

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Viora Home Health, Inc.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-2500

Decision No. CR4369

Date: October 27, 2015

**DECISION**

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke the participation in the Medicare program of Petitioner, Viora Home Health, Inc. Revocation is authorized because Petitioner was not operational within the meaning of 42 C.F.R. § 424.535(a)(5).

**I. Background**

Petitioner, a home health agency, requested a hearing in order to challenge the determination of a Medicare contractor – sustained by CMS on initial determination and reconsideration – to revoke Petitioner’s participation in Medicare. CMS filed a motion for summary judgment or, in the alternative for a decision based on the written record of the case. CMS filed seven proposed exhibits, identified as CMS Ex. 1 – CMS Ex. 7, with its motion. Petitioner did not file a brief in opposition to CMS’s motion but filed five proposed exhibits, identified as P. Ex. 1 – P. Ex. 5.<sup>1</sup> I receive both parties’ exhibits into the record.

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<sup>1</sup> I gave Petitioner several opportunities to file a brief in opposition to CMS’s motion. My initial pre-hearing order directed Petitioner to file a brief on the merits. When Petitioner failed to do so I afforded it another opportunity. Petitioner still did not file a

## **II. Issue, Findings of Fact and Conclusions of Law**

### **A. Issue**

The issue is whether CMS is authorized to revoke Petitioner's Medicare participation on the ground that Petitioner was not operational within the meaning of 42 C.F.R. § 424.535(a)(5).

### **B. Findings of Fact and Conclusions of Law**

The facts of this case are not complex. Petitioner, in its 2012 application for revalidation as a Medicare participant, listed its business address as 12808 W. Airport Boulevard, Suite 285, Sugarland, Texas 77478 (Airport Boulevard location). CMS Ex. 6. On July 8, 2014, an inspector employed by a Medicare contractor went to that location in order to conduct an onsite inspection. When he arrived there, he discovered that Petitioner was not conducting business at that location. CMS Ex. 4. The contractor and CMS predicated their revocation determination on the fact that Petitioner was no longer doing business at the location that it had listed as its business location in its revalidation application. CMS Ex. 3.

In fact, Petitioner had changed its business location at some point in time after it had filed its revalidation application. As of July 2014 it was no longer doing business at the Airport Boulevard location but had moved its business address to 3711 Pennington Court, Missouri City, Texas 77459 (Pennington Court location). P. Exs. 1, 2.

CMS asserts that its contractor has no record of Petitioner ever notifying it of its change of location. Petitioner did not submit an official form notifying the contractor of its change of address (855 Form) nor did it notify the contractor online via CMS's Provider Enrollment Chain and Ownership System (PECOS).<sup>2</sup> In responding to the

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brief. On October 23, 2015, I issued an order foreclosing Petitioner from filing a brief. On October 26, 2015, Petitioner's representative called my office and insisted that he had attempted to file a brief but that the Departmental Appeals Board's electronic filing system would not accept it. I allowed Petitioner some additional time in order to file its brief. Finally, Petitioner filed a brief later on October 26. I am accepting that brief and I address Petitioner's arguments in this decision.

<sup>2</sup> Petitioner now contends that it filed an updated 855 Form advising the contractor and CMS of its change of business location. Petitioner's brief at 1. Petitioner does not state when it allegedly filed this form – whether it did so before the unsuccessful July 8, 2014 inspection or subsequently – nor has it offered a copy of this allegedly filed form as proof of its action. I do not find that Petitioner filed an 855 Form properly notifying the

determination to revoke its participation Petitioner did not deny that it failed to use either of these official mechanisms for notifying the contractor of its change of business location but it asserted that on August 6, 2013, it sent a letter to the contractor announcing its intent to move from the Airport Boulevard location to the Pennington Court location. P. Ex. 1.

CMS contends that its contractor has no record of ever having received this letter. It contends additionally that Petitioner cannot prove that it actually sent the letter or that it was delivered because it was not sent either as certified or as registered mail. I find it unnecessary to decide whether the letter actually was delivered to the contractor. The letter was an ineffective form of notice and consequently, Petitioner did not comply with its duty as a Medicare participant to notify the contractor of its change of business location.

A provider or a supplier participating in Medicare is required to comply with that program's participation criteria. Its duties include complying with the program's prerequisites for providing notice and information regarding its business location and change of address. Medicare publishes a Program Integrity Manual (Manual) that instructs providers and suppliers as to what information they must provide but just as importantly, how they are to provide that information. The Manual specifically instructs providers and suppliers that they must adhere to all relevant instructions. Manual § 15.1.3. The Manual allows for two ways in which a provider or supplier may provide the Medicare program with notice. It may do so either by filing an 855 Form or via PECOS. Manual § 15.1.2.

The two forms of notice provided for by the Manual are exclusive. The Manual allows for no alternate form of notice. Petitioner was required, when it changed its business location, either to provide the Medicare program with an 855 Form announcing the change, or to notify the program online via PECOS. Sending a letter to the contractor by regular mail is not an acceptable alternative.

This is not an instance of exalting form over substance. I take notice that there are many thousands, if not more, providers and suppliers participating in Medicare. The contractors who administer the program on a day-to-day basis are confronted with immense amounts of information and are responsible for processing and organizing that information. It is essential that they receive relevant information in a routinized way. Receiving it piecemeal or by irregular means poses a real threat to disrupt the orderly administration of the program. Consequently, it is entirely rational that the Medicare program and CMS, its administrator, insist that information be provided to the program only in a standardized format. These requirements apply to all providers and suppliers.

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contractor and CMS of its change of business location absent any proof that Petitioner filed such a form timely.

