

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Lindsay Zamis, M.D., & Lindsay Zamis, M.D., a Professional Corporation,
(PTANs: CB231787 & CB231788)
(NPI: 1457751968)

Petitioners,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-4134

Decision No. CR4723

Date: October 21, 2016

DECISION

Petitioners, Lindsay Zamis, M.D., and Lindsay Zamis, M.D., a Professional Corporation, appealed the determination establishing the effective date of their enrollment and billing privileges as Medicare suppliers. For the reasons explained below, I find that Noridian Healthcare Solutions (Noridian), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), properly determined that the effective date of Petitioners' enrollment was April 1, 2015, with retrospective billing permitted as of March 2, 2015.¹ *See* CMS Exhibit (Ex.) 3. I therefore affirm the effective date set by CMS.

¹ Noridian identified March 2, 2015, as the "effective date" of Petitioners' enrollment. CMS Ex. 3. However, by regulation, the "effective date" of enrollment is the date Noridian received enrollment applications from Petitioners that it eventually approved. *See* 42 C.F.R. § 424.520(d). In this case, Noridian received Petitioners' enrollment application on April 1, 2015. *See, e.g.*, CMS Ex. 5 at 2. CMS may permit a supplier to "retrospectively bill" for services for up to 30 days prior to that effective date. 42 C.F.R. § 424.521(a). Because March 2, 2015 is 30 days prior to the date Noridian received

I. Background and Procedural History

On September 1, 2014, Petitioners' credentialing specialist sent applications for Medicare enrollment and billing privileges to Noridian using Forms CMS-855B, CMS-855I, and CMS-855R. Petitioners' (P.) Ex. 8 ¶ 2 (Shanahan Declaration).² Noridian received the applications on September 17, 2014. *See, e.g.*, CMS Ex. 1 at 1. Noridian sent Petitioners' credentialing specialist e-mails requesting additional information regarding the applications on October 2, 2014, November 11, 2014, and December 20, 2014. P. Ex. 8 ¶¶ 3, 5, 6.

Each of the e-mails requesting additional information stated that Noridian may reject Petitioners' applications if Petitioners failed to provide complete information "within 30 calendar days of the initial request." P. Ex. 1; CMS Exs. 7, 8.

By letter dated December 30, 2014, Noridian notified Petitioners that it had rejected Petitioners' applications because the applications were incomplete and because Petitioners had not submitted complete applications in response to the requests for additional information. CMS Ex. 1. The December 30 letter further explained that in order to reapply for Medicare enrollment, Petitioners must submit new applications. *Id.*

Petitioners submitted a new application for enrollment (Form CMS-855I) that Noridian received on April 1, 2015. CMS Ex. 2 at 28. Noridian approved the application. CMS Ex. 3. Noridian approved retrospective billing effective March 2, 2015. Petitioners requested reconsideration of the effective date. CMS Ex. 4. Noridian issued an unfavorable reconsidered determination in which it reaffirmed the effective date of Petitioners' enrollment. CMS Ex. 5. Petitioners filed a timely request for a hearing before an administrative law judge. The case was originally assigned to Judge Joseph Grow and was briefly re-assigned to Judge Carolyn Cozad Hughes before being re-assigned to me effective September 16, 2016.

Pursuant to the Acknowledgement and Pre-Hearing Order (Order) issued by Judge Grow, the parties filed cross-motions for summary judgment and CMS filed a reply brief opposing Petitioners' motion for summary judgment (CMS Br., P. Br., CMS Reply).

Petitioners' application, it appears that Noridian used the term "effective date" to refer to the date from which Petitioners are authorized to retrospectively bill for Medicare services. For clarity, I use the term "effective date" in this decision to refer to the effective date of enrollment that is established by regulation (April 1, 2015), not the date from which retrospective billing is authorized (March 2, 2015).

² Petitioners submitted the written declaration of their credentialing specialist, Madison Shanahan, but did not mark the declaration as an exhibit. For purposes of this decision, I designate Ms. Shanahan's declaration as P. Ex. 8.

CMS offered nine exhibits. (CMS Exs. 1-9). Petitioners offered seven exhibits. (P. Exs. 1-7). As noted previously, Petitioners submitted the written declaration of Madison Shanahan; but, Petitioners did not mark the declaration as an exhibit, as was required under Judge Grow's pre-hearing order. Order ¶¶ 4.c.iv, 8. Therefore, consistent with the terms of the pre-hearing order, I designate Ms. Shanahan's declaration as P. Ex. 8. In the absence of objection, I admit CMS Exs. 1-6 and P. Exs. 1-8 into the record.

Petitioners objected to the admission of CMS Exs. 7-9 as untimely under the terms of Judge Grow's pre-hearing order. I overrule the objection. Petitioners do not deny that they received the three e-mail communications that are the subject of CMS Exs. 7-9. To the contrary, Ms. Shanahan's declaration describes each of the e-mail communications at issue. P. Ex. 8. Thus, there can be no issue of unfair surprise regarding the e-mails. Moreover, while Ms. Shanahan's declaration refers to the e-mails, Petitioners did not offer printouts of the content of these e-mails in support of the declaration. Therefore, in the interest of creating a complete record of the communications between Petitioners and Noridian, I find good cause to admit CMS Exs. 7-9 into the record.

CMS did not propose to call any witnesses. Petitioners offered the written declaration of Ms. Shanahan. However, CMS did not request to cross-examine Ms. Shanahan. As Judge Grow's pre-hearing order informed the parties, a hearing is necessary only if a party requests to cross-examine a witness for whom the party opponent offered written direct testimony. Order ¶¶ 9, 10. Therefore, I deny the motions for summary judgment and proceed to issue this decision based on the written record.³

II. Issue

The issue in this case is whether Noridian, acting on behalf of CMS, properly established April 1, 2015, as Petitioners' effective date for enrollment in Medicare, with retrospective billing privileges authorized from March 2, 2015.

III. Jurisdiction

I have jurisdiction to hear and decide this case. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* Social Security Act (Act) § 1866(j)(8) (codified at 42 U.S.C. § 1395cc(j)(8)).

³ Further, it appears Petitioners waived their right to appear at a hearing, as they indicated that the case was ready for a decision on the merits without further proceedings. *See* April 7, 2016 Notice of Case Status.

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

A provider or supplier that seeks billing privileges under Medicare must “submit enrollment information on the applicable enrollment application.” 42 C.F.R.

§ 424.510(a). A “provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor,” and the application must include “complete, accurate, and truthful responses to all information requested within each section as applicable to the provider or supplier type.” 42 C.F.R.

§ 424.510(d)(1)-(2). “Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program.” 42 C.F.R. § 424.510(a).

CMS “may reject” an enrollment application if a supplier “fails to furnish complete information on the provider/supplier enrollment application within 30 calendar days from the date of the contractor request for the missing information.” 42 C.F.R.

§ 424.525(a)(1); *see also* 42 C.F.R. § 424.502 (definition of *Reject/Rejected*). CMS may extend the 30-day period before rejecting an application “if CMS determines that the . . . supplier is actively working with CMS to resolve any outstanding issues.”

42 C.F.R. § 424.525(b). However, CMS’s (or the contractor’s) decision to either reject the application or extend the period for submitting information is a matter of discretion that is not subject to appeal. 42 C.F.R. § 424.525(d).

If CMS or its contractor rejects an enrollment application, the supplier must submit a new enrollment application. 42 C.F.R. § 424.525(c). For suppliers that are physicians or non-physician practitioners, or physician or non-physician practitioner organizations, the effective date for Medicare enrollment and billing privileges is the date on which the supplier files an enrollment application that is subsequently approved or the date on which the supplier first began providing services at a new location, whichever is later. 42 C.F.R. § 424.520(d).

1. I have no authority to review Noridian’s rejection of Petitioners’ September 2014 enrollment application.

CMS argues that its contractor’s determination to reject a Medicare enrollment application is not subject to review by an administrative law judge. CMS Br. at 4. In response, Petitioners argue that they do not challenge Noridian’s rejection of their applications. P. Br. at 6-8. For the reasons explained below, I find Petitioners’ arguments unconvincing.

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

Petitioners cite to 42 C.F.R. § 498.3(b)(15) as establishing their right to administrative review of the determination establishing the effective date of their Medicare enrollment. P. Br. at 6. Petitioners are correct. There is no doubt Petitioners have a right to review of the effective date of enrollment, but my authority to review the effective date of enrollment cannot be expanded to permit review of Noridian's determination to reject Petitioners' applications.

Petitioners acknowledge that CMS may reject an incomplete enrollment application. P. Br. at 7. Nevertheless, their arguments focus solely on how and why Noridian (on behalf of CMS) erred by rejecting their September 1 enrollment applications. Petitioners detail the communications that their credentialing specialist had with Noridian representatives regarding Noridian's requests for additional information. P. Br. at 8-10. Petitioners suggest that Noridian's requests for information were unclear or that Noridian mishandled the application process.⁵ *Id.* Petitioners also contend that they were "actively working with CMS to resolve any outstanding issues" within the meaning of 42 C.F.R. § 424.525(b). P. Br. at 7. Finally, Petitioners argue that the information Noridian requested was at all times apparent from their applications. P. Br. at 2. I have considered these contentions but, even accepting them as true, I am unable to grant Petitioners the relief they seek.

I cannot grant a September 1, 2014 effective date for Petitioners' Medicare enrollment unless I set aside Noridian's rejection of Petitioners' September 2014 enrollment applications. As summarized above, the governing regulations provide that, once an enrollment application is rejected, a supplier must submit a new enrollment application. *See* 42 C.F.R. § 424.525(c). Thus, a rejected enrollment application cannot be the basis for an enrollment effective date. This is because submission of a new enrollment application triggers a new effective date calculation based on the date the contractor receives the new application. *See* 42 C.F.R. § 424.520(d). No matter how Petitioners

⁵ For example, Petitioners emphasize the fact that Noridian rejected the applications before 30 days had elapsed from its final request for information. P. Br. at 9-10. However, Noridian's e-mail of November 11, 2014, informed Petitioners that their applications may be rejected if they failed to submit complete responses "within 30 calendar days of the *initial request*." CMS Ex. 8 (emphasis added). As CMS points out in its Reply, this instruction is consistent with the provisions of the Medicare Program Integrity Manual, Chapter 15 § 15.8.2, which states that "[i]f the contractor makes a follow-up request for information, the 30-day clock does not start anew; rather it keeps running for the date the pre-screening letter was sent." CMS Reply at 4. Noridian rejected Petitioners' applications on December 30, 2014, which is beyond 30 days following the information request on November 11, 2014. Thus, Petitioners' criticisms of Noridian's process do not even establish that Noridian acted contrary to CMS policy.

may couch their arguments, I cannot grant Petitioners relief without exercising authority over Noridian's rejection of Petitioners' September 2014 enrollment applications. The regulations do not permit me to exercise such authority. *See* 42 C.F.R. § 424.525(d).

2. By regulation, the effective date of Petitioners' Medicare enrollment cannot be earlier than April 1, 2015, the date they submitted an application that Noridian accepted.

Because Noridian, on behalf of CMS, rejected Petitioners' September 2014 applications, Petitioners were required to submit a new enrollment application. The date of filing an enrollment application directly impacts the effective date for Medicare billing privileges. As stated in the regulations:

The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d).

The "date of filing" is the date that the Medicare contractor "receives" a signed enrollment application that the Medicare contractor is able to process to approval. *Tri-Valley Family Medicine, Inc.*, DAB No. 2358 at 6-7 (2010) (citing 73 Fed. Reg. 69,725, 69,769 (Nov. 19, 2008)); *see also Alexander C. Gatzimos, MD, JD, LLC*, DAB No. 2730 at 5-15 (2016) (explaining that CMS did not change the definition of the date of filing when it stated that "[t]he 'date of filing' is the date on which the provider or supplier submitted its CMS-855 application via mail or Internet-based PECOS [Provider Enrollment, Chain and Ownership System].") (citing 79 Fed. Reg. 72,500, 72,521 (Dec. 5, 2014)).

Petitioners do not contend that Noridian received their new enrollment application at any time prior to April 1, 2015. Accordingly, as required by regulation, the effective date of Petitioners' Medicare enrollment is April 1, 2015. Pursuant to 42 C.F.R. § 424.521(a)(1), Petitioners are permitted to retrospectively bill for services for up to 30 days prior to the effective date of enrollment.

V. Conclusion

I affirm CMS's decision that the effective date of Petitioners' Medicare enrollment and billing privileges is April 1, 2015, with retrospective billing permitted as of March 2, 2015.

_____/s/_____
Leslie A. Weyn
Administrative Law Judge