Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Joe Figuereo, APRN
(NPI: 1255717344 / PTAN: T400362557),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-745

Decision No. CR5022

Date: February 6, 2018

DECISION

The effective date of Medicare enrollment and billing privileges of Petitioner, Joe Figuereo, APRN, is January 31, 2017, with retrospective billing privileges beginning January 1, 2017.

I. Background and Procedural History

National Government Services (NGS), a Medicare Administrative Contractor (MAC), notified Petitioner's employer by letter dated February 22, 2017, that Petitioner's application to reassign benefits (CMS-855R) to the employer, Mental Health Center of Greater Manchester, was approved effective January 1, 2017. Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 3.

On March 17, 2017, Petitioner's employer requested a reconsidered determination changing the effective date to July 26, 2016, the date Petitioner began his employment.

On March 23, 2017, the MAC issued a reconsidered determination. The reconsidered determination indicates that Petitioner filed both an application to enroll in Medicare (CMS-855I) and an application to reassign his right to receive reimbursement from Medicare for treatment and services provided to Medicare-eligible beneficiaries (CMS-855R). The reconsidered determination indicates both applications were received

by the MAC on January 31, 2017. The reconsidered determination states that the MAC upheld an "effective date of January 1, 2017," but as explained hereafter, Petitioner's effective date of enrollment was the date his applications were received, i.e., January 31, 2017, with retrospective billing privileges beginning January 1, 2017.

Petitioner requested a hearing (RFH) before an administrative law judge (ALJ) on May 18, 2017. This case was assigned to Judge Scott Anderson on June 9, 2017. The case was reassigned to me on August 25, 2017, upon Judge Anderson's departure from the Departmental Appeals Board.

CMS filed a combined prehearing brief and motion to dismiss or for summary judgment on July 13, 2017, with CMS Exs. 1 through 5. Petitioner filed a combined prehearing brief and response in opposition to the CMS motion for summary judgment with Petitioner's exhibits (P. Exs.) 1 and 2.

On December 8, 2017, I ordered the parties to respond to specified issues due to conflicting evidence about Petitioner's enrollment status when he filed his application to reassign Medicare benefits to his employer. CMS filed its response on December 18, 2017, with CMS Exs. 6 and 7. Petitioner filed his response on January 9, 2018. The parties advised me in their filings that they waived oral hearing and requested a decision on the documentary evidence and the pleadings. Petitioner's Response to December 8, 2017 Order at 1; CMS' Response to December 8, 2017 Order at 1.

The parties have not objected to my consideration of CMS Exs. 1 through 7 or P. Exs. 1 and 2, and all are admitted as evidence.

III. Discussion

A. Applicable Law

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers.[1] Act

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[1] Petitioner, a nurse practitioner, is a "supplier" under the Act and the regulations. A "supplier" furnishes services under Medicare and the term supplier applies to physicians or other practitioners and facilities that are not included within the definition of the phrase "provider of services." Act § 1861(d) (42 U.S.C. § 1395x(d)). A "provider of services," commonly shortened to "provider," includes hospitals, critical access hospitals, skilled nursing facilities, comprehensive outpatient rehabilitation facilities, home health

(Footnote continued next page.)

§§ 1835(a) (42 U.S.C. § 1395n(a)); 1842(h)(1) (42 U.S.C. § 1395u(h)(1)). Administration of the Part B program is through contractors such as NGS. Act § 1842(a) (42 U.S.C. § 1395u(a)).

The Act requires the Secretary of Health and Human Services (the Secretary) to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review of certain enrollment determinations. Act § 1866(j) (42 U.S.C. § 1395cc(j)).

Pursuant to 42 C.F.R. § 424.505, [2] a provider or supplier must be enrolled in the Medicare program and be issued a billing number to have billing privileges and to be eligible to receive payment for services rendered to a Medicare-eligible beneficiary. The effective date of enrollment in Medicare of a physician, nonphysician practitioner such as Petitioner, and physician and nonphysician practitioner organizations is governed by 42 C.F.R. § 424.520(d). The effective date of enrollment for a physician or nonphysician practitioner may only be the later of two dates: the date of receipt of the application for enrollment that was subsequently approved by a Medicare contractor charged with reviewing the application on behalf of CMS; or the date when the physician or nonphysician practitioner first began providing services at a new practice location. *Id.* An enrolled physician or nonphysician practitioner may retrospectively bill Medicare for services provided to Medicare-eligible beneficiaries up to 30 days prior to the effective date of enrollment, if circumstances precluded enrollment before the services were provided. Retrospective billing for up to 90 days prior to the effective date of enrollment is permitted only in case of a Presidentially-declared disaster pursuant to 42 U.S.C. §§ 5121-5206; 42 C.F.R. § 424.521.

The Medicare beneficiary, one who is entitled to benefits under Medicare part A or enrolled under part B, is the individual covered by Medicare and entitled to request payment for Medicare-covered health care items and services. Act § 1802. The assignment of the right to file a claim for Medicare coverage of health care charges from a Medicare beneficiary to a Medicare-enrolled provider or supplier is limited. The reassignment of the right to file a Medicare-claim from an enrolled provider or supplier to

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(Footnote continued.)

agencies, hospice programs, and a fund as described in sections 1814(g) and 1835(e) of the Act. Act § 1861(u) (42 U.S.C. § 1395x(u)). The distinction between providers and suppliers is important because they are treated differently under the Act for some purposes.

[2] Citations are to the 2016 revision of the Code of Federal Regulations unless otherwise stated.

another is very limited. 42 C.F.R. pt. 424, subpt. F. Reassignment to an employer is permitted from a supplier, such as a physician or nonphysician practitioner, when reassignment is required as a condition of employment. 42 C.F.R. § 424.80(b)(1).

The Secretary's regulations do not specify how to determine an effective date for an authorized reassignment. 42 C.F.R. pt. 424, subpt. F. However, CMS has addressed the effective date of a reassignment by policy found in the Medicare Program Integrity Manual (MPIM), CMS Pub. 100-08, chap. 15, § 15.5.20 (rev. 676, eff. Dec. 19, 2016). MPIM § 15.5.20A requires that a CMS-855R be completed and filed by an individual that wants to reassign benefits to an eligible entity or to terminate a reassignment. Both the party seeking to reassign (reassignor) and the party to whom reassignment is intended (reassignee) must be enrolled in Medicare. A party seeking to reassign that is not enrolled may submit a CMS-855I concurrently with the CMS-855R to accomplish enrollment and reassignment. If the party receiving the reassignment is not enrolled, that party must file the appropriate version of form CMS-855. MPIM § 15.5.20A. The MPIM in effect on January 31, 2017, when NGS received Petitioner's CMS-855R that was processed to completion required:

> If the Form CMS-855R is accompanied by an initial Form CMS-855I or submitted as a "stand-alone" form (that is, a Form CMS-855R is submitted as a new reassignment, such as when an enrolled physician who is operating as a sole proprietor joins a group practice and reassigns his benefits to the group), the effective date of enrollment and the reassignment shall be consistent with the 30-day rule (i.e., the later of the date of filing or the date the reassignor first began furnishing services at the new location) specified in section 15.17 of this chapter.

MPIM § 15.5.20E.3[3] .

The Secretary has issued regulations that establish the right to a hearing and judicial review of certain enrollment determinations. Act § 1866(j) (42 U.S.C. § 1395cc(j)). Pursuant to section 1866(h)(1) and (j)(8), a provider or supplier whose enrollment application or renewal application is denied is entitled to an administrative hearing and judicial review. Pursuant to 42 C.F.R. § 498.3(b)(15), a supplier's effective date of enrollment is an initial determination that is subject to administrative review by an ALJ after a reconsidered determination. 42 C.F.R. § 498.5(*l*)(1)-(2). Appeal and review

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[3] The latest revision of Chapter 15 § 15.5.20 is revision 717, issued May 12, 2017 and effective May 15, 2017. There was no substantive change to the text.

rights are specified by 42 C.F.R. § 498.5. However, the Secretary has not granted a right to ALJ review of CMS or MAC determinations related to reassignment, including the effective date of reassignment. The Secretary has not delegated the authority to conduct such reviews to ALJs. 42 C.F.R. §§ 424.70-.90, 424.545, 498.3(b), 498.5.

B. Issue

Whether Petitioner's effective date for Medicare enrollment and billing privileges is January 31, 2017, with retrospective billing privileges beginning January 1, 2017.

C. Findings of Fact, Conclusions of Law and Analysis

My conclusions of law are set forth in bold followed by my findings of fact and analysis.

1. The parties have waived oral hearing and decision upon the documentary evidence and pleadings is appropriate. 42 C.F.R. § 498.66.

2. Pursuant to 42 C.F.R. § 424.520(d), Petitioner's effective date of Medicare enrollment is January 31, 2017, the date of receipt by the MAC of a Medicare enrollment application (CMS-855I) from Petitioner that the MAC could process to approval.

3. Pursuant to 42 C.F.R. § 424.521(a)(1), Petitioner is authorized to bill Medicare for services provided to Medicare-eligible beneficiaries up to 30 days prior to his effective date of enrollment, that is, beginning on January 1, 2017.

a. Facts

It is not disputed that Petitioner began working for his employer, Mental Health Center of Greater Manchester, on or about July 26, 2016. On January 31, 2017, Petitioner's employer filed a Medicare enrollment application (CMS-855I) on Petitioner's behalf and an application to reassign Petitioner's entitlement to receive reimbursement from Medicare to his employer (CMS-855R) using the CMS on-line Provider Enrollment, Chain, and Ownership System (PECOS). CMS Exs. 2, 6; P. Br. at 2-3. The MAC received the CMS-855I and CMS-855R on January 31, 2017. The MAC was able to process both applications to completion. CMS Exs. 2-7.

b. Analysis

The regulations controlling the effective date of enrollment of a nonphysician practitioner and the application of those regulations are clear. The effective date of enrollment in Medicare of a physician, nonphysician practitioner, and physician and nonphysician practitioner organizations is governed by 42 C.F.R. § 424.520(d). The effective date of enrollment for a physician or nonphysician practitioner may only be the later of two dates: (1) the date when the physician filed an application for enrollment that was subsequently approved by a MAC charged with reviewing the application on behalf of CMS; or (2) the date when the physician first began providing services at a new practice location. 42 C.F.R. § 424.520(d). The date of filing of the enrollment application is the date on which the Medicare contractor receives a signed enrollment application that the MAC is able to process to approval. 42 C.F.R. § 424.510(d)(1); 73 Fed. Reg. 69,725, 69,769 (Nov. 19, 2008); *Alexander C. Gatzimos, MD, JD, LLC d/b/a Michiana Adult Medical Specialists*, DAB No. 2730 at 1 (2016). The burden is on Petitioner, not the government, to demonstrate that the MAC or CMS received the requisite enrollment forms and that Petitioner met all enrollment requirements. 42 C.F.R. § 424.545(c). An enrolled physician or nonphysician practitioner may retrospectively bill Medicare for services provided to Medicare-eligible beneficiaries up to 30 days prior to the effective date of enrollment, if circumstances precluded enrollment before the services were provided. 42 C.F.R. § 424.521(a)(1).

Petitioner requests that his effective date of enrollment be changed to July 26, 2016, when he began providing services at his employer. RFH, P. Br. at 3. Petitioner acknowledges, however, that his employer failed to submit Petitioner's Medicare enrollment application (CMS-855I) to the MAC until January 31, 2017. Applying the regulations to the undisputed evidence, I conclude that Petitioner's effective date of enrollment is January 31, 2017, which is the date the MAC received the Medicare enrollment application (CMS-855I) that it processed to approval. January 31, 2017 is clearly later than July 26, 2016, the date Petitioner began providing services at his employer. The first day of the 30-day period of retrospective billing privileges is January 1, 2017, pursuant to 42 C.F.R. § 424.521(a)(1). Petitioner concedes in his brief that he is requesting an equitable remedy. Unfortunately, I have no authority to grant Petitioner equitable relief in the form of an earlier effective date of enrollment, even if I were inclined to do so. *US Ultrasound*, DAB No. 2302 at 8 (2010). I am bound to follow the Act and regulations and have no authority to declare statutes or regulations invalid or ultra vires. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009).

III. Conclusion

For the foregoing reasons, Petitioner's effective date of enrollment is January 31, 2017, with retrospective billing privileges beginning January 1, 2017.

/s/
Keith W. Sickendick
Administrative Law Judge