

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jon Scott Appling, M.D.,
(PTAN: KA3601)
(NPI: 1619127495)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-75

Decision No. CR4984

Date: December 12, 2017

DECISION

Petitioner, Jon Scott Appling, M.D., is a physician working under contract at the Gertsberger Medical Clinic in Ulysses, Kansas. Following the death of the clinic's physician, he applied to enroll in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) granted his enrollment application, effective June 9, 2015 (with a billing date of May 10, 2015). Petitioner now challenges that effective date.

For the reasons set forth below, I find that June 9, 2015 is the earliest possible effective date for Petitioner's enrollment and that CMS had the authority to grant Petitioner's May 10, 2015 billing date.

Background

In a letter dated July 8, 2015, the Medicare contractor, Wisconsin Physicians Service Insurance Corporation, advised Petitioner Appling that it approved his Medicare enrollment, effective May 10, 2015. CMS Exhibit (Ex.) 2.¹ Petitioner sought reconsideration, asking that his effective date of enrollment be changed to April 25, 2015,

¹ In fact, May 10 represents the "retrospective billing date," not the "effective date of enrollment." *See* discussion below.

which is the date that Gertsberger Clinic's only Medicare-enrolled physician died. CMS Ex. 3. In a reconsidered determination, dated September 23, 2015, the contractor affirmed the May 10, 2015 effective date. CMS Ex. 4.²

Petitioner appealed.

Although CMS has moved for summary judgment, neither party proposes any witnesses, so an in-person hearing would serve no purpose. *See* Acknowledgment and Prehearing Order at 3, 5 (¶¶ 4(c)(iv), 8-10) (November 16, 2015). This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

With its prehearing motion and brief (CMS Br.), CMS submits four exhibits (CMS Exs. 1-4). Petitioner submitted a letter in response, but no exhibits. In the absence of any objections, I admit into evidence CMS Exs. 1-4.

Discussion

Because Petitioner Appling submitted his subsequently-approved enrollment application on June 9, 2015, his Medicare enrollment can be no earlier than that date.³

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 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. § 424.502.⁴

When CMS determines that a physician practitioner meets the applicable enrollment requirements, it grants Medicare billing privileges, which means that the physician can submit claims and receive payments from Medicare for covered services provided to

² Again, the reconsideration determination inaccurately refers to the retrospective billing date as the effective date. CMS Ex. 4 at 2.

³ I make this one finding of fact/conclusion of law.

⁴ CMS's electronic process is referred to as PECOS (Provider Enrollment, Chain, and Ownership System).

program beneficiaries. The effective date for physician billing privileges “is the *later* of . . . [t]he date of filing” a subsequently-approved enrollment application or “[t]he date that the supplier first began furnishing services at a new practice location.” 42 C.F.R. § 424.520(d) (emphasis added). The date of filing is the date the Medicare contractor receives an application. *Karthik Ramaswamy, M.D.*, DAB No. 2563 at 3 (2014).

If a physician meets all program requirements, CMS allows it to bill retrospectively for up to “thirty days prior to [the] effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries. . . .” 42 C.F.R. § 424.521(a)(1).

The Medicare contractors have created much confusion because they are inclined to conflate the effective date with the retrospective billing date, as the contractor did in this case. CMS Ex. 2. The reconsidered determination offers a slight improvement because it notes that Petitioner Appling’s application was received on June 9, 2015, but it nevertheless mischaracterizes the “effective date” as May 10. CMS Ex. 4 at 2. In fact, May 10 is the retrospective billing date. The distinction is important; I have the authority to review “[t]he effective date of . . . supplier approval.” 42 C.F.R. § 498.3(b)(15). But nothing in the regulations gives me the authority to review CMS’s determinations regarding retrospective billing.

Here, on *June 9, 2015*, the Medicare contractor received Petitioner’s electronically-filed enrollment application, CMS Form 855I. CMS Ex. 1. The contractor subsequently approved that enrollment application. Thus, the date Petitioner filed his subsequently-approved enrollment application – June 9, 2015 – is the correct effective date of his enrollment.

Petitioner, however, explains that, when the prior owner of the medical practice died, several of his patients were hospitalized, requiring follow-up care, which Petitioner Appling provided. Although he filed his enrollment application as quickly as he could, he will not be reimbursed for the services he provided unless CMS grants him an earlier enrollment date. *See* 42 C.F.R. § 424.505 (providing that a supplier must be enrolled in the Medicare program in order to receive payment).

As CMS points out, however, the regulations simply do not allow for an earlier date of enrollment, and I am bound by the regulations. *See US Ultrasound*, DAB No. 2302 at 8 (2010) (holding that neither 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).

Conclusion

Because Petitioner Appling filed his subsequently-approved enrollment application on June 9, 2015, that is the earliest possible effective date for Petitioners' enrollment.

_____/s/_____
Carolyn Cozad Hughes
Administrative Law Judge