DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Service
Office of Hearings
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August 14, 2025

Via Electronic Delivery

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RE: Hearing Officer Decision
Hearing Officer Docket Number: H-25-00015
Medicare Advantage/Prescription Drug Plan ("MA/PD")
Humana Inc./Emphesys Insurance Company, Contract Number: H7617

Dear Ms. McDonald and Ms. Casserly:

A copy of the Hearing Officer's decision for the above-referenced appeal is attached.

The Hearing Officers' decision may be appealed to the Administrator of the Centers for Medicare & Medicaid Services. The parties may request review by the Administrator within 15 calendar days of receiving this decision. See 42 C.F.R. § 422.692; 42 C.F.R. § 423.666. Requests for review should be sent via email to CMS OAA General Appeals at OAA_Appeal@cms.hhs.gov.

Sincerely,

Office of Hearings

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

EMPHESYS INSURANCE COMPANY, Contract No. H7617	*	**CMS Hearing Officer Case No.: H-25-00015**
Petitioner	*	
v.	*	**Denial of Service Area Expansion Application for a Medicare Advantage – Prescription Drug, Chronic Condition Special Needs, and Dual-Eligible Special Needs Plan**
CENTERS FOR MEDICARE & MEDICAID SERVICES,	*	
Respondent	*	

HEARING OFFICER ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

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I. FILINGS

a) May 27, 2025, Request for a Hearing on 2026 Service Area Expansion Application Denial for [Medicare Advantage/Medicare Advantage – Prescription Drug ("MA/MA-PD")] Contract No. H7617;

b) June 13, 2025, Initial Hearing Brief of Humana Inc. ("Plan Initial Brief") and Exhibits P-1 through P-20;

c) June 17, 2025, Supplemental Exhibit to Initial Hearing Brief of Humana Inc. and Supplemental Exhibit P-21;

d) June 18, 2025, Replacement Supplemental Exhibit to Initial Hearing Brief of Humana Inc. and Supplemental Exhibit P-21;

e) June 18, 2025, Corrected Supplemental Exhibit to Initial Hearing Brief of Humana Inc. and Corrected Supplemental Exhibit P-21;

f) June 20, 2025, Center for Medicare & Medicaid Services ["CMS"] Brief in Reply to Applicant's Brief in the Matter of the Denial of the MA-PD [Chronic or Disabling Condition Special Needs Plan ("C-SNP")] and [Dual Eligible Special needs Plan ("D-SNP")] Application Submitted by Emphesys Insurance Company [("Emphesys")] (Contract H7617) and Exhibits C-1 through C-16;

g) June 27, 2025, Reply Brief of Humana Inc. ("Plan Reply Brief") and Exhibits P-22 through P-23.[1]

II. JURISDICTION

This appeal is provided pursuant to 42 C.F.R. § 422.660. The CMS Hearing Officer designated to hear this case is the undersigned, Amanda S. Costabile.

III. ISSUE

Whether CMS's denial of Emphesys' service area expansion application for its MA/MA-PD, C-SNP, and D-SNP Contract No. H7617, based on Emphesys' failure to meet CMS's provider network adequacy requirements, was inconsistent with regulatory requirements.

IV. DECISION SUMMARY

The Hearing Officer grants CMS's Motion for Summary Judgment. *See* CMS Brief at 9-10; 42 C.F.R. § 422.684(b). The Hearing Officer finds that there are no material facts in dispute and that the record does not establish that Emphesys timely provided CMS, in response to the April 14, 2025 Notice of Intent to Deny ("NOID"), with an MA provider Health Service Delivery ("HSD")

[1] Plan Exhibit P-21 is Emphesys Insurance Company Florida State Certification Form, which Emphesys submitted on June 18, 2025, and CMS reviewed and accepted to cure the state licensure deficiency that was initially part of the instant application denial. *See* CMS Brief at 6.

table that met CMS's network adequacy requirements for cardiology providers in Aransas County, Texas; an exception request for that provider specialty; or a request to withdraw the county from its application. *See* CMS Exhibit C-16 at Line 74444; Plan Exhibit P-20, ¶¶ 16-18; CMS Exhibit C-13. The Hearing Officer also finds that Emphesys was not prejudiced in submitting its exception request for Aransas County cardiology because, by its own admission, it expected that its HSD changes post-NOID would create a deficiency, and it proactively prepared an exception request for submission. Additionally, CMS provided clear notice of the Automated Criteria Check ("ACC") Report defining the Aransas County cardiology deficiency that gave Emphesys ample time to submit (four calendar days/three business days) an exception request that it had already drafted. Accordingly, the Hearing Officer finds that Emphesys has not proven by a preponderance of the evidence that CMS's denial of its service area expansion application for contract H7617 (based on a provider network deficiency in Aransas County, Texas) was inconsistent with regulatory requirements. *See* 42 C.F.R. § 422.116(a)(2)(ii); 42 C.F.R. § 422.660(b)(1).

V. AUTHORITY

A. APPLICATION REVIEW

Under Title XVIII of the Social Security Act ("the Act") (codified at 42 U.S.C. §§ 1395-1395lll), CMS is authorized to enter into contracts with entities seeking to offer Medicare Part C and Part D benefits to beneficiaries. 42 U.S.C §§ 1395w-27, 1395w-112. Any entity seeking such a contract must fully complete all parts of a certified application in the form and manner required by CMS. 42 C.F.R. § 422.501(c)(1). CMS requires an entity seeking to contract as an MA organization to submit an application through the Health Plan Management System ("HPMS").[2] *See* "Part C-Medicare Advantage and 1876 Cost Plan Expansion Application" at https://www.cms.gov/files/document/cy2026-medicare-advantage-part-c-application.pdf (last visited July 10, 2025). The "Part C-Medicare Advantage and 1876 Cost Plan Expansion Application" is specifically "[f]or all new applicants and existing Medicare Advantage organizations seeking to expand a service area[.]" *Id*. at 1.

The regulation at 42 C.F.R. § 422.501 sets forth the application requirements for entities that seek a contract as an MA organization offering an MA plan and additional application requirements for MA organizations seeking to offer a Specialized MA plan for Special Needs Individuals. Among other requirements, applicants must provide documentation of appropriate state licensure, demonstrate that they are licensed under state law as a risk-bearing entity eligible to offer health insurance or health benefits, and submit a properly executed CMS State Certification Form. *See also* 42 C.F.R. § 422.400; "Part C-Medicare Advantage and 1876 Cost Plan Expansion Application" at https://www.cms.gov/files/document/cy2026-medicare-advantage-part-c-application.pdf (last visited July 10, 2025).

As CMS explains:

[2] HPMS is the primary information collection vehicle within which MA organizations will communicate with CMS during the application process, bid submission process, ongoing operations of the MA program, reporting and oversight activities. https://www.cms.gov/files/document/cy2026-medicare-advantage-part-c-application.pdf at 6.

> In order to meet the requirements to offer a [SNP], SNPs must also meet the MA requirements. At the time of application, [a]pplicants must attest that they understand that the SNP must meet MA requirements. As part of the attestation, applicants are made aware that if a SNP applicant's MA application is denied, the initial SNP application will also be denied.

CMS Brief at 2.

CMS evaluates an application based on the information contained in the application itself, any additional information that CMS obtains through other means such as on-site visits, and by using information from a current or prior contract (i.e., any relevant past performance history associated with the applicant). 42 C.F.R. § 422.502(a)(1) and (b)(1). After reviewing whether the application meets all requirements, CMS issues, if necessary, a Deficiency Notice in which CMS notifies an applicant of deficiencies within the application and allows a specific time within which the applicant may cure the deficiencies. *See* CMS Brief at 2. If the applicant fails to cure the deficiencies cited within the Deficiency Notice or if the applicant is otherwise unable to meet the pertinent regulatory requirements, CMS issues the applicant a NOID. 42 C.F.R. § 422.502(c)(2). Pursuant to 42 C.F.R. § 422.502(c)(2)(ii), the applicant will have ten days from the NOID to respond in writing to correct deficiencies in the application.

If, in response to the NOID, the applicant either fails to submit a revised application within ten days from the date of the NOID, 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. 42 C.F.R. § 422.502(c)(2)(iii). For an application denial, CMS provides the applicant with written notice of the determination and the basis for the determination. 42 C.F.R. § 422.502(c)(3).

If CMS denies an MA application, the applicant is entitled to a hearing before a CMS Hearing Officer. 42 C.F.R. § 422.502(c)(3)(iii). The applicant has the burden of proving by a preponderance of the evidence that CMS's determination was inconsistent with the requirements of 42 C.F.R. §§ 422.501 (application requirements) and 422.502 (evaluation and determination procedures). 42 C.F.R. § 422.660(b)(1). In addition, either party may ask the Hearing Officer to rule on a Motion for Summary Judgment. 42 C.F.R. § 422.684(b). The authority of the Hearing Officer is found at 42 C.F.R. § 422.688, which specifies that "[i]n exercising his or her authority, the hearing officer must comply with the provisions of title XVIII [of the Act] and related provisions of the Act, the regulations issued by the Secretary, and general instructions issued by CMS in implementing the Act."[3]

[3] Within the preamble to the 2010 Final Rule, the Secretary provided additional clarification regarding the hearing process:

> [T]he applicant would not be permitted to submit additional revised application material to the Hearing Officer for review should the applicant elect to appeal the denial of its application. Allowing for such a submission and review of such information would, in effect, extend the deadline for submitting an approvable application.

75 Fed. Reg. 19678, 19683 (Apr. 15, 2010).

B. NETWORK ADEQUACY REQUIREMENTS AND REVIEW

An applicant for a new or expanding service area must demonstrate compliance with the network adequacy requirements set forth under 42 C.F.R. § 422.116 as part of its application. 42 C.F.R. § 422.116 (a)(2)(ii). Within a service area expansion application, an MA organization must demonstrate that the number and type of providers available to plan enrollees are sufficient to meet projected needs of the population to be served. 42 C.F.R. § 422.112(a)(4). As such, the MA organization must meet maximum time and distance standards and contract with a specified minimum number of each provider and facility-specialty type. 42 C.F.R. § 422.116(a)(3). To demonstrate compliance with these network adequacy standards, applicants must upload, as part of the application, Provider and Facility HSD tables into HPMS/Network Management Module ("NMM"). CMS Brief at 3; "Part C-Medicare Advantage and 1876 Cost Plan Expansion Application" at https://www.cms.gov/files/document/cy2026-medicare-advantage-part-c-application.pdf at 27 (last visited July 10, 2025). Furthermore, under 42 C.F.R. § 422.116(a)(2)(ii), CMS may deny an application on the basis of an evaluation of the applicant's network for the new or expanding service area.

An organization's HSD tables must list every provider and facility with a fully executed contract in its network. *See* Medicare Advantage and Section 1876 Cost Plan Network Adequacy Guidance, located at https://www.cms.gov/files/document/medicare-advantage-and-section-1876-cost-plan-network-adequacy-guidance-12-09-2024.pdf at 2-3 (last updated December 9, 2024) (hereinafter "Network Adequacy Guidance "). An applicant for a new or expanding service area receives a 10-percentage point credit towards the percentage of beneficiaries residing within the published time and distance standards for the contracted network in the pending service area, at the time of application and for the duration of the application review. 42 C.F.R. § 422.116(d)(7). In addition, applicants may use a Letter of Intent ("LOI") signed by both the MA organization and the provider or facility with which the MA organization has started or intends to negotiate, in lieu of a signed contract at the time of application and for the duration of the application review, to meet network standards. *Id*. As part of the network adequacy review process, applicants must notify CMS of their use of LOIs to meet network standards in lieu of a signed contract and submit copies upon request in the form and manner directed by CMS. *Id*.

The regulatory subsections 42 C.F.R. § 422.116(b)(1)-(2) list the provider-specialty types and facility-specialty types to which the network adequacy evaluation applies. "Access to each specialty type is assessed using quantitative standards based on the local availability of providers and facilities to ensure that organizations contract with a sufficient number of providers and facilities to furnish health care services without placing undue burden on enrollees seeking covered services." Network Adequacy Guidance at 2. CMS explains that it programs network adequacy criteria into the NMM in HPMS. *Id*. The "network review is performed through an automated tool within HPMS that compares the network data submitted by each applicant against standardized CMS network adequacy criteria published in the annual Reference File and then generates a report called the [ACC], that shows whether a provider or facility in a given county is passing the network adequacy requirements." CMS Brief at 3; *see* 42 C.F.R. § 422.116(d)(4). CMS states that "[t]he ACC reports are accessible to applicants within [HPMS] so at any point in time applicants are able to see where the applicant stands with respect to meeting the standardized criteria." CMS Brief at 3.

As set forth under 42 C.F.R. § 422.116(a)(5), CMS annually updates and makes available the following reference files:

> (i) A Health Service Delivery Reference file that identifies the following:
>
> (A) All minimum provider and facility number requirements [and]
>
> (B) All provider and facility time and distance standards.
>
> . . .
>
> (ii) A Provider Supply file that lists available providers and facilities and their corresponding office locations and specialty types.

CMS further describes its reference "Provider and Facility Supply File" as follows:

> The supply file is a cross-sectional database that includes information on provider and facility name, address, national provider identifier, and specialty type and is posted by state and specialty[]type. The supply file is segmented by state to facilitate the development of networks by service area. Contracts with service areas near a state border may need to review the supply file for multiple states, as the network adequacy criteria are not restricted by state or county boundaries. . . .
>
> Given the dynamic nature of the market, the file is a resource and may not be a complete depiction of the provider and facility supply available in real-time. MA organizations remain responsible for conducting validation of data used to populate HSD tables, including data initially drawn from the supply file. MA organizations should not rely solely on the supply file when establishing networks, as additional providers and facilities may be available.
>
> CMS uses the supply file when validating information submitted on exception requests. Therefore, CMS may update the supply file periodically to reflect updated provider and facility demand and to capture information associated with exception requests.

Network Adequacy Guidance at 3.

CMS states that

> Organizations with a contract ID number have the opportunity to test their contracted networks' compliance with network adequacy criteria at any time via the NMM in HPMS. Once an organization initiates its HSD table upload, the NMM will automatically review the contracted network against CMS network adequacy criteria for each required provider and facility type in each county.
>
> . . .

> The ACC report displays the results of the automated network review for each provider and facility. The results are displayed as either "PASS" or "FAIL." The NMM also contains the *ZIP Code Report for Failed Counties* that lists the areas where enrollees do not have adequate access.

Id. at 5.

C. EXCEPTION REQUEST PROCESS AND REVIEW

Under specific circumstances and rules, CMS permits applicants that are unable to satisfy network adequacy criteria to submit exception requests. 42 C.F.R. § 422.116(f)(1); *see* Network Adequacy Guidance at 5. Specifically, an applicant may request an exception to network adequacy criteria when both of the following occur:

> (i)(A) certain providers or facilities are not available for the MA plan to meet the network adequacy criteria as shown in the Provider Supply file for the year for a given county and specialty type; and
>
> (B) the applicant has contracted with other providers and facilities that may be located beyond the limits in the time and distance criteria, but are currently available and accessible to most enrollees, consistent with the local pattern of care.

42 C.F.R. § 422.116(f)(1)(i)(A)-(B).

When reviewing exception requests, CMS considers whether

> (i) the current access to providers and facilities is different from the HSD reference and Provider Supply files for the year;
>
> (ii) there are other factors present in accordance with § 422.112(a)(10)(v), that demonstrate that network access is consistent with or better than the original Medicare pattern of care; and
>
> (iii) approval of the exception is in the best interests of beneficiaries.

42 C.F.R. § 422.116(f)(2)(i)-(iii).

VI. PROCEDURAL HISTORY AND INITIAL STATEMENT OF FACTS

On February 12, 2025, Emphesys applied to expand its service area under contract number H7617 for the 2026 contract year.[4] Plan Initial Brief at 1.

[4] Emphesys explains that contract H7617 is currently an Employee Group Waiver Plan ("EGWP") only contract and that it "contracts with employer and union groups in 44 states to offer Employer Only coverage [but] [f]or the 2026

On March 13, 2025, CMS issued a Deficiency Notice to Emphesys in which CMS cited licensure, state certification and provider and network adequacy deficiencies, the latter of which were listed under a section titled "Health Services Management & Delivery." *See* Plan Exhibit P-9 at 1-2 and CMS Exhibit C-2 at 1-2. Under the Health Services Management & Delivery, MA Provider Table, section of the Deficiency Notice, CMS states

> [r]efer to HSD Submission Reports (available in HPMS), including the Automated Criteria Check (ACC) Report for Providers, for further details on the status of your submission. To resolve any areas where these reports show that you fail the network criteria, you must submit an updated MA Provider Table in the next upload period. Additionally, during the upload period following CMS' initial deficiency notice, or NOID, you may submit Exception Requests for any provider(s) that fail the network criteria as long as you can appropriately justify your request for the exception by following the Exception Template. **In addition, any "Pass" reflected on the HSD Submission Reports is contingent upon the validity of the data submitted on the applicant's HSD tables and the exceptions uploads, including whether the individual providers are accurately reflected** and appropriately contracted with the applicant.

Id. (emphasis added).

The Deficiency Notice informed Emphesys of the response timeline as follows:

> You have an opportunity to correct the deficiencies in this notice. CMS opened the Health Plan Management System (HPMS) gates so you can make changes to your application under H7617. You must submit all changes in HPMS and hit Final Submit no later than 03/24/2025 8:00:00 PM Eastern.

Plan Exhibit P-9 at 3 and CMS Exhibit C-2 at 2.

Lastly, the Deficiency Notice warned Emphesys that

> For those deficiencies that require you to revise and resubmit one or more upload documents in HPMS, you must resubmit ALL of the documents for that particular section. **The new upload will completely replace the previous upload for that section**. Additionally, once you click Final Submit, be aware that your submission will end your opportunity to upload any additional materials.

Id. (emphasis added).

"On March 13, 2025, Emphesys submitted revised provider and facility HSD tables, and exception requests[.]" CMS Brief at 6 (not disputed by Emphesys). CMS states that

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contract year, Emphesys applied to expand the service area of H7617 to offer Individual market coverage in 37 states[.]" Plan Initial Brief at 6.

> Emphesys submitted 41 cardiologists in Aransas, Texas[,] in response to the deficiency notice. All cardiologists submitted by Emphesys were located within the time and distance requirements for Aransas and counted towards the beneficiary coverage requirement. **Emphesys was passing network adequacy in Aransas County for cardiology at the time of this submission.**

Id. at 7 (not disputed by Emphesys) (emphasis added); CMS Exhibit C-3, line 97131; *see* Plan Brief at 8.

Additionally, CMS states (and Emphesys does not dispute) that within Emphesys' March 13, 2025, provider HSD table submission (in response to the Deficiency Notice), under Aransas County cardiology, the table contains the provider "Dr. T."[5] CMS Brief at 7; CMS Exhibit C-10, line 36. CMS points out that provider "Dr. S"[6] is not on Emphesys' March 13, 2025, provider HSD table submission (in response to the Deficiency Notice) for Aransas County cardiology (not disputed by Emphesys). S*ee id*.; CMS Exhibit C-10; *see also* Plan Reply Brief at 2, 4.

On April 14, 2025, CMS issued Emphesys a NOID in which it cited licensure, state certification, provider and network adequacy deficiencies, and denied exception requests. Plan Exhibit P-2. Emphesys' NOID contained almost identical language as was included in the Deficiency Notice, cited in pertinent parts, *supra*, with the exception of the response timeline, stated as follows in the NOID:

> You must cure all deficiencies listed above in order to receive approval on your Part C - MA application. You have ten (10) days after the date of this notice to submit materials that cure the identified deficiencies in accordance with 42 CFR 422.502(c)(2). CMS opened the Health Plan Management System (HPMS) gates so you can make changes to your application. You must submit all changes in HPMS and hit Final Submit no later than 04/24/2025 8:00:00 PM Eastern.

Id. at 3.

The NOID stated that "[i]f you have any questions about the deficiencies or instructions noted above, please send an email to the DMAO portal . . . and select the "MA Application" tab." *Id*. at 4.

Additionally, the NOID informs applicants that

> [y]ou have the option to withdraw or reduce the service area of your pending application . . . . You must also follow the instructions below to request that CMS remove pending counties from the service area you proposed in your application . . .[the request must] [b]e received no later than May 9, 2025, 8:00 PM ET.

[5] The physician's name has been purposely masked for this decision.

[6] The physician's name has been purposely masked for this decision.

Id. at 3.

Also on April 14, 2024, CMS notified contract H7617 (Emphesys) that the "Network Exception Window [was] Open for H7617." CMS Exhibit C-12. Specifically, the message stated that "[t]he Exception Gate submission window to request Exceptions [and upload supporting documentation] for H7617 will be open from 4/14/2025 3 PM ET through 4/30/2025 8 PM ET." *Id.*

On April 16, 2025, CMS issued an HPMS email titled "Reminder: Deadline for Submitting Requests to Remove Counties from Contract Year 2026 Medicare Advantage Applications," in which CMS reiterated that the date to withdraw counties was May 9, 2025. CMS Exhibit C-13.

In response to the NOID, Emphesys resubmitted its provider and facility HSD tables.[7] CMS Brief at 7; Plan Initial Brief at 9; *see* Plan Reply Brief at 2, 4. With respect to the resubmission, CMS states (and Emphesys does not dispute) that

> [o]n Emphesys' provider network resubmission, the plan included a new cardiology provider, [Dr. S] . . . who is not located within the time and distance requirements for Aransas, Texas . . . . In this same resubmission file[,] Emphesys also excluded a contracted provider[] that had previously been included in the initial file submitted with their response to the deficiency notice. [The provider,] [Dr. T] . . . had counted towards the time and distance calculations for cardiology in Aransas, Texas, when the initial file was submitted, however this provider was not included on Emphesys' provider network resubmission.

CMS Brief at 7.

On April 25, 2025, Emphesys submitted "additional network exception requests for H7617 during the exceptions window (which closed April 30)." Plan Initial Brief at 9.

On April 26, 2025, CMS notified Emphesys via HPMS that the "automated processing for the submitted [HSD] network for H7617" was complete and that the ACC reports were now available. CMS Exhibit C-11. The April 26, 2025, ACC Report "identified a failure in cardiology for Aransas County, Texas." Plan Initial Brief at 9; *see* CMS Brief at 7.

On May 9, 2025, Emphesys submitted requests to withdraw multiple counties from their application. *See* CMS Exhibits C-6 and C-7.[8]

On May 14, 2025, CMS issued Emphesys a Denial Letter in which CMS cited the provider network deficiency. *See* CMS Exhibit C-8. The parties agree that the provider network deficiency cited

[7] Although both parties indicate that Emphesys resubmitted its provider HSD table, neither party provided the date of that submission. *See* CMS Brief at 7; Plan Reply Brief at 2, 4. However, as CMS has not contested that Emphesys' submission was untimely, the Hearing Officer assumes it was timely submitted.

[8] The Hearing Officer notes that CMS's Exhibit C-7 is a May 9, 2025, Emphesys request to withdraw additional counties and modify its application.

within the Denial Letter pertains to Aransas County cardiology providers. Plan Initial Brief at 1; Plan Reply Brief at 1-2; CMS Brief at 7.

On May 27, 2025, Emphesys filed its Request for a Hearing. On June 13, 2025, Emphesys filed its Initial Hearing Brief and 20 exhibits. Subsequently, on June 18, 2025, Emphesys submitted its Exhibit P-21, a Florida state certification form. On June 20, 2025, CMS filed its responsive brief and 16 exhibits. CMS's brief included a Motion for Summary Judgment. On June 27, 2025, Emphesys filed its reply brief and two additional exhibits. On June 23, 2025, the Hearing Officer postponed the hearing to consider CMS's Motion for Summary Judgment.

VII. EMPHESYS' CONTENTIONS

Emphesys states that throughout the application process, its provider HSD tables showed "passing" for cardiology in Aransas, Texas. Plan Initial Brief at 2. Specifically, Emphesys states that "[w]hen it initially submitted its application, Emphesys received automated HSD results showing that Aransas County, Texas, had passed for cardiology." Plan Initial Brief at 7.

Subsequently, Emphesys noted that its "automated HSD results continued to show[] Aransas County, Texas" as passing for cardiology on March 26, 2025, as well. *Id.* at 8; Plan Exhibit P-15.

However, Emphesys explains that, "following CMS's [NOID] on April 14, 2025[,]" and "because one of the cardiology providers serving Aransas County previously in network no longer practiced at that location[,]" it "had to make one change to the final HSD tables it uploaded for cardiology in Aransas County[,] [and] [t]hat change triggered—for the first time—a network inadequacy for cardiology in Aransas County." Plan Reply Brief at 3-4.

Emphesys states that it had anticipated that its change in cardiology providers for Aransas County "may trigger a network adequacy deficiency, so it prepared a draft exception request for cardiology in Aransas County." *Id.* at 4. *See* Plan Exhibit P-17. Emphesys explains that it was unable to submit an Aransas cardiology exception request on April 25, 2025, "when it uploaded all remaining exception requests for the H7617 application[,]" because the county was not deficient in cardiology. Plan Exhibit P-20 at ¶ 16; Plan Initial Brief at 9. Emphesys further explains that the HPMS portal does not allow an exception to be requested unless the county/specialty type is showing "Fail." Plan Exhibit P-20 at ¶ 17. Therefore, "[o]n April 25, 2025, when [it] uploaded its additional exception requests, CMS's ACC Report had not identified Aransas County, Texas, in the cardiology specialty as 'Fail' [but] it was listed as a 'Pass'" and prevented the cardiology exception request from being uploaded. *Id*. Emphesys states that its "personnel would have retrieved an updated ACC Report on April 28, 2025[,] [b]ut [they] did not notice in the short window before April 30, the deadline for submitting exception requests, that CMS had changed Aransas County, Texas, in cardiology to a Fail mark." *Id*.

Emphesys contends that CMS did not identify that Aransas County, Texas, had a defect in cardiology until it published NOID results, and by that time, Emphesys had already submitted its exception requests. Plan Initial Brief at 15. Emphesys asserts that but for "timing fortuities," it would have submitted a "meritorious" exception request for cardiology that it is substantively entitled to, in Aransas County, as evidenced by CMS's grant of a cardiology exception request in

Aransas County for other, different Humana contracts. *Id.* at 15-16; Plan Reply Brief at 1; Plan Exhibit P-12; *see* Plan Reply Brief at 6-7.

Emphesys argues that "CMS's late-breaking addition of Aransas County, Texas—after Emphesys submitted its last batch of exception requests—as having a deficiency prejudiced Emphesys's ability to address this deficiency in a timely fashion[,] [and that it] learned too late from CMS that there was an issue [,] thus its internal processes for exception requests and withdrawal requests failed in this narrow instance." Plan Initial Brief at 17. Emphesys contends that as CMS did not publish its analysis for the final HSD tables that Emphesys uploaded following the NOID until Saturday, April 26, 2025, it "did not have a meaningful opportunity to timely submit a network adequacy request[,]" in that it "had a mere two to three business days to submit an exception request." Plan Reply Brief at 2. Emphesys reiterates that it was "required to cure any application deficiencies identified in the NOID by April 24, 2025[,] [and] [t]hat deadline came and went before CMS had even published the results from Emphesys's most recent HSD tables for Aransas County." *Id*. at 5.

Alternatively, Emphesys requests that CMS agree to allow it to withdraw Aransas County from the H7617 application. Plan Initial Brief at 16.

VIII. CMS'S CONTENTIONS

CMS states that, during training, it informed applicants that they had two opportunities to cure application deficiencies, once after the Deficiency Notice and again after the NOID, and that "each application upload overwrites the previous upload." CMS Brief at 8. CMS also states that the ACC report for the post-NOID HSD submissions is only completed once the NOID's ten-day curing opportunity has passed, i.e., the submission gate has closed, and then applicants "receive notification through HPMS" when their network HSD submissions have completed the process. *Id*. CMS states that on April 26, 2025, it notified Emphesys that the result of their latest (i.e., post-NOID) submission was available to view. *Id*. CMS states that it "also notified applicants that the exception request submission window would be open from April 14, 2025, through April 30, 2025." *Id.*; CMS Exhibit C-12. CMS asserts that "[t]his allowed organizations to immediately submit revised exceptions if they were not submitting revised provider or facility HSD tables." *Id*. at 8-9. However, CMS notes that "[i]f an applicant submitted revised provider or facility HSD tables in response to the NOID, they would have a shorter period of time to submit an exception request." *Id*. at 9.

CMS states that the time to submit application information and materials has passed and that CMS requires that "all required application materials be provided by the final submission deadline, including the request to remove any pending counties"[9] and exception requests. *Id*.

IX. DISCUSSION AND ANALYSIS

The Hearing Officer finds there are no material facts in dispute and grants CMS's Motion for Summary Judgment upholding its denial of Emphesys' service area expansion application for

[9] CMS asserts that "[a]ll applicants received a reminder notice on April 16, 2025, that the deadline to remove pending counties from their applications was on May 9, 2025[.]" CMS Brief at 9, *See* CMS Exhibit C-13.

contract H7617, as explained below. *See* CMS Brief at 9-10 (CMS Motion for Summary Judgment).

Emphesys does not dispute that its provider HSD table submitted in response to the April 14, 2025, NOID was deficient in Aransas County, Texas, for the provider specialty cardiology. Plan Initial Brief at 9; Plan Reply Brief at 2; *see* Plan Exhibit P-16. Rather, Emphesys argues that it "did not have a meaningful opportunity to timely submit a network adequacy exception request" and that it "is substantively entitled to" an exception for the Aransas County cardiology deficiency. Plan Reply Brief at 1-2. In the alternative, Emphesys requests that it be allowed to withdraw Aransas County from its application. *Id*. at 2.

The Hearing Officer notes that although Emphesys' provider HSD table for Aransas County cardiology was "passing" prior to CMS's issuance of the NOID, Emphesys admitted that within its *post*-NOID upload, it substituted Dr. S for Dr. T and anticipated that, due to this substitution, Dr. S would not count towards the time and distance requirements for Aransas County cardiology as Dr. T had. Plan Reply Brief at 3-4. Thus, Emphesys states that it drafted an exception request for Aransas County cardiology, expecting the physician change to its HSD table to "trigger" a network deficiency. Plan Reply Brief at 4; Plan Exhibit P-20 at ¶ 16 Emphesys admits that it missed the timeframe to submit its exception request for Aransas County cardiology but argues that it was not given a "meaningful opportunity" (i.e., enough time) to submit its network adequacy exception request. Plan Reply Brief at 2. Emphesys explains that when it decided to submit other exception requests on April 25, 2025, it had "no way to make an exception request through the HPMS Portal" for the Aransas County cardiology deficiency." Plan Reply Brief at 2; Plan Exhibit P-20 at ¶ 17. Only after submitting its first batch of exception requests on April 25, 2025, did CMS issue the ACC Report indicating that Aransas County cardiology had failed (based on Emphesys' substitution of Dr. S for Dr. T). Plan Reply Brief at 2; Plan Exhibit P-20 at ¶ 17. Emphesys states that, at that point, it "had a mere two to three business days to submit an exception request." Plan Reply Brief at 2.

The Hearing Officer notes that CMS issued numerous notifications pertaining to the post-NOID deadlines. Specifically, on the same date that it issued Emphesys' NOID, April 14, 2025, CMS informed Emphesys that the "Exception Gate submission window to request Exceptions for H7617 will be open from 4/14/2025 3 PM ET **through 4/30/2025** 8 PM ET." CMS Exhibit C-12 (emphasis added). Then, on April 16, 2025, CMS sent Emphesys (and all applicants) a reminder notice that informed applicants that the deadline to remove pending counties from their applications was May 9, 2025 (this notification was also communicated within Emphesys' April 14, 2025, NOID). *See* CMS Exhibits C-13 and C-4 at 2. On April 26, 2025, CMS notified Emphesys that "[t]he automated processing for the submitted [HSD] network for H7617 is now complete." CMS Exhibit C-11. The record does not reflect, however, that Emphesys ever attempted to submit the Aransas County cardiology exception request (despite Emphesys stating that it had prepared a draft exception request) during the time after receiving its post-NOID ACC report on April 26, 2025, and the time that the exception window closed on April 30, 2025. Plan Initial Brief at 9. Indeed, Emphesys admits as much when it states that its "personnel did not notice in the short window before April 30, the deadline for submitting exception requests" that Aransas County cardiology had failed. Plan Exhibit P-20 at ¶ 18. Accordingly, the Hearing Officer finds that CMS timely provided Emphesys with clear notice of the post-NOID exception request submission timeframe, timely provided Emphesys with clear notice that its ACC report for

its post-NOID HSD submission was complete, and that the ACC report notice was provided with four full calendar days and three full business days left for Emphesys to submit any additional exception requests that may have been necessary based on the changes that Emphesys made to the Aransas County cardiology providers within its post-NOID (final) HSD upload.

Lastly, the Hearing Officer notes that CMS provided, within the April 14, 2025, NOID and additionally within an April 16, 2025 HPMS E-Mail, clear notice of the May 9, 2025 deadline for Emphesys to remove counties from its application. CMS Exhibits C-4 and C-13.

Thus, the Hearing Officer finds that Emphesys has not proven by a preponderance of the evidence that CMS's denial of Emphesys' service area expansion application for contract H7617, based on CMS's evaluation that Emphesys' provider network did not meet CMS's requirements, was inconsistent with regulatory requirements. *See* 42 C.F.R. § 422.116(a)(2)(ii); 42 C.F.R. § 422.660(b)(1)

X. ORDER

The Hearing Officer grants CMS's Motion for Summary Judgment and upholds CMS's May 14, 2025, Denial of Emphesys' service area expansion application for contract H7617.

Amanda S. Costabile -S
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Date: 2025.08.14 15:55:22 -04'00'

Amanda S. Costabile, Esq.
CMS Hearing Officer

Date: August 14, 2025