

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Connie Miller, NP,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-1633

Decision No. CR4040

Date: July 14, 2015

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, Novitas Solutions (Novitas), determined that Petitioner was not eligible for enrollment in the Medicare program earlier than July 14, 2014, and that Petitioner could not submit claims for payment of services performed or delivered earlier than June 14, 2014. Petitioner requested a hearing in which she sought a retroactive effective date for billing privileges of May 1, 2014. For the reasons stated below, I affirm Novitas' determination.

I. Case Background and Procedural History

On May 6, 2014, Petitioner mailed to Novitas an initial Medicare enrollment application (Form CMS-855I) and a reassignment of benefits application (Form CMS-855R) seeking to reassign her Medicare payments to Texas EM-I Medical Services, PA, which Novitas received on May 7, 2014. CMS Exhibits (Exs.) 1, 2, 12. Petitioner was not already enrolled in the Medicare program when she filed her applications. CMS Ex. 14. In two May 12, 2014 letters, Novitas requested additional information to process Petitioner's applications. CMS Exs. 5, 6. In two letters dated June 11, 2014, Novitas rejected

Petitioner's applications because Petitioner did not supply the requested information. CMS Exs. 7, 8.

On July 11, 2014, Novitas received a new Medicare enrollment application (Form CMS-855I), and a Medicare reassignment of benefits application (Form CMS-855R) again seeking to reassign her Medicare payments to Texas EM-I Medical Services, PA. CMS Exs. 3, 4, 12. These applications are the subject of the present appeal. Novitas received these applications on July 14, 2014. CMS Ex. 13 at 1. Novitas requested additional information, which Petitioner timely supplied. CMS Exs. 9, 10. On October 2, 2014, Novitas approved Petitioner's applications indicating an "Effective date" of June 14, 2014. CMS Ex. 11.

By letter dated October 21, 2014, Petitioner requested reconsideration in order to obtain a May 1, 2014 effective date. In a January 16, 2015 reconsideration determination, Novitas upheld its earlier determination. Novitas explained that the effective date for billing privileges was based on the date Novitas received Petitioner's applications that were processed to completion. Novitas explained that the application processed to completion was received on July 14, 2014. Novitas also stated that it had decided to provide Petitioner with a 30-day retroactive billing period to June 14, 2014. However, Novitas indicated that it could not consider the applications Petitioner filed in May 2014 because they had not been processed to completion. CMS Exs. 12, 13.

By letter dated February 25, 2015, Petitioner timely filed a request for a hearing with the Departmental Appeals Board, Civil Remedies Division. Following the issuance of my March 25, 2015 Acknowledgment and Pre-hearing Order (Order), CMS filed a prehearing brief and motion for summary disposition (CMS Br.), and 14 proposed exhibits (CMS Exs. 1-14). One of the exhibits contained written direct testimony from a CMS witness. CMS Ex. 14. Petitioner filed a document in response which is substantively the same as the hearing request.

II. Decision on the Record

Because Petitioner did not object to any of CMS's proposed exhibits, I admit CMS Exs. 1-14 into the record. *See* Order ¶ 7; Civil Remedies Division Procedures (CRDP) § 14(e).

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10; CRDP § 16(b). CMS submitted written direct testimony for one witness; however, Petitioner did not request to cross-examine the witness. Therefore, I issue this decision based on the written record. Order ¶ 11; CRDP § 19(d).

III. Issue

Whether CMS had a legitimate basis to determine that July 14, 2014, was the effective date for Petitioner's Medicare enrollment and that Petitioner could retrospectively bill for services rendered to Medicare beneficiaries on or after June 14, 2014.

IV. Findings of Fact, Conclusions of Law, and Analysis¹

The Social Security Act authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers in the Medicare program.² 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary's regulations, a provider or supplier who 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).

1. Novitas received Petitioner's applications (Forms CMS-855I and CMS-855R) on July 14, 2014, and Novitas ultimately approved them.

Petitioner completed and signed Forms CMS-855I and CMS-855R on June 27, 2014. CMS Ex. 3 at 29; CMS Ex. 4 at 4. On July 9, 2014, a representative from Texas EM-I Medical Services, PA, signed the Form CMS-855R. On July 11, 2014, the applications were mailed to Novitas. CMS Ex. 12 at 2. Both Petitioner and Novitas acknowledge that Novitas received these applications on July 14, 2014. CMS Ex. 12 at 2; CMS Ex. 13 at 2. Novitas processed these applications and, on October 2, 2014, Novitas informed Petitioner that she was enrolled in the Medicare program and that her reassignment of benefits was approved. CMS Ex. 11. Therefore, the evidence of record supports the conclusion that Novitas received Petitioner's enrollment and reassignment applications on July 14, 2014, and that Novitas approved these applications.

2. Novitas properly concluded that Petitioner's enrollment and reassignment of Medicare benefits was effective on July 14, 2014, with a retrospective billing period commencing on June 14, 2014.

¹ My findings of fact and conclusions of law are set forth in italics and bold font.

² A "supplier" furnishes services under Medicare, and the term supplier applies to physicians and other nonphysician practitioners and facilities that are not included within the definition of the phrase "provider of services." 42 U.S.C. § 1395x(d).

In its initial determination, Novitas stated that Petitioner's effective date was June 14, 2014. CMS Ex. 11 at 2. In its reconsidered determination, Novitas explained that the effective date for Medicare billing privileges was July 14, 2014, with a retrospective billing period commencing June 14, 2014. CMS Ex. 13.

The Secretary's regulations provide that the effective date of enrollment of physicians and non-physician practitioners is "the later of the **date of filing** of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician . . . first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d) (emphasis added). The "date of filing" is the date that the Medicare contractor "receives" a signed provider/supplier enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *see also Caroline Lott Douglas, PA*, DAB CR2406, at 5-7 (2011); *Rizwan Sadiq, M.D.*, DAB CR2401, at 5 (2011). Because Novitas received the applications from Petitioner on July 14, 2014, and Novitas was ultimately able to approve them, Novitas properly determined July 14, 2014, as Petitioner's effective date.

The regulations applicable to this case permit limited retrospective billing for physician or non-physician practitioner services provided up to 30 days before the effective date of enrollment. 42 C.F.R. § 424.521(a). Thus, Novitas correctly determined, based on a July 14, 2014 date of receipt, Petitioner could retrospectively bill for services provided to beneficiaries beginning on June 14, 2014.

3. I have no jurisdiction to review Novitas' decision to reject Petitioner's applications filed in May 2014.

Petitioner originally filed both a Form CMS-855I and Form CMS-855R in May 2014. CMS Exs. 1, 2. Novitas issued letters to Petitioner acknowledging receipt of the applications and requesting additional information in order to process the applications. Novitas warned Petitioner that a failure to provide the requested information within 30 days could result in a rejection of the applications. CMS Exs. 5, 6. When Novitas did not receive the requested information, Novitas informed Petitioner that her applications were rejected. CMS Exs. 7, 8.

Petitioner acknowledges that Novitas rejected its application, but did not expressly dispute that she failed to provide the requested information. Rather, Petitioner asserts that Novitas made a number of errors in processing the applications filed by other practitioners associated with Texas EM-I Medical Services, PA. CMS Ex. 12 at 1; Request for Hearing at 1.

I have no jurisdiction to review Novitas' rejection of Petitioner's May 2014 applications. The Secretary has given CMS the authority to reject an enrollment application when "[t]he prospective provider or supplier fails to furnish complete information on the

provider/supplier enrollment application within 30 calendar days from the date of the contractor request for the missing information.” 42 C.F.R. § 424.525(a)(1). The Secretary also decided that “[e]nrollment applications that are rejected are not afforded appeal rights.” 42 C.F.R. § 424.525(d). Therefore, I have no authority to consider whether Novitas properly rejected Petitioner’s original applications for enrollment or reassignment. Further, because Novitas did not process those applications to completion, they can play no part in the determination of Petitioner’s Medicare enrollment effective date or the effective date of reassignment. *See* 42 C.F.R. § 424.520(d).

V. Conclusion

I affirm Novitas’ determination that Petitioner’s effective date of enrollment is July 14, 2014, with a 30-day retrospective billing period commencing on June 14, 2014.

/s/
Scott Anderson
Administrative Law Judge