

date visited 10/05/012

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Bryn Mawr Care  
(CCN: 14-E148),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-806

Decision No. CR2277

Date: November 1, 2010

**DECISION DISMISSING REQUEST FOR HEARING**

I dismiss the hearing request filed by Petitioner, Bryn Mawr Care. Petitioner has no right to a hearing.

**I. Background**

Petitioner is a nursing facility in the State of Illinois. It participates in that State's Medicaid program, but it is not a participant in the Medicare program. On April 2, 2010, the Illinois Department of Public Health (IDPH) conducted a complaint investigation survey of Petitioner's facility. The survey was conducted on the State's initiative and not on behalf of CMS. IDPH found deficiencies, but it did not impose any remedies against Petitioner.

Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision. On September 21, 2010, the Centers for Medicare and Medicaid Services (CMS) moved to dismiss Petitioner's hearing request. Petitioner did not reply to the motion.

CMS submitted five proposed exhibits with its motion, which it identified as CMS Ex. 1 – CMS Ex. 5. I receive these exhibits into the record.

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

### **A. Issue**

The issue is whether Petitioner is entitled to a hearing.

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

I make the following findings of fact and conclusions of law.

#### ***1. Petitioner is not entitled to a hearing.***

As I note at the inception of this decision, Petitioner participates in a State Medicaid program but does not participate in Medicare. A Medicaid-only provider, such as Petitioner, generally is not entitled to a hearing at the federal level to challenge findings of noncompliance that are made by a State survey agency, such as IDPH. Regulations establishing an individual or entity's right to a hearing are published at 42 C.F.R. Part 498. These regulations confer hearing rights only in specific instances. First, and as a general rule, to be entitled to a hearing, an individual or entity must be a "provider." A "provider" is defined at 42 C.F.R. § 498.2 to be one of several specified entities that has executed an agreement to participate in Medicare. A nursing facility, such as Petitioner, which participates in a State Medicaid program, and not Medicare, does not satisfy the general definition of a provider. Furthermore, simply having provider status does not automatically entitle an entity to a hearing. Only determinations that affect participation in Medicare generally entitle a provider to a hearing. 42 C.F.R. § 498.3(a)(2).

Application of this general rule to Petitioner establishes that it has no right to a hearing. Petitioner is not a provider as is defined by 42 C.F.R. § 498.2, because it does not participate in Medicare. Moreover, no determination has been made that affects its participation as a Medicare provider inasmuch as it is not a Medicare participant.

There are exceptions to the general rule. A Medicaid-participating facility is entitled to a hearing where CMS determines to terminate that entity's provider agreement. 42 C.F.R. § 498.3(a)(2)(i). In another excepted circumstance, a Medicaid-participating facility that is not State-operated may be considered a provider pursuant to Part 498, if it is subjected to a compliance action as a result of a validation survey by CMS or as a consequence of CMS's review of State findings. 42 C.F.R. § 498.4(b). A Medicaid-participating entity may also be entitled to a hearing if it seeks participation in Medicare as a skilled nursing facility, and its participation is denied. 42 C.F.R. § 498.5(k) (incorporating 42 C.F.R. § 431.153(g)).

None of these exceptions applies to Petitioner. CMS has not determined to terminate Petitioner's provider agreement. Petitioner has not been subject to compliance action as the result of a CMS validation survey or CMS review of State action, and the noncompliance findings appealed by Petitioner were not generated as part of a denial of an application by Petitioner to participate in Medicare as a skilled nursing facility.

***2. I dismiss Petitioner's hearing request, because it has no right to a hearing.***

An administrative law judge may dismiss a party's hearing request in the circumstance where the party has no right to a hearing. 42 C.F.R. § 498.70(b). Petitioner has no right to a hearing, and, therefore, I dismiss its hearing request.

/s/

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Steven T. Kessel  
Administrative Law Judge