

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

James J. Hatcher M.D., PC  
(NPI: 1720175490),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-57

Decision No. CR4908

Date: August 4, 2017

**DECISION**

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, determined that the effective date of billing privileges for Dr. James J. Hatcher's medical practice, James J. Hatcher M.D., PC (Petitioner), is March 25, 2016, with a retrospective billing date of February 24, 2016. Petitioner requested a hearing before an administrative law judge to dispute the effective date of billing privileges. Because the CMS administrative contractor received Petitioner's enrollment application seeking reactivation of Medicare billing privileges on March 25, 2016, and the CMS administrative contractor approved that application, March 25, 2016, is the correct effective date for Petitioner's reactivated Medicare billing privileges.

**I. Background and Procedural History**

Dr. Hatcher is a physician specializing in internal medicine who is the sole owner of James J. Hatcher M.D., PC, which operates under PTAN 00X476J01. CMS Exhibit (Ex.) 4 at 8; CMS Ex. 8 ¶ 4. Petitioner was enrolled in the Medicare program until the CMS administrative contractor deactivated Petitioner's billing privileges on December 20,

2008, after having not submitted any claims for one year. CMS Ex. 7 at 4; CMS Ex. 8 ¶ 4; Petitioner (P.) Ex. 8. On March 25, 2016, the CMS administrative contractor received an enrollment application from Petitioner to reactivate Medicare enrollment and billing privileges. CMS Ex. 8 ¶ 5. The CMS administrative contractor notified Petitioner by letter dated June 16, 2016, that its Medicare enrollment application was approved effective February 24, 2016.<sup>1</sup> CMS Ex. 3; CMS Ex. 4; CMS Ex. 8 ¶ 5; P. Ex. 9; P. Ex. 10.

In its timely filed reconsideration request, Petitioner requested an earlier effective date of October 1, 2015, asserting that “the office was not notified that the group number was expired ...” and that the “...office has outstanding bills from that date.” CMS Ex. 4. On August 24, 2016, the CMS administrative contractor’s hearing officer issued an unfavorable reconsidered determination. The hearing officer upheld the contractor’s earlier determination. CMS Ex. 1.

Petitioner timely requested a hearing to dispute the reconsidered determination. On October 31, 2016, I issued an Acknowledgment and Pre-hearing Order (Order) establishing a submission schedule for pre-hearing exchanges. In response, Petitioner submitted his brief (P. Br.) and 12 exhibits. CMS filed a motion for summary judgment with a brief in support of the motion (CMS Br.) and eight exhibits.

## **II. Decision on the Record**

I admit all of the proposed exhibits into the record because neither party objected to any of them. Order ¶ 7; Civil Remedies Division Procedures (CRDP) § 14(e).

My Order advised the parties to submit written direct testimony for each witness and that I would only hold an in-person hearing if the opposing party requested to cross-examine a witness. Order ¶¶ 8-10; CRDP §§ 16(b), 19(b). CMS submitted written direct testimony for a witness (CMS Ex. 8), but Petitioner did not request to cross examine the witness. Therefore, I issue this decision based on the written record. Order ¶ 10; CRDP § 19(d).

## **III. Issue**

Whether CMS had a legitimate basis to determine March 25, 2016, as the effective date for Petitioner’s Medicare enrollment and billing privileges.

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<sup>1</sup> According to CMS, the administrative contractor incorrectly refers to February 24, 2016, as the effective date; instead, it is the retrospective billing date and March 25, 2016, is the effective date. CMS Brief at 1 n.1.

#### IV. Jurisdiction

I have jurisdiction to hear and decide this case. 42 U.S.C. § 1395cc(j)(8); 42 C.F.R. §§ 498.3(b)(15), (17), 498.5(l)(2).

#### V. Findings of Fact, Conclusions of Law, and Analysis

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

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 in the Medicare program. 42 U.S.C. §§ 1302, 1395cc(j). A “supplier” is “a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services” under the Medicare provisions of the Act. 42 U.S.C. § 1395x(d). Consequently, as a medical practice, Petitioner is a supplier.

A supplier must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The terms “*Enroll/Enrollment* means the process that Medicare uses to establish eligibility to submit claims for Medicare covered services and supplies.” 42 C.F.R. § 424.502. A supplier seeking billing privileges under the Medicare program must “submit enrollment information on the applicable enrollment application. Once the . . . supplier successfully completes the enrollment process . . . CMS enrolls the . . . supplier into the Medicare program.” 42 C.F.R. § 424.510(a).

CMS can deactivate an enrolled provider or supplier’s Medicare billing privileges if the enrollee does not submit any Medicare claims for 12 consecutive calendar months. 42 C.F.R. § 424.540(a)(1). Suppliers deactivated for nonsubmission of a claim are required to recertify that the enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate. 42 C.F.R. § 424.540(b)(2). To determine the effective date for the reactivation of billing privileges for physicians and physician practitioner organizations, section 424.520(d) provides that it is the later of—(1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) The date that the supplier first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d). However CMS may provide for retroactive billing for up to 30 days. 42 C.F.R. § 424.521(a)(1).

***1. The CMS administrative contractor deactivated Petitioner’s Medicare billing privileges on December 20, 2008, because Petitioner did not submit claims to Medicare for 12 consecutive months.***

Pursuant to 42 C.F.R. § 424.540(a)(1), CMS may deactivate the Medicare billing privileges of a supplier if the supplier does not submit any Medicare claims for 12

consecutive calendar months. Suppliers deactivated for nonsubmission of a claim are required to recertify their enrollment information to reactivate billing privileges. 42 C.F.R. § 424.540(b)(2).

Petitioner's original effective date under PTAN 00X476J01 was August 23, 2007. CMS Ex. 8 ¶ 4; P. Ex. 5. On December 20, 2008, the CMS administrative contractor deactivated PTAN 00X476J01 for non-billing after one year. CMS Ex. 7 at 4; CMS Ex. 8 ¶ 4. Therefore, Petitioner was required to recertify reenrollment information to reactivate its billing privileges.

***2. The CMS administrative contractor received Petitioner's enrollment application on March 25, 2016, which the CMS administrative contractor ultimately approved.***

CMS's policy with respect to reactivations is set forth in the Medicare Program Integrity Manual (MPIM). According to MPIM § 15.27.2.1, "[i]f the contractor approves a provider or supplier's reactivation application or reactivation certification package (RCP) for a Part B non-certified supplier, the reactivation effective date shall be the date the contractor received the application or RCP that was processed to completion." Here, the CMS administrative contractor approved Petitioner's reactivation application and set the effective date as the date the application was approved, March 25, 2016.

CMS's policy as to the effective date of Petitioner's billing privileges is consistent with the regulations, which provide that:

The effective date for billing privileges for physicians, non-physician practitioners, physician and non-physician practitioner organizations, and ambulance suppliers is the later of – (1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) The date that the supplier first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d).

In the present case, the CMS administrative contractor received Petitioner's enrollment application to reactivate its Medicare billing privileges on March 25, 2016, which the CMS administrative contractor subsequently approved with an effective date of March 25, 2016. CMS Ex. 5 at 6; CMS Ex. 8 ¶ 5; CMS Ex. 3.

Petitioner requests retroactive reimbursement for services rendered from October 2014 through October 2016. P. Br. at 2. Petitioner asserts that it is unsure for the reason of the inability to bill Medicare and refers to a possible computer glitch, which prevented billing Medicare for charges incurred from October 2014 through February 2015. Request for

Hearing; P. Br. at 2. However, Petitioner has not provided evidence to corroborate this position. More importantly, the CMS administrative contractor deactivated Petitioner's billing privileges in December 2008 for non-billing, years prior to when Petitioner argues it was unable to bill Medicare. Further, "[n]o payment may be made for otherwise Medicare covered items or services furnished to a Medicare beneficiary" while a supplier is deactivated.<sup>2</sup> 42 C.F.R. § 424.555(b); MPIM § 15.29.4.3 ("The provider will not be reimbursed for dates of service in which they were not in compliance with Medicare requirements (deactivated for non-response to revalidation).").

However, I construe Petitioner's argument as a challenge to the deactivation of its Medicare billing privileges, but I have no jurisdiction to review the CMS administrative contractor's decision to deactivate Petitioner's Medicare billing privileges. *Willie Goffney, Jr., M.D.*, DAB No. 2763 (2017). My authority is limited in this case to deciding whether CMS or its contractor correctly established the effective date of Petitioner's reactivation. *See* 42 C.F.R § 498.3(b)(15).

## **VI. Conclusion**

I affirm CMS's determination that Petitioner's effective date of reactivated billing privileges is March 25, 2016.

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/s/  
Scott Anderson  
Administrative Law Judge

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<sup>2</sup> CMS permitted Petitioner to retrospectively bill for services rendered to Medicare beneficiaries on or after February 24, 2016. It is true that CMS has the authority to permit 30 days of retrospective billing prior to the effective date of enrollment. 42 C.F.R. § 424.521(a)(1). However, given the prohibition on payment for services provided during the period of deactivation under 42 C.F.R. § 424.555(b), it is questionable whether 42 C.F.R. § 424.521(a)(1) applies to the reactivation of billing privileges. Since the retrospective billing period is not an issue before me, I do not reverse CMS's decision to provide Petitioner with a retrospective billing period.