

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ronald Schubert, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-2685

Decision No. CR4463

Date: November 25, 2015

DECISION

The Centers for Medicare & Medicaid Services (CMS), through an administrative contractor, revoked the Medicare billing privileges of Ronald Schubert, M.D., because the Washington State Health Care Authority terminated Dr. Schubert's Medicaid provider agreement. Petitioner requested a hearing to dispute the effective date of the revocation. Because CMS properly set the effective date for revocation 30 days after it issued the revocation notice, I affirm CMS's determination.

I. Background and Procedural History

Dr. Schubert is a physician licensed to practice medicine in Washington State. *See* CMS Exhibit (Ex.) 6. In an August 13, 2014 initial determination, CMS's administrative contractor revoked Petitioner's Medicare billing privileges, effective September 12, 2014, for the following reason:

42 CFR § 424.535(a)(12)-Medicaid Billing Privileges Revoked
By letter dated July 18th, 2011, Ronald Schubert was informed that he was terminated from the Washington Medicaid program. Washington Medicaid confirmed that

Ronald Schubert's appeal rights have been exhausted with respect to this termination.

CMS Ex. 1 at 1 (emphasis in original). CMS's administrative contractor barred Dr. Schubert from re-enrolling in the Medicare program for two years. CMS Ex. 1 at 2.

Dr. Schubert timely requested reconsideration of the revocation determination. CMS Exs. 3, 4. On March 26, 2015, the CMS contractor upheld its initial determination. CMS Ex. 2.

Petitioner timely requested a hearing. On June 19, 2015, I issued an Acknowledgment and Pre-Hearing Order (Order) establishing deadlines for the submission of prehearing exchanges. In accordance with the Order, CMS filed its prehearing exchange, which included a motion for summary judgment and brief, and seven exhibits (CMS Exs. 1-7). Dr. Schubert filed a brief (Schubert Br.) in opposition to summary judgment. CMS then filed a reply brief.

II. Decision on the Record

I admit all of CMS's proposed exhibits into the record because Dr. Schubert did not object to any of them. *See* Order ¶ 7. Further, neither party submitted written direct testimony for any witnesses. Therefore, there are no witnesses to be cross-examined and I issue this decision based on the written record. Order ¶¶ 8-11; Civil Remedies Division Procedures §§ 16(b), 19(b), (d).

III. Issue

Whether CMS properly revoked Dr. Schubert's Medicare billing privileges and established September 12, 2014, as the effective date for revocation.

IV. Jurisdiction

I have jurisdiction to decide this issue. *See* 42 C.F.R. §§ 498.3(b)(17), 498.5(1)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

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

Petitioner is a physician and, therefore, a supplier for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (definition of *Supplier*), 410.20(b)(1).

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

CMS may revoke a supplier's Medicare billing privileges for any of the reasons stated in 42 C.F.R. § 424.535. When CMS revokes a supplier's Medicare billing privileges, CMS establishes a re-enrollment bar that lasts from one to three years. 42 C.F.R. § 424.535(c). Generally, a revocation becomes effective 30 days after CMS mails the initial determination revoking Medicare billing privileges. 42 C.F.R. § 424.535(g).

1. CMS had a legitimate basis under 42 C.F.R. § 424.535(a)(12) to revoke Dr. Schubert's Medicare billing privileges because the Washington State Health Care Authority terminated Dr. Schubert's participation agreement in its Medicaid program and Dr. Schubert does not have an appeal of that termination pending.

On July 18, 2011, the Washington State Health Care Authority informed Dr. Schubert that it was terminating his Medicaid provider agreement immediately to ensure the health and safety of Medicaid beneficiaries. The specific basis for the termination related to a Washington State Department of Health decision to restrict Dr. Schubert's medical license. The July 18, 2011 notice indicated that Dr. Schubert could appeal the termination of his Medicaid provider agreement. CMS Ex. 6. Dr. Schubert did not appeal the termination. Schubert Br. at 3; CMS Ex. 7.

CMS revoked Dr. Schubert's Medicare billing privileges under 42 C.F.R. § 424.535(a)(12), which states that CMS may revoke a supplier's billing privileges if:

- (i) Medicaid billing privileges are terminated or revoked by a State Medicaid Agency.
- (ii) Medicare may not terminate unless and until a provider or supplier has exhausted all applicable appeal rights.

Based on the evidence of record and the fact that Dr. Schubert has not disputed CMS's basis for revocation, I conclude that CMS legitimately revoked Dr. Schubert's Medicare billing privileges because Dr. Schubert's Medicaid billing privileges were terminated by the Washington State Health Care Authority and Dr. Schubert did not exercise his right to appeal the termination. Schubert Br. at 3; CMS Ex. 3 at 1; CMS Ex. 4 at 2; CMS Ex. 5 at 4; CMS Ex. 6; CMS Ex. 7.

2. CMS properly established September 12, 2014, as the effective date for the revocation of Dr. Schubert's Medicare billing privileges.

The CMS contractor issued its determination to revoke Dr. Schubert's Medicare billing privileges on August 13, 2014, and stated in that determination that the revocation was effective on September 12, 2014. CMS Ex. 1 at 1. Under the regulations, a "[r]evocation becomes effective 30 days after CMS or the CMS contractor mails notice of its

determination to the . . . supplier” unless an exception applies. 42 C.F.R. § 424.535(g). The effective date of Dr. Schubert’s revocation, September 12, 2014, is 30 days after the date CMS’s administrative contractor issued its August 13, 2014 initial determination. Therefore, CMS properly assigned the effective date of revocation.

Dr. Schubert asserts that he was terminated from the Medicaid program in July 2011 and that the two-year re-enrollment bar for the Medicare program ought to have ended in 2013. Dr. Schubert’s basis for this argument is that the regulations state that “[w]hen a . . . supplier’s billing privilege is revoked, any provider agreement in effect at the time of revocation is terminated effective with the date of revocation.” 42 C.F.R. § 424.535(b). Schubert Br. at 2. However, Dr. Schubert’s argument presupposes that the Medicare and Medicaid programs are the same, which they are not. To the extent that there is any ambiguity in section 424.535(b), it is clear that section 424.535, taken as a whole, only relates to CMS’s authority to revoke Medicare billing privileges. Therefore, there is no basis to consider the Washington State termination of Dr. Schubert’s Medicaid provider agreement as an act that could trigger the termination of Dr. Schubert’s Medicare provider agreement under section 424.535(b).

Further, Dr. Schubert avers that the regulations provide that the effective date of a revocation is the date of the federal exclusion or debarment upon which the revocation is based. 42 C.F.R. § 424.535(g). Therefore, Dr. Schubert believes that the revocation of his Medicare billing privileges ought to be effective from July 18, 2011, the date his Medicaid termination became effective. Schubert Br. at 3-4. However, the regulations do not support Dr. Schubert’s argument that the effective date of his revocation should be the date of the termination of his Medicaid provider agreement in Washington State. It is true that when a revocation of Medicare billing privileges is based on a federal exclusion or debarment, the revocation is effective on the date of the exclusion or debarment, 42 C.F.R. § 424.535(g); however, the Washington State termination of Dr. Schubert’s Medicaid provider agreement was not a federal exclusion or debarment. Rather, the provision Dr. Schubert cites applies to revocations imposed under 42 C.F.R. § 424.535(a)(2) (provider or supplier conduct). By contrast, the revocation in this case was based on 42 C.F.R. § 424.535(a)(12) (Medicaid termination).

VI. Conclusion

I affirm CMS’s determination to revoke Petitioner’s Medicare billing privileges effective September 12, 2014.

/s/
Scott Anderson
Administrative Law Judge