

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ramon Madrid, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1260

Decision No. CR3090

Date: January 27, 2014

DECISION

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), determined that Petitioner's effective date of enrollment in the Medicare program was December 7, 2012, with a retrospective billing period starting on November 7, 2012. Petitioner disputed this determination. For the reasons stated below, I affirm WPS's determination.

I. Background and Procedural History

Petitioner, Ramon Madrid, M.D., is a physician located in Michigan and is one of the owners of Cardinal Home Physicians, PLLC (Cardinal). In 2012, prior to creating Cardinal, Petitioner had a business relationship with Advanced Care Medical Center and A2Z Precise Medical Billing. Petitioner came to believe that Advance Care Medical Center and A2Z Precise Medical Billing were engaged in fraud when Petitioner did not receive reimbursement for the services he provided to patients while he was associated with those businesses. As a result, Petitioner decided to establish Cardinal. CMS Exhibit (Ex.) 4, at 1-3.

In October 2012, Cardinal obtained an Employer Identification Number from the Internal Revenue Service and filed Articles of Organization with the Michigan Department of Licensing and Regulatory Affairs, and, in November 2012, received a National Provider Identifier. CMS Ex. 6, at 11-13; Petitioner (P.) Exs. 3-5. On November 19, 2012, Petitioner signed a Medicare enrollment application (Form CMS-855I), but did not submit it to WPS until December 6, 2012. CMS Ex. 1, at 11; P. Ex. 1, at 10; P. Brief (Br.) at 2. WPS received Petitioner's enrollment application on December, 7, 2012. CMS Ex. 2, at 1.

In a March 28, 2013 initial determination, WPS acknowledged receipt of Petitioner's enrollment application on December 7, 2012, and approved that application with an effective Medicare billing date of November 7, 2012. CMS Ex. 3, at 1. Petitioner requested reconsideration of the initial determination and sought an effective Medicare billing date of June 1, 2012. CMS Ex. 4, at 1. In a reconsidered determination, WPS upheld the initial determination. CMS Ex. 5, at 2. Petitioner filed a request for hearing, and I was assigned to hear and decide this case.

In response to an Acknowledgment and Pre-hearing Order (Order) that I issued, CMS filed a brief and six exhibits as its pre-hearing exchange. Petitioner failed to timely file its brief and proposed exhibits as required by my Order. I issued an Order to Show Cause to Petitioner on January 6, 2014, and Petitioner timely filed a response.

II. Decision on the Written Record

In response to the Order to Show Cause, Petitioner provided a reason for his failure to file his pre-hearing exchange. Further, Petitioner filed his brief and seven proposed exhibits. Therefore, I will not dismiss Petitioner's hearing request and will adjudicate this case on its merits.

In their pre-hearing exchanges, both parties affirmatively stated that they do not have any witnesses to offer in this case. From these statements, I conclude that both parties waive the right to provide oral testimony at an in-person hearing. *See* 42 C.F.R. § 498.66(a)(1), (b)(2). Therefore, I issue this decision based on the written record. *See* Order ¶¶ 8-11.

Neither party objected to any of the parties' proposed exhibits. *See* Order ¶ 7. Therefore, I admit CMS Exs. 1-6 and P. Exs. 1-7 into the record. *See* 42 C.F.R. § 498.66(d).

III. Issue

Whether CMS had a legitimate basis for establishing December 7, 2013, as the effective date of Petitioner's Medicare billing privileges and November 7, 2013, as the beginning of Petitioner's retrospective billing period.

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

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers.² 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary’s regulations, a provider or supplier that seeks billing privileges under the Medicare program must “submit enrollment information on the applicable enrollment application. 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). CMS then establishes an effective date for billing privileges under the requirements stated in 42 C.F.R. § 424.520(d) and may permit limited retroactive billing under 42 C.F.R. § 424.521.

1. WPS received Petitioner’s completed and signed Medicare enrollment application on December 7, 2012.

Petitioner signed a Medicare enrollment application, Form CMS-855I, on November 19, 2012, and, after a delay, sent the application to WPS by overnight delivery so it would be delivered to WPS on December 7, 2012. CMS Ex. 1, at 11; P. Ex. 1, at 10; P. Br. at 2. Petitioner and CMS agree that the date of receipt of the application was December 7, 2012. CMS Exs. 1, at 1; 2, at 1; 3, at 1; 4, at 2. Therefore, I find that WPS received Petitioner’s Medicare enrollment application on December 7, 2012.

2. The date of receipt of Petitioner’s Medicare enrollment application that was approved is the effective date of Medicare billing privileges for Petitioner.

On May 28, 2013, WPS approved Petitioner’s Medicare enrollment application. CMS Ex. 3. WPS indicated that it received Petitioner’s Medicare enrollment application on December 7, 2012. CMS Ex. 3, at 1. WPS then set November 7, 2012, as Petitioner’s “effective date,” noting that this date was 30 days prior to the date WPS received Petitioner’s enrollment application. CMS Ex. 3, at 1.

The relevant regulation concerning the effective date of Medicare billing privileges states:

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

² Petitioner, as a physician, is considered a “supplier” for purposes of the 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); 42 C.F.R. § 400.202.

The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations *is the later of the date of filing* of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner 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 that the Medicare contractor “receives” a signed provider enrollment application that the Medicare contractor is able to process to approval. 73 *Fed. Reg.* 69,726, 69,769 (Nov. 19, 2008); *see also Caroline Lott Douglas, PA*, DAB CR2406, at 5-7 (2011); *Rizwan Sadiq, M.D.*, DAB CR2401, at 5 (2011).³ Because WPS received an application from Petitioner on December 7, 2012, that it was ultimately able to approve, I conclude that the effective date for Petitioner’s Medicare billing privileges is December 7, 2012.

3. WPS’s reference to an “effective billing date” means the date Petitioner’s retrospective billing period begins.

Under the regulations set forth below, CMS may permit limited retrospective billing if a physician meets all program requirements.

Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician or a nonphysician practitioner organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—

- (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or
- (2) 90 days [in certain emergencies not applicable to this case.]

42 C.F.R. § 424.521(a).

In its initial determination, WPS erroneously characterized the beginning of the retrospective billing period to be the effective date. CMS Ex. 3, at 1. This conclusion is based on reading WPS’s initial determination consistently with the regulation quoted above. *See Jorge M. Ballesteros*, DAB CR2067, at 2 (2010) (“CMS apparently sets enrollment effective dates 30 days prior to the date of application, which is what the

³ Administrative decisions cited in this decision are accessible on the internet at: <http://www.hhs.gov/dab/decisions/index.html>.

Medicare contractor did here.”). Therefore, I interpret WPS’s determination to mean that the “effective billing date” is the beginning of the retrospective billing period. *Sadiq*, DAB CR2401, at 5-6.

Accordingly, in the present matter, the earliest effective date for retrospective billing privileges that Petitioner could be granted is 30 days prior to December 7, 2012. Thus, WPS granted Petitioner the maximum permissible retrospective billing period and permitted Petitioner to bill for services provided from November 7, 2012. Therefore, I conclude that WPS granted Petitioner retrospective billing privileges consistent with the requirements in 42 C.F.R. § 424.521.

4. I cannot provide Petitioner with equitable relief.

Petitioner seeks retroactive Medicare billing privileges back to June 1, 2012, because he claims that he was the victim of a Medicare fraud scheme perpetrated by Advance Care Medical Center and A2Z Precise Medical Billing. P. Br. at 1-2; CMS Ex. 4, at 1-3. Petitioner provides documentation in order to show that Petitioner provided services for Medicare beneficiaries for which he has been unable to receive payment from Medicare. P. Exs. 2, 7. Petitioner asserts that representatives from the Office of the Inspector General and the “Medicare Hotline” suggested that Petitioner request retroactive Medicare billing privileges back to June 1, 2012. P. Br. at 2; CMS Ex. 4, at 2-3.

As indicated above, WPS provided Petitioner with the most favorable retroactive Medicare billing date that the regulations allow. Despite what representatives from the Office of the Inspector General or the Medicare Hotline told Petitioner, WPS could not provide Petitioner with retroactive Medicare billing privileges back to June 1, 2012. To the extent that Petitioner requests that I consider the equities of his situation to grant retrospective billing, I am unable to do so since I cannot grant equitable relief or an exemption to the regulations discussed above. *See US Ultrasound*, DAB No. 2302, at 8 (2010); *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009).

V. Conclusion

For the reasons explained above, I affirm WPS’s determination that Petitioner’s effective date for Medicare billing privileges is December 7, 2012, and that his retrospective billing date is November 7, 2012.

/s/
Scott Anderson
Administrative Law Judge