Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Michael MacCormac, M.D.,
(NPI: 1659377943), (PTAN: 050000300)

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-13-566

Ruling No. 2014-31

Date: May 22, 2014

ORDER OF REMAND AND DISMISSAL

I remand this case to the Centers for Medicare & Medicaid Services (CMS) to reconsider the new issue of CMS's current policy to reactivate billing privileges effective the date of deactivation, in accordance with 42 C.F.R. § 424.540(c), and to process Petitioner's application for reactivation of his billing privileges.

I. Background

Petitioner is a physician with Lynchburg Anesthesia Associates located in Richmond, VA and has been enrolled as a Medicare supplier for more than 20 years. On September 30, 2011, Palmetto GBA (Palmetto), the Medicare contractor, informed Petitioner that he must revalidate his enrollment information. CMS Exhibit (Ex.) 6. The notice stated that if Petitioner chose to revalidate his enrollment through the paper-based system, he was required to download the appropriate and current CMS-855 Medicare Enrollment application from the CMS website. CMS Ex. 6 at 1-2. The notice warned that Petitioner must complete and submit all required materials within 60 days or he would face deactivation. CMS Ex. 6 at 1. In response, on February 10, 2012, Petitioner submitted

an enrollment application Form CMS-855I to Palmetto but used an outdated version of the application. CMS Ex. 4. On February 28, 2012, Palmetto accepted Petitioner's untimely revalidation request but instructed him to submit the information on the current CMS-855I application form. CMS Ex. 7. The notice provided Petitioner 30 days to submit the updated application for revalidation and warned that Palmetto would reject his application if he failed to do so. CMS Ex. 7, *citing* 42 C.F.R. § 424.525.

On April 4, 2012, Palmetto sent Petitioner an e-mail, referencing its February 28, 2012 notice, and informed Petitioner that Palmetto still had not received the correct version of his CMS-855I application. CMS Ex. 8. Palmetto explained that it was going to issue Petitioner a "Do Not Forward" (DNF) letter, and Petitioner would be permitted to submit the correct application within ten days of the letter, or Palmetto would terminate his provider number. CMS Ex. 8. On April 6, 2012, Palmetto issued the DNF letter to Petitioner. This letter instructed Petitioner to submit the correct application or otherwise Palmetto would deactivate Petitioner's Provider Transaction Access Number (PTAN). CMS Ex. 9. On April 13, 2012, Palmetto warned Petitioner that it planned to deactivate Petitioner's billing privileges effective April 16, 2012, based on his failure to furnish the documentation for his revalidation. CMS Ex. 10. On April 16, 2012, Palmetto deactivated Petitioner's Medicare billing privileges. CMS Ex. 10.

On October 17, 2012, Petitioner submitted the correct version of the CMS-855I application required for revalidation, which Palmetto received on October 19, 2012. CMS Ex. 11; CMS Ex. 14 at 3. Petitioner identified this October 2012 application as a revalidation request. CMS Ex. 11 at 1, 2. However, by this time, Palmetto did not allow Petitioner to revalidate because Palmetto had deactivated Petitioner's billing privileges in April 2012. CMS Ex. 14 at 3. Palmetto processed Petitioner's October 19, 2012 application as a new enrollment application. CMS Ex. 14 at 3. Palmetto approved Petitioner's application and issued him a new effective date based on Palmetto's receipt of the application, effective October 19, 2012, with retrospective billing privileges beginning September 19, 2012.[1] CMS Ex. 13 at 2; *see* 42 C.F.R. §§ 424.520(d), 424.521(a).

---

[1] The contractor refers to September 19 as the "effective date" presumably to refer to the date when Petitioner may <u>retrospectively</u> bill for Medicare services. CMS Ex. 13 at 2. For providers and suppliers initially enrolling, the "effective date" would ordinarily be the date the contractor received the enrollment application that it eventually approved. *See* 42 C.F.R. § 424.520(d). CMS may, however, permit a provider or supplier to retrospectively bill for services for up to 30 days prior to that effective date. 42 C.F.R. § 424.521(a). In this case, although Petitioner was seeking reactivation, the contractor considered September 19 as the effective retrospective *billing* date and October 19 as the effective date of Petitioner's reactivation. *See* 42 C.F.R. § 424.521(a).

Petitioner requested contractor reconsideration. CMS Ex. 1. On February 4, 2013, Palmetto issued an unfavorable redetermination, upholding the effective date. CMS Ex. 2. Petitioner requested a hearing before an administrative law judge (ALJ) by letter dated March 13, 2013. The case was assigned to me for hearing and decision and on March 26, 2013, I issued an Acknowledgment and Prehearing Order (Prehearing Order). On April 30, 2013, CMS filed a motion for summary judgment (CMS Br.) with fourteen exhibits (CMS Exs. 1-14). On June 4, 2013, Petitioner filed a memorandum in opposition to the CMS motion for summary judgment (P. Br.). On June 4 and 7, 2012, Petitioner filed exhibits (P. Exs.) 1 through 3.[2] The parties have not objected to the proffered exhibits, and I admit them to the record.

II. Discussion

Suppliers such as Petitioner must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The regulations at 42 C.F.R. Part 424, subpart P, establish the requirements for a supplier to enroll in the Medicare program. 42 C.F.R. §§ 424.510 - 424.516; *see also* Social Security Act (Act) § 1866(j)(1)(A) (authorizing the Secretary of the U.S. Department of Health and Human Services to establish by regulation the process for enrolling providers and suppliers in the Medicare program). 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). "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), (d). Once the application for enrollment as a provider or supplier is approved, the enrollee is issued a National Provider Identifier (NPI) number and a PTAN to use for billing Medicare and supplier inquiries. Medicare Program Integrity Manual (MPIM), CMS pub. 100-08, ch. 15 § 15.9.1 (rev. 416, eff. March 18, 2013).

To maintain Medicare billing privileges, a provider or supplier (other than a DMEPOS supplier) must resubmit and recertify the accuracy of its enrollment information at least every 5 years. 42 C.F.R. § 424.515. This process is called revalidation. CMS reserves the right to perform off cycle revalidations in addition to the regular 5–year revalidations and may request that a provider or supplier recertify the accuracy of the enrollment information when warranted to assess and confirm the validity of the enrollment information maintained by CMS. 42 C.F.R. § 424.515. "Off cycle" revalidations may be triggered as a result of random checks, information indicating local health care fraud problems, national initiatives, complaints, or other reasons that cause CMS to question

[2] Initially, Petitioner filed an unsigned declaration on June 4, 2013, as P. Ex. 2. Then on June 7, Petitioner filed a signed version of the declaration as an amended P. Ex. 2. CMS did not object to either filing.

the compliance of the provider or supplier with Medicare enrollment requirements. 42 C.F.R. § 424.515(d). To revalidate its enrollment, a supplier must submit an enrollment application and meet the requirements outlined at 42 C.F.R. §§ 424.510 through 424.515. The supplier must submit the appropriate enrollment application to CMS with complete and accurate information and supporting documentation within 60 calendar days of CMS's notification to resubmit and certify the accuracy of the supplier's enrollment application. 42 C.F.R. § 424.515(a)(2).

Beginning July 16, 2012, CMS was authorized to deactivate an enrolled provider or supplier's Medicare billing privileges if the enrollee failed to comply with revalidation requirements, within 90 days of CMS's notice to revalidate. 42 C.F.R. § 424.540(a)(3); 77 Fed. Reg. 29,002, 29,030 (May 16, 2012). If CMS deactivates a provider or supplier's Medicare billing privileges, CMS cannot pay the enrollee for items or services it provides to Medicare beneficiaries. 42 C.F.R. § 424.555(b). The purpose of deactivating a provider or supplier's Medicare billing privileges is to protect the enrollee from misuse of its billing privileges and also to protect the Medicare Trust Funds from unnecessary overpayments. 42 C.F.R. § 424.540(c). Further, deactivation of Medicare billing privileges does not have any effect upon the provider or supplier's participation agreement or any conditions of participation. 42 C.F.R. § 424.540(c).

Reactivation of an enrolled provider or supplier's billing privileges is governed by 42 C.F.R. § 424.540(b). The process by which a deactivated enrollee reactivates its billing privileges depends upon the reason CMS deactivated that provider or supplier. If CMS deactivates a provider or supplier's billing privileges for an untimely revalidation, such as in this case, the enrolled provider or supplier may apply for CMS to reactivate its Medicare billing privileges by submitting a new enrollment application. 42 C.F.R. § 424.540(a)(3), (b)(1).

Here, Palmetto deactivated Petitioner's billing privileges after he failed to timely revalidate his enrollment information. Petitioner subsequently submitted an outdated application for revalidation. Palmetto eventually deactivated him and required him to reactivate his Medicare billing privileges with a new enrollment application. Palmetto eventually accepted Petitioner's application and issued him a new billing number. However, Palmetto granted Petitioner billing privileges effective from the date Palmetto received the new enrollment application.

The CMS policy in effect at the time of Petitioner's October 2012 reactivation application instructed the contractor to establish the reactivation effective date to be the date of filing of the enrollment application that was subsequently approved. MPIM, ch. 15 § 15.27.1(B)(2) (rev. 412, eff. April 30, 2012). Accordingly, Palmetto established Petitioner's reactivation effective October 19, 2012. However, CMS subsequently modified this policy to reflect that: "If the contractor approves a provider or supplier's reactivation application . . . the reactivation effective date shall be the provider or

supplier's date of deactivation. . . ." MPIM, ch. 15 § 15.27.1.2 (rev. 474, eff. October 8, 2013) (emphasis added).

As previously stated, the purpose of deactivation is to protect the enrolled provider or supplier from misuse of their billing privileges as well as to protect the Medicare Trust Funds from unnecessary overpayments. 42 C.F.R. § 424.540(c). When CMS deactivates an enrolled provider or supplier's Medicare billing privileges, the action "does not have any effect on a provider or supplier's participation agreement or any conditions of participation." *Id.*

The CMS policy in effect at the time of Petitioner's October 19, 2012 reactivation application does not seem to comply with the regulation governing deactivation that was in effect at that time, and CMS appears to have addressed this with its new policy. The regulations and new CMS policy suggest that suppliers who subsequently reactivate their information should not be subject to a period of ineligible reimbursements due to deactivations.

III. Order

I may remand a case to CMS for reconsideration of a new issue and a new determination. 42 C.F.R. § 498.56(d); *see Lynn Ann Vaughan, M.D.*, DAB CR3174 (2014) (remanding a similar request for hearing where a previously enrolled supplier was provided a later effective date upon reactivation). I therefore remand and dismiss Petitioner's request for hearing and instruct the contractor to reconsider Petitioner's reactivation date in accordance with 42 C.F.R. § 424.540(c) and the changes in CMS's deactivation and reactivation policy. If CMS completes its reconsideration on this case more than 60 days from the date of this Order, and Petitioner desires my further review, Petitioner may file a request for hearing referring to this case with a copy of this Order attached.

/s/
Joseph Grow
Administrative Law Judge