

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Dipti Itchhaporla Medical Corporation
dba Newport Coast Cardiology
(NPI No.: 1356533848)
(PTAN: CB253622),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-116

Decision No. CR4850

Date: May 17, 2017

DECISION

The Centers for Medicare & Medicaid Services (CMS), through an administrative contractor, determined that the effective date for the reactivation of the Medicare billing privileges for Dipti Itchhaporla Medical Corporation dba Newport Coast Cardiology (Petitioner) was March 30, 2016. Petitioner requested a hearing before an administrative law judge to dispute this effective date. Because CMS's administrative contractor approved Petitioner's revalidation enrollment application that it received on March 30, 2016, the CMS administrative contractor correctly determined that the effective date for the reactivation of billing privileges is March 30, 2016. Therefore, I affirm CMS's determination.

I. Background and Procedural History

Petitioner is a group practice that has been enrolled in the Medicare program as a supplier CMS Exhibit (Ex.) 6 at 1; Nov. 16, 2016 Hearing Request at 1. In October 2014, a CMS administrative contractor sent a notice to Petitioner's post office box and street address

advising Petitioner to submit a revalidation enrollment application within 60 days. CMS Ex. 1. The notice stated that a failure to timely file the revalidation enrollment application could result in the deactivation of Petitioner's Medicare billing privileges. CMS Ex. 1 at 4. In a March 24, 2015 notice, the CMS administrative contractor informed Petitioner that its Medicare billing privileges were deactivated because the contractor did not receive a response to its October 2014 notice for Petitioner to revalidate its enrollment. CMS Ex. 2.

On March 30, 2016, the CMS administrative contractor received an enrollment application from Petitioner. CMS Ex. 3. After requesting and receiving additional information from Petitioner (CMS Exs. 4, 5), on May 6, 2016, the CMS administrative contractor reactivated Petitioner's Medicare billing privileges effective March 30, 2016. CMS Ex. 6 at 1.

In its timely filed reconsideration request, Petitioner requested that the CMS administrative contractor grant it a reactivation effective date of March 1, 2015. Petitioner asserted that it should have an earlier reactivation date because Dr. Dipti Itchhaporla, Petitioner's owner, was unaware of the revalidation request. Petitioner stated that it did not receive the revalidation notice, and that an employee concealed notices from CMS rejecting Petitioner's claims for services provided while Petitioner was deactivated. Once discovered, Dr. Itchhaporla took immediate action to reactivate Petitioner as a supplier in the Medicare program. CMS Ex. 7.

The CMS administrative contractor issued an unfavorable reconsidered determination that upheld March 30, 2016, as the effective date for the reactivation of Medicare billing privileges. CMS Ex. 9.

Petitioner requested a hearing to dispute the reconsidered determination. On November 28, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order), which established a submission schedule for pre-hearing exchanges. In response, CMS filed a motion for summary judgment with a brief in support of the motion (CMS Br.) and nine exhibits (CMS Exs. 1-9). Petitioner submitted a brief in opposition to the motion (P. Br.), a list of proposed exhibits and witnesses, two exhibits,¹ and a witness declaration for Dr. Itchhaporla (Itchhaporla Decl.).

¹ Petitioner proposed two exhibits in its List of Proposed Exhibits (P. Exs. 1-2). Petitioner also attached an Appointment of Representative form to its pre-hearing brief marked as Exhibit 1. The Appointment of Representative form is not a substantive exhibit and should not be confused with P. Ex. 1.

II. Decision on the Written Record

I admit all of the proposed exhibits into the record because neither party objected to any of them. Order ¶ 7; Civil Remedies Division Procedures (CRDP) § 14(e).

My Order advised the parties to submit written direct testimony for each witness and that I would only hold an in-person hearing if a party requested to cross-examine a witness. Order ¶¶ 8-10; CRDP §§ 16(b), 19(b). CMS did not offer any written direct testimony. Petitioner submitted written direct testimony from Dr. Itchhaporla (Itchhaporla Decl.); however, CMS did not request to cross-examine that witness. Therefore, I issue this decision based on the written record. Pre-Hearing Order ¶ 11; CRDP § 19(d).

III. Issue

Whether CMS had a legitimate basis to establish March 30, 2016, as the effective date for reactivation of Petitioner's Medicare billing privileges.

IV. Jurisdiction

I have jurisdiction to hear and decide this case. 42 U.S.C. § 1395cc(j)(8); 42 C.F.R. §§ 424.545(a), 498.3(b)(15), (17), 498.5(l)(2).

V. Findings of Fact, Conclusions of Law, and Analysis

My findings of fact and conclusions of law are set forth in italics and bold font.

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers. 42 U.S.C. §§ 1302, 1395cc(j). A "supplier" is "a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services" under the Medicare provisions of the Act. 42 U.S.C. § 1395x(d); *see also* 42 U.S.C. § 1395x(u).

A supplier must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The terms "*Enroll/Enrollment*" means the process that Medicare uses to establish eligibility to submit claims for Medicare covered services and supplies." 42 C.F.R. § 424.502. A provider or supplier seeking billing privileges under the Medicare program must "submit enrollment information on the applicable enrollment application. 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 then establishes an effective date for billing privileges under the requirements stated in 42 C.F.R. § 424.520(d) and may permit limited retrospective billing under 42 C.F.R. § 424.521.

To maintain Medicare billing privileges, providers and suppliers must revalidate their enrollment information at least every five years. CMS reserves the right to perform revalidations at any time. 42 C.F.R. § 424.515. When CMS notifies providers and suppliers that it is time to revalidate, the providers or suppliers must submit the appropriate enrollment application, accurate information, and supporting documentation within 60 calendar days of CMS's notification. 42 C.F.R. § 424.515(a)(2). CMS can deactivate an enrolled provider or supplier's Medicare billing privileges if the enrollee fails to comply with revalidation requirements. 42 C.F.R. § 424.540(a)(3). When CMS deactivates providers or suppliers' Medicare billing privileges "[n]o payment may be made for otherwise Medicare covered items or services furnished to a Medicare beneficiary." 42 C.F.R. § 424.555(b). If CMS deactivates a provider or supplier's billing privileges due to an untimely response to a revalidation request, the enrolled provider or supplier may apply for CMS to reactivate its Medicare billing privileges by completing a new enrollment application or, if deemed appropriate, recertifying its enrollment information that is on file. 42 C.F.R. § 424.540(b)(1).

1. On March 30, 2016, the CMS administrative contractor received Petitioner's enrollment application (CMS-855B), which the CMS administrative contractor ultimately approved.

Petitioner submitted a CMS-855B enrollment application on March 30, 2016, to revalidate its enrollment as a supplier in the Medicare program. CMS Ex. 3. After requesting and receiving further information from Petitioner, the CMS administrative contractor approved Petitioner's application and reactivated its Medicare billing privileges effective March 30, 2016. CMS Exs. 4, 5, 6.

2. The effective date for Petitioner's Medicare billing privileges is March 30, 2016.

The effective date for Medicare billing privileges for physicians, non-physician practitioners, and physician or non-physician practitioner organizations is the later of the "date of filing" or the date the supplier 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. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *Donald Dolce, M.D.*, DAB No. 2685 at 8 (2016).

CMS's policy in effect at the time Petitioner filed its enrollment application provided that if an application for revalidation is filed more than 120 days after deactivation, a new effective date will be issued to the supplier consistent with 42 C.F.R. § 424.520(d).

Medicare Program Integrity Manual (MPIM), ch. 15, § 15.29.4.3 (rev. 578, iss'd Feb. 25, 2015, eff. May 15, 2015). The reactivation effective date is then set as the date the contractor received the enrollment application. MPIM, ch. 15, § 15.27.1.2 (rev. 561, iss'd Dec. 12, 2014, eff. Mar. 18, 2015). That guidance is consistent with the effective date for Medicare billing privileges in section 424.520(d) and with section 424.555(b)'s prohibition on reimbursing services performed by deactivated providers and suppliers. In the present case, the CMS administrative contractor properly determined that Petitioner's effective date for reactivation of its Medicare billing privileges is March 30, 2016, because that is the date that Petitioner filed its enrollment application that the CMS administrative contractor ultimately approved.

Petitioner disagrees with this conclusion because CMS policy at the time of Petitioner's deactivation indicated that the reactivation effective date would be the date of deactivation. MPIM, ch. 15 § 15.27.1.2 (rev. 474, eff. October 8, 2013). However, at the time of Petitioner's deactivation, CMS had already issued notice that it was changing the policy regarding effective dates for reactivation to the current policy. CMS Transmittal 561, Pub 100-08 (Dec. 12, 2014) (amending MPIM, ch. 15 § 15.27.1.2); CMS Transmittal 578, Pub 100-08 (Feb. 25, 2015) (amending MPIM, ch. 15 § 29.4.3). Had Petitioner submitted its reactivation enrollment application before the effective dates of the changes, March 18, 2015 and May 15, 2015, then Petitioner would have had an effective date the same as its deactivation date. However, Petitioner did not file a new enrollment application until March 30, 2016.

Petitioner also argues that it was never effectively deactivated by CMS because CMS failed to notify Petitioner of the requirement to revalidate and of the deactivation, in violation of Petitioner's due process rights. P. Br. at 9-11, Itchhaporita Decl. at 1. Petitioner notes that CMS filed copies of the revalidation and deactivation letters addressed to Petitioner, but did not provide proof that these documents were actually served. P. Br. at 4, 5. Petitioner also states that a former employee concealed the Medicare claims rejection letters from Dr. Itchhaporita, who took immediate action to reactivate upon becoming aware of those rejections. CMS Ex. 7 at 3-6. Essentially, Petitioner asserts that it acted in good faith and that it would be inequitable to deny it reimbursement for legitimate services that it provided to beneficiaries.

Given that Petitioner's employee concealed important correspondence from Dr. Itchhaporita related to the effects of the deactivation (i.e., the rejection of claims due to the deactivation), it seems likely that the employee could have concealed the correspondence from the CMS administrative contractor concerning revalidation and deactivation. For purposes of the present case, whether Petitioner's employee did this or not makes no difference. My jurisdiction in this case is limited to reviewing the effective date of the approval of Petitioner's reactivation enrollment application. 42 C.F.R. § 493.3(b)(15). I do not have jurisdiction to review CMS's deactivation of Petitioner's

Medicare billing privileges because deactivation is not an “initial determination” and deactivation decisions have a separate review process. *See* 42 C.F.R. §§ 424.545(b), 498.3(b).

V. Conclusion

I affirm CMS’s determination that Petitioner’s effective date for Medicare billing privileges is March 30, 2016.

_____/s/
Scott Anderson
Administrative Law Judge