

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Khaja Aliuddin, M.D.,  
Khaja Aliuddin, M.D.S.C.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-978

Decision No. CR3021

Date: December 4, 2013

**DECISION**

Wisconsin Physicians Service (WPS), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), determined that the effective date for reactivation of Medicare billing privileges for Khaja Aliuddin, M.D. and Khaja Aliuddin, M.D.S.C. (Petitioner) was December 25, 2012. Petitioner appealed. Because Petitioner filed his enrollment application seeking reactivation of billing privileges on December 25, 2012, and that application was ultimately approved, I affirm CMS's determination as to the effective date of the reactivation of Petitioner's Medicare billing privileges.

**I. Background and Procedural History**

Petitioner is a physician who was enrolled in the Medicare program as a supplier. Petitioner Exhibit (P. Ex.) 1; CMS Ex. 1. On September 14, 2011, WPS sent Petitioner a request to revalidate (i.e., update and certify) his Medicare enrollment information with WPS within 60 days. CMS Ex. 1. WPS's notice stated in bold that a failure to submit a timely and complete revalidation enrollment application may result in the deactivation of Petitioner's Medicare billing privileges. CMS Ex. 1, at 2.

On November 16, 2011, WPS received Petitioner's revalidation enrollment application through the Provider Enrollment, Chain, Ownership System (PECOS) internet-based system. In a letter dated November 29, 2011, WPS informed Petitioner that he had 30 days to provide additional information so that his application could be approved. The letter stated in bold that a failure to timely submit the required information "will result in the deactivation of your Medicare billing privileges." CMS Ex. 2.

On January 4, 2012, WPS informed Petitioner that it deactivated Petitioner's Medicare billing privileges (Provider Transaction Access Number (PTAN) 751940) effective immediately because Petitioner failed to provide the information required in WPS's November 29, 2011 letter. WPS informed Petitioner that he could reactivate his billing privileges by filing a revalidation enrollment application along with all supporting information. CMS Ex. 3.

Petitioner continued to provide services to Medicare beneficiaries in 2012. P. Ex. 2. However, it was not until December 25, 2012, that Petitioner submitted a new enrollment application (Form CMS-855I) for revalidation through PECOS; Petitioner also sent a hard copy of the application by mail on December 26, 2012. CMS Ex. 4. On January 7, 2013, WPS notified Petitioner that it received Petitioner's enrollment application on December 25, 2012; however, WPS requested additional information from Petitioner. CMS Ex. 5. Petitioner apparently provided the required documentation and, on January 17, 2013, WPS approved Petitioner's enrollment application to reactivate his billing privileges with an effective date of December 25, 2012. CMS Ex. 6, at 1. WPS also indicated that it assigned Petitioner a new PTAN and that his previous PTAN was still deactivated. CMS Ex. 6, at 1.

By letter dated January 27, 2013, Petitioner requested that WPS reconsider its determination as to the effective date of reactivation of billing privileges. Petitioner stated that "[d]ue to a misunderstanding and miscommunication, I was not able to revalidate my billing privileges for the period of January 4, 2012 to December 24, 2012." CMS Ex. 7. Petitioner requested retroactive billing privileges commencing January 4, 2012. CMS Ex. 7.

On April 26, 2013, a WPS hearing officer issued a reconsidered determination upholding WPS's determination that Petitioner's effective date for Medicare billing privileges was December 25, 2012. The hearing officer found that WPS had properly rejected Petitioner's incomplete November 16, 2011 revalidation enrollment application and deactivated Petitioner for failing to provide requested information needed to complete the revalidation application. The hearing officer stated that following deactivation, Petitioner's December 25, 2012 enrollment application was the one that had been approved. The hearing officer concluded that WPS had properly determined that December 25, 2012, was the effective date for Medicare billing privileges under the new PTAN that was issued. CMS Ex. 9.

On June 26, 2013, Petitioner, represented by counsel, filed a request for hearing (RFH) with the Departmental Appeals Board, Civil Remedies Division (CRD). The CRD Director assigned this case to me. In response to my July 8, 2013 Acknowledgment and Pre-hearing Order (Order), CMS filed a brief (CMS Br.) and nine exhibits. On September 10, 2013, Petitioner filed a motion to compel discovery. As explained in my September 13, 2013 Order Denying Motion to Compel, Petitioner did not have a right to discovery because the applicable statute and regulations did not provide such a right. *Oaks of Mid City Nursing & Rehabilitation Ctr.*, DAB No. 2375, at 32 (2011); *see also* 42 U.S.C. §§ 405(b), 1395cc(h)(1)(A), (j)(8); 42 C.F.R. pt. 498; CRD Procedures § 13. On September 16, 2013, Petitioner timely filed his pre-hearing brief (P. Br.) and two exhibits.

In the absence of an objection, I admit CMS Exs. 1-9 and P. Exs. 1-2 into the record. Because neither party submitted written direct testimony and both parties have sought summary disposition of this case, I will not hold an in-person hearing in this matter. The record is closed and I issue this decision based on the written record. Order ¶ 11.

## **II. Discussion**

### **A. Issue**

Whether CMS had a legitimate basis for determining that December 25, 2012, is the effective date for Petitioner's Medicare billing privileges.

### **B. Jurisdiction**

I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(15), 498.5(l)(2).

### **C. Findings of Fact, Conclusions of Law, and Analysis<sup>1</sup>**

The Social Security Act authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for suppliers.<sup>2</sup> 42 U.S.C. §§ 1302, 1395cc(j). The Secretary's regulations provide that suppliers must submit enrollment applications to revalidate their enrollment and to reactivate their enrollment when the supplier's billing privileges were deactivated for any reason other than a failure to submit a claim within 12 months. 42 C.F.R. §§ 424.515, 424.540(b). For suppliers that are physicians or non-physician practitioners, or physician or non-

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<sup>1</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

<sup>2</sup> Petitioner, as a physician, is considered a "supplier" for purposes of the Social Security Act and the regulations. *See* 42 U.S.C. §§ 1395x(d), 1395x(u); 42 C.F.R. § 498.2.

physician practitioner organizations, the effective date for Medicare billing privileges is the later date on which the supplier files an enrollment application that is subsequently approved or first began providing services at a new location. 42 C.F.R. § 424.520(d).

***1. WPS received Petitioner's Medicare enrollment application seeking reactivation of billing privileges on December 25, 2012, and WPS approved this application.***

Petitioner filed an enrollment application in response to a request from WPS to revalidate his enrollment information. CMS Ex. 1. WPS deactivated Petitioner's Medicare billing privileges on January 4, 2012, because Petitioner failed to provide additional information that WPS requested so that it could process the revalidation enrollment application. CMS Ex. 3. WPS informed Petitioner that he had to file an enrollment application to reactivate his Medicare billing privileges. CMS Ex. 3. On December 25, 2012, WPS received Petitioner's enrollment application via PECOS. CMS Exs. 4; 5; 9. Petitioner does not dispute this date of receipt. P. Br. at 2. WPS approved this application on January 17, 2013. CMS Exs. 6; 9. Therefore, I find that WPS received Petitioner's application on December 25, 2012, and that this application was subsequently approved.

***2. WPS properly concluded that the reactivation of Petitioner's Medicare billing privileges was effective December 25, 2012.***

WPS deactivated Petitioner's Medicare billing privileges on January 4, 2012, because Petitioner failed to provide information necessary to process the revalidation enrollment application Petitioner submitted to WPS on November 16, 2011. CMS Ex. 3. Once WPS deactivated Petitioner for any reason other than failing to submit a claim during a 12-month period,<sup>3</sup> Petitioner had to "complete and submit a new enrollment application to reactivate [his] Medicare billing privileges or, when deemed appropriate, at a minimum, recertify that the enrollment information currently on file with Medicare is correct." 42 C.F.R. § 424.540(b)(1). In the present case, WPS's January 4, 2012 letter deactivating Petitioner made it clear that he needed to file "a complete revalidation application," in

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<sup>3</sup> In its January 17, 2013 letter reactivating Petitioner's Medicare billing privileges, WPS indicated that it assigned Petitioner a new PTAN and that PTAN 751940 (Petitioner's original PTAN) was "End-dated on 01/04/2012 for 12 consecutive months of non-billing." CMS Ex. 6, at 1. Both CMS and Petitioner dispute that this was the basis for the deactivation of Medicare billing privileges, and a review of WPS's deactivation letter from January 4, 2012, shows that the basis given for deactivation was a failure to provide requested information in relation to Petitioner's revalidation enrollment application. CMS Br. at 5 n.2; RFH at 4; CMS Ex. 3.

order for WPS to reactivate Petitioner's Medicare billing privileges.<sup>4</sup> CMS Ex. 3. The fact that Petitioner was required to submit a new revalidation enrollment application is significant because 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. *Caroline Lott Douglas, PA*, DAB CR2406, at 5-7 (2011).<sup>5</sup> Even if a Medicare contractor has to request additional information from a supplier, as long as the supplier timely submits that information and the Medicare contractor is able to approve the application, the effective date for enrollment is the date the enrollment application was received. *See Tri-Valley Family Medicine, Inc.*, DAB No. 2358, at 7 (2010).

Petitioner filed his enrollment application for reactivation of his Medicare billing privileges on December 25, 2012. Petitioner complied with WPS's January 7, 2013 request for additional information and WPS approved the enrollment application on January 17, 2013. *See* CMS Exs. 5; 6. Therefore, WPS properly determined that Petitioner's effective date for the reactivation of his Medicare billing privileges was December 25, 2012.

***3. The enrollment application received by WPS on November 16, 2011, is not relevant to the determination of the effective date of the reactivation of Petitioner's Medicare billing privileges.***

Petitioner disputes that his December 25, 2012 application was ultimately approved. Instead, Petitioner argues that his original revalidation enrollment application, received by WPS on November 16, 2011, was the application that was approved. Petitioner's theory is that WPS's January 4, 2012 letter deactivating his Medicare billing privileges

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<sup>4</sup> A "revalidation application" is an "enrollment application" for Medicare billing privileges. *See* 42 C.F.R. § 424.515 (introductory text); *see also* 42 C.F.R. § 424.515(a) (applications for revalidation must meet all of the requirements for enrollment applications in 42 C.F.R. § 424.510).

<sup>5</sup> Administrative decisions and rulings cited in this decision are accessible on the internet at: <http://www.hhs.gov/dab/decisions/index.html>.

simply instructed Petitioner to submit missing information from his revalidation application to reactivate the billing privileges. He asserts that WPS never officially rejected his November 16, 2011 revalidation enrollment application; therefore, Petitioner had an indefinite amount of time to provide the requested information. Petitioner states that he eventually complied with the request for additional information in December 2012 and January 2013. Petitioner, therefore, argues that the correct effective date for the reactivation of his Medicare billing privileges should be November 16, 2011, the date of receipt of the original revalidation enrollment application. Petitioner supports this argument by citing the reactivation provision in the regulations for suppliers deactivated for non-billing for more than 12 months. Petitioner further asserts that WPS never had the authority to convert Petitioner's revalidation enrollment application into an enrollment for a new PTAN, and that WPS violated Petitioner's due process rights by doing so. Petitioner argues that WPS should have reactivated Petitioner's original PTAN rather than assigning a new PTAN. But for WPS assigning a new PTAN, Petitioner asserts, he would have been eligible to retroactively bill for services provided since November 16, 2011. RFH at 4-5; P. Br. at 5-9.

Petitioner's arguments are flawed. The record is clear that WPS deactivated Petitioner for a reason other than a failure to bill Medicare for 12 months, and WPS informed Petitioner that he must file a new revalidation enrollment application in order for WPS to reactivate Petitioner's billing privileges. CMS Ex. 3. Although suppliers deactivated for failing to bill Medicare for 12 months are not required to submit an enrollment application to obtain reactivation of billing privileges (thus permitting them to bill for previous services provided to Medicare beneficiaries), suppliers deactivated for any other reason must submit an enrollment application to reactivate billing privileges. *See* 42 C.F.R. § 424.540(b); *John Heverin, Ph.D.*, ALJ Ruling 2013-6, at 6-7 (HHS CRD March 19, 2013). The requirement to file an enrollment application subjected Petitioner to the effective date provisions in 42 C.F.R. § 424.520(d).

Although Petitioner accepts that WPS deactivated his billing privileges, Petitioner argues that because WPS did not formally reject Petitioner's November 2011 revalidation enrollment application, the application was still pending and subject to approval when Petitioner provided the information that WPS requested in 2012 and 2013. As indicated above, the fact that WPS deactivated Petitioner for a reason other than failing to bill Medicare for 12 months and required the submission of a new revalidation enrollment application to reactivate Medicare billing privileges is sufficient for WPS to apply the effective date provisions in 42 C.F.R. § 424.520(d). However, to the extent that Petitioner argues that WPS's failure to formally reject his revalidation enrollment application, received from Petitioner on November 16, 2011, is relevant, I conclude that WPS did reject his application.

Under the regulations, 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 [Medicare] 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*). In the present case, on November 29, 2011, WPS requested additional information in order to process the revalidation enrollment application that had been filed on November 16, 2011. CMS Ex. 2, at 1. On January 4, 2012, WPS sent a notice that stated: “Because you have not provided a complete revalidation enrollment application(s) and all supporting documentation within 30 days of our 11/29/2011 letter, your Medicare billing privileges are being deactivated, effective immediately.” CMS Ex. 3. Although CMS did not expressly state that it rejected Petitioner’s revalidation enrollment application, there is no doubt from WPS’s letters that it followed the provisions of 42 C.F.R. § 424.525 to reject Petitioner’s application. In fact, WPS’s reconsidered determination indicates that WPS had rejected Petitioner’s application. CMS Ex. 9. Section 424.525 does not require WPS to expressly state that the application had been rejected and, because suppliers have no right to appeal the rejection of an application, there is no prejudice to Petitioner that the January 4, 2012 letter did not expressly state that the application had been rejected. 42 C.F.R. § 424.525(d).

Finally, Petitioner argues that WPS’s assignment of a new PTAN following reactivation of his billing privileges is tantamount to revoking his PTAN without notice or due process. P. Br. at 8-9. Although WPS deactivated Petitioner’s Medicare billing privileges and did not revoke them, it is significant that WPS deactivated those billing privileges for a reason that required Petitioner to submit a new enrollment application. Because Petitioner must essentially reenroll as a Medicare supplier in order to reactivate his billing privileges, he cannot bill Medicare for services from the date of deactivation until he is reactivated with a new effective date for Medicare billing privileges. 42 C.F.R. § 424.520(d). The issuance of a new PTAN reflects this. *See Shalbhadra Bafna, M.D.*, DAB No. 2449, at 2 n.3 (2012) (indicating that under 42 C.F.R. § 424.505, CMS issues PTANs to suppliers when they are granted billing privileges). Petitioner cannot bill for services provided from January 4, 2012, until December 25, 2012, unless Petitioner is granted a limited period of retrospective billing.

***4. I decline to determine whether Petitioner is entitled to a retrospective billing period under 42 C.F.R. § 424.521(a)(1).***

Petitioner requests that, if I affirm CMS’s determination concerning the effective date of Petitioner’s Medicare billing privileges, I grant him a 30-day retrospective billing period under 42 C.F.R. § 424.521(a)(1). Petitioner argues that he should receive retroactive billing due to: 1) the errors WPS made in deactivating his billing privileges; 2) Petitioner’s confusion concerning the effect of the deactivation; and 3) the high quality of services Petitioner provided to his patients during the period of deactivation. RFH at 6; P. Br. at 10.

The regulations at 42 C.F.R. § 424.521(a) state a limited retrospective period may be permitted as follows:

Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician or a nonphysician organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—

- (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or
- (2) 90 days [in certain emergencies not applicable to this case.]

The circumstances in the present case are similar to those in the *Bafna* case cited above, and I adopt that case’s reasoning regarding this issue:

We decline to address this issue because even if denials of retrospective billing are appealable (an issue that we do not reach), Petitioner has not alleged that he met all of the conditions for retrospective billing, and because nothing in the record shows that CMS or WPS denied Petitioner a retrospective billing period when it issued its initial and reconsideration determinations.

*Bafna*, DAB No. 2449, at 5. To the extent that Petitioner requests that I consider the equities of his situation to grant retrospective billing, I am unable to do so since I have no authority to grant equitable relief or an exemption to applicable regulations discussed above. See *US Ultrasound*, DAB No. 2302, at 8 (2010); *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009) (“[a]n ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground . . .”).

### **III. Conclusion**

For the reasons explained above, I affirm CMS’s determination that Petitioner’s effective date for Medicare billing privileges is December 25, 2012.

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/s/  
Scott Anderson  
Administrative Law Judge