

**CENTERS FOR MEDICARE AND MEDICAID SERVICES
HEARING OFFICER DECISION**

IN THE MATTER OF:

Community Care Alliance of Illinois	*
	* DOCKET NO. 2013 MA/PD APP. 7
Denial of Application to Qualify as a	*
Medicare Advantage/Prescription Drug Plan Organization	*
Contract Year 2014, Contract No. H3071	*
	*

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

I. JURISDICTION

This appeal is provided pursuant to 42 C.F.R. § 422.660. The Centers for Medicare and Medicaid Services (CMS) Hearing Officer designated to hear this case is the undersigned, Michael J. McDougall.

II. ISSUE

Whether CMS properly denied the Community Care Alliance of Illinois' (CCAI, or the Plan) application to offer a Medicare Advantage – Prescription Drug (MA-PD) plan for contract year 2014.

III. PROGRAM BACKGROUND

The Medicare Advantage (MA or Part C) program offers Medicare beneficiaries the option of receiving health care benefits through a privately-operated coordinated care delivery system.¹ The Secretary of the United States Department of Health & Human Services (the Secretary) is authorized to contract with entities seeking to offer MA and MA-PD benefits.² Through regulation, the Secretary has delegated this contracting authority to CMS, which has established the general requirements for MA-PD organizations and the MA-PD application process.³

MA-PD applications must be completed “in the form and manner required by CMS.”⁴ Presently, CMS requires the electronic submission of MA-PD applications via the Health Plan Management System (HPMS) program.⁵ In addition, regulations require applicants to “thoroughly describe how the entity and MA plan meet, or will meet, all of the requirements described in this part.”⁶

¹ See 42 U.S.C. § 1395w-21 *et seq.*

² 42 U.S.C. § 1395w-27.

³ 42 C.F.R. §§ 422.400 *et seq.*, 422.503(b) *et seq.*

⁴ 42 C.F.R. § 422.501(c)(1).

⁵ CMS Memorandum and Motion for Summary Judgment (CMS Memorandum) at 2.

⁶ 42 C.F.R. § 422.502(c)(2).

Of particular relevance to the present case, MA-PD applicants must demonstrate that the plan is licensed to offer a health insurance benefit. To this end, program regulations at 42 C.F.R. § 422.501(c)(1)(i) call on plans to provide:

(i) Documentation of appropriate State licensure or State certification that the entity is able to offer health insurance or health benefits coverage that meets State-specified standards applicable to MA plans, and is authorized by the state to accept prepaid capitation for providing, arranging, or paying for the comprehensive health care services to be offered under the MA contract.

Further State licensure requirements are described at 42 C.F.R. § 422.400 as follows:

[E]ach MA organization must –

(a) Be licensed under State law, or otherwise authorized to operate under State law, as a risk bearing entity (as defined in § 422.2) eligible to offer health insurance or health benefits coverage in each State in which it offers one or more MA plans;

(b) If not commercially licensed, obtain certification from the State that the organization meets a level of financial solvency and such other standards that the State may require for it to operate as an MA organization; and

(c) Demonstrate to CMS that—

(1) The scope of its license or authority allows the organization to offer the type of MA plan or plans that it intends to offer in the State; and

(2) If applicable, it has obtained the State certification required under paragraph (b) of this section.

These regulations are reflected in the MA-PD application instructions, as CMS requires applicants to complete a table stating that:

1. Applicant is licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each state in which the Applicant proposes to offer the managed care product. In addition, the scope of the license or authority allows the Applicant to offer the type of managed care product that it intends to offer in the state or states.
 - If “Yes”, upload in HPMS an executed copy of a state licensing certificate and the CMS State Certification Form for each state being requested.

- Note: Applicant must meet and document all applicable licensure and certification requirements no later than the Applicant's final upload opportunity, which is in response to CMS' [Notice of Intent to Deny] communication.⁷

After receiving a MA-PD application, CMS makes a determination as to whether the applicant meets all of the relevant program requirements.⁸ This determination is based solely on information contained in the application or obtained by CMS through methods such as onsite visits.⁹

If CMS determines that an applicant organization does not meet the program requirements, it will deny that application. Before final denial is issued, however, CMS must provide a formal "Notice of Intent to Deny," which provides the basis for the impending denial and gives the applicant ten days to cure the deficiencies in its application. The regulatory requirement for curing an application is stated at 42 C.F.R. § 422.502(c)(2)(ii - iii) as follows:

(ii) Within 10 days from the intent to deny, the applicant must respond in writing to the issues or other matters that were the basis for CMS' preliminary finding and must revise its application to remedy any defects CMS identified.

(iii) If CMS does not receive a revised application within 10 days from the date of the notice, or if after timely submission of a revised application, CMS still finds that the applicant does not appear qualified or has not provided CMS enough information to allow CMS to evaluate the application, CMS will deny the application.

If CMS denies a MA-PD application, the applicant organization is entitled to a hearing before a CMS Hearing Officer.¹⁰ The regulation at 42 C.F.R. § 422.660(b)(1) dictates that "the applicant has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of [42 C.F.R. §§ 422.501 and 422.502]."¹¹ In addition, the regulations governing the hearing process provide that either party may ask the Hearing Officer to rule on a Motion for Summary Judgment.¹²

⁷ See 2014 Medicare Advantage Application at 23, available at <http://www.cms.gov/Medicare/Medicare-Advantage/MedicareAdvantageApps/Downloads/CY-2014-Part-C-Application-Updated-01-24-13.zip> (last visited July 11, 2013).

⁸ 42 C.F.R. § 422.502(a)(2).

⁹ 42 C.F.R. § 422.502(a)(1).

¹⁰ 42 C.F.R. § 422.660(a).

¹¹ See *supra* pages 1-2. The regulations at 42 C.F.R. §§ 422.501 and 422.502 establish the contract application requirements and review procedures.

¹² 42 C.F.R. § 422.684. See also Medicare Program, Revisions to the Medicare Advantage and Part D Prescription Drug Contract Determinations, Appeals and Intermediate Sanctions Processes, 72 Fed. Reg. 68700, 68714 (December 5, 2007) (Preamble to final rule stating, "In ruling on such a [Summary Judgment] motion, we propose that the hearing officer would be bound by the CMS regulations and

IV. FACTUAL AND PROCEDURAL BACKGROUND

On January 28, 2013, CCAI completed its application to become a Medicare Advantage Organization.¹³ This application included elements concerning the provision of both a MA-PD plan, and a Special Needs Plan offering for individuals that are entitled to both Medicare and Medicaid benefits.¹⁴ During this application process, CCAI had received certification to operate as a Managed Care Community Network from the Illinois Department of Health and Family Services (HFS). This certification authorized CCAI to “enter into risk-bearing contracts with HFS.”¹⁵

In its initial review of CCAI’s application, CMS determined that the applicant did not meet all appropriate MA application requirements. Accordingly, on March 13, 2013, CMS issued an electronic Deficiency Notice to CCAI.¹⁶ This notice included a deficiency citation regarding CCAI’s licensure with the State of Illinois. Under the heading “State Licensure” this section read as follows:

* Copy of State Licensure – You failed to submit satisfactory evidence that your organization is licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage, including the authority to offer the MA product for which you are applying, across your entire service area.

State license has not been executed by the State of Illinois.¹⁷

The Deficiency Notice gave CCAI an opportunity to correct the cited deficiencies by March 28, 2013. CCAI acted to address this issue on March 26, 2013 by submitting an application for health management organization (HMO) authority to the Illinois Department of Insurance.¹⁸ However, the license was not immediately issued and no additional documentation was provided to CMS prior to the March 28, 2013 deadline.

Finally, on April 26, 2013, CMS issued a Notice of Intent to Deny CCAI’s application, again citing the applicant’s failure “to submit satisfactory evidence that your organization is licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage.”¹⁹ As required, this notice also gave CCAI a final ten-day cure period to address the application deficiencies. The deadline established for this cure period was May 7, 2013.²⁰

general instructions. Where no factual dispute exists, the hearing officer may make a decision on the papers, without the need for a hearing.”).

¹³ CCAI Exhibit 4, MA Application Timeline.

¹⁴ CMS Memorandum at 3; CCAI Appeal Brief.

¹⁵ CCAI Exhibit 1, Risk Bearing Entity Certification.

¹⁶ CMS Memorandum at 3.

¹⁷ CMS Exhibit C, Deficiency Notice.

¹⁸ CCAI Exhibit 4, MA Application Timeline. The application for the Certificate of Authority to operate a HMO was executed on March 22, 2013. See CCAI Exhibit 3, Receipt of Certificate of Authority Application.

¹⁹ CMS Exhibit D, Notice of Intent to Deny, at 1.

²⁰ *Id.*

When CMS found that CCAI failed to provide additional information prior to the May 7, 2013 deadline, it denied the MA-PD application. This final determination was transmitted to CCAI via a May 31, 2013 letter.²¹

CCAI timely filed this appeal on June 10, 2013.

V. CCAI'S CONTENTIONS

In its appeal brief CCAI claimed that its MA-PD application “[met] all known Federal Requirements, in the allotted time frame,” and that it should be awarded such a contract. The Plan stated that during early stages of the MA-PD application process, it was “under the impression” that its risk-bearing certification from the Illinois Department of Health and Family Services “would, with increased financial requirements, suffice for the State licensure requirement.”²²

However, CCAI noted that once it became aware of the need for additional State license documentation, it took immediate action to become an HMO under Illinois law.²³ CCAI argued that these actions satisfy the established MA-PD application requirements. In support, CCAI noted that the regulations require applicants to “thoroughly describe how the entity and MA plan meet, **OR WILL MEET**, all the requirements described in this part.”²⁴

CCAI concluded by stating that its application “met all requirements needed, save for the Certificate of Authority or State Licensure requirement.” CCAI reiterated that it has filed an application for a State HMO license and informed CMS of this development. Therefore, the Plan argued, it has demonstrated that it “will meet” the application requirements prior to the enrollment of any beneficiary in its MA-PD plan.²⁵

VI. CMS' CONTENTIONS

In its appeal memorandum, CMS argued that there is no factual dispute concerning CCAI's failure to provide documentation of State licensure prior to the May 7, 2013 cure deadline.²⁶ CMS noted that the establishment of such filing deadlines is required in order “to ensure that it maintains a fair and consistent application review process.”²⁷

²¹ CMS Exhibit A, Denial Letter, at 1. CCAI alludes to a May 17, 2013 response to the Notice of Intent to Deny in its Application Timeline. However, this responsive material was not submitted into the administrative record. See CCAI Exhibit 4.

²² CCAI Brief. *But see* CMS Exhibit E, E-mail from Mr. James Parker (demonstrating that CMS consulted Illinois officials concerning the adequacy of CCAI's risk-bearing certification to meet State licensure requirements).

²³ CCAI Brief.

²⁴ CCAI Brief (citing 42 C.F.R. § 422.501(c)(2))(all emphasis added by CCAI).

²⁵ CCAI Brief.

²⁶ CMS Memorandum at 4.

²⁷ *Id.* at 5.

CMS argued that it properly denied CCAI's application based on the information timely provided through the MA-PD application process. CMS further contended that neither it, nor the CMS Hearing Officer, may consider any new information provided by the Plan during the MA-PD appeal process.²⁸

Finally, CMS argued that, since there is no dispute of material fact, its denial was appropriate as a matter of law. Therefore, CMS moved for Summary Judgment.

VII. DECISION

The Motion for Summary Judgment is granted. The undisputed facts in this case support CMS' conclusion that CCAI's 2014 MA-PD application, No. H3017, did not meet program requirements by virtue of its failure to include the critical documentation of State licensure. Therefore, CCAI did not meet its burden of proof, set forth at 42 C.F.R. § 422.660(b)(1), in demonstrating that CMS' determination was inconsistent with program contracting requirements.

In March 2013, CMS provided CCAI with a Deficiency Notice concerning the licensure element of its contract application. The subsequent Notice of Intent to Deny reiterated the Plan's failure to document that it held the appropriate State license to offer a MA-PD plan. CCAI acknowledges that it did not have such licensure at the time of its application submission in January 2013 or prior to the May 7, 2013 cure deadline. Instead, the Plan responded by offering information concerning its pending State license application. CMS determined that this material did not satisfy the State license-related application requirements and denied the MA-PD application.

CCAI's contention that the regulations allow for future compliance with regard to State licensure is misplaced. This interpretation takes the regulatory passage cited ("meets, or will meet, all of the requirements") out of context. A number of MA-PD application and program requirements cannot be met prior to the approval of an application. For example, contracting compliance requirements at 42 C.F.R. § 422.503(b)(4)(vi)(G)(1) require plans conduct inquiries into any "evidence of misconduct related to payment or delivery of items or services under the contract." As no payment or delivery of services occurs prior to contract approval, an applicant could not "meet" this requirement prior to the application deadline. The precise phrasing of the "meets, or will meet" regulation encompasses those requirements that can be satisfied at the application deadline, such as State licensure and provider network agreements, as well as those requirements that constitute ongoing obligations subsequent to plan approval, such as compliance and monitoring.

The characterization of State licensure demonstration as an requirement that can, and must, be met prior to the applicant's final submission deadline is made clear in the application instructions, which state:

Applicants must meet and document all applicable licensure and certification requirements no later than the Applicant's final upload

²⁸ *Id.* at 5.

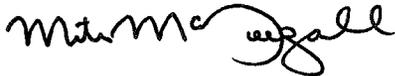
opportunity, which is response to CMS' [Notice of Intent to Deny] communication.²⁹

In the present case, the Plan has conceded that it did not document the applicable State licensure requirements within the required timeframe. CCAI argued that, as of the cure deadline, its application "met all requirements needed, save for the Certificate of Authority or State Licensure requirement."³⁰

The Secretary has delegated MA-PD contracting authority to CMS. In turn, CMS has established both the requirements of MA-PD contract applications and the filing deadlines needed in order to ensure procedural consistency. The authority conferred on the Hearing Officer in review of this process is limited to the determination of whether CMS' denial of an application was an appropriate exercise of this delegated authority. The Plan has not demonstrated by a preponderance of the evidence that CMS' determination was inconsistent with program contracting regulations. Furthermore, the undisputed material facts indicate that this appeal should be resolved as a matter of law.

VIII. CONCLUSION

The Hearing Officer finds that CMS acted within its authority in denying application H3017. CMS' Motion for Summary Judgment is granted.



Michael J. McDougall
Hearing Officer

July 12, 2013

²⁹ Medicare Advantage Application, *supra* note 7.

³⁰ See *supra* note 25.