

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Howard Deckter, M.D., et al.

v.

Centers for Medicare & Medicaid Services

Docket No. C-14-896¹

Decision Number: CR3354

Date: September 4, 2014

DECISION

I grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) against each of the Petitioners whose names are recited in the caption of this decision. CMS correctly determined that April 14, 2013 was the earliest date on which an entity, TriHealth Physicians of Indiana, could claim reimbursement for services provided by any of the Petitioners.

I. Background

The Petitioners are physicians and a nurse practitioner. On May 14, 2013, each of them filed an application to reassign his or her Medicare Part B billing privileges to TriHealth Physicians of Indiana. A contractor, acting on behalf of CMS, accepted these applications effective their filing date and established April 14, 2013 as the earliest date on which Medicare reimbursement claims would be accepted from TriHealth Physicians of Indiana on behalf of any of the Petitioners.

Petitioners were dissatisfied with the April 14 date and requested reconsideration of CMS's determination. They contended that Medicare should accept reimbursement claims filed on their behalf by TriHealth Physicians of Indiana beginning January 1,

¹ An Appendix, attached after my signature on this decision, lists the names of all Petitioners and the respective docket numbers of their cases.

2013. The contractor, again acting on behalf of CMS, denied the reconsideration requests. Petitioners then requested hearings.

CMS moved for summary judgment. It filed nine proposed exhibits that are identified as CMS Ex. 1 – CMS Ex. 9. Petitioner opposed the motion and filed four proposed exhibits that are identified as P. Ex. A – P. Ex. D. I receive the parties' exhibits into the record. Neither party requested an in-person hearing.

II. Issues, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether Petitioners are entitled to reassign their benefits to TriHealth Physicians of Indiana prior to the date that Petitioners filed their applications and prior to the date that TriHealth Physicians of Indiana was enrolled.

B. Findings of Fact and Conclusions of Law

There are no disputed facts in these cases. The undisputed facts establish that TriHealth Physicians of Indiana was not enrolled in the Medicare program prior to filing an enrollment application on its own behalf on May 14, 2013. Prior to May 14, 2013, Petitioners were associated with businesses other than TriHealth Physicians of Indiana. The entities include: Gastroenterology Consultants of Greater Cincinnati (Indiana location); TriHealth Digestive Diseases Institute, LLC; and Gastroenterology Consultants of Greater Cincinnati (Ohio locations).² These other entities may have been associated with TriHealth Physicians of Indiana or may have had common ownership, but they did business as separate entities. None of them operated from the same address as that used by TriHealth Physicians of Indiana, nor did any of them treat beneficiaries using the name of TriHealth Physicians of Indiana. CMS Ex. 6 at 2 – 3; CMS Ex. 7 at 2; CMS Ex. 8 at 18; CMS Ex. 9 at 2.

A health care provider or supplier must be enrolled in the Medicare program in order to receive payment for covered items or services. 42 C.F.R. § 424.505. TriHealth Physicians of Indiana was, therefore, not eligible to claim Medicare reimbursement for the services that it provided prior to its becoming enrolled in Medicare. The earliest date that it could seek reimbursement for services was 30 days prior to the effective date of its enrollment. 42 C.F.R. §§ 424.520(d), 424.521(a). The regulations establish the earliest possible effective date of enrollment as being the later of the date of filing of an application or the date when an enrolled physician begins furnishing services at a new practice location. 42 C.F.R. § 424.520(d). Thus, for TriHealth Physicians of Indiana, the

² Not all Petitioners were associated with all of the other entities, but all Petitioners were associated with at least some of them.

earliest date when it could claim reimbursement for Petitioners' services was April 14, 2013, 30 days prior to the date of its application. It is irrelevant that TriHealth Physicians of Indiana may be associated with or owned by another entity or entities that were enrolled previously in Medicare. TriHealth Physicians of Indiana is, for Medicare reimbursement purposes, a separate entity operating out of a unique address that is not shared with other entities under common ownership. Therefore, it must qualify on its own for enrollment.

So also is the case with the individual Petitioners. Whether or not they were enrolled previously in Medicare is irrelevant. TriHealth Physicians of Indiana is an entity with which they had not been associated previously and for whom they had not qualified as enrolled providers. Accordingly, they were required to file enrollment applications and to qualify for reassignment of billing privileges to TriHealth Physicians of Indiana because, for these individual Petitioners, TriHealth Physicians of Indiana was a "new practice location" and reimbursement for their services could be claimed by that entity only on the *later* of the following dates: the date when they filed applications for reassignment of Medicare benefits or the date when they began providing services at the office location of TriHealth Physicians of Indiana. That date was, in fact, the date when they filed reassignment of billing privileges applications, May 14, 2013 (with reimbursement claims being accepted retroactively to April 13, 2013, courtesy of 42 C.F.R. § 424.521(a)).

Petitioners' argument is that they were entitled to reassign their billing privileges to TriHealth Physicians of Indiana because they were already enrolled in Medicare. They contend that their preexisting enrollment was transferrable to a new provider group without the need re-enroll. That argument is wrong, as a matter of law.

The regulation at 42 C.F.R. § 424.520(d) does not state explicitly that a physician must submit a new enrollment application if he or she begins practice from a new location. But, that is the only possible rational reading of the regulation, because the regulation states that the *earliest date* that a physician may claim reimbursement for services delivered at a new practice location is the later of the date when the physician files an enrollment application or begins to provide care from that location. Thus, a physician cannot claim reimbursement for services provided at a new location without enrolling for that location. None of Petitioners had provided services from TriHealth Physicians of Indiana previously and, therefore, all of them were required to file a new enrollment application to reflect their new status.

Importantly, TriHealth Physicians of Indiana could not have filed reimbursement claims on behalf of Petitioners until it was enrolled in Medicare. A provider or supplier of care may not claim reimbursement from Medicare without enrolling. 42 C.F.R. § 424.505. TriHealth Physicians of Indiana did not file an enrollment application until May 14, 2013. Consequently, it was not eligible to claim reimbursement for services prior to

April 14, 2013 (30 days prior to the date of its application) and it could not lawfully file claims on behalf of Petitioners on any date prior to that date. So, even if Petitioners reassigned their billing privileges to TriHealth Physicians of Indiana prior to April 14, 2013, those reassignments would be ineffective as a matter of law prior to that date.

/s/
Steven T. Kessel
Administrative Law Judge

Appendix

Docket No.	Petitioner	PTAN	NPI
C-14-887	Grace E. Bell, N.P.	IN39500005	136654217
C-14-888	Manojkumar S. Singh, M.D.	IN1395014	1295934719
C-14-889	Carmen B. Meier, M.D.	IN1395004	1306043107
C-14-890	Allan L. Peck, M.D.,	IN1395011	1588663561
C-14-891	Michel P. Ghastine, M.D.	IN1395008	1417956475
C-14-892	Maritza Palusiak, M.D.	IN1395006	1184623159
C-14-893	Nav K. Grandhi, M.D.	IN1395012	1497754469
C-14-894	Greg D. Anderson, M.D.	IN1395013	1093714651
C-14-895	Rajagopal Chadavada, M.D.	IN3950009	1336115443
C-14-896	Howard Deckter, M.D.,	IN1395010	1073512729