

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Diabetes & Endocrine Associates, P.C.

(PTAN: 099726),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-836

Decision No. CR4748

Date: November 30, 2016

DECISION

Petitioner's Medicare billing privileges were deactivated as a result of its failure to fully respond to a revalidation request, and its billing privileges were subsequently reactivated effective July 1, 2016, the date it submitted its enrollment application and supporting documentation to reactivate its billing privileges. Petitioner has appealed the determination that the effective date of its reactivation is July 1, 2016. For the reasons discussed below, I conclude that the effective date of Petitioner's reactivated Medicare billing privileges remains July 1, 2016.

I. Background and Procedural History

Petitioner, Diabetes & Endocrine Associates, P.C., is a medical practice that is enrolled in the Medicare program. Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 4.

On March 16, 2016, Wisconsin Physicians Service Insurance Corporation (WPS), a Medicare administrative contractor, mailed a letter to Petitioner directing that it revalidate its Medicare enrollment record. The letter explained that Petitioner needed to update or confirm its enrollment record, to include its practice locations and reassignments. WPS informed Petitioner that it must submit this information by May 31, 2016, and that failure to respond to the notice could result in a hold on Petitioner's payments, and possible "possible deactivation of [its] Medicare enrollment." WPS explained that deactivation would cause a "gap in reimbursement." CMS Ex. 1 at 1.

On May 24, 2016, WPS received a Form CMS-855B revalidation application from Petitioner. Several days later, on May 27, 2016, WPS sent an email to Petitioner in which it requested that Petitioner make corrections to and submit documentation in support of its enrollment application, and informed Petitioner that “failure to submit a complete revalidation enrollment application(s) and all supporting documents within 30 days will result in the deactivation of [its] Medicare billing privileges.” CMS Ex. 2 at 1-2. WPS did not receive the required documentation; specifically, it did not receive the requested Internal Revenue Service generated form providing the legal business name and employer identification number or tax identification number. CMS Ex. 3 at 1. In a letter dated June 29, 2016, WPS rejected Petitioner’s revalidation application and informed Petitioner it would need to file a new enrollment application with all required documentation. CMS Ex. 3.

On July, 1, 2016, Petitioner submitted a new enrollment application to WPS.¹ CMS Ex. 6. On July 15, 2016, Petitioner received a letter from WPS informing it that its Medicare enrollment revalidation had been approved, effective July 1, 2016, which is the date that Petitioner submitted a complete enrollment application. CMS Ex. 4. WPS informed Petitioner that it had been assigned a new Provider Transaction Access Number (PTAN), effective July 1, 2016.

Petitioner requested reconsideration of the July 15, 2016 determination in a letter dated July 21, 2016. Petitioner requested a date of reactivation of its billing privileges of June 27, 2016, so that there would be no gap in reimbursement from June 27 through 30, 2016. CMS Ex. 5. In support of its request for reconsideration, Petitioner explained the following:

The initial revalidation enrollment was submitted by our administrative assistant, [L.I.], who left her employment with DEA abruptly. It is unfortunate that we were left unaware of the status of the reapplication caused by this circumstance. However, once we were made aware that additional information was required by your office, we responded promptly to your request and provided the necessary information and documentation.

CMS Ex. 5 at 1. An August 9, 2016 reconsidered determination by WPS determined that the effective date for billing privileges of July 1, 2016 was correct. In support of its determination, WPS explained:

According to our records the revalidation letter for Diabetes & Endocrine Associates, P.C. was mailed to 7831 Chicago CT Omaha, NE 68114-3654 on March 16, 2016, indicating that we need this form by May 31, 2016. On May 24, 2016, WPS Provider Enrollment (PE) received a

¹ Neither party has submitted a copy of the July 1, 2016 enrollment application.

CMS-855B revalidation application and PE sent a development email on May 27, 2016, stating "Failure to submit a complete revalidation enrollment application(s) and all supporting documents within 30 days will result in the deactivation of your Medicare billing privileges." The development information was not received and therefore the application was rejected on June 29, 2016, and the Medicare billing number was deactivated. The new enrollment application was received on July 1, 2016, and an effective date of July 1, 2016, was issued correctly which has caused a gap in your reimbursement.

CMS Ex. 6 at 2.

Petitioner submitted a timely request for hearing by an administrative law judge that was dated August 15, 2016, and received on August 22, 2016. I issued an Acknowledgment and Pre-Hearing Order on August 26, 2016, in which I directed the parties to submit pre-hearing briefs addressing all issues of law and fact, including any motions for summary judgment, along with any proposed exhibits, including written direct testimony in the form of an affidavit or declaration, of any proposed witness. Acknowledgment and Pre-Hearing Order, §§ 4-8. The order advised the parties that a hearing for the purpose of cross-examining witnesses "will be necessary only if a party files admissible, written direct testimony, and the opposing party asks to cross-examine." Acknowledgment and Pre-Hearing Order, § 10.

CMS submitted a brief and motion for summary judgment (CMS Br.), along with seven proposed exhibits. Petitioner submitted its brief in the form of a letter (P. Br.), and five proposed exhibits. In the absence of any objections, I admit into evidence CMS Exs. 1-7 and Petitioner Exhibits (P. Exs.) 1-5.

Neither party has submitted witness testimony, and there is therefore no need to convene a hearing for purposes of cross-examination of any witnesses. I consider the record in this case to be closed, and the matter is ready for a decision on the merits.²

II. Jurisdiction

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

III. Discussion

A. Issue

The issue in this case is:

² It is unnecessary in this instance to address the issue of summary disposition, as neither party has requested an in-person hearing.

Whether CMS had a legitimate basis for establishing July 1, 2016, as the effective date of Petitioner's reactivated billing privileges.

B. Background 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. Act §§ 1835(a) (42 U.S.C. § 1395n(a)); 1842(h)(1) (42 U.S.C. § 1395(u)(h)(1)). Petitioner is a "supplier" of services 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)). Pursuant to 42 C.F.R. § 424.505, 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.

To maintain Medicare billing privileges, a supplier such as Petitioner must revalidate its enrollment information at least every 5 years. 42 C.F.R. § 424.515. 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. 42 C.F.R. § 424.540(a)(3). Particularly, CMS may deactivate billing privileges if a supplier "does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation . . ." *Id.* 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 its failure to submit a complete and accurate application, to include all supporting documentation, 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).

The effective date of billing privileges for a physician, nonphysician practitioner, and physician and nonphysician practitioner organizations is governed by 42 C.F.R. § 424.520(d) and may be only be the later of two dates: the date when the practitioner filed an 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 practitioner first began providing services at a new practice location. 42 C.F.R. § 424.520(d).

C. Findings of Fact, Conclusions of Law, and Analysis³

- 1. On March 16, 2016, WPS requested that Petitioner revalidate its Medicare enrollment record.***
- 2. Petitioner submitted an enrollment application on May 24, 2016.***
- 3. On May 27, 2016, WPS informed Petitioner that it must submit additional documentation within 30 days to complete its revalidation application; the requested documentation was not submitted to WPS within 30 days.***
- 4. On June 29, 2016, WPS informed Petitioner that it had rejected its enrollment application.***
- 5. Petitioner filed a new enrollment application on July 1, 2016.***
- 6. Pursuant to 42 C.F.R. § 424.520(d), the effective date of Petitioner's reactivated billing privileges is July 1, 2016, the date of filing of the Medicare enrollment application that WPS was able to process to approval.***

Petitioner is seeking an effective date of reactivated billing privileges dating back to June 27, 2016, the date on which Petitioner's Medicare billing privileges were deactivated. P. Br. Petitioner states that it failed to timely submit the requested documentation because it was unaware of the ongoing revalidation process. Petitioner contends that an administrative assistant, L.I., received the revalidation request and began the revalidation process, but left employment "without notice" on April 27, 2016 without informing Petitioner that it was undergoing revalidation. In fact, Petitioner states: "[t]hrough no fault of our own, we were completely unaware that this process of revalidation had been started and was due on May 31, 2016." P. Br. at 1. However, evidence submitted by Petitioner contradicts its arguments and demonstrates that Petitioner was unquestionably

³ Findings of fact and conclusions of law are set forth in bold and italics.

aware that additional documentation needed to be submitted by the May 31, 2016 deadline; in fact, the evidence submitted by Petitioner demonstrates that a current employee received the email request for additional documentation and forwarded this request for action by another employee on the same day as the May 27, 2016 request. P. Ex. 3 (May 27, 2016 email from J.R. to T.D. forwarding the May 27, 2016 email from CMS entitled “Request for Corrections for Medicare Enrollment Application . . .”). Additionally, while Petitioner asserts that L.I. left employment without notice on April 27, 2016, Petitioner did not submit its revalidation application until nearly a month *later* on May 24, 2016, demonstrating that it was fully aware that it was required to revalidate its enrollment record despite L.I.’s departure from employment. Petitioner’s arguments are internally inconsistent and are belied by Petitioner’s own supporting evidence. It is clear that Petitioner knew of the requirement to revalidate, as evidenced by its submission of an enrollment application on May 24, 2016, and its confirmed receipt of the May 27, 2016 request for additional documentation. Petitioner failed to timely submit a complete revalidation application, and WPS appropriately deactivated its billing privileges. 42 C.F.R. §§ 424.525(a)(2) and 424.540(a)(3).

Petitioner submitted a new and complete enrollment application on July 1, 2016, and WPS processed that application to approval. WPS assigned an effective date for billing privileges of July 1, 2016, which is the date Petitioner filed the latter enrollment application. CMS Ex. 4. Petitioner is seeking an effective date of billing privileges dating back to its deactivation date, but does not identify any authority supporting this retroactive effective date for the reactivation of billing privileges. Rather, Petitioner’s sole basis for contesting the effective date of its reactivated billing privileges is its incredulous allegation that it was unaware of the pending request for additional documentation in support of its revalidation enrollment application. The effective date of the 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 August 9, 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 July 1, 2016. CMS Ex. 6 at 1. As previously discussed, WPS correctly deactivated Petitioner’s billing privileges because it failed to complete its revalidation in accordance with the time periods prescribed in 42 C.F.R. §§ 424.525(a)(2) and 424.540(a)(3), and the effective date assigned for Petitioner’s reactivated billing privileges, July 1, 2016, is mandated by 42 C.F.R. § 424.520(d).

IV. Conclusion

For the foregoing reasons, I uphold the July 1, 2016 effective date assigned for Petitioner's reactivated Medicare billing privileges.

_____/s/_____
Leslie C. Rogall
Administrative Law Judge