

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Senior Care Advantage,
(PTAN: 9383381),
(NPI: 1841431475)

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-16-896

Decision No. CR4847

Date: May 15, 2017

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its Medicare administrative contractor, revoked the Medicare enrollment and billing privileges of Petitioner, Senior Care Advantage, 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 "group practice of physicians and nurse practitioners" and supplies medical services to "patients at nursing facilities in central Ohio." Petitioner Brief (P. Br.) at 1; *see* CMS Exhibit (CMS Ex.) 7 at 1. In connection with a revalidation request (*see* CMS Ex. 4 at 1) by CGS Administrators, LLC (CGS or "the contractor"), a Medicare administrative contractor, Petitioner submitted an internet-based enrollment application through the Provider Enrollment, Chain, and Ownership System (PECOS). CMS Ex. 3. At that time, Petitioner deleted five practice locations and added a new practice location

at 7652 Sawmill Road, Suite 321, in Dublin, Ohio.¹ CMS Ex. 2 at 8. Petitioner also reported a correspondence address of PO Box 920, Dublin, Ohio. CMS Ex. 2 at 2. An owner of Petitioner signed the certification statement, agreeing that he had “read the contents of the application” and did “certify that the information contained herein is true, correct, and complete” CMS Ex. 3 at 4.

On February 24, 2015, CGS sent a letter to Petitioner confirming that it had processed the revalidation application. CMS Ex. 4. In that letter, CGS informed Petitioner that its enrollment information on file included a “[p]rovider [l]ocation” on Sawmill Road in Dublin, Ohio. CMS Ex. 4 at 1.

On December 28, 2015, a site visit contractor visited Petitioner’s reported address on Sawmill Drive, at which time he documented that the location was a UPS Store, and not a medical office. CMS Ex. 5. On April 19, 2016, CGS sent Petitioner an initial determination informing it that its Medicare enrollment and billing privileges were being revoked retroactive to December 28, 2015, the date of the failed site visit, and that it was barred from re-enrollment in Medicare for a period of two years. CMS Ex. 6. The letter stated the following, in pertinent part:

42 [C.F.R. §]424.535(a)(5) - On Site Review

You are no longer operational to furnish Medicare covered items or services. An on-site review conducted on December 28, 2015 at 7652 Sawmill Rd 321, Dublin, OH 43016-9296 confirmed that you are non-operational.

42 [C.F.R. §]424.535(a)(9) - Failure to Report

You are no longer operational to furnish Medicare covered items or services. An on-site review conducted on December 28, 2015 at 7652 Sawmill Rd 321, Dublin OH 43016-9296 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.

¹ Petitioner’s enrollment application referenced six practice locations, five of which it was deleting, effective November 6, 2014. CMS Ex. 2 at 3-8. Petitioner deleted the following locations: Altercare of Hilliard (Hilliard, OH); Columbus Rehab and Subacute (Columbus, OH); Heartland Victorian Village (Columbus OH); Columbus Healthcare Center (Columbus, OH); and Villa Angela (Columbus, OH). The sixth location, which is the location that Petitioner added, is the 7652 Sawmill Road address, which Petitioner reported was a “Group Practice Office/Clinic.” CMS Ex. 2 at 8.

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

In a letter dated May 4, 2016, Petitioner requested reconsideration of the April 19, 2016 revocation determination. CMS Ex. 7. Petitioner explained that the Sawmill Road address “is where we accept mail and packages for [Senior Care Advantage] and is not our location of operation.” CMS Ex. 7 at 1. Petitioner explained that it “has never and does not currently maintain an office in which patients are treated,” and sees patients at seven “servicing locations.”² Petitioner explained that its co-owner had previously used his home address as a mailing address, and it “changed the Medicare address to the Sawmill Road address” because the co-owner’s new home was under construction. CMS Ex. 7 at 1. Petitioner added that “[w]e did not report any further address changes because we were unaware the address provided needed to be an address of which the practice provides operations.” CMS Ex. 7 at 2. Petitioner explained that each of its claims “indicates the facility address in addition to the place-of-service code which indicates the type of facility” CMS Ex. 7 at 2. Petitioner added that “[w]e deeply regret the confusion that occurred due to our attempt to secure a consistent address where [personal health information] and other business mailings could be safely received by [Senior Care Advantage] during an address transition.” CMS Ex. 7 at 2.

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

Revocation Reason: 42 [C.F.R. §]424.535(a)(5) – On-Site Review

You are no longer operational to furnish Medicare covered items or services. An on-site review conducted on December 28, 2015 at 7652 Sawmill Rd 321, Dublin, OH 43016-9296 confirmed that you are non-operational.

Revocation Reason: 42 [C.F.R. §]424.535(a)(9) – Failure to Report

You are no longer operational to furnish Medicare covered items or services. An on-site review conducted on December 28, 2014 at 7652 Sawmill Rd 321, Dublin, OH 43016-9296 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.

² Petitioner reported it sees patients at the following seven locations: Aftercare of Hilliard (Hilliard, OH); Columbus Healthcare Center (Columbus, OH); Astoria Place of Columbus (Columbus, OH); Heartland Victorian Village (Columbus, OH); Whetstone Gardens & Care Center (Columbus, OH); Arbors at London (London, OH); and Arbors West (West Jefferson, OH). CMS Ex. 7 at 1.

CMS Ex. 8 at 1 (emphasis omitted). The reconsidered determination explained that “[u]pon an on-site review, the practice location . . . was found to be a UPS [S]tore,” and that “[t]he reported practice location must be where you provide health care services.” CMS Ex. 8 at 2.

Petitioner, through counsel, submitted a request for an administrative law judge (ALJ) hearing on September 13, 2016, that my office received on September 15, 2016. On September 29, 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 29, 2016 Order, CMS filed a brief and 10 exhibits (CMS Exs. 1-10). Petitioner filed a brief and two exhibits (P. Exs. 1-2). As neither party has objected to any exhibits, I admit the exhibits into the record. Pursuant to my Order, CMS submitted the written direct testimony of an employee of CGS (CMS Ex. 10), and Petitioner submitted the written direct testimony of one of its owners (P. Ex. 1) and an employee of its billing company (P. Ex. 2). Order, § 8. Because neither party has requested the opportunity to cross-examine any of these witnesses, I consider the record to be closed and the matter ready for a decision on the merits.³ Order, §§ 9, 10.

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).

³ As an in-person hearing to cross-examine witnesses is not necessary, it is unnecessary to further address CMS’s motion for summary disposition.

IV. Findings of Fact, Conclusions of Law, and Analysis⁴

As a medical practice, 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, entities 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 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 December 28, 2015, a site visit contractor was unable to conduct a site visit of Petitioner’s Sawmill Road practice location, which was the practice location on file with CGS at that time, because the location is a UPS Store and not a medical office.***

In November 2014, Petitioner submitted an internet-based enrollment application in response to the Medicare administrative contractor’s request that it revalidate its enrollment. CMS Ex. 3. At that time, Petitioner changed its Medicare information and deleted five practice locations and added one new practice location, the address on Sawmill Road. CMS Ex. 2 at 3-8. In a letter dated February 24, 2015, CGS informed Petitioner that it had processed its enrollment application for purposes of revalidation. CMS Ex. 4 at 1. In summarizing Petitioner’s Medicare enrollment information, CGS informed Petitioner that its “Medicare Enrollment Information” listed that its “[p]rovider [l]ocation” was on Sawmill Road. CMS Ex. 4 at 1. The letter instructed Petitioner to “verify the accuracy of your enrollment information” and that it is “required to submit updated and changes to [its] enrollment information in accordance with specified timeframes” CMS Ex. 4 at 1.

On December 28, 2015, a site visit contractor attempted a “site verification survey” at the reported practice location on Sawmill Road. CMS Ex. 5. The site visit contractor

⁴ My numbered findings of fact and conclusions of law appear in bold and italics.

reported that “[t]he address as provided is a UPS Mail Drop. Not a Senior Care Advantage.” CMS Ex. 5 at 1.

In seeking reconsideration of the determination revoking its enrollment, Petitioner admitted that it was not operational at the UPS Store address and that it was “unaware the address provided needed to be an address of which the practice provides operations.” CMS Ex. 7 at 1-2. Petitioner admits that it did not practice at the location provided in the enrollment application, but rather, it practiced at other locations that were not identified in the enrollment information on file at the time of the December 28, 2015 site visit. CMS Ex. 7 at 1-2; P. Br. at 3 (stating that it “does not contest the information submitted by CMS that these locations were deleted by [Petitioner] in a filing dated November 6, 2014”); P. Br. at 3 (stating that it “did not intend for the Sawmill Location to be recognized as a clinical practice location.”).

There is no dispute that the Sawmill Road address Petitioner provided is a UPS Store, and not a medical office or facility where it provided services to Medicare beneficiaries.

2. CMS has a legal basis to revoke Petitioner’s Medicare enrollment and billing privileges because it was not operational pursuant to 42 C.F.R. § 424.535(a)(5) at the practice location on file with CMS.

While Petitioner concedes that the Sawmill Road location is a UPS Store, it nonetheless contends that it was operational to see patients and its enrollment should not have been revoked. P. Br. at 4-7.

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 it provided services to patients at the seven locations identified in its May 2016 request for reconsideration (*see* CMS Ex. 7 at 1), the address Petitioner provided as its sole physical practice location when it revalidated its Medicare enrollment in November 2014 was the UPS Store on Sawmill Road. CMS Ex. 2 at 8; *see* CMS Ex. 5. Even if Petitioner had any misunderstanding regarding the location it had reported as a practice location, CGS had, in February 2015, informed Petitioner that its “Medicare Enrollment Information” showed that its “provider location” was at the Sawmill Road location, a UPS Store, and not any of the seven locations where Petitioner states that it actually provided services to patients. CMS Ex. 7 at 1.

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 in late 2014, Petitioner provided a new physical practice location and deleted five other practice locations, and reported that its new practice location was a “Group Practice Office/Clinic” on Sawmill Road. CMS Ex. 2 at 8. Petitioner’s co-owner signed the application and certified that its contents were “true, correct, and complete.” CMS Ex. 3 at 4. 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 on Sawmill Road that it claimed was an office/clinic and a practice location. CMS Exs. 2 at 8, 5; 42 C.F.R. § 424.517(a). In assessing that Petitioner was not operational at a practice location on Sawmill Road, CMS 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 or medical facility, CMS had a legal basis to revoke Petitioner’s enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(5)(ii). Petitioner was not operational at the UPS Store on Sawmill Road. *See Care Pro Home Health Care*, DAB No. 2723 at 6 (2016) (holding that CMS lawfully revoked a supplier’s Medicare enrollment based on its non-operational status at a single location); *see also Viora Home Health, Inc.*, DAB No. 2690 at 13 (2016) (holding that CMS properly revoked Medicare enrollment when a practice location of record was not operational upon onsite review).

Petitioner raises several arguments that are not persuasive. First, Petitioner argues it “intended only to identify the Sawmill Location to CMS for correspondence purposes, but inadvertently listed it as a practice location.” P. Br. at 3. Petitioner adds that “[t]he Sawmill Location was never a clinic practice location” and that it “was merely erroneously listed as one.” P. Br. at 5. Petitioner also explains that “[a] paperwork error resulted in a mailing location being listed as a clinic practice location in the CMS 855B

enrollment form.”⁵ P. Br. at 6. In reviewing compliance with applicable regulations, I must look to Petitioner’s actions, rather than simply its intent. Petitioner did not indicate in its revalidation application that it currently practiced at *any* of its seven locations that it reported in the May 2016 request for reconsideration, but rather, listed a single practice location at which it did not provide services to Medicare beneficiaries. Further, if Petitioner’s goal was to receive correspondence at the Sawmill Road address, it had already listed a different address, a post office box, at which it wished to receive correspondence. CMS Ex. 2 at 2. And while Petitioner had deleted five locations, purportedly erroneously, it apparently had not previously reported three of the practice locations that it first reported in its May 2016 reconsideration request, even though it submitted evidence that its co-owner had been the medical director of one of those facilities for at least two years. CMS Ex. 7 at 1-2, 26. Unfortunately, even if Petitioner did not intend to report the UPS Store location as its sole practice location, Petitioner did so. *See* P. Br. at 6 (“A mistake in completing this paperwork should not be grounds for termination under the Medicare regulations.”). In fact, Petitioner committed numerous mistakes in completing its revalidation enrollment application. P. Br. at 6.

Petitioner contends that 42 C.F.R. § 424.535(a) is permissive, and revocation is not mandatory. Petitioner is correct; however, my review is not premised on whether CMS’s action was required, but rather, whether CMS or its contractor has a “legal basis” for its action. *Letantia Bussell, M.D.*, DAB No. 2196 at 10 (2008); *see Razaque Ahmed, M.D.*, DAB No. 2261 at 19 (2008), *aff’d, Ahmed v. Sebelius*, 710 F. Supp. 2nd 167 (D. Mass. 2010) (stating if CMS establishes that the regulatory elements necessary for revocation are satisfied, an ALJ may not substitute his or her “discretion for that of CMS in determining whether revocation is appropriate under the circumstances”). Therefore, I need only review whether CMS was authorized to revoke Petitioner’s Medicare enrollment, rather than whether it was required to revoke Petitioner’s Medicare enrollment. 42 C.F.R. § 424.535(a) (stating “CMS *may* revoke a currently enrolled provider or supplier’s Medicare billing privileges”) (emphasis added).

Petitioner recounts that the filing instructions were unclear, stating: “The filing instructions for the enrollment process may seem clear to CMS which has contractors and personnel dedicated solely to these functions, but they are not always clear to small providers who do not.” P. Br. at 6. I disagree with Petitioner. The Form CMS-855B application clearly asks the applicant to provide a “correspondence address,” for contact purposes, and to also list each “practice location.” *See* CMS Ex. 2 at 2-3. Petitioner

⁵ Section 2 of the Form CMS-855I enrollment application directs the applicant to provide a “correspondence address.” *See* CMS Ex. 1 at 2. If Petitioner wished to receive mail at the UPS Store, it could have listed the UPS Store address as a correspondence address without the need to inaccurately provide practice location information in Section 4 of the application. Rather, Petitioner listed its post office box as a correspondence address. CMS Ex. 2 at 2; *see* CMS Ex. 7 at 2.

demonstrated that it was aware that it could provide a correspondence address that is not a practice location. CMS Ex. 2 at 2 (listing post office box in Dublin, OH, as the “correspondence address”); *see* CMS Ex. 7 at 2 (discussing that the Dublin, OH, correspondence address is a post office box). Petitioner stated in its application that its practice location was a “Group Practice Office/Clinic” at what is actually a UPS Store. CMS Ex. 2 at 8. And further, Petitioner *deleted* its other practice locations. CMS Ex. 2 at 3-8. Petitioner has not demonstrated there is any ambiguity in the enrollment application with respect to identifying a correspondence address or practice location(s).

To the extent that Petitioner’s arguments can be construed as a request for equitable relief, I am unable to grant equitable relief. *See* P. Br. at 6 (“If the Reconsideration Decision stands, [Petitioner] will be terminated and subject to a two-year reenrollment bar due to a mere paperwork error that was clarified by [Petitioner]”); *see also US Ultrasound*, DAB No. 2302 at 8 (2010) (“[n]either 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 its practice. However, because Petitioner listed a practice location on its enrollment application at which it was not operational (and did not list *any* operational practice locations), CMS had a legal basis to revoke its enrollment.

3. Petitioner failed to notify CMS or its administrative contractor of a change of practice location within 30 days of the location change.⁶

The regulations at 42 C.F.R. § 424.516(d)(1)(iii) require that physician and nonphysician practitioner organizations report, within 30 days, a change in practice location to their Medicare contractor. Failure to timely report a change in practice location subjects a practice to revocation of its Medicare billing privileges. 42 C.F.R. § 424.535(a)(9). Petitioner does not contend that it informed CGS of its practice location change within 30 days of when it began practicing at the seven practice locations that were not listed on its enrollment application. *See* CMS Ex. 7 at 1. Further, I note that while four of those locations had previously been reported before they were purportedly deleted in error (CMS Ex. 2 at 3-8), Petitioner has not submitted evidence that it had ever reported three of the seven practice locations, Whetstone Gardens & Care Center (Columbus, OH), Arbors of London (London, OH), and Arbors West (West Jefferson, OH). CMS Ex. 7 at 1; *see* CMS Ex. 7 at 26 (May 5, 2016 letter from the Administrator of Whetstone Rehabilitation Center, Skilled Nursing & Assisted Living, stating that Petitioner’s co-

⁶ I recognize that the fact that Petitioner was non-operational, alone, is a sufficient basis for CMS to have revoked its Medicare enrollment and billing privileges. I will nonetheless briefly address Petitioner’s failure to timely report the location change for its practice.

owner has been its medical director for “well over two years” and “was most definitely seeing patients in our facility last December, 2015 . . .”). Thus even if Petitioner erroneously deleted five practice locations, which is not an excuse for noncompliance, it still had apparently not reported three other practice locations on its enrollment applications.

Petitioner cannot escape responsibility for its failure to report its change of practice location from the Sawmill Road address to other locations, and Petitioner is responsible for knowing the rules pertaining to Medicare suppliers. Therefore, I conclude that Petitioner failed to timely notify CGS of the changes in practice location within 30 days as required, and that this failure serves as a legitimate basis to revoke its Medicare billing privileges. 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 re-enrollment.

/s/
Leslie C. Rogall
Administrative Law Judge