

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Deborah A. Mertz, NP,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-4194

Decision No. CR4555

Date: March 23, 2016

DECISION

Petitioner, Deborah Mertz, NP, appealed the determination establishing the effective date of the reassignment of her billing privileges to Family Care Clinic, PC (FCC). I find that Noridian Healthcare Solutions (Noridian), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), properly determined that the earliest approvable enrollment application that it received from FCC was on March 23, 2015, resulting in an effective enrollment date for FCC of March 23, 2015, with retrospective billing privileges starting on February 21, 2015. Accordingly, Petitioner's earliest assignment date must also be February 21, 2015.

I. Background

The following facts are undisputed unless otherwise noted. Petitioner is a nurse practitioner, who was previously enrolled in the Medicare program as a supplier. On or about January 22, 2015, Noridian received an initial Medicare enrollment application (Form CMS-855B) for FCC, a reassignment of benefits application (Form CMS-855R) seeking to reassign Petitioner's Medicare payments to FCC, and an application to direct Medicare payments to a certain bank account (CMS-588 (EFT)). CMS Exhibits (Exs.) 1- 4. By facsimile transmission, on February 9, 2015, Noridian allegedly requested additional information to process FCC's applications from FCC's designated contact

person using the facsimile number provided on both the CMS forms provided by FCC and Petitioner (CMS-855B and CMS-885R). CMS Br. at 7; CMS Ex. 5. On that same date, Noridian received a facsimile from FCC's contact containing some of the requested information. CMS Br. at 7; CMS Ex. 6. On February 11, 2015, Noridian received a second facsimile from FCC's contact that also contained some of the requested information. CMS Ex. 7. Noridian alleges that the facsimiles of FCC's contact did not contain all the information Noridian requested for Section 6 (Ownership Interest and/or Managing Control Information), Section 15 (Certification Statement), Section 17 (IRS generated supporting documents confirming FCC's legal business name and Tax Identification Number), and FCC did not include the name of the contact person for the financial institution in Part III of the EFT. CMS Exs. 5, 6, 7, 8. On March 10, 2015, Noridian rejected FCC's Form CMS-855B enrollment application because Noridian did not receive all the additional information it requested within 30 days of its request. CMS Ex. 8. On March 11, 2015, Noridian also rejected Petitioner's reassignment of billing privileges application because FCC, the group to which she was attempting to reassign her billing privileges, was not yet enrolled in Medicare. CMS Ex. 9.

On March 23, 2015, Noridian received a new Medicare enrollment application (Form CMS-855B) for FCC, and a new Medicare reassignment of benefits application (Form CMS-855R) again seeking to reassign Petitioner's Medicare payments to FCC and a new EFT form. CMS Exs. 10, 11, 12. On April 14, 2015, Noridian requested additional information, which Petitioner timely supplied within the 30 day timeframe. CMS Exs. 13, 14. On May 11, 2015, Noridian notified FCC that its effective date was March 25, 2015, with retrospective billing privileges effective January 5, 2015. CMS Ex. 16. On May 8, 2015, Noridian notified Petitioner that her effective date for reassigning her benefits to FCC was March 16, 2015. CMS Ex. 15.

On May 28, 2015, Petitioner requested reconsideration and asked that Noridian change her reassignment effective date to January 5, 2015, rather than March 16, 2015. CMS Ex. 17. On July 17, 2015, Noridian notified Petitioner's representative that it corrected the retrospective date for FCC to February 21, 2105, rather than January 5, 2015. CMS Ex. 18. Noridian explained it changed the retrospective date because it received FCC's application that was ultimately processed to completion on March 23, 2015, which only allows for a retrospective billing date that is 30 days prior to that receipt date. CMS Ex. 18. Also on July 17, 2015, Noridian issued an unfavorable reconsideration determination notifying Petitioner that her request for a January 5, 2015 reassignment effective date was denied because FCC was not an enrolled provider on that date. CMS Ex. 19 at 2. However, the hearing officer granted Petitioner a reassignment effective date of February 21, 2015, which was the new retrospective billing date that Noridian granted to FCC. CMS Ex. 19 at 2. On August 3, 2015, Noridian sent Petitioner a letter confirming that her reassignment effective date was February 21, 2015. CMS Ex. 20.

Petitioner timely filed a request for hearing on September 11, 2015, and the case was assigned to me for hearing and decision. I issued an Acknowledgment and Pre-Hearing Order (Order) on October 13, 2015. With its prehearing brief (CMS Br.), CMS filed 20 proposed exhibits (CMS Exs. 1-20). With its prehearing brief (P. Br.), Petitioner filed 27 proposed exhibits (P. Exs. 1-27). In the absence of any objection, I admit CMS Exs. 1-20 and P. Exs. 1-27 into the record.

Neither CMS nor Petitioner listed any witnesses or filed any written direct testimony. I find, therefore, that an in-person hearing in this case is unnecessary, and I issue this decision on the full merits of the case based on the written record. Order at ¶¶ 10, 11.

II. Discussion

A. Issue

Whether Noridian, acting on behalf of CMS, properly established February 21, 2015 as the effective date of Petitioner's reassignment of Medicare billing privileges to FCC.

B. Findings of Fact and Conclusions of Law

1. Petitioner's reassignment of her Medicare billing privileges to FCC was dependent upon the Medicare enrollment of FCC.

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. 42 U.S.C. §§ 1302, 1395cc(j). A provider or supplier seeking 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 retrospective billing under 42 C.F.R. § 424.521.

For Medicare Part B claims, a beneficiary may assign his or her benefits to an enrolled physician or non-physician supplier providing services to that beneficiary. 42 U.S.C. § 1395u(b)(3)(B)(ii). In certain circumstances, a supplier who has received an assignment of benefits may reassign those benefits to an employer, or to an individual or entity with which the supplier has a contractual arrangement. 42 U.S.C. § 1395u(b)(6); 42 C.F.R. § 424.80(b)(1)-(2). Reassignment of benefits may only occur between enrolled suppliers. *See* Medicare Program Integrity manual, CMS Pub. 100-08 (MPIM) § 15.5.20. A Medicare contractor, such as Noridian, cannot approve the reassignment until the entity is enrolled. 42 C.F.R. § 424.502; MPIM §§ 15.1.2, 15.5.4.3B, 15.5.20

(“Both the individual practitioner and the eligible supplier must be currently enrolled (or concurrently enrolling . . .) in the Medicare program before the reassignment can take place”). The CMS-855R completed by Petitioner also advises applicants that “[b]oth the individual practitioner and the eligible supplier must be currently enrolled (or concurrently enrolling . . .) in the Medicare program before the reassignment can take place.” CMS Ex. 2 at 2.

2. Noridian denied Petitioner’s first reassignment application to FCC because FCC was not enrolled in Medicare, and Noridian had rejected FCC’s first application for not timely providing requested information.

If an applicant does not provide a complete application, the CMS contractor contacts the applicant and requests the necessary information. MPIM § 15.7.1.4.1. The CMS contractor may send the request for additional information to the provider either via facsimile or email, and only one request is necessary. *Id.* CMS may reject an enrollment application if the applicant “fails to furnish complete information within 30 calendar days from the date of the contractor request for the missing information.” 42 C.F.R. § 424.525(a)(1).

On March 11, 2015, Noridian rejected Petitioner’s reassignment of billing privileges application because FCC, the group to which she was attempting to reassign her billing privileges, was not yet an enrolled entity. CMS Ex. 9. Although FCC was in the process of enrolling, I find CMS has shown that it requested missing information from its enrollment application, and FCC did not respond with the missing information within the required 30 days.

Petitioner claims FCC never received Noridian’s February 9, 2015 facsimile request for additional information in order to process FCC’s application. P. Br. at 1, 3. According to Petitioner, she did not know about the February 9th facsimile until August 11, 2015, when FCC contacted Noridian by telephone. P. Br. at 3. Petitioner makes this claim without any supporting affidavits or other evidence. However, a CMS exhibit indicates that FCC’s contact received the February 9th facsimile. A receipt verification indicates that “Your fax has been successfully sent to [FCC’s contact] at 70132412173” on February 9, 2015 at 1:00 pm. CMS Ex. 5 at 4; P. Ex. 27 at 4. Credible evidence also suggests that FCC’s contact responded to Noridian’s February 9, 2015 facsimile by submitting some of the information Noridian requested. CMS Exs. 6, 7 at 1.

Petitioner states that she was supposed to receive a letter requesting any further information, not a facsimile. P. Br. at 1; P. Ex. 4 at 1. Under CMS’s internal procedures, however, Noridian properly exercised discretion to use a facsimile as a means of contacting FCC’s contact in regards to FCC’s enrollment application. *See* MPIM §15.5.13 (“unless the provider requests that the contractor communicate with only a specific individual (e.g., an authorized official) or via specific means (e.g., only via the

correspondence address e-mail) – the contractor has the discretion to use the contact persons listed in section 13 of the Form CMS-855 for all written and oral communications (e.g., mail, e-mail, telephone) related to the provider’s Medicare enrollment.”).

An applicant does not have the right to appeal a rejected application. 42 C.F.R. § 424.525(d). To enroll in Medicare after an application is rejected, the applicant must complete and submit a new enrollment application. 42 C.F.R. § 424.525(c).

3. Noridian enrolled FCC in the Medicare program on March 23, 2015, with retrospective Medicare billing privileges starting February 21, 2015; therefore, the earliest date for Petitioner’s reassignment of Medicare billing privileges to FCC is February 21, 2015.

The effective date for billing privileges of a medical practice like FCC is either the date on which an application that is subsequently approved is filed or the date an enrolled physician or non-physician practitioner began furnishing services at a new practice location, whichever is later. 42 C.F.R. § 424.520(d). Suppliers are permitted to retroactively bill for services when all program requirements have been met for up to 30 days prior to the effective date, if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries. *See* 42 C.F.R. § 424.521(a).

Although FCC and Petitioner first submitted CMS-855B and CMS-855R applications to Noridian on January 22, 2015, those applications are not before me because Noridian rejected them. When CMS processes a subsequent application to completion, it is the filing date of that subsequent application that controls the effective date of enrollment. *Karthik Ramaswamy*, DAB No. 2563 at 6 (2014); 71 Fed. Reg. 20,754, 20,759 (April 21, 2006).

On March 23, 2015, Noridian received a new Medicare enrollment application (Form CMS-855B) for FCC, a new Medicare reassignment of benefits application (Form CMS-855R) again seeking to reassign Petitioner’s Medicare payments to FCC, and a new EFT form. CMS Exs. 10, 11, 12. On April 16, 2015, Noridian requested additional information, which Petitioner timely supplied within the 30 day timeframe. CMS Exs. 13, 14. A hearing officer ultimately granted Petitioner a reassignment effective date of February 21, 2015, which is the retroactive billing date that FCC was ultimately granted based on the receipt date of the application that Noridian was able to process to approval. CMS Exs. 18, 19.

