

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Peter Manis, M.D., FACEP	)	Date: November 20, 2009
PMMDOC, Inc. (NPI: 1447313978),	)	
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-09-634
	)	Decision No. CR2036
Centers for Medicare & Medicaid	)	
Services.	)	

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**DECISION DISMISSING REQUEST FOR HEARING**

I dismiss the hearing request of Petitioner, Peter Manis, M.D., because under the applicable regulations Petitioner does not have a right to a hearing before me.

**I. Background**

Petitioner filed a hearing request which asked for further appeals rights with respect to the effective date given Petitioner for billing Medicare. Petitioner contends that under previous policy (prior to January 1, 2009), physicians were allowed to retroactively bill Medicare for services provided to Medicare beneficiaries for 27 months from the effective date of enrollment. Petitioner indicated that he previously was certified as a Medicare provider but as part of partnership practice. Because he was beginning a new solo practice, Petitioner was required to apply for new Medicare certification even though he had previously been billing his services to Medicare for over 20 plus years under his previous practice. Petitioner contends that even though he did not file his application until February 23, 2009, he began treating patients in November, 2008 based on this previous policy thinking that he would still receive payment for his services. Petitioner was approved for Medicare enrollment effective February 23, 2009 and, thus, under the regulations in effect as of January 1, 2009, his right to bill for services to Medicare beneficiaries became effective as of January 24, 2009.

This case was assigned to me for a hearing and a decision. Petitioner responded to my initial Order that he had submitted everything he wished for me to consider and that he did not have any testimony or witnesses he wished to present.

## **II. Issue, findings of fact and conclusions of law**

### **A. Issue**

The issue is whether the Petitioner has a right to a hearing before me.

### **B. Findings of fact and conclusions of law**

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth my Findings below as separate headings.

#### ***1. The Petitioner does not have a right to a hearing.***

The Petitioner, a physician, requested a hearing because he is dissatisfied with the policy of the Medicare program governing payment for claims for services generated prior to the dates of his enrollment in Medicare.

Because Petitioner was changing from a group practice to a solo practice, he was required to obtain a new Medicare certification. He asserts that he began the process in November 2008, but had problems obtaining a National Provider Identifier and therefore did not submit his application for enrollment until February 23, 2009. Petitioner provided services to one or more Medicare beneficiaries from November 1, 2008, prior to the date of his enrollment, through February 23, 2009, and seeks to claim reimbursement for those services. Petitioner argues that new Medicare regulations bar reimbursement for claims for services that Petitioner provided prior to the effective date of his enrollment and he is dissatisfied with that likely outcome. He contends that at the time he began the enrollment process the previous policy, which allowed him to bill back for services rendered 27 months prior to the effective date of his enrollment in the Medicare program, was in effect.

At its heart, this case appears to involve a challenge to regulations which govern the time frame for which Medicare will retrospectively reimburse items or services provided prior to the effective dates of enrollment by physicians who are newly enrolled in the Medicare program (or re-enrolled at a point in time after enrollment has lapsed). The regulations are 42 C.F.R. §§ 424.520(d) and 424.521(a). These are relatively newly enacted regulations which became effective in January 1, 2009.

The regulations provide, first, that the effective date for Medicare billing privileges for physicians and certain other practitioners is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date that an enrolled physician or other practitioner first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d). This regulation establishes the point in time (effective date) from which Medicare may determine to reimburse retrospectively claims for services provided by an enrolled physician.

Medicare will reimburse retrospectively a claim for services by an enrolled physician for up to 30 days prior to the effective date of enrollment “if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries.” 42 C.F.R. § 424.521(a)(1). It will reimburse retrospectively for up to 90 days prior to the effective date of enrollment in the event that a Presidentially-declared disaster precluded enrollment in advance of providing services. 42 C.F.R. § 424.521(a)(2). There are no other circumstances under which retrospective reimbursement is permitted.<sup>1</sup>

Petitioner’s challenge of the regulations and the policies that they embody is not something that I have the authority to hear and decide. As a delegate of the Secretary of this Department, I must apply her policies as they are stated in regulations. I have no authority to declare a regulation to be unlawful or ultra vires. Consequently, I may not hear Petitioners’ challenge to the lawfulness of 42 C.F.R. §§ 424.520(d) and 424.521(a). Nor do I have the authority to grant exceptions to this policy. Consequently, I may not direct that it be waived in the case of this Petitioner.

I only have authority to hear cases where Medicare enrollment was denied or revoked, but here Petitioner’s Medicare enrollment was not improperly denied or revoked. *See* 42 C.F.R. § 498.3(b)(17).<sup>2</sup> While Petitioner might argue that I do have authority to hear and decide this matter pursuant to 42 C.F.R. § 498.3(b)(15); that particular authority is inapplicable here as Petitioner does not contend that he was entitled to an earlier effective date of enrollment; rather he argues about when he may begin billing for his services. *See* 42 C.F.R. § 498.3(b)(15). This section therefore does not confer hearing rights with respect to the issue Petitioner here asks me to review.

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<sup>1</sup> Petitioner avers that the Medicare program previously gave newly enrolled physicians a 27-month grace period during which claims would be reimbursed retrospectively. Petitioner complains that it is unreasonable for the Medicare program to change its policy from the 27-month period to the periods that are now permitted, under defined circumstances, by 42 C.F.R. § 424.521(a)(1) and (2).

<sup>2</sup> The applicable regulations do not provide appeal rights for this issue. The regulations only provide review when a provider is denied enrollment or when a provider’s enrollment has been revoked (42 C.F.R. §424.545(a) and 42 C.F.R. § 495.3(b)(17)) and here Petitioner’s Medicare enrollment was neither denied or revoked.

***2. I must dismiss Petitioner's hearing request.***

I must dismiss a hearing request in the circumstance where a party requesting a hearing has no right to a hearing. 42 C.F.R. § 498.70(b). I conclude that Petitioner has not established a right to a hearing. Consequently, I dismiss this case.

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/s/

Alfonso J. Montaña  
Administrative Law Judge