Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Gregory Hadfield, PA
(NPI: 1285869966),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-756

Decision No. CR4778

Date: January 27, 2017

DECISION

This case involves a Medicare supplier, Gregory Hadfield, PA (Petitioner) whose billing privileges for one of his practice locations, Lake Dermatology Medical Associates, Inc. (herein Lake Dermatology), were deactivated as a result of his failure to timely provide complete enrollment information for that practice location in response to a revalidation request. Petitioner's billing privileges were subsequently reactivated effective February 29, 2016, the date Noridian Healthcare Services (Noridian), a Medicare administrative contractor, received Petitioner's enrollment application to reactivate his billing privileges. Petitioner has appealed Noridian's assignment of a February 29, 2016 effective date for the reactivation of his billing privileges. For the reasons discussed below, I conclude that the effective date of Petitioner's reactivated billing privileges remains February 29, 2016.

I. Background

On April 9, 2014, Noridian sent Petitioner a letter requesting that he revalidate his Medicare enrollment, at which time it explained that it was seeking revalidation of three separate Provider Transaction Access Numbers (PTANs), CU724X, CU724Y, and

CU724Z.[1] Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 1 at 2. On June 3, 2014, Petitioner, through A. Rahe, an employee of Praxis Medical Management (Praxis), returned a Form CMS-855I on behalf of Petitioner in order to revalidate his enrollment, at which time she provided information for only two of the practices (and PTANs) listed on the revalidation request and failed to report Petitioner's enrollment for the Lake Dermatology practice (PTAN CU724Z).[2] CMS Ex. 1 at 20, 27, 66. On June 25, 2014, a Noridian employee contacted Ms. Rahe, via email, and reported that Petitioner "has multiple active Medicare PTANs not listed on the application" and that "I need to verify with him/her whether or not he/she still practices at these locations." CMS Ex. 2 at 5. In that correspondence, Noridian explained that "[t]he missing PTANs are: **CU724Z**" and that Petitioner had 30 days to correct the deficiencies in his revalidation application, to include submitting information for Lake Dermatology in sections 1, 4b, and 15 of the Form CMS-855I. CMS Ex. 2 at 5 (emphasis in original). Email correspondence indicates that Ms. Rahe communicated with Petitioner regarding Noridian's request for additional information for Lake Dermatology on or about July 14, 2014. CMS Ex. 2 at 4. On August 8, 2014, Noridian informed Petitioner that it had not received the requested corrections to Petitioner's revalidation enrollment application, and explained that if it did not receive the requested information pertaining to Lake Dermatology that same day, it would be unable to revalidate the PTAN for Lake Dermatology. CMS Ex. 2 at 3. Petitioner, through Praxis, partially submitted the requested information on August 29, 2014, but did not submit section 1 of the Form CMS-855I as had been requested. CMS Ex. 3. Noridian thereafter deactivated Petitioner's billing privileges on October 15, 2015.[3] CMS Ex. 4 at 2.

---

[1] The revalidation request was mailed to a post office box in Oklahoma City. The record does not indicate who received the revalidation request at that location.

[2] Petitioner reports that Praxis did not manage his enrollment for Lake Dermatology. CMS Ex. 9; P. Br. at 7-8. While I accept Petitioner's assertions, I also point out, as will be discussed later in this decision, that Praxis informed Petitioner that it had submitted his revalidation application and that Noridian had requested "additional information," to include "any active groups you render services for." CMS Ex. 2 at 4-5.

[3] It is unclear why Noridian did not deactivate Petitioner's billing number for more than one year following his failure to submit a complete enrollment application for the PTAN at issue. Furthermore, CMS has not submitted any evidence indicating that it or its contractor notified Petitioner that his PTAN had been deactivated. While I do not have authority to reverse a contractor's deactivation of billing privileges, Noridian did not expeditiously process the deactivation and quite possibly did not inform Petitioner that his billing privileges had been deactivated. *See* Medicare Program Integrity Manual (MPIM) Section 15.29.3.3.

On February 25, 2016, Petitioner submitted a Form CMS-855I to revalidate and reactivate his Medicare enrollment for Lake Dermatology, which Noridian received on February 29, 2016. CMS Exs. 5, 6. In a letter dated March 28, 2016, Noridian approved the application, at which time it assigned a new PTAN with an effective date of billing privileges of February 29, 2016. CMS Ex. 8 at 1.

Petitioner requested reconsideration of the effective date of his Medicare billing privileges, at which time he explained that he discovered his billing privileges had been deactivated after the practice "started getting denied payment[s]." CMS Ex. 9. In a reconsidered determination dated May 31, 2016, Noridian denied Petitioner's request for an earlier effective date of his Medicare billing privileges for Lake Dermatology. CMS Ex. 4. Noridian explained that "[t]he provider had 120 days to revalidate in order to maintain the current PTAN and effective date," and "[i]f the revalidation was not done within the 120 days allowed, the provider is required to reactivate." CMS Ex. 4 at 2.

Petitioner submitted a request for hearing that was received at the Civil Remedies Division on July 24, 2016. CMS filed a pre-hearing brief and motion for summary disposition (CMS Br.), along with nine exhibits (CMS Exs. 1 to 9). Petitioner filed a response (P. Br.). In the absence of any objections, I admit CMS Exs. 1 to 9 into the record.

Neither party has offered the testimony of any witnesses, and therefore, a hearing for the purpose of cross-examination of witnesses is not necessary. *See* Acknowledgment and Prehearing Order §§ 8, 9, and 10. I consider the record in this case to be closed, and the matter is ready for a decision on the merits.[4]

II. Issue

Whether CMS had a legitimate basis for establishing February 29, 2016, as the effective date of the reactivated billing privileges for Petitioner.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(15), 498.5(*l*)(2).

---

[4] CMS has argued that summary disposition is appropriate. It is unnecessary in this instance to address the issue of summary disposition, as neither party has requested an in-person hearing.

IV. Findings of Fact, Conclusions of Law, and Analysis[5]

1. ***On April 8, 2014, Noridian sent a revalidation request to Petitioner.***

2. ***Noridian did not receive a completed enrollment application for purposes of revalidation of Petitioner's PTAN for Lake Dermatology within 120 days of its request and subsequently deactivated PTAN CU724Z on October 15, 2015.***

3. ***Noridian received Petitioner's enrollment application seeking reactivation of its billing privileges for Lake Dermatology on February 29, 2016.***

4. ***An effective date earlier than February 29, 2016, is not warranted for the reactivation of billing privileges for Petitioner.***

Petitioner is considered to be a "supplier" for purposes of the Social Security Act (Act) and the regulations. *See* 42 U.S.C. §§ 1395x(d), 1395x(u); *see also* 42 C.F.R. § 498.2. A "supplier" furnishes services under Medicare and the term applies to physicians or other practitioners that are not included within the definition of the phrase "provider of services." 42 U.S.C. § 1395x(d). A supplier must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The regulations at 42 C.F.R. Part 424, subpart P, establish the requirements for a supplier to enroll in the Medicare program. 42 C.F.R. §§ 424.510 - 424.516; *see also* Act § 1866(j)(1)(A) (authorizing the Secretary of the U.S. Department of Health and Human Services to establish regulations addressing the enrollment of providers and suppliers in the Medicare program). A supplier that seeks billing privileges under Medicare must "submit enrollment information on the applicable enrollment application." 42 C.F.R. § 424.510(a). "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), (d).

To maintain Medicare billing privileges, a supplier must revalidate its enrollment information at least every five years. 42 C.F.R. § 424.515. CMS (or its contractor) reserves the right to perform off-cycle revalidations in addition to the regular five-year revalidations and may request that a provider or supplier recertify the accuracy of the enrollment information when warranted to assess and confirm the validity of the enrollment information maintained by CMS. 42 C.F.R. § 424.515. Off-cycle revalidations may be triggered as a result of random checks, information indicating local health care fraud problems, national initiatives, complaints, or other reasons that cause CMS to question the compliance of the provider or supplier with Medicare enrollment

[5] My findings of fact and conclusions of law are set forth in italics and bold font.

requirements. 42 C.F.R. § 424.515(d). When CMS notifies a supplier that it is time to revalidate, the supplier must provide the requested information and documentation within 60 calendar days of CMS's notification. 42 C.F.R. § 424.515(a)(2).

CMS is authorized to deactivate an enrolled supplier's Medicare billing privileges if the enrollee fails to comply with revalidation requirements within 90 days of CMS's notice to revalidate.[6] 42 C.F.R. § 424.540(a)(3). If CMS deactivates a supplier's Medicare billing privileges, "[n]o payment may be made for otherwise Medicare covered items or services furnished to a Medicare beneficiary." 42 C.F.R. § 424.555(b). The regulation authorizing deactivation explains that "[d]eactivation of Medicare billing privileges is considered an action to protect the provider or supplier from misuse of its billing number and to protect the Medicare Trust Funds from unnecessary overpayments." 42 C.F.R. § 424.540(c).

The reactivation of an enrolled provider or supplier's billing privileges is governed by 42 C.F.R. § 424.540(b), and the process for reactivation is contingent on the reason for deactivation. If CMS deactivates a provider or supplier's billing privileges due to an untimely response to a revalidation request, such as in this case, the enrolled provider or supplier may apply for CMS to reactivate its Medicare billing privileges by completing the appropriate enrollment application or recertifying its enrollment information, if deemed appropriate. 42 C.F.R. § 424.540(a)(3), (b)(1).

Noridian deactivated Petitioner's billing privileges more than a year after it requested that Petitioner revalidate his enrollment information and did not provide a complete response. CMS Exs. 1, 2, 4. Nearly two years after Noridian initially requested that Petitioner complete the revalidation process (CMS Ex. 1), Petitioner submitted an enrollment application for purposes of revalidation that Noridian received on February 29, 2016. CMS Ex. 5. Noridian accepted Petitioner's application and reactivated his billing privileges for Lake Dermatology and assigned a new PTAN, effective February 29, 2016. CMS Ex. 8.

The pertinent regulation with respect to the effective date of reactivation, as cited by Noridian in its reconsidered decision, is 42 C.F.R. § 424.520(d). CMS Ex. 4 at 1; *Arkady B. Stern, M.D.*, DAB No. 2329 at 4 (2010). Section 424.520(d) states that "[t]he effective date for billing privileges . . . is the later of – (1) [t]he date of filing of a

---

[6] Section 15.29.4.3 of the MPIM in effect at the time of Petitioner's deactivation, while not inconsistent with the regulation, instructed Medicare contractors to allow an additional 30 days, until 120 days, to receive a response to a request for revalidation before deactivating Medicare billing privileges. *See also* MPIM, ch. 15 § 15.29.3.3 (rev. 578, issued February 25, 2015, effective May 15, 2015) (addressing revalidation applications not received within 120 to 125 days of the sending of the revalidation notice).

Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) [t]he date that the supplier first began furnishing services at a new practice location." [7] The Departmental Appeals Board has explained that the "date of filing" is the date "that an application, however sent to a contractor, is actually received." *Alexander C. Gatzimos, MD, JD, LLC*, DAB No. 2730 at 5 (2016) (emphasis omitted). Accordingly, based on the date of filing of Petitioner's enrollment application for Lake Dermatology, which was more than 120 days after deactivation, Noridian reactivated Petitioner's billing privileges effective February 29, 2016. 42 C.F.R. § 424.520(d).

Petitioner is seeking an effective date of billing privileges dating back to the date of deactivation on October 15, 2015. However, Petitioner does not identify any authority supporting this retroactive effective date for the reactivation of billing privileges.

While Petitioner's failure to provide a complete response to the revalidation request resulted in an approximately 4-month lapse in billing privileges, only a few years ago such a failure to respond to a revalidation request could have resulted in a revocation of billing privileges and an enrollment bar for a minimum of one year. 42 C.F.R. § 424.535(b), (c) (2010) (stating that "[w]hen a provider's or supplier's billing privilege is revoked any provider agreement in effect at the time of revocation is terminated effective with the date of revocation" and "[a]fter a . . . supplier . . . has had their billing privileges revoked, they are barred from participating in the Medicare program from the effective date of the revocation until the end of the re-enrollment bar," which is a minimum of one year and no more than three years.). The Secretary's former authority to revoke billing privileges and establish a re-enrollment bar was implemented through a final rule published on June 27, 2008, and the regulatory amendment had a stated purpose "to prevent providers and suppliers from being able to immediately re-enroll in Medicare after their billing privileges were revoked." 76 Fed. Reg. 65909, 65912 (October 24, 2011), citing 73 Fed. Reg. 36448. When the Secretary later determined, in subsequent rulemaking, that this basis for revocation and a re-enrollment bar should be eliminated through removing the pertinent language in 42 C.F.R. § 424.535(c), the Secretary's final rule explained:

---

[7] At the time of the reconsidered determination, policy guidance contained in the MPIM instructed that "[t]he PTAN and effective date shall remain the same if the revalidation application was received prior to 120 days after the date of deactivation" and "[i]f the revalidation is received more than 120 days after deactivation, a new PTAN and effective date shall be issued to the provider or supplier . . . ." MPIM, ch. 15 § 15.29.4.3 (rev. 578, issued February 25, 2015, effective May 15, 2015). The Secretary recently revised portions of section 15.29.4.3 and related sections of the MPIM, but those revisions do not substantively impact the discussion herein. (Revision 666, issued August 5, 2016, and effective September 6, 2016).

> In our October 24, 2011, proposed rule, we proposed to revise § 424.535(c) to eliminate the re-enrollment bar in instances where providers and suppliers have had their billing privileges revoked under § 424.535(a) solely for failing to respond timely to a CMS revalidation request or other request for information. As we explained in the proposed rule, we believe that this change is appropriate because the re-enrollment bar in such circumstances often results in unnecessarily harsh consequences for the provider or supplier and causes beneficiary access issues in some cases . . . . Moreover, *there is another, less restrictive regulatory remedy available* for addressing a failure to respond timely to a revalidation request. This remedy was identified in proposed § 424.540(a)(3).

77 Fed. Reg. at 29009 (emphasis added). The final rule further stated:

> We do not believe that the finalization of our proposed revision to § 424.535(c) will impact our ability to prevent or combat fraudulent activity in our programs. Providers and suppliers that fail to respond once or repeatedly to a revalidation or other informational request *will still be subject to adverse consequences*, including—as explained below—the deactivation of their Medicare billing privileges.

77 Fed. Reg. at 29010 (emphasis added). Finally, in amending section 424.540(a)(3), as referenced above, the final rule stated:

> We proposed to add a new § 424.540(a)(3) that would allow us to deactivate, rather than revoke, the Medicare billing privileges of a provider or supplier that fails to furnish complete and accurate information and all supporting documentation within 90 calendar days of receiving notification to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information. While the deactivated provider or supplier would still need to submit a complete enrollment application to reactivate its billing privileges, *it would not be subject to other, ancillary consequences that a revocation entails*; for instance, a prior revocation must be reported in section 3 of the Form CMS-855I application, whereas a prior deactivation need not.

77 Fed. Reg. at 29013 (emphasis added). Thus, while the rulemaking explained that the regulatory amendment was intended to mitigate the "unnecessarily harsh consequences" of revocation and a mandatory enrollment bar for a supplier's failure to respond to a revalidation request, the final rule recognized that there was a "less restrictive regulatory remedy available for addressing a failure to respond timely to a revalidation request" and that a supplier "will still be subject to adverse consequences" that included "the deactivation of their Medicare billing privileges." The final rule implemented section

424.540(a)(3), which specified that deactivation of billing privileges, rather than revocation, was appropriate, and stated that deactivation "does not have any effect on a provider or supplier's participation agreement or any conditions of participation." [8] 42 C.F.R. § 424.540(a)(3), (c).

Although section 424.540(a)(3) indicates that the deactivation does not have any effect on the supplier's participation agreement or conditions of participation, deactivation nonetheless may cause "adverse consequences," most significantly, the loss of billing privileges. The effective date of reactivation of billing privileges is governed by 42 C.F.R. § 424.520, "Effective date of Medicare billing privileges," which states, in pertinent part, that the effective date for billing privileges, as applicable to this case, is "[t]he date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor." 42 C.F.R. § 424.520(d)(1). The May 31, 2016 reconsidered determination explicitly relied on 42 C.F.R. § 424.520(d) in determining that the effective date of Petitioner's reactivated billing privileges was correctly determined to be February 29, 2016. CMS Ex. 4 at 1. Noridian correctly applied section 424.520(d), and an effective date earlier than February 29, 2016 is not warranted.

Petitioner has argued that he was unaware of the revalidation request and that Praxis acted without authority. CMS Ex. 9; P. Br. at 2-8. Yet, the evidence shows that Petitioner was aware of the request (CMS Ex. 2 at 4-5), and that he provided documentation (completed sections 4 and 15), to include the certification statement, in response to the request for additional documentation to complete his revalidation. CMS Ex. 3 at 3. Petitioner has not shown that his failure to completely respond to the revalidation request in a timely manner is due to any fault of CMS or Noridian.

To the extent that Petitioner is requesting equitable relief in the form of an earlier effective date of reactivated billing privileges, I am unable to grant equitable relief. *See* P. Br. at 2 (Petitioner's argument that the effective date of reactivation of February 29, 2016 "is not equitable with the mitigating factors being brought to light in this document"); *US Ultrasound*, DAB No. 2302 at 8 (2010) ("[n]either the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements"). While I cannot grant Petitioner equitable relief, that does not mean that I do not recognize Petitioner's frustrations with the deactivation of his billing privileges.

---

[8] A physician or supplier participation agreement can be made through a Form CMS-460. When a physician or supplier enters into such an agreement, it "enters into an agreement with the Medicare program to accept assignment of the Medicare Part B payment for all services for which the participant is eligible to accept assignment under the Medicare law and regulations." Form CMS-460. A supplier such as Petitioner is not subject to conditions of participation. *See* 42 C.F.R. Parts 482 and 485.

Petitioner had three PTANs that were associated with three different medical practices at the time of the revalidation request. CMS Exs. 1, 4. The company that manages his enrollment for PTANs CU724X and CU724Y, Praxis, initially responded to the revalidation request by providing information pertaining to only those two practices. CMS Ex. 1, P. Br. at 3-6. The evidence shows that Praxis later notified Petitioner that Noridian was also seeking revalidation of any other "active groups [he] render[s] services for," and Praxis, with Petitioner's knowledge, submitted information pertaining to the Lake Dermatology practice even though it did not ordinarily handle matters for that practice. CMS Exs. 2 at 4-5; 3. Praxis did not submit complete information in response to the request, and the incomplete response ultimately led to the deactivation of Petitioner's billing privileges for Lake Dermatology. CMS Ex. 3. The evidence shows that Praxis submitted sections 4 and 15, but not section 1, with its incomplete August 29, 2014 submission. CMS Ex. 3.

I recognize that providers and suppliers frequently rely on office staff and billing and credentialing companies to handle their Medicare enrollment and reimbursement matters. Providers and suppliers are busy medical professionals, and no doubt prefer treating patients to handling administrative tasks. However, providers and suppliers must exercise care and continued oversight when they delegate such important administrative tasks.

CMS, and its contractors, have a significant amount of authority and discretion under the regulations, particularly pursuant to 42 C.F.R. part 498. Part 498 does not afford the same amount of discretion to an administrative law judge. While CMS and its contractors may deactivate billing privileges for failure to comply with an enrollment requirement, and CMS and its contractors have the discretion to postpone or waive a deactivation of billing privileges, an administrative law judge cannot exercise such discretion over a determination deactivating a supplier or provider's billing privileges. *See, e.g.,* 42 C.F.R. § 498.3. Thus, with respect to providers and suppliers, there is limited recourse available to providers and suppliers who have had their billing privileges deactivated. Further, CMS and its contractors are not required to exercise discretion when even a slight enrollment error adversely affects a provider or supplier (and may therefore affect the beneficiaries who are their patients). Additionally, as seen in this case, even if CMS and its contractors do not adhere to sub-regulatory policy, such as providing timely notice that a provider or supplier has been deactivated, there is not necessarily any recourse for a provider or supplier . I am unable to reverse a deactivation of billing privileges that results from a provider or supplier's failure to strictly comply with revalidation requirements.[9]

[9] That does not mean that I lack authority to remand under certain circumstances. 42 C.F.R. § 498.78.

I encourage Petitioner, as I would any other provider or supplier, to take an active role in managing his Medicare enrollment. A provider or supplier is bound by the mistakes of the people he or she relies upon to help manage his or her Medicare enrollment, and errors may occur if a provider or supplier does not personally and carefully review all enrollment requests *and* all sections of an enrollment application that accompany a signed certification statement.[10] By signing a certification statement alone, or a certification statement that accompanies an isolated section or sections of an enrollment application, in the absence of reviewing the request prompting the submission of the enrollment information, the supplier or provider may unwittingly adopt a preparer's errors. There is simply no provision under law that absolves a supplier or provider of the mistakes of another individual who is handling his or her enrollment application. Therefore, while I recognize that Praxis may have erred in handling Petitioner's revalidation application, I also recognize that Petitioner signed the certification statement that accompanied Praxis's submission and was not without knowledge that it was acting on his behalf. In the absence of any basis to grant an earlier date for the reactivation of billing privileges, the effective date of February 29, 2016, for the reactivation of Petitioner's billing privileges must stand.

V. Conclusion

I uphold the February 29, 2016 effective date of the reactivation of Medicare billing privileges for Petitioner.

/s/
Leslie C. Rogall
Administrative Law Judge

---

[10] Petitioner asserts that he provided sections 4 and 15 of the enrollment application to Praxis, upon Praxis's request, and he contends that Praxis did not request that he provide section 1 of the application. P. Br. at 5-6. The record does not evidence whether Praxis requested that Petitioner submit section 1, in addition to sections 4 and 15. Nor does the record evidence whether Petitioner inquired of the reason why Praxis asked him to submit only sections 4 and 15 of the enrollment application, if true. The record also does not show whether Petitioner asked Praxis to forward him a copy of the correspondence requesting that he submit additional enrollment information, to include the aforementioned portions of the enrollment application.