

**CENTERS FOR MEDICARE AND MEDICAID SERVICES**  
**Hearing Officer Decision**

<b>In the Matter of:</b>	*	
<b>Health Advantage Florida, Inc.</b>	*	<b>Docket No.</b>
		<b>2017-9 MA/PD</b>
<b>Denial of Service Area Expansion:</b>	*	
<b>Initial Application</b>	*	
	*	
<b>Contract Year 2018</b>	*	
<b>Contract No. H1321</b>	*	

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**ORDER GRANTING CENTERS FOR MEDICARE AND MEDICAID SERVICES**  
**MOTION FOR SUMMARY JUDGMENT**

I. FILINGS

This Order is being issued in response to the following:

- (a) Health Advantage Florida, Inc.’s (“HAF”) Request for Hearing submitted by letter, dated June 7, 2017;
- (b) Centers for Medicare & Medicaid Services’ (“CMS”) Memorandum and Motion for Summary Judgment in Support of CMS’ Denial of Health Advantage Florida, Inc.’s Initial Application to offer Medicare Advantage/Medicare Advantage - Prescription Drug Contract H1321 for contract year (“CY”) 2018, dated June 14, 2017 [hereinafter CMS’ Motion for Summary Judgment]; and
- (c) HAF’s Opposition to Motion for Summary Judgment, Cross Motion for Summary Judgment, and Pre-Hearing Brief dated June 20, 2017 [hereinafter HAF’s Brief].

II. ISSUE

Whether CMS’ denial of HAF’s application to offer a new Medicare Advantage (“MA”) product—due to a failure to meet the State licensure application requirement—was inconsistent with regulatory requirements.

III. DECISION

The Hearing Officer grants CMS’ Motion for Summary Judgment and denies HAF’s Cross Motion for Summary Judgment. HAF admits that it failed to meet the State licensure application

requirement by CMS' established deadline. HAF has not proved by a preponderance of the evidence that CMS' denial of its application was inconsistent with controlling authority.

#### IV. BACKGROUND

Any entity seeking to contract as an MA organization must fully complete all parts of a certified application, in the form and manner required by CMS. *See* 42 C.F.R. §§ 422.501(c) and 422.503(b)(1) (2016). Specifically, CMS requires that applications be submitted through the Health Plan Management System ("HPMS") and in accordance with instructions and guidelines that CMS may issue. Among other requirements, an applicant must provide:

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. 42 C.F.R. § 422.501(c)(i).

Under current regulations and procedures, after receiving an application, CMS reviews the application for any issues. CMS then notifies the applicant of any deficiencies by e-mailing a Deficiency Notice. This is an applicant's first opportunity to amend its application.

If an applicant fails to cure its deficiencies, CMS will issue a Notice of Intent to Deny ("NOID"). 42 C.F.R. § 422.502(c)(2)(i). The NOID affords an applicant a second opportunity to cure its application. *See id.* § 422.502(c)(2)(ii). After CMS issues a NOID, an applicant has a final ten-day period to cure any deficiencies in order to meet CMS' requirements; otherwise, CMS will deny the application. *Id.* § 422.502(c)(2)(ii)–(iii).

The formal NOID process is outlined at 42 C.F.R. § 422.502(c)(2)(i)–(iii), which states:

(i) If CMS finds that the applicant does not appear to be able to meet the requirements for an MA organization or Specialized MA Plan for Special Needs Individuals, CMS gives the applicant notice of intent to deny the application for an MA contract or for a Specialized MA Plan for Special Needs Individuals a summary of the basis for this preliminary finding.

(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 an MA application, then CMS gives the applicant a written notice with the basis for the determination, and the applicant is entitled to request a hearing before a Hearing Officer. *Id.* § 422.502(c)(3)(i)–(iii). Furthermore, 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 (application requirements) and 422.502 (evaluation and determination procedures). *Id.* § 422.660(b)(1). In addition, either party may ask the Hearing Officer to rule on a Motion for Summary Judgment. *Id.* § 422.684(b).

#### V. PROCEDURAL HISTORY AND STATEMENT OF FACTS

On February 15, 2017, HAF filed an initial application with CMS to offer a new Medicare Advantage (“MA”)/ Medicare Advantage - Prescription Drug (“MA-Only/MA-PD”) product under contract number HI321 for contract year (“CY”) 2018. *See* CMS’ Motion for Summary Judgment at 1. On March 3, 2017, CMS issued a deficiency notice, which cited, among other items, a deficiency in State licensure. *Id.* at 4. This deficiency notice stated that HAF had until March 9, 2017 to cure all deficiencies. *Id.* On March 9, 2017, HAF stated in the licensure section of the application that HAF submitted its application for State licensure on March 7, 2017 to the Florida Office of Insurance Regulation (“OIR”) and the Agency for Health Care Administration (“AHCA”). *Id.* at 4–5. Also, HAF acknowledged in its March 9<sup>th</sup> correspondence to CMS that its application for State licensure was under review by OIR and AHCA. *Id.* at 5.

On April 17, 2017, CMS issued a Notice of Intent to Deny (“NOID”) which noted a deficiency in State licensure. *Id.* The NOID gave HAF a final ten-day cure period to correct any deficiencies in its application—that is, by April 27, 2017. *Id.* On the April 27 deadline, HAF responded to CMS that it had not yet received the State license but anticipated receiving the license shortly. *See* HAF’s Brief at 2.

CMS issued a letter on May 24, 2017 denying HAF’s new MA-Only/MA-PD product application on the basis that HAF did not have a license under State law as a risk-bearing entity eligible to offer health insurance or health insurance benefits coverage across the service area. CMS’ Motion for Summary Judgment at 5. On June 1, 2017, OIR issued HAF a Certificate of Authority evidencing licensure in the State of Florida. HAF’s Brief at 2. On June 2, 2017, OIR completed the MA State Certification Request form, and HAF submitted the Certificate of Authority and Certification Request form to the CMS reviewer on June 5, 2017 (along with a

request that the application be approved).<sup>1</sup> *Id.* CMS responded to HAF's request by discussing the availability of the appeal process, and HAF subsequently filed a Hearing Request on June 7, 2017 to establish the instant appeal. *Id.* at 3. The parties then briefed the issue as noted in Section I. above.

#### VI. DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

When exercising his/her authority, the Hearing Officer must comply with the provisions of Title XVIII and related provisions of the Social Security Act ("Act"), regulations issued by the Secretary, and general instructions issued by CMS in implementing the Act. 42 C.F.R. § 422.688.

The regulations are clear that an applicant must document that it has a State license or State certification to meet CMS' standards. *See id.* § 422.501(c)(1)(i). HAF failed to meet the application requirements when it submitted its initial application, and HAF failed to cure this deficiency by the April 27, 2017 deadline established through the NOID.

The parties do not dispute these facts. HAF admits that it did not possess a State license by the April 27, 2017 deadline. HAF's Brief at 3. HAF contends that satisfying the licensure requirement is not fully within the applicant's control, as it requires action from the applicant and the State regulator. *Id.* at 4. HAF further claims that HAF worked diligently to obtain State licensure by responding to all inquiries and follow-up requests from the state agencies and providing necessary materials. *Id.* HAF argues that approving its application "would benefit Medicare beneficiaries by enhancing competition and providing a new plan that would be wholly distinct from those presently available in South Florida." *Id.* at 5.

In this proceeding, the applicant bears the burden of proof that CMS' determination was inconsistent with controlling requirements. 42 C.F.R. § 422.660. The Hearing Officer finds that CMS' denial was an appropriate exercise of its delegated authority. HAF failed to meet the State licensure application requirement when submitting its initial application, and HAF failed to timely cure this deficiency by the April 27, 2017 deadline. Therefore, HAF did not meet its burden of proof to demonstrate that CMS' determination was inconsistent with controlling authority.

#### VII. DECISION AND ORDER

The Hearing Officer finds that HAF has not established by a preponderance of the evidence that CMS' May 24, 2017 denial was inconsistent with controlling authority. HAF failed to timely meet the State licensure application requirement. The June 5, 2017 licensure submission was

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<sup>1</sup> CMS indicates that it is unclear whether the documents that HAF submitted on June 5, 2017 constitute an actual license. *See* CMS' Motion for Summary Judgment at 7.

untimely. Thus, CMS' Motion for Summary Judgment is hereby granted, and HAF's Cross Motion for Summary Judgment is denied.



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Benjamin R. Cohen, Esq.  
CMS Hearing Officer



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Diana K. Hobbs, Esq.  
CMS Hearing Officer

Date: July 10, 2017