

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Nightingale Medical PC,  
(PTAN: A400113630)  
(NPI: 1407935802)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-2113

Decision No. CR4824

Date: April 4, 2017

**DECISION**

Petitioner, Nightingale Medical PC, is a single-owner medical practice that applied to enroll in the Medicare program. It is owned by Margaret Carpenter, M.D., a physician licensed to practice in New York and the practice's sole medical practitioner. The Centers for Medicare & Medicaid Services (CMS) granted Petitioner's enrollment application, effective September 29, 2014 (with a billing date of August 30, 2014). Petitioner now challenges that effective date.

CMS moves for summary judgment. Because I find that the undisputed evidence establishes that CMS appropriately granted Petitioner's Medicare enrollment effective September 29, 2014, I grant CMS's motion.

**Background**

In a letter dated January 23, 2015, the Medicare contractor, National Government Services, advised Petitioner that it approved the practice's Medicare enrollment, effective August 31, 2014. CMS Ex. 10. Petitioner sought reconsideration, asking that its effective date of enrollment be changed to May 1, 2014. CMS Ex. 12. In a reconsidered determination, dated March 30, 2015, the contractor denied Petitioner's request,

concluding that Petitioner had not provided “extenuating circumstances” to allow the effective date to be changed. CMS Ex. 13 at 2. Without explanation, the contractor also corrected an error in the initial notice letter, changing the effective date to September 29, 2014, with a billing date of August 30, 2014 (which, as discussed below, are the correct dates).<sup>1</sup>

Petitioner appealed.

CMS moves for summary judgment, which Petitioner opposes.

With its prehearing brief and motion for summary judgment (CMS Br.), CMS submits 13 exhibits (CMS Exs. 1-13). Petitioner submits a brief in opposition to summary judgment (P. Br.), two written declarations, and two exhibits (P. Exs. 1-2).

## Discussion

*CMS is entitled to summary judgment because the undisputed evidence establishes that it properly determined the effective date for Petitioner’s Medicare enrollment. As the evidence establishes, the medical practice submitted its subsequently-approved enrollment application on September 29, 2014, and its Medicare enrollment can be no earlier than that date.*

Summary Judgment. To grant summary judgment, I must draw all reasonable inferences in the light most favorable to the non-moving party and find that the case presents no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 2-3 (2009); *Illinois Knights Templar Home*, DAB No. 2274 at 3-4 (2009), and cases cited therein.

Program requirements. To receive Medicare payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. “Enrollment” is the process used by CMS and its contractors to: 1) identify the prospective supplier; 2) validate the supplier’s eligibility to provide items or services to Medicare beneficiaries; 3) identify and confirm a supplier’s owners and practice location; and 4) grant the supplier Medicare billing privileges. 42 C.F.R. § 424.502. To enroll in Medicare, a prospective supplier must complete and submit an enrollment

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<sup>1</sup> CMS allows physicians and physician organizations to bill retrospectively for up to 30 days prior to the effective date of enrollment if certain conditions are met. 42 C.F.R. § 424.521(a)(1).

application. 42 C.F.R. §§ 424.510(d)(1), 424.515(a). An enrollment application is either a CMS-approved paper application or an electronic process approved by the Office of Management and Budget. 42 C.F.R. § 424.502.<sup>2</sup>

When CMS determines that a physician organization meets the applicable enrollment requirements, it grants Medicare billing privileges, which means that the organization can submit claims and receive payments from Medicare for covered services provided to program beneficiaries. For physicians and physician organizations, the effective date for billing privileges “is the *later* of the date of filing” a subsequently approved enrollment application or “the date an enrolled physician . . . first began furnishing services at a new practice location.” 42 C.F.R. § 424.520(d) (emphasis added). If a physician organization meets all program requirements, CMS allows it to bill retrospectively for up to “30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries. . . .” 42 C.F.R. § 424.521(a)(1).

Here, with respect to the enrollment application that CMS approved, the facts are not disputed:

- On September 15, 2014, Margaret Carpenter, M.D., signed and submitted, on behalf of Petitioner Nightingale, CMS Form 855, an enrollment application for physicians and non-physician practitioners. The Medicare contractor received the document on September 29, 2014. CMS Ex. 8.
- In a letter to Dr. Carpenter, dated October 20, 2014, the contractor acknowledged that it had received her enrollment application but requested some revisions and additional documentation. The letter specified the necessary revisions and warned that “consistent with regulations found at 42 CFR § 424.525,” it could reject the application if, within 30 days of the postmark date of the letter, Petitioner did not furnish complete information. CMS Ex. 9.
- On January 23, 2015, the contractor advised Dr. Carpenter that her enrollment application was approved and Petitioner “has been added to [the] new sole owner group Nightingale Medical PC.” CMS Ex. 10.

Petitioner, however, points out that she submitted an earlier application, which the contractor received on June 3, 2014. CMS Ex. 3. She concedes that, by letter dated July 17, 2014, the contractor asked for additional information, claims that she responded on July 29, 2014, and denies any additional contact from the contractor until September 2, 2014. CMS Ex. 4; P. Br. at 3-4; Carpenter Aff. at 2 (¶¶ 9-11). On September 2, 2014, the contractor sent her notice that it was rejecting her application because she did not furnish complete information within 30 days of the date requested. CMS Ex. 7.

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<sup>2</sup> CMS’s electronic process is referred to as PECOS (Provider Enrollment, Chain, and Ownership System).

Petitioner argues that CMS should not have rejected her June application because she responded promptly to the contractor's first request for additional information and, although CMS claims that she failed to respond to the contractor's subsequent letter (dated August 1, 2014) requesting additional revisions, she did not receive that request. *See* CMS Ex. 6. For purposes of summary judgment, I accept Petitioner's factual representations but find them not material. Petitioner was not entitled to a second opportunity to supplement its application. The regulations authorize the contractor to reject an application if the supplier fails to furnish complete information within 30 days of the date requested. 42 C.F.R. § 424.525(a)(1). In any event, I have no authority to review a rejected enrollment application. 42 C.F.R. § 424.525(d).

Thus, the undisputed evidence in this record establishes that, on September 29, 2014, Petitioner submitted an enrollment application that was subsequently approved. It may have attempted to submit an earlier application but has not established that it did so successfully. Its effective date of enrollment can be no earlier than September 29, 2014, with a billing date of August 30, 2014.

### **Conclusion**

Because Petitioner filed its subsequently-approved enrollment application on September 29, 2014, it was properly granted Medicare enrollment effective that date. I therefore grant CMS's motion for summary judgment.

/s/

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Carolyn Cozad Hughes  
Administrative Law Judge