

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Harton Clinic Company, LLC  
(NPI: 1699168195),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-105

Decision No. CR4592

Date: April 25, 2016

**DECISION**

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, Cahaba, determined that the effective date for Medicare billing privileges for Harton Clinic Company, LLC (Harton or Petitioner) was June 10, 2015, and that Harton could retrospectively bill Medicare for services provided on or after May 11, 2015. Harton requested a hearing to obtain authorization to bill Medicare for services provided on and after April 1, 2015. Because Cahaba received Harton's enrollment application on June 10, 2015, and Cahaba approved that application, Cahaba properly determined that June 10, 2015, was the effective date of Harton's Medicare billing privileges. Further, Cahaba provided Harton with the maximum retrospective billing period permitted under regulations applicable to this case. Therefore, I affirm CMS's determination.

**I. Case Background and Procedural History**

On July 15, 2015, Cahaba issued an initial determination in which it approved Harton's enrollment application (CMS-855B) as a multispecialty clinic or group practice in the Medicare program. The initial determination also indicated that the effective date of Harton's enrollment was May 11, 2015. CMS Exhibit (Ex.) 7.

Harton disagreed with the initial determination and requested that Cahaba permit it to bill Medicare for services provided on and after April 1, 2015. Harton explained that it had acquired Internal Medicine Associates, a preexisting medical practice, on April 1, 2015, and that the physicians in that practice continued to provide services to Medicare beneficiaries on and after April 1, 2015. Harton further stated that it had needed to obtain a taxpayer identification number for the newly acquired practice, but that by April 22, 2015, it submitted multiple Medicare enrollment applications to Cahaba. Apparently, Harton submitted a CMS-855B enrollment application for the practice and CMS-855R applications for the reassignment of Medicare benefits from the physicians in the newly acquired practice to Harton. In June 2015, Harton received correspondence from Cahaba, “which prompted [Harton] to believe that [Cahaba] did not receive the 855B. Thus, on 6/8/15 the 855B was resubmitted.” CMS Ex. 8.

On October 16, 2015, a Cahaba hearing officer issued an unfavorable reconsidered determination. The hearing officer found that Cahaba received Harton’s CMS-855B on June 10, 2015, and that “[t]he application was reviewed, developed for missing/additional information, and subsequently approved establishing the effective date of enrollment as June 10, 2015 with a retrospective billing date of May 11, 2015.” CMS Ex. 12 at 2. The Cahaba hearing officer concluded that under 42 C.F.R. § 424.550(c), Harton needed to file an enrollment application because Harton changed the taxpayer identification number of the practice it acquired. The Cahaba hearing officer then applied 42 C.F.R. § 424.520(d) to uphold the June 10, 2015 effective date of billing privileges based on the date Cahaba received the CMS-855B enrollment application. Further, the Cahaba hearing officer applied 42 C.F.R. § 424.521(a)(1) and upheld Cahaba’s decision to grant Harton a 30-day retrospective billing period back to May 11, 2015. CMS Ex. 12.

By letter dated November 9, 2015, Petitioner timely requested a hearing in order to obtain an April 1, 2015 effective date for billing privileges. Following the issuance of my November 16, 2015 Acknowledgment and Pre-hearing Order (Order), CMS filed a motion for summary judgment, a prehearing brief, and 19 exhibits (CMS Exs. 1-19). Petitioner failed to timely file a prehearing exchange in accordance with the Order; therefore, I issued an order to show cause why I should not dismiss Petitioner’s hearing request for abandonment. Petitioner, now represented by counsel, filed a brief (P. Br.) in opposition to summary judgment and one exhibit (P. Ex. 1.). In its brief, Petitioner explained that it was delayed in filing its prehearing exchange by the unavailability of individuals who had information pertinent to the submission of the enrollment applications in question. P. Br. at 5.

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

I accept that Petitioner did not intend to abandon its hearing request. Therefore, I will not dismiss the hearing request.

Because neither party objected to the opposing party's proposed exhibits, I admit CMS Exs. 1-19 and P. Ex. 1. into the record. *See* Order ¶ 7; Civil Remedies Division Procedures (CRDP) § 14(e).

My Order stated that the parties must submit written direct testimony for each proposed witness and that I would only hold an in-person hearing if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10; CRDP § 16(b). CMS and Petitioner each submitted written direct testimony from one witness (CMS Ex. 19; P. Ex. 1). However, neither party requested to cross-examine the opposing party's witness. Therefore, I issue this decision based on the written record. Order ¶ 11; CRDP § 19(d).

### **III. Issue**

Whether CMS had a legitimate basis to determine that June 10, 2015, was the effective date for Petitioner's Medicare billing privileges and that Petitioner could retrospectively bill for services rendered to Medicare beneficiaries on or after May 11, 2015.

### **IV. Findings of Fact, Conclusions of Law, and Analysis<sup>1</sup>**

The Social Security 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.<sup>2</sup> 42 U.S.C. §§ 1302, 1395cc(j). 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. Under the Secretary's regulations, a provider or supplier who seeks billing privileges under Medicare 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).

#### ***1. Cahaba received Petitioner's enrollment application (CMS-855B) on June 10, 2015, and Cahaba approved that application.***

CMS's exhibits show Cahaba received Harton's CMS-855B enrollment application on June 10, 2015. CMS Ex. 1; CMS Ex. 4; CMS Ex. 19 ¶ 8. Further, the record demonstrates that after receiving the CMS-855B on June 10, 2015, Cahaba took action to process that application, ultimately approving it on July 15, 2015. CMS Exs. 2, 4-7.

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

<sup>2</sup> A “supplier” furnishes services under Medicare, and the term supplier applies to physicians and other nonphysician practitioners and facilities that are not included within the definition of the phrase “provider of services.” 42 U.S.C. § 1395x(d).

Although Petitioner does not dispute that it mailed a CMS-855B enrollment application to Cahaba in June 2015, Petitioner asserts that it was merely resubmitting the application and that it had previously submitted the application on April 22, 2015. Hearing Request at 1; CMS Ex. 8 at 2. Petitioner supports this earlier submission date by pointing out that it submitted to Cahaba on April 22, 2015, several CMS-855I and/or CMS-855R applications related to the reassignment of Medicare benefits from the physicians in the newly acquired practice to Petitioner (CMS Ex. 13 at 3, 13; CMS Ex. 14 at 3, 13; CMS Ex. 15 at 4, 14; CMS Ex. 16 at 8, 20; CMS Ex. 17 at 7). Petitioner asserts its normal business practice was to submit all enrollment and reassignment applications together. P. Br. at 2; P. Ex. 1 ¶¶ 7-8, 10.

Contrary to Petitioner's position, CMS presented testimony that Cahaba did not receive a CMS-855B from Petitioner before June 10, 2015. CMS Ex. 19 ¶ 12. The witness, a Cahaba employee, conducted a search of its electronic and paper records to reach this conclusion. CMS Ex. 19 ¶¶ 8-11. The witness also testified that her search uncovered records indicating that Petitioner had not submitted a CMS-855B to Cahaba until June 2015. Specifically, the witness testified that a Cahaba employee noted that on June 9, 2015, one of Petitioner's employees indicated to the Cahaba employee that Petitioner had not decided yet whether to file a CMS-855B. CMS Ex. 18 at 2; CMS Ex. 19 ¶ 12. Further, CMS's witness stated that Petitioner's June 9, 2015 cover letter accompanying the CMS-855B explicitly stated that the Petitioner's CMS-855R reassignment applications were previously completed on-line. CMS Ex. 1 at 78; CMS Ex. 19 ¶ 13. This letter is significant for the fact that it does not state that Petitioner previously filed a CMS-855B. I find CMS's witness' testimony to be compelling because it is based on her extensive inquiry into Cahaba's records.

I do not find the testimony of Petitioner's witness to be as detailed or reliable as the CMS witness. Petitioner's witness is only able to testify about the general business practice that Petitioner engages in when filing enrollment applications. P. Ex. 1 ¶¶ 7-9. However, Petitioner's employees who had direct knowledge of the submission of the enrollment application in this case could not testify because one is deceased and the other is no longer Petitioner's employee. P. Ex. 1 ¶ 9. Therefore, the testimony Petitioner offers is insufficient to prove it mailed the CMS-855B to Cahaba on April 22, 2015, and even weaker to prove that Cahaba received the CMS-855B allegedly mailed on April 22, 2015.

Based on the evidence of record, I find that Cahaba received Petitioner's CMS-855B enrollment application on June 10, 2015, and that Cahaba later approved that application.

2. ***Cahaba properly concluded that Petitioner's enrollment was effective on June 10, 2015, and that Cahaba could establish a retrospective billing period commencing on May 11, 2015.***

In its initial determination, Cahaba stated that the effective date for Petitioner's Medicare billing privileges was May 11, 2015. CMS Ex. 7 at 1. In its reconsidered determination, the Cahaba hearing officer explained that the effective date for Medicare billing privileges was June 10, 2015, with a retrospective billing period commencing May 11, 2015. CMS Ex. 12 at 2.

The Secretary's regulations provide that the effective date of enrollment of physicians, non-physician practitioners, and physician or non-physician practitioner organizations is the later of the "date of filing" or the date the supplier first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d). The "date of filing" is the date that the Medicare contractor "receives" a signed provider/supplier 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). Because Cahaba received the CMS-855B enrollment application on June 10, 2015, and Cahaba ultimately approved that application, Cahaba properly determined June 10, 2015, as Petitioner's effective date.

The regulations applicable to this case permit CMS to grant retrospective billing for physician or non-physician practitioner services provided up to 30 days before the effective date of enrollment. 42 C.F.R. § 424.521(a)(1). Thus, Cahaba correctly determined, based on a June 10, 2015 date of receipt of Petitioner's CMS-855B enrollment application, that Petitioner could retrospectively bill for services provided to beneficiaries beginning on May 11, 2015.

## **V. Conclusion**

I affirm CMS's determination that Petitioner's effective date of enrollment is June 10, 2015, with a 30-day retrospective billing period commencing on May 11, 2015.

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/s/  
Scott Anderson  
Administrative Law Judge