Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Vincent Pirri, M.D.,	)	Date: February 16, 2010
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-10-19
	)	Decision No. CR2065
Centers for Medicare & Medicaid Services.	)	
	)	

DECISION

This case is before me on the Centers for Medicare & Medicaid Services' (CMS) motion for summary disposition. It involves Southern Pain & Anesthesia, LLC's (SPA) challenge to CMS's determination of the effective date of Medicare billing privileges for Vincent Pirri, M.D. CMS has submitted a memorandum and exhibits in support of its motion. Petitioner has responded to the motion with a letter. Having reviewed the pleadings and exhibits carefully, I find that no material facts remain in dispute and conclude that CMS's position is correct as a matter of law. I therefore grant CMS's motion and affirm CMS's determination to approve Petitioner's effective date of participation in the Medicare program as April 23, 2009, making his effective billing date March 24, 2009.

I. Legal Authority

The Social Security Act (Act) authorizes the Secretary of Health and Human Services to promulgate regulations governing the enrollment process for providers and suppliers. Act §§ 1102, 1866(j) [42 U.S.C. §§ 1302, 1395cc(j)]. Under the Secretary's regulations, a provider or supplier that seeks billing privileges under Medicare 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).

The regulations specify that a "provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor," and that the application include "complete . . . 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). Signatures are required on enrollment applications. 42 C.F.R. § 424.510(d)(3)(i)(A), (C). "To enroll in Medicare and obtain Medicare billing privileges after notification of a rejected enrollment application, the provider or supplier must complete and submit a *new enrollment application* and submit all supporting documentation for CMS review and approval." 42 C.F.R. § 424.525(c) (emphasis added).

The effective date of enrollment for physicians and certain other practitioners is set by regulation. As of January 1, 2009, when new regulations went into effect, the effective date is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date that an enrolled physician or other practitioner first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d); 73 Fed. Reg. 69726, 69940 (Nov. 19, 2008).

This regulation establishes the point in time (effective date) from which CMS may determine to reimburse retrospectively claims for services provided by an enrolled physician. Pursuant to 42 C.F.R. § 424.521(a), physicians, non-physician practitioners and physician and non-physician practitioner organizations may retrospectively bill for services 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries.[1] A provider or supplier may challenge the effective date of a Medicare provider agreement or supplier approval. 42 C.F.R. § 498.3(b)(15).

II. Procedural Background

Here, SPA employed Dr. Pirri as a locum physician from September 1, 2008 to February 6, 2009. On or about September 1, 2008, SPA, submitted an 885R application to the CMS contractor to reassign Dr. Pirri's benefits.[2] However, the application was missing

[1] Under previous policy (prior to January 1, 2009), physicians were allowed to retrospectively bill Medicare for services provided to Medicare beneficiaries 27 months before the effective date of enrollment.

[2] The form CMS 855R is the Medicare enrollment application for the reassignment of Medicare benefits. The form CMS 855I is the Medicare enrollment application for physicians and non-physician practitioners. CMS Enrollment Applications, *available at* http://www.cms.hhs.gov/MedicareProviderSupEnroll (then follow "Enrollment Applications" hyperlink).

Dr. Pirri's signature, and the contractor returned the application for re-submittal. In November 2008, Dr. Pirri signed the very same form that SPA had originally submitted, and SPA resubmitted the application.[3] CMS Ex. 2, at 3.

In the middle of February 2009, the contractor returned the 855R form a second time because Petitioner did not submit a new certification page with a new signature of the authorized or delegated official. By this time, Dr. Pirri was no longer employed by SPA. SPA was not able to obtain the Dr. Pirri's signature until March 15, 2009. It then submitted the new certification page, which the contractor received on April 23, 2009. CMS Ex. 2, at 3.

On May 11, 2009, the contractor notified SPA that it had issued Dr. Pirri's Provider Transaction Access Number (PTAN) with the effective billing date March 23, 2009. CMS Ex. 5. On June 16, 2009, SPA requested reconsideration and asked that Dr. Pirri's effective date be changed to September 1, 2008 since it started the process in November and submitted a fully executed form with original signatures in January. CMS Ex. 4; CMS Ex. 2, at 3.

On September 14, 2009, the contractor notified SPA that it had affirmed its earlier determination of Dr. Pirri's April 23, 2009 effective date, which meant that SPA's retroactive billing for Dr. Pirri could go back no further than March 24, 2009. On September 18, 2009, SPA timely requested a hearing.

CMS has filed a motion for summary judgment and SPA has filed a response (CMS Br.; P. Response.). CMS has submitted thirteen exhibits (CMS Exs. 1-13). SPA has not submitted any exhibits.

III. Issue

The sole issue before me is whether Dr. Pirri is entitled to an effective date of his reassignment of benefits to SPA on any date prior to April 23, 2009. This legal issue has been addressed in a variety of factual settings by several other Administrative Law Judges (ALJs), by appellate panels of the Departmental Appeals Board (Board), and by me. Although some of those factual settings have differed slightly from the present one in certain details, none have differed in such a way as to establish an exception to this forum's well-settled rule that requires me to find that Petitioner is not entitled to approval as a Medicare provider on any date prior to April 23, 2009.

[3] Neither party has provided the exact dates of Petitioner's application submissions.

IV. Discussion

1. CMS received Petitioner's complete application on April 23, 2009, and thus, it correctly determined that to be the date of Petitioner's enrollment.[4]

The effective date of enrollment for physicians and certain other practitioners is set by regulation. As of January 1, 2009, the effective date is the later of two dates: either the date of filing of a Medicare enrollment application that a Medicare contractor subsequently approved or the date that an enrolled physician or other practitioner first began furnishing services at a new practice location.[5] 42 C.F.R. § 424.520(d); 73 Fed. Reg. 69726, 69940 (Nov. 19, 2008).

Here, the contractor received the complete enrollment application, which it subsequently approved, on April 23, 2009. CMS Ex. 2, at 3; CMS Ex. 12, at 1.

Petitioner contends that the application that was returned in February (with both original signatures) was a complete application that the contractor should have been able to process. In its hearing request, Petitioner states that when SPA received the returned 855R in February, it called the contractor to determine the problem. SPA expresses disbelief that a new signature page was required to process the application:

> How can there be any impropriety if the same person who signed the form the first time, had the physician sign upon return of the form, and, then returned the form to CMS? The physician had to acknowledge [the signature of the authorizing official] when he signed the form because he signed just above [it].

P. Response at 1. Petitioner complains that there is no rule or statute that supports CMS's denial of a "fully executed form." P. Response at 2. However, the regulations require a new application when one is rejected and CMS guidance specifically requires the submission of a new certification page when an application is returned.

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[4] I make this one finding of fact and conclusion of law to support my decision in this case.

[5] In its September 14, 2009 notice letter, the contractor states that it based its determination on "new applicable regulatory requirements which went into effective [sic] on April 1, 2009 and applied to all CMS 855 applications received after April 1, 2009." CMS Ex. 2, at 3. CMS does not address the discrepancy between the contractor's statement and the regulation's effective date in its brief. However, CMS Publication 100-8, Medicare Program Integrity Manual, Chapter 10, which outlines requirements for enrollment in the Medicare program, states that the implementation date for the changes is April 1, 2009.

Although the difference does not change the outcome of this case, it appears that Petitioner's original, September application was "returned," as distinguished from "rejected," and that when Petitioner failed to cure the deficiency with his resubmission of the original signature page, the application was then rejected.[6] CMS Exs. 8, 9, 10. If Petitioner's application was "returned," as the parties suggest in their briefs, it was not an application, and thus, he would be required to submit a new application, including a new certification page. If Petitioner's application was "rejected," as the contractor's application information sheet indicates, the regulations would require him to "complete and submit a new enrollment application. . . ." 42 C.F.R. § 424.525(c); *see* CMS Ex. 8.

Moreover, as the Secretary has delegated the authority to CMS to administer the application process, CMS may establish guidelines to accomplish the task. Thus, even if the policy is not stated explicitly in the regulations, CMS is authorized to establish Medicare application processes and requirements and, thus, may determine what constitutes a complete application.

CMS has established procedures for processing provider and supplier enrollment applications. Medicare Program Integrity Manual (MPIM), CMS Pub. 100-8, Ch. 10 (Medicare Provider/Supplier Enrollment), *available at* http://www.cms.hhs.gov/Manuals (then follow hyperlink for internet only manuals). When a contractor returns an application, the guidelines specifically state that "[a]ny application resubmission must contain a *brand new certification statement page* containing a signature and date. The provider cannot simply add its signature to the original certification statement it submitted." CMS Pub. 100-8, Ch. 10, section 3.2.B (emphasis added). This policy was in effect well before the contractor returned Petitioner's signature page in February 2009.[7]

SPA also argues that Dr. Pirri should be enrolled earlier than April 23, 2009, because it should not be penalized as a result of the contractor's lengthy review process. SPA asserts that it had completed and submitted an initial application for reassignment of Dr. Pirri's benefits in September 2008. It admits that it neglected to have Dr. Pirri sign the

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[6] A "rejected" application is based on the provider's failure to respond to the contractor's request for missing or clarifying information. A "returned" application is considered a non-application. Additional Provider Enrollment Verification and Program Integrity Activities, CMS Pub 100-08, Ch. 10, section 3.2.

[7] This policy has been in effect since before December 19, 2008, as Transmittal 277 refers to section 3.2 and shows the language requiring a new certification statement as unchanged by the transmittal. Additional Provider Enrollment Verification and Program Integrity Activities, CMS Pub 100-08, Transmittal 277, C.R. 6097, Dec. 19, 2008, *available at* http://www.cms.hhs.gov/Transmittals.

certification page in September, but it asserts that once it resubmitted its application with the original certification page in November, the contractor took two months to return it. *Arguendo*, I accept this assertion as true, although Petitioner has provided no evidence to support it.

Petitioner complains that if the contractor had accepted the "fully executed" signature page in February, under the law SPA would be eligible to bill CMS for Dr. Pirri's services from September 1, 2008. Hearing Request at 2. However, even if CMS had accepted the application in February, the regulations actually went into effect on January 1, 2009. 73 Fed. Reg. 69726, 69940 (Nov. 19, 2008). Although CMS has not explained the basis for its policy requiring a "brand new certification statement," the regulations require that when an application is rejected and returned, providers and suppliers must submit a new application. *See* 42 C.F.R. § 424.525(c). Aside from the regulation, in a program as large as Medicare, CMS may establish policies and procedures to ensure efficiency of the program as a whole, and it may refuse to make individual exceptions to those policies.

That Petitioner may have experienced some delays in providing the contractor with all necessary information – even if those delays may have been caused by the contractor's delays in processing the application – is no basis for me to order Petitioner to be enrolled on a date that is earlier than the date when the contractor received all of the information necessary to process Petitioner's application. The regulatory criteria for enrollment allow no such exception to the rule governing the effective date of enrollment. Even assuming all of Petitioner's complaints and assertions to be true, there is nothing in the regulations which requires CMS to accept an application for enrollment on a date that is earlier than the date when a complete application is received.

V. Conclusion

CMS is entitled to judgment as a matter of law. The date of Petitioner's enrollment may not be any earlier than April 23, 2009, the date the CMS contractor received a complete application that it could process. CMS's motion for summary judgment should be, and it is, GRANTED.

/s/
Richard J. Smith
Administrative Law Judge