

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Harry K. Wong, DC,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-648

Decision No. CR4741

Date: November 22, 2016

DECISION

The Centers for Medicare & Medicaid Services (CMS), through an administrative contractor, determined that the effective date for the reactivation of the Medicare billing privileges for Harry K. Wong, DC (Dr. Wong or Petitioner) was November 25, 2015. Dr. Wong requested a hearing before an administrative law judge to dispute this effective date. Because CMS's administrative contractor approved Dr. Wong's revalidation enrollment application that it received on November 25, 2015, the CMS administrative contractor correctly determined that the effective date for the reactivation of billing privileges is November 25, 2015. Therefore, I affirm CMS's determination.

I. Background and Procedural History

Dr. Wong is a chiropractor (National Provider Identification (NPI) number 1841352416), who has been enrolled in the Medicare program for many years as a supplier. CMS Exhibit (Ex.) 5 at 1; Petitioner (P.) Ex. 2 at 1. Dr. Wong is affiliated with a group practice called Wong Chiropractic Center, Inc. (NPI number 1194027466), which is also enrolled in the Medicare program. CMS Ex. 7 at 1; P. Ex. 1 at 7; P. Ex. 2 at 1.

The address for Dr. Wong and the Wong Chiropractic Center was 1391 Woodside Road, Redwood City, California. However, in May 2012, Wong Chiropractic Center's office manager filed a CMS-885B enrollment application to inform the CMS administrative contractor that its new address was 1021 Alameda De Las Pulgas, Belmont, California. P. Ex. 1 at 1, 2, 4, 6; P. Ex. 2 at 2. The CMS administrative contractor acknowledged this change of address for Wong Chiropractic Center. P. Ex. 1 at 7.

In 2014, the CMS administrative contractor sent a notice to Dr. Wong at the 1391 Woodside Road address to revalidate his Medicare enrollment information. Dr. Wong did not receive the notice because 1391 Woodside Road was no longer his address. When Dr. Wong did not respond to the revalidation request, on October 14, 2014, the CMS administrative contractor deactivated Dr. Wong's Medicare billing privileges. Dr. Wong was not aware of the deactivation until September 2015. On November 10, 2015, Wong Chiropractic Center's office manager spoke with a representative from the CMS administrative contractor and learned that the CMS administrative contractor deactivated Dr. Wong for failing to revalidate his enrollment information. CMS Ex. 1 at 2; CMS Ex. 3; P. Ex. 1 at 1-2.

On November 25, 2015, the CMS administrative contractor received a CMS-855I enrollment application from Dr. Wong. CMS Ex. 1 at 2; CMS Ex. 2; CMS Ex. 6. After receiving some additional information from Dr. Wong (CMS Exs. 4, 5), on December 28, 2015, the CMS administrative contractor reactivated Dr. Wong's Medicare billing privileges effective November 25, 2015. CMS Ex. 7 at 1.

In his timely filed reconsideration request, Dr. Wong requested that the CMS administrative contractor grant him a reactivation date of January 1, 2015. Dr. Wong asserted that he should have an earlier reactivation date because the CMS administrative contractor erroneously mailed the revalidation notice to an incorrect address, which resulted in the deactivation. CMS Ex. 3.

The CMS administrative contractor issued an unfavorable reconsidered determination that upheld November 25, 2015, as the effective date for the reactivation of Medicare billing privileges. Further, the reconsidered determination stated:

[Dr. Wong] states in the appeal that the revalidation letter was sent to the wrong address. The 855I application that was received November 25, 2015 updates the correspondence address. Prior to that the correspondence address on file was what was used to address the revalidation letter. It is the provider's responsibility to ensure that Medicare has the current information.

CMS Ex. 1 at 2.

Petitioner requested a hearing to dispute the reconsidered determination. On July 14, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order), which established a submission schedule for pre-hearing exchanges. In response, CMS filed a motion for summary judgment with a brief in support of the motion (CMS Br.) and seven exhibits. Petitioner submitted two exhibits.

II. Decision on the Written 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 a party requested to cross-examine a witness. Order ¶¶ 8-10; CRDP §§ 16(b), 19(b). CMS did not offer any written direct testimony. Petitioner submitted written direct testimony from his office manager (P. Ex. 1); however, CMS did not request to cross-examine that witness. Therefore, I issue this decision based on the written record. Pre-Hearing Order ¶ 10; CRDP § 19(d).

III. Issue

Whether CMS had a legitimate basis to assign November 25, 2015, as the effective date for reactivation of Dr. Wong's Medicare billing privileges.

IV. Jurisdiction

I have jurisdiction to hear and decide this case. 42 U.S.C. § 1395cc(j)(8); 42 C.F.R. §§ 424.545(a), 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. 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); *see also* 42 U.S.C. § 1395x(u). For Medicare program purposes, chiropractors are considered physicians. 42 U.S.C. § 1395x(r).

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 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.

To maintain Medicare billing privileges, providers and suppliers must revalidate their enrollment information at least every five years. CMS reserves the right to perform revalidations at any time. 42 C.F.R. § 424.515. When CMS notifies providers and suppliers that it is time to revalidate, the providers or suppliers must submit the appropriate enrollment application, accurate information, and supporting documentation within 60 calendar days of CMS’s notification. 42 C.F.R. § 424.515(a)(2).

CMS can deactivate an enrolled provider or supplier’s Medicare billing privileges if the enrollee fails to comply with revalidation requirements. 42 C.F.R. § 424.540(a)(3). When CMS deactivates providers or suppliers’ 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). If CMS deactivates a provider or supplier’s billing privileges due to an untimely response to a revalidation request, the enrolled provider or supplier may apply for CMS to reactivate its Medicare billing privileges by completing a new enrollment application or, if deemed appropriate, recertifying its enrollment information that is on file. 42 C.F.R. § 424.540 (b)(1).

1. On November 25, 2015, the CMS administrative contractor received Petitioner’s enrollment application (CMS -855I), which the CMS administrative contractor ultimately approved.

Dr. Wong submitted a CMS-855I enrollment application on November 25, 2015, to revalidate his enrollment as a supplier in the Medicare program. CMS Exs. 2, 6. After requesting and receiving further information from Dr. Wong, the CMS administrator approved Dr. Wong’s application and reactivated his Medicare billing privileges effective November 25, 2015. CMS Exs. 4, 5, 7.

2. The effective date for Petitioner’s Medicare billing privileges is November 25, 2015.

The effective date for Medicare billing privileges for 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 enrollment application that the Medicare contractor is able

to process to approval. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *Donald Dolce, M.D.*, DAB No. 2685 at 8 (2016). CMS's published guidance for its contractors states that the effective date for the reactivation of Medicare billing privileges is the date on which the contractor received the enrollment application. Medicare Program Integrity Manual (MPIM) § 15.27.1.2. That guidance is consistent with the effective date for Medicare billing privileges in section 424.520(d) and with section 424.555(b)'s prohibition on reimbursing services performed by deactivated providers and suppliers.

In the present case, the CMS administrative contractor properly determined that Dr. Wong's effective date for reactivation of his Medicare billing privileges is November 25, 2015, because that is the date that Dr. Wong filed his enrollment application that the CMS administrative contractor ultimately approved.

Dr. Wong disagrees with this conclusion because he did not receive the revalidation notice in 2014 and that his failure to respond to that notice, which he did not receive, resulted in the deactivation of his Medicare billing privileges. In particular, Dr. Wong asserts that his office notified CMS of his change in address in 2012, and that the CMS administrative contractor should not have mailed the revalidation notice to his old address. P. Ex. 2 at 1-2, 7.

Unfortunately, the record shows that Dr. Wong submitted a CMS-855B enrollment application in 2012 to update the address of Wong Chiropractic Center, the practice group with which he is affiliated. P. Ex. 1 at 1-2, 7; P. Ex. 2 at 2. However, there is no evidence in the record that he submitted a CMS-855I enrollment application to update his enrollment record as a chiropractor at the same time. Because Dr. Wang failed to update his address as an individual supplier in 2012, the CMS administrative contractor mailed the revalidation notice to the address it had on file for Dr. Wong, which was 1391 Woodside Road, Redwood City, California. CMS Ex. 1 at 2; P. Ex. 1 at 1. Therefore, it was Dr. Wong's failure to properly notify the CMS administrative contractor of the change in his address that resulted in Dr. Wong's inability to receive the revalidation notice, ultimately resulting in the deactivation of his Medicare billing privileges.

V. Conclusion

I affirm CMS's determination that Petitioner's effective date for Medicare billing privileges is November 25, 2015.

/s/
Scott Anderson
Administrative Law Judge