

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Sandarsh Kancherla, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-436

Decision Number: CR3310

Date: July 25, 2014

**DECISION**

Petitioner Sandarsh Kancherla, M.D., filed a hearing request to challenge the effective date of his Medicare enrollment and billing privileges. For the reasons discussed below, I affirm the Centers for Medicare & Medicaid Services' (CMS's) determination that the effective date of Petitioner's Medicare enrollment and billing privileges is May 6, 2013, with a retrospective billing start date of April 6, 2013.

**I. Background and Procedural History**

The following facts are not disputed. On December 13, 2012, Petitioner submitted a CMS Form 855I (CMS-855I) enrollment application for Medicare enrollment and billing privileges to Novitas Solutions (Novitas), a CMS administrative contractor. CMS Exhibit (Ex.) 1. On January 7, 2013, Novitas informed Petitioner that, because he was reassigning his benefits, he also had to file a CMS Form 855R (CMS-855R) for the group to which he was reassigning his benefits. Novitas informed Petitioner that if he did not file the CMS-855R within 30 days, Novitas could reject his application. CMS Ex. 2. On January 14, 2013, Petitioner sent Novitas a CMS-855R. CMS Ex. 3. On February 1, 2013, Novitas informed Petitioner that he had failed to date his signature and that he would have to sign as an authorized official of the practice group because the person who

had signed for the practice group apparently was not authorized to do so. CMS Brief (Br.) at 3; CMS Ex. 4. The letter also instructed Petitioner that if he did not furnish this information within 30 days Novitas could reject his application. CMS Ex. 4. On February 1, 2013, Petitioner resubmitted his CMS-855R to Novitas. CMS Ex. 5. On February 12, 2013, Novitas informed Petitioner again that it could not complete processing his enrollment application and that he needed to provide signed and dated signatures. Novitas noted that if Petitioner did not furnish complete information within 30 days it might reject his application. CMS Br. at 4; CMS Ex. 6. On March 4, 2013, Novitas rejected Petitioner's CMS-855R stating that on February 1, 2013, Novitas had requested "additional information" and that Petitioner "did not respond or only sent a portion of the requested information that we requested in the letter." Specifically, Novitas was not provided with "[a] new certification statement in secti[o]n 4A and 4B . . . signed and dated by the same individual." CMS Ex. 7. Novitas also informed Petitioner that, because it had rejected Petitioner's CMS-855R, it was also rejecting his CMS-855I. CMS Ex. 8. On May 6, 2013, Petitioner submitted a new CMS-855I to Novitas. CMS Ex. 9. On May 13, 2013, Petitioner submitted a new CMS-855R. CMS Ex. 10. On May 28, 2013, Novitas notified Petitioner that his enrollment was approved effective May 6, 2013, with his retrospective billing privileges starting from April 6, 2013. CMS Ex. 11. On June 24, 2013, Petitioner requested reconsideration, asking that his enrollment be effective from August 2012. CMS Ex. 12.

On October 17, 2013, Novitas denied Petitioner's requested effective date and found that Petitioner "has not provided evidence to show full compliance with the standards for assigning an effective date in August 2012." CMS Ex. 13.

On December 17, 2013, Petitioner requested a hearing. Petitioner stated that:

All the proper paperwork was sent to CMS for consideration. Unfortunately, I was not available to sign the final required paperwork as I was in Montreal. I was there taking a medical EUS tutorial and did not return to my office until the evening of March 4, 2013. I signed the paperwork and it was faxed the next day by our office manager. The requirements are an original signature and as I was not here, my office manager opted to do the right thing and get my signature upon my return.

The case was assigned to me for hearing and decision. I issued an Acknowledgment and Pre-Hearing Order on December 24, 2013 (Order). Pursuant to my Order, CMS filed a brief and 13 exhibits (CMS Exs. 1 – 13). Petitioner filed a letter in response, dated March 13, 2013, which it had previously sent to Novitas, as Petitioner's request for reconsideration. I construe this letter to Novitas also to be Petitioner's response to CMS's brief (P. Br.). Petitioner did not file any exhibits. Neither party offered witness testimony.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing is only necessary when the opposing party affirmatively requests an opportunity to cross-examine a witness. Order ¶¶ 8, 9; *see Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses). Considering neither party offered witness testimony, I find that an in-person hearing in this case is unnecessary and issue this decision on the full merits of the written record, including the parties' argument and CMS's exhibits. Order ¶¶ 10, 11.

## II. Applicable Law

As a physician, Petitioner is a "supplier" to the Medicare program. 42 C.F.R. §§ 400.202; 498.2. The Social Security Act (Act) authorizes the Secretary of the U.S. Department of Health and Human Services (the Secretary) to promulgate regulations governing the enrollment process for suppliers (and providers, although not applicable here). Act §§ 1102, 1866(j) (42 U.S.C. §§ 1302, 1395cc(j)). The regulations at 42 C.F.R. Part 424, subpart P, establish the requirements for a supplier to enroll in the Medicare program. *Id.* § 424.510 *et. seq.*; *see also* Act, § 1866(j)(1)(A) (42 U.S.C. § 1395cc(j)(1)(A)) (authorizing the Secretary to establish by regulation the process for enrolling providers and suppliers in the Medicare program). Under the Secretary's regulations, a supplier that seeks billing privileges under Medicare must "submit enrollment information on the applicable enrollment application. Once the supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program." 42 C.F.R. § 424.510(a).

A "supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor," and the application must include "complete, accurate, and truthful 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. The individual signing must have the authority to bind the supplier. 42 C.F.R. § 424.510(d)(3).

The regulation addressing the effective date of a physician's Medicare billing privileges states:

The effective date for billing privileges for physicians . . . 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). 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. 69726, 69769 (Nov. 19, 2008). Under 42 C.F.R. § 424.521(a)(1), physicians may retrospectively bill for their services when they have “met all program requirements” and “services were provided at the enrolled practice location for up to . . . 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries . . . .”<sup>1</sup>

CMS “may reject” an enrollment application if a prospective supplier “fails to furnish complete information” or supplemental materials within 30 days “from the date of the contractor request.” 42 C.F.R. § 424.525(a). A rejected enrollment application means that the supplier’s enrollment application was not processed due to incomplete information, or the failure to receive additional or corrected information in a timely manner. 42 C.F.R. § 424.502. CMS may “at its discretion, choose to extend the 30 day period if CMS determines that the [supplier] is actively working with CMS to resolve any outstanding issues.” 42 C.F.R. § 424.525(b). To enroll in Medicare and obtain Medicare billing privileges after notification of a rejected enrollment application, a supplier must complete and submit a new enrollment application and all supporting documentation for CMS review and approval. 42 C.F.R. § 424.525(c). A supplier does not have the right to appeal a rejected application. 42 C.F.R. § 424.525(d).

### **III. Discussion**

#### **A. Issue Presented**

Whether Novitas, acting on behalf of CMS, properly established May 6, 2013, as Petitioner’s effective date for enrollment in Medicare, with his retrospective billing privileges starting on April 6, 2013.

#### **B. Findings of Fact and Conclusions of Law**

##### ***1. Novitas properly established the effective date of Petitioner’s Medicare enrollment and billing privileges as May 6, 2013, with his retrospective billing privileges starting on April 6, 2013.***

By letter dated January 7, 2013, Novitas first informed Petitioner that his enrollment application was not complete and then informed him in letters dated February 1 and 12, 2013, that his application was not complete due to problems with the certification. Novitas rejected Petitioner’s CMS-855R, on March 4, 2013, because he did not provide the corrected certification despite being given time to correct it. Petitioner admits that he

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<sup>1</sup> There is also a 90-day retrospective billing period if a Presidentially-declared disaster precluded enrollment, which was not argued here. See 42 C.F.R. § 424.521(a)(2).

did not send the corrected CMS-855R Novitas requested before Novitas rejected his application but asserts that he could not do so because he could not sign the form that Novitas needed until he returned from a course that he was taking from February 4, 2013 through March 4, 2013 in Montreal, Canada. P. Br.; P. H. R.

The effective date of enrollment is the date on which a contractor receives a supplier's application that it is able to process to approval. If a contractor requests additional information to complete the application, the effective date relates back to the original date of filing only so long as that application continues to be processed to a decision to approve it. The process ends, however, once the application is rejected. A subsequent application, if processed to completion, is then processed with the effective date of its filing date, not that of the earlier application the contractor was unable to process. *Karthik Ramaswamy, M.D.*, DAB No. 2563, at 5 (2014); *see* 71 Fed. Reg. 20754, 20759 (April 21, 2006).

Here, it was Petitioner's responsibility to timely correct his enrollment application. Unfortunately, Petitioner did not do so prior to the rejection of his application. While Petitioner did submit corrections, at no time prior to March 4, 2013, did Petitioner file an enrollment application acceptable to Novitas. I find that by allowing Petitioner more than 30 days to submit an accurate and complete CMS-855R, Novitas afforded Petitioner the opportunity to correct problems with his application contemplated by the regulation at 42 C.F.R. § 424.525(b).

I note that Novitas' February 12, 2013 letter to Petitioner stated that if Petitioner did not provide the required corrective actions within 30 days Novitas might reject his application. CMS Ex. 6. This statement could be construed as giving Petitioner a 30-day extension to submit his corrections, which period would not have expired as of March 4, 2013. I find this point to be moot, however, because there is no evidence that Petitioner filed the corrections Novitas requested during the 30-day period. Instead, Petitioner submitted the corrections in May 2013.

***2. I am not authorized to consider Petitioner's equitable arguments.***

Petitioner asserts that he has been serving Medicare patients since August 2012, he provides quality care, and he was unable to sign the CMS-855R during the time he was in Montreal from February 4 through March 4, 2013 taking a course. These assertions might be construed as equitable arguments for a finding that he deserves an earlier effective date.

I have no authority to consider equitable arguments here. Neither an administrative law judge nor the Board is authorized to provide equitable relief by reimbursing and enrolling a supplier who does not meet statutory or regulatory requirements. *US Ultrasound*, DAB No. 2302, at 8 (2010); *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009).

