Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sofia Peterson, M.D.,
(PTAN: CB532A),
(NPI: 1386664498)

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-16-810

Decision No. CR4844

Date: May 10, 2017

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its Medicare administrative contractor, revoked the Medicare enrollment and billing privileges of Petitioner, Sofia Peterson, M.D., because Petitioner was not operational at the practice location on record with CMS. Specifically, the practice location on record with CMS was a mailbox at a UPS Store. For the reasons stated herein, I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges.

I. Background

Petitioner is a physician, CMS Exhibit (Ex.) 3 at 3. On or about February 3, 2014, Petitioner filed an internet-based enrollment application through the Provider Enrollment, Chain and Ownership System (PECOS) in response to a revalidation request from Noridian Healthcare Solutions (Noridian or "the contractor"). *See* CMS Ex. 2 at 1. The sole practice location listed by Petitioner in her enrollment application was 7231 Boulder Ave. 301, Highland, CA. When Petitioner completed and submitted her enrollment application, she updated, *inter alia,* both her practice location and correspondence

address. CMS Ex. 1 at 1. Petitioner electronically signed the certification statement on February 3, 2014. CMS Ex. 1 at 4. Noridian informed Petitioner, via a letter dated April 15, 2014, that it had approved her revalidation Medicare enrollment application. CMS Ex. 2 at 1.

On or about August 4, 2015, Petitioner submitted updated enrollment information through PECOS, at which time she provided a new correspondence address and payment address, and also listed a new enrollment application contact person. CMS Ex. 3 at 2-5. In a letter dated September 8, 2015, Noridian informed Petitioner that it had approved her change of information request. CMS Ex. 4 at 1.

On January 11, 2016, a site visit contractor visited Petitioner's reported practice location, at which time the site visit contractor documented that the location was a UPS Store. CMS Ex. 5. On April 21, 2016, Noridian sent Petitioner an initial determination informing her that her Medicare enrollment and billing privileges were being revoked retroactive to January 11, 2016, the date of the failed site visit, and that she was barred from reenrollment in Medicare for a period of two years. CMS Ex. 6 at 1-2. The letter stated the following, in pertinent part:

> **42 [C.F.R. §]424.535(a)(5) - On Site Review/Other Reliable Evidence that Requirements Not Met**
>
> You are no longer operational to furnish Medicare covered items or services. A site visit conducted on January 11, 2016 at 7231 Boulder Ave. 301, Highland, CA 92346-3313 confirmed that you are not operational.
>
> **42 [C.F.R. §]424.535(a)(9) - Failure to Report Changes**
>
> You are no longer operational to furnish Medicare covered items or services. A site visit conducted on January 11, 2016 at 7231 Boulder Ave. 301, Highland, CA 92346-3313 confirmed that you are non-operational. You did not notify the Centers for Medicare & Medicaid Services of this change of practice location as required under 42 [C.F.R. §]424.516.

CMS Ex. 6 at 1 (emphasis in original).

In a letter dated June 16, 2016, Petitioner, through counsel, requested reconsideration of the initial determination. CMS Ex. 7. Petitioner explained that she is "well aware of the requirement to maintain complete and accurate information in her Medicare file, and the need to report changes to practice locations within 30 days pursuant to 42 C.F.R. [§] 424.516." CMS Ex. 7 at 3. Petitioner stated that she had hired her billing company, Advanced Billing Consultants, to complete her Medicare revalidation, and that the billing company was "unfamiliar with the rules for reporting practice locations for physicians

that work solely within hospital locations, and populated the revalidation practice location with a mail center, which was Dr. Peterson's correct correspondence address." CMS Ex. 7 at 3. Petitioner stated that her billing company "accepted responsibility for the error . . . ," and she practiced full-time as a physician at the Wound Care Clinic at Eisenhower Medical Center. CMS Ex. 7 at 4, citing CMS Ex. 7 at 9, 10. Petitioner contended that she "did not fail to accurately report a change in practice location; her billing company inaccurately populated the practice address location with her correspondence address due to confusion regarding how to report hospital-based physicians." CMS Ex. 7 at 5 (emphasis in original).

On July 22, 2016, Noridian issued an unfavorable reconsidered determination. CMS Ex. 8. The reconsidered determination stated the following:

> Revocation, Denial, or Effective date reason: 42 [C.F.R. §]424.535(a)(5)
>
> **On Site Review/Other Reliable Evidence that Requirements Not Met**
>
> **You are no longer operational to furnish Medicare covered items or services. A site visit conducted on January 11, 2016 at 7231 Boulder Ave. 301, Highland, CA 92346-3313 confirmed that you are non-operational.**
>
> Revocation, Denial, or Effective date reason: 42 [C.F.R. §]424.535(a)(9)
>
> **Failure to Report Changes**
>
> **You are no longer operational to furnish Medicare covered items or services. A site visit conducted on January 11, 2016 at 7231 Boulder Ave. 301, Highland, CA 92346-3313 confirmed that you are non-operational. You did not notify the Centers for Medicare & Medicaid Services of this change of practice location as required under 42 [C.F.R. §]424.516.**

CMS Ex. 8 at 1 (emphasis in original). The reconsidered determination explained that Petitioner signed the February 3, 2014 application that listed the private practice location at the location of the UPS Store as a "Private Practice Office" and that Petitioner signed the subsequent change of information application on August 4, 2015, at which time she again certified "the 855I application as being true and accurate." CMS Ex. 8 at 2. Noridian determined that Petitioner "has not provided evidence to show full compliance with the standards for which [she was] revoked." CMS Ex. 8 at 2 (emphasis omitted).

Petitioner, through counsel, submitted a request for an administrative law judge (ALJ) hearing on August 12, 2016. On September 14, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order), at which time I directed the parties to each file a pre-hearing exchange consisting of a brief and supporting documents by specified deadlines. Order, § 4. I also explained that the parties should submit written direct testimony for any witnesses in lieu of in-person direct testimony. Order, § 8. In the Order, I explained that a hearing would only be necessary for the purpose of cross-examination of witnesses. Order, §§ 9, 10.

In response to my September 14, 2016 Order, CMS filed a motion for summary judgment and brief (CMS Br.), along with eight exhibits (CMS Exs. 1-8). Petitioner filed a brief and response to CMS's motion for summary judgment. (P. Br.). As neither party has objected to any exhibits, I admit the exhibits into the record. Because neither party has submitted written direct testimony, there is no need for a hearing for the purpose of cross-examination of witnesses. Order, §§ 9, 10. I consider the record to be closed and the matter ready for a decision on the merits.[1]

II. Issue

Whether CMS has a legal basis to revoke Petitioner's Medicare enrollment and billing privileges because Petitioner was not operational at the practice location on file with CMS and did not timely report a change in practice location.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(17), 498.5(*l*)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Findings of Fact, Conclusions of Law, and Analysis[2]

As a physician, Petitioner is a "supplier" for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (definition of supplier), 410.20(b)(1). In order to participate in the Medicare program as a supplier, individuals must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke the enrollment and billing privileges of a supplier for any reason stated in 42 C.F.R. § 424.535. When CMS revokes a supplier's Medicare billing privileges, CMS

[1] CMS has argued that summary disposition is appropriate. It is unnecessary in this instance to address the issue of summary disposition, as neither party has requested an in-person hearing.

[2] My numbered findings of fact and conclusions of law appear in bold and italics.

establishes a reenrollment bar for a period ranging from one to three years. 42 C.F.R. § 424.535(c). Generally, a revocation becomes effective 30 days after CMS mails the initial determination revoking Medicare billing privileges, but if CMS finds a supplier to be non-operational, as it did here, the revocation is effective from the date that CMS determines that the supplier was not operational. 42 C.F.R. § 424.535(g).

On-site review is addressed in 42 C.F.R. § 424.535(a)(5). Pursuant to subsection 424.535(a)(5)(ii), a supplier is non-operational if CMS determines upon an on-site review that it is "no longer operational to furnish Medicare covered items or services" or that it is "not meeting Medicare enrollment requirements."

1. ***On January 11, 2016, a site visit contractor was unable to conduct a site visit of Petitioner's practice location in Highland, CA, which was the practice location on file with Noridian at that time, because the location is a UPS Store and not a medical office.***

On or about February 3, 2014, Petitioner submitted an enrollment application in response to the Medicare administrative contractor's request that she revalidate her enrollment. At that time, Petitioner reported that she was changing her Medicare information and updated both her correspondence address and practice location. CMS Ex. 1 at 1. Petitioner answered in the affirmative a question asking if the practice location listed in the application is a private practice office setting. CMS Ex. 1 at 1. Petitioner also explained that she had seen her first Medicare patient at this practice location on January 1, 2013. CMS Ex. 1 at 1. Petitioner updated her enrollment information in August 2015; although she added an email address for the listed practice location, she otherwise did not change the practice location that was previously listed in February 2014. CMS Ex. 3.

On January 11, 2016, a site visit contractor attempted a "site verification survey" at the reported practice location address in Highland, CA, at which time he determined the location was a UPS Store. CMS Ex. 5 at 1-2.

In seeking reconsideration of the determination revoking her enrollment, Petitioner contended that her billing company took responsibility for the listing of an improper practice location. CMS Ex. 7. In her brief, she argues that "[t]he issue in Petitioner's Medicare enrollment file occurred due to an innocent mistake by her billing company . . . ." P. Br. at 3. However, Petitioner does not dispute that the practice location address in Highland, CA, is a UPS Store, not a medical office.

2. CMS had a legal basis to revoke Petitioner's Medicare enrollment and billing privileges because she was not operational pursuant to 42 C.F.R. § 424.535(a)(5) at the practice location on file with CMS at the time of the January 11, 2016 site visit.

While Petitioner concedes that the Highland, CA, location is a UPS Store, she nonetheless contends that she was operational to see patients at another location that was not listed on her Medicare enrollment application and that her enrollment should not have been revoked. P. Br. at 5-7.

A supplier is "operational" when it:

> has a qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked (as applicable based on the type of facility or organization, provider or supplier specialty, or the services or items being rendered) to furnish these items or services.

42 C.F.R. § 424.502. CMS may revoke a currently enrolled supplier's Medicare billing privileges in the following circumstance:

> Upon on-site review, CMS determines that-
>
> (i) A Medicare Part B supplier is no longer operational to furnish Medicare covered items or services, or the supplier has failed to satisfy any or all of the Medicare enrollment requirements, or has failed to furnish Medicare covered items or services as required by statute or regulations.

42 C.F.R. § 424.535(a)(5)(ii).

While Petitioner asserts that she provided services to patients at Eisenhower Medical Center's Wound Care Clinic in Rancho Mirage, CA (*see* CMS Ex. 7 at 10), the address Petitioner provided as her physical practice location when she revalidated her Medicare enrollment in February 2015 was a UPS Store. CMS Ex. 1 at 1. Even if Petitioner had any misunderstanding regarding the location that she had reported as a practice location, she maintained this practice location in her enrollment record in August 2015 when she updated her enrollment information. CMS Ex. 3.

The regulatory definition of the term "operational" refers to the "qualified physical practice location" of a supplier, 42 C.F.R. § 424.502. When Petitioner was asked to revalidate her enrollment, she provided a physical practice location at the address of the UPS Store in Highland, CA. CMS Exs. 1 at 1. While Petitioner argues that she did not

prepare the enrollment application herself (CMS Ex. 7 at 1-3; P. Br. at 6), Petitioner signed the application and certified that its contents were "true, correct, and complete."[3] CMS Ex. 8 at 2; *see* CMS Exs. 1 at 4; 3 at 1; *see also* Section 15, Form CMS-855I, *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/cms855i.pdf* (last visited May 3, 2017). CMS, in its performance of an on-site inspection "to verify that the enrollment information submitted to CMS or its agents is accurate and to determine compliance with Medicare enrollment requirements," discovered that Petitioner did not have an operational practice at the location in Highland, CA, that she claimed was a "Private Practice Office Setting." CMS Exs. 1 at 1; 3 at 3; 42 C.F.R. § 424.517(a). In assessing that Petitioner was not operational at a practice location in Highland, CA, CMS unsuccessfully attempted to inspect the "qualified physical practice location" that Petitioner provided and was on file with CMS at the time of the attempted site visit. 42 C.F.R. § 424.517(a).

Because the physical practice location on file with CMS was a UPS Store, and not a private office, CMS had a legal basis to revoke Petitioner's enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(5)(ii). Simply stated, Petitioner was not operational at the UPS Store.

Petitioner primarily argues that she relied on her billing company to handle her revalidation, and that due to the company's ignorance, it incorrectly completed the enrollment application. However, while Petitioner argues that she did not prepare the enrollment application containing the incorrect information, she fails to acknowledge that she certified that the information contained in her enrollment application was correct. By certifying incorrect enrollment information, Petitioner agreed that the information on the application was correct. Even if the preparer erred in preparing the application, Petitioner, the Medicare enrollee, certified its accuracy and adopted those errors as her own.[4] *See* 42 C.F.R. § 424.510(d)(3)(i) (requiring a signature of the applying practitioner

[3] CMS did not submit a copy of the certification statement that accompanied the August 2015 change of information. CMS Ex. 3. However, Petitioner has not alleged that she did not certify the information prepared by her billing company.

[4] I recently addressed a similar situation in *Gregory Hadfield, M.D.*, DAB No. CR4788 at 10 (2017), stating: "By signing a certification statement alone, or a certification statement that accompanies an isolated section or sections of an enrollment application, in the absence of reviewing the request prompting the submission of the enrollment information, the supplier or provider may unwittingly adopt a preparer's errors. There is simply no provision under law that absolves a supplier or provider of the mistakes of another individual who is handling his or her enrollment application. Therefore, while I recognize that [the billing company] may have erred in handling Petitioner's revalidation application, I also recognize that Petitioner signed the certification statement that accompanied [the billing company's] submission and was not without knowledge that it

or sole proprietor that "attests that the information submitted is accurate and that the provider or supplier is aware of, and abides by, all applicable statutes, regulations, and program instructions.").

I construe that Petitioner has also disputed the two year length of the reenrollment bar. The Departmental Appeals Board (Board) has explained that "CMS's determination regarding the duration of the reenrollment bar is not reviewable." *Vijendra Dave, M.D.*, DAB No. 2672 at 11 (2016). The Board further discussed that "the only CMS actions subject to appeal under Part 498 are the types of initial determinations specified in section 498.3(b)." *Id.* The Board also explained that "[t]he determinations specified in section 498.3(b) do not, under any reasonable interpretation of the regulation's text, include CMS decisions regarding the severity of the basis for revocation or the duration of a revoked supplier's reenrollment bar." *Id.* The Board noted that a review of the rulemaking history showed that CMS did not intend to "permit administrative appeals of the length of a reenrollment bar." *Id.* I have no authority to review this issue on appeal, and therefore, I do not disturb the length of the two-year reenrollment bar.

To the extent that Petitioner is requesting equitable relief, I am unable to grant equitable relief. P. Br. at 2 (stating that Petitioner "has not received any settlement money or insurance proceeds" from the billing company or any other source, and that she was obligated to refund CMS an overpayment in excess of $76,000); P. Br. at 3 ("The revocation of Dr. Peterson's enrollment has created a significant hardship on Dr. Peterson and has posed difficult physician coverage issues for Eisenhower Medical Center's Medicare wound-care patients."); *see US Ultrasound*, DAB No. 2302 at 8 (2010) ("Neither the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements."). While I cannot grant Petitioner equitable relief, that does not mean that I do not recognize the significant impact of Petitioner's Medicare enrollment revocation on her practice. However, because Petitioner listed a practice location on her enrollment application at which she was not operational, CMS had a legal basis to revoke her enrollment.

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was acting on his behalf." I further discussed that "[a] provider or supplier is bound by the mistakes of the people he or she relies upon to help manage his or her Medicare enrollment, and errors may occur if a provider or supplier does not personally and carefully review all enrollment requests *and* all sections of an enrollment application that accompany a signed certification statement." *Id.* (emphasis in original).

3. Petitioner failed to notify CMS or its administrative contractor of a change of practice location within 30 days of the location change.[5]

The regulations at 42 C.F.R. § 424.516(d)(1)(iii) require that physicians report, within 30 days, a change in practice location to their Medicare contractor. Failure to timely report a change in practice location subjects a physician to revocation of his or her Medicare billing privileges. 42 C.F.R. § 424.535(a)(9). Petitioner contends that she practiced at Eisenhower Medical Center, yet did not report that practice location on her application. *See* CMS Ex. 7 at 10 (letter stating that Petitioner had been practicing at Eisenhower Medical Center since 2010). The evidence indicates that Petitioner did not report that she practiced at Eisenhower Medical Center until June 16, 2016. CMS Ex. 7 at 3-5.

Petitioner cannot escape responsibility for her failure to report her change in practice location within 30 days, and Petitioner is responsible for knowing the rules pertaining to Medicare suppliers. In fact, Petitioner acknowledged that she is "well aware of the requirements to maintain complete and accurate information in her Medicare file . . . ." CMS Ex. 7 at 3. While Petitioner contends that she did not change her practice location, for purposes of her Medicare enrollment, she did change her practice location; Petitioner initially reported she was practicing in Highland, CA, in February 2014 (CMS Ex. 1 at 1), and she later reported, after a failed site visit, that she had been practicing at Eisenhower Medical Center in Rancho Mirage, CA, at the time of the failed site visit. CMS Ex. 7 at 4; P. Br. at 7. Therefore, for purposes of her Medicare enrollment, Petitioner did not timely report a change in practice location pursuant to 42 C.F.R. § 424.516(d)(1)(iii).

V. Conclusion

I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges, along with the two-year bar to reenrollment.

/s/
Leslie C. Rogall
Administrative Law Judge

[5] I recognize that the fact that Petitioner was non-operational, alone, is a sufficient basis for CMS to have revoked her Medicare enrollment and billing privileges. I will nonetheless briefly address Petitioner's failure to timely report the location change for her practice.