

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Amanda B. Wendel, M.D.,

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-13-70

Decision No. CR2726

Date: March 15, 2013

**DECISION**

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting on behalf of the Centers for Medicare and Medicaid Services (CMS), notified Petitioner that her Medicare billing privileges were revoked effective June 1, 2011. Petitioner appealed. For the reasons stated below, I reverse CMS's determination to revoke Petitioner's Medicare billing privileges.

**I. Background and Procedural History**

Petitioner, a physician, was enrolled in the Medicare program as a supplier.<sup>1</sup> On June 21, 2012, WPS informed Petitioner that her Medicare billing privileges were revoked effective June 1, 2011. WPS alleged that Petitioner was noncompliant with regulatory requirements at 42 C.F.R. § 424.535(a)(1) and 42 C.F.R. § 410.20 because she was no longer licensed to practice medicine in Iowa, and with 42 C.F.R. § 424.535(a)(9) because she "did not report" that she was "no longer licensed and therefore did not comply with the requirement for reporting this change of information." CMS Exhibit (CMS Ex.) 1; Petitioner Exhibit (P. Ex.) 1.

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<sup>1</sup> The Medicare program considers a physician to be a "supplier." 42 C.F.R. §§ 400.202; 498.2.

On July 11, 2012, Petitioner requested reconsideration indicating that she practiced at the Dermatology Clinic of Iowa, P.C., from August 1, 2010 through June 30, 2011, after which she relocated to Illinois. Petitioner was aware that her Iowa license was due to expire on June 1, 2011, but had been informed by the Iowa Board of Medicine (Iowa Board) that she could practice during a 60-day grace period following expiration. Because Petitioner only planned to practice in Iowa through June 30, 2011, she chose not to renew her Iowa medical license. Petitioner noted that she had applied for an Illinois license and was working to “credential” with Medicare at the new location. Petitioner indicated that she failed to send appropriate documentation regarding her relocation and the reassignment of her Medicare billing privileges to WPS, but that she was now doing so to correct the oversight. CMS Ex. 2; P. Ex. 5. WPS acknowledged receipt of Petitioner’s request for reconsideration on July 19, 2012. P. Ex. 11.

By letters to Petitioner dated September 6, 2012 and October 5, 2012 (the October 5, 2012 letter corrected a typographical error in the September 6, 2012 letter), WPS denied Petitioner’s request for reconsideration. CMS Exs. 4, 5; P. Ex. 15. WPS noted that CMS may revoke an enrolled supplier’s Medicare billing privileges for noncompliance under 42 C.F.R. § 424.535(a)(1). Under 42 C.F.R. § 410.20, services must be furnished by a professional who is legally authorized to practice in the state where she is performing the functions or actions, and who is acting within the scope of her license. Further, pursuant to 42 C.F.R. § 424.516(d), changes of information must be timely reported to WPS. WPS determined that Petitioner’s “Iowa State license is listed as inactive status effective June 1, 2011, and WPS Medicare Provider Enrollment did not receive an 855I application to properly report this.” P. Ex. 15, at 1; CMS Ex. 4.

By letter dated September 17, 2012, Petitioner requested a hearing. The Civil Remedies Division received Petitioner’s letter on October 22, 2012. I was assigned to hear and decide this case and issued an Acknowledgment and Pre-hearing Order (Order) on November 14, 2012. In response, CMS filed a motion for summary disposition and brief (CMS Br.) and seven proposed exhibits. Petitioner filed a motion for summary disposition and brief and 17 proposed exhibits. Subsequently, Petitioner filed a replacement copy of P. Ex. 10 (noting that she had inadvertently filed a copy of P. Ex. 9 as P. Ex. 10). Because neither party has objected to any of the proposed exhibits, I admit CMS Exs. 1 through 7 and P. Exs. 1 through 17 into the record. I also accept as P. Ex. 10, the replacement copy that Petitioner filed. Neither party offered any witnesses; therefore, I will not hold an in-person hearing. Accordingly, the record is closed and I find it unnecessary to summarily decide this matter. I have considered all of the written evidence of record and I issue this decision based on that record. *See* Order ¶ 12.

## II. Discussion

In order to participate in the Medicare program as a supplier, individuals must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510; 424.516. In order for a physician to enroll as a supplier, he or she must comply with relevant state licensing requirements, namely that the physician must be legally authorized to practice in the state in which he or she performs services and must be acting within the scope of his or her license. 42 C.F.R. §§ 410.20(b), 424.516(a)(2). A physician must report to the relevant Medicare contractor, within 30 days, any adverse legal action and any change in practice location. 42 C.F.R. § 424.516(d)(1)(ii) and (iii). CMS may revoke a physician's Medicare billing privileges if the physician is not in compliance with enrollment requirements or if the physician has failed to comply with the reporting requirements specified in 42 C.F.R. § 424.516(d)(1). 42 C.F.R. § 424.535(a)(1), (a)(9).

In the present case, WPS revoked Petitioner's billing privileges because Petitioner's Iowa medical license was listed as inactive status effective June 1, 2011, and WPS did not receive a Form CMS-855I application to properly report the change to inactive status. CMS Ex. 5, at 1. On appeal, CMS asserts that WPS determined from an online search of the Iowa Board's records that Petitioner's medical license expired on June 1, 2011, and entered into inactive status on that date. CMS Br. at 4; CMS Ex. 7, at 1. Therefore, Petitioner was allegedly not in compliance with Medicare requirements because she was not actively licensed in Iowa, the state where she provided services billed to Medicare in June 2011. CMS Br. 5-6. CMS also noted that as a second, related basis for revocation, Petitioner failed to report to CMS the change in her license status.<sup>2</sup> CMS Br. at 1.

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<sup>2</sup> In its brief, CMS asserts, for the first time, that Petitioner's admitted failure to comply with the requirement to report a change in practice location "is grounds for the revocation of her billing privileges." CMS Br. at 6. The "admission" that CMS refers to is contained in a letter from the Iowa dermatology practice, which was Petitioner's prior employer. The letter states that the practice "fail[ed] to send appropriate documentation that [Petitioner] would be relocating and to reassign her billing privileges." CMS Ex. 2, at 1; P. Ex. 5, at 1. The letter also states that "steps were already being taken to credential [Petitioner] with Medicare at her new location in Illinois." CMS Ex. 2, at 1; P. Ex. 5, at 1. This letter is not persuasive evidence that Petitioner failed to comply with the requirement to notify CMS that her practice location had changed. This statement is not responsive to any issue in this case and I have no other evidence as to whether Petitioner informed CMS of a change in practice location. At most it indicates that Petitioner misunderstood CMS's second basis for revocation (i.e., that Petitioner did not report that she was no longer licensed in Iowa). Without CMS formally noticing Petitioner and adding this as a basis for revocation (I do not consider three sentences at the end of CMS's brief such notice) to which Petitioner has an opportunity to respond, I will not

## A. Issue

Whether CMS had a legitimate basis to revoke Petitioner's Medicare billing privileges.

## B. Findings of Fact, Conclusions of Law, and Analysis<sup>3</sup>

### *1. Petitioner was authorized to practice medicine in the State of Iowa through August 1, 2011.*

Petitioner was licensed to practice medicine in Iowa. The Iowa Administrative Code (Code), at section 653-9.13 (147,148), governs renewal of permanent physician licenses in Iowa.<sup>4</sup> In regard to a physician's failure to renew a license, section 9.13(6) of the Code states:

*9.13(6) Failure to renew.* Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid is prohibited from practice until the license is reinstated in accordance with rule 9.13 (147,148).

*a.* In order to ensure that the license will not become inactive when a paper renewal form is used, the completed renewal application and appropriate fees must be received in the board office by the fifteenth of the month prior to the month the license becomes inactive. For example, a licensee whose license expires on January 1 has until March 1 to renew the license or the license becomes inactive and invalid. The licensee must submit and the board office must receive the renewal materials prior to or on February 15 to ensure that the license will be renewed prior to becoming inactive and invalid on March 1.

*b.* In order to ensure that the license will not become inactive when on-line renewal is used, the licensee must complete the on-line renewal prior to midnight of the last day of the month in the month after the expiration date on the license. For example, a licensee whose license expiration date is January 1 must complete the on-line renewal before midnight on the last

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consider this issue. Thus, this decision is limited to a review of the bases for revocation indicated by WPS, which are summarized above.

<sup>3</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

<sup>4</sup> The Code was amended in 2012, but did not materially change section 9.13(6). Because Petitioner's license expired in 2011, reference is to the 2011 Code.

day of February; the license becomes inactive and invalid at 12:01 a.m. on March 1.

Petitioner filed as an exhibit a letter dated September 11, 2012, signed by the Iowa Board's Director of Licensure & Administration, explaining the impact of license expiration on a physician's medical license. P. Ex. 9. The Director stated, consistent with the Code provision cited above, that:

A licensee has a two month grace period following the expiration date of their [sic] license in which they [sic] can renew [his or her] license. If a physician fails to renew [the] license prior to the expiration date of their [sic] license, they [sic] will be assessed a penalty fee(s) during this grace period. Once the license is renewed it is valid for two years.

P. Ex. 9. According to the Code and the Director of Licensure & Administration of the Iowa Board, the expiration of a physician's license does not mean that a physician is prohibited from practicing medicine in Iowa on the date of expiration. A physician's license, due to the grace period set forth in the Code, does not become inactive and invalid until 60 days after the date a physician's license expires.<sup>5</sup>

Petitioner asserts in her hearing request that she did not renew her medical license because she was leaving practice in the State of Iowa as of June 30, 2011, and that she contacted the Iowa Board and was advised that she had a 60-day grace period in which to practice before her license would be considered inactive and invalid. CMS Ex. 6, at 1. Thus, under Iowa law, Petitioner was still licensed to practice in Iowa through August 1, 2011. Petitioner notes that after contacting the Iowa Board again, the Board informed her that it was "standing by their previous recommendation that they do not consider a physician as 'inactive' until that 60 day period has lapsed." CMS Ex. 6, at 1.

Based on the evidence of record, I find that Petitioner's physician's license in Iowa expired on June 1, 2011, but that she remained legally authorized to practice medicine in Iowa until August 1, 2011.

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<sup>5</sup> CMS asserts that under the Code a license becomes "inactive" immediately on expiration if not renewed and "invalid" two months later if not renewed within that time. CMS Br. at 5 n.2. Contrary to this position, section 9.13(6) of the Code clearly states that the failure of the licensee to renew the license "within two months following its expiration date shall cause the license to become inactive and invalid."

**2. *Petitioner met the licensure enrollment requirement in 42 C.F.R. §§ 410.20(b) and 424.516(a)(2) to be a physician for purposes of billing the Medicare program because she was authorized to practice medicine in Iowa through at least August 1, 2011.***

The Medicare program requires suppliers to have the relevant state licensure for the services being provided. 42 C.F.R. § 424.516(a)(2). A physician is defined by statute as “a doctor of medicine . . . legally authorized to practice medicine and surgery by the State in which he performs such function or action . . .” 42 U.S.C. § 1395x(r). The regulation at 42 C.F.R. § 410.20(b), referencing physicians’ services, states Medicare will pay for the services of a physician if the physician is “legally authorized to practice by the State in which he or she performs the functions or actions” and is “acting within the scope of his or her license.”

Here, Iowa is the state in which Petitioner was practicing when her license expired and the licensing rules of Iowa control with regard to whether a physician is legally authorized to practice and is acting within the scope of his or her license. As already found above, Petitioner was authorized to practice medicine in Iowa for 60 days following the June 1, 2011 expiration of her physician’s license. Therefore, Petitioner met the Medicare program requirements to be a physician for services performed in Iowa through at least August 1, 2011.<sup>6</sup>

**3. *Petitioner did not fail to report her alleged inactive medical license because her license was not inactive during the relevant period, June 1 through 30, 2011.***

As noted above, Petitioner was authorized to practice medicine in Iowa through August 1, 2011. Thus, as of June 1, 2011, there was nothing for Petitioner to report to WPS under 42 C.F.R. § 424.535(a)(9). Therefore, she had no adverse legal action taken against her in Iowa and she had not changed her practice location.

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<sup>6</sup> This conclusion is limited to the specific findings in WPS’s determinations, the position taken by CMS in its brief, as well the evidence of record. Petitioner has demonstrated that the basis for a retroactive revocation to June 1, 2011, was incorrect. It is unclear whether CMS could revoke Petitioner’s enrollment on or after August 1, 2011, on the same grounds. CMS did not argue this in its brief and my decision is circumscribed by the actual position of CMS and the record.

