

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Juan J. Rhoades, ANP-BC  
(NPI: 1851672166)  
(PTAN: P22110007),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-451

Decision No. CR4911

Date: August 9, 2017

**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 Juan J. Rhoades, ANP-BC (Petitioner) was December 12, 2016. Petitioner requested a hearing before an administrative law judge to dispute this effective date. Because CMS's administrative contractor approved Petitioner's revalidation enrollment application that it received on December 12, 2016, the CMS administrative contractor correctly determined that the effective date for the reactivation of billing privileges is December 12, 2016. Therefore, I affirm CMS's determination.

**I. Background and Procedural History**

Petitioner is a nurse practitioner who enrolled in the Medicare program as a supplier. CMS Exhibit (Ex.) 4 at 1. In a letter dated July 6, 2016, a CMS administrative contractor sent a notice that advised Petitioner to submit a revalidation enrollment application within 60 days. CMS Ex. 1. The notice stated that a failure to timely file the revalidation enrollment application could result in the deactivation of Petitioner's Medicare billing

privileges. CMS Ex. 1 at 1. In a subsequent letter dated October 5, 2016, CMS informed Petitioner he had not revalidated his enrollment and that a deactivation would cause a gap in reimbursement. CMS Ex. 2 at 1. Before his deactivation, Petitioner attempted twice to revalidate his enrollment prior to deactivation, and he successfully updated his information and received a notification that the update occurred. P. Exs. 3-4; P. Exs. 6-7; P. Ex. 11 at 2-7; P. Ex. 13. However, CMS did not accept these updates as a revalidation and did not communicate with Petitioner to determine if this filing was in response to revalidation request.

In a December 2, 2016 notice, the CMS administrative contractor informed Petitioner that his Medicare billing privileges were deactivated because Petitioner did not revalidate his enrollment. CMS Ex. 3. On December 12, 2016, the CMS administrative contractor received an enrollment application from Petitioner. CMS Ex. 4 at 1. On that same date, the CMS administrative contractor received an application from Petitioner to reassign his Medicare benefits to his employer. CMS Ex. 6 at 1. The CMS administrative contractor reactivated Petitioner's enrollment and the reassignment of benefits effective December 12, 2016. CMS Ex. 7 at 1-2; CMS Ex. 8 at 8; P. Ex. 1 at 1.

Petitioner submitted a timely reconsideration request, CMS Ex. 8, and untimely submitted a second reconsideration request with additional documents. CMS Ex. 10. The CMS administrative contractor issued an unfavorable reconsidered determination that did not acknowledge or consider the second request and that upheld December 12, 2016 as the effective date for the reactivation of Medicare billing privileges. CMS Ex. 11.

Petitioner requested a hearing to dispute the reconsidered determination. On March 24, 2017, I issued an Acknowledgment and Pre-Hearing Order (Order), which established a submission schedule for pre-hearing exchanges. In response, CMS filed a prehearing brief in support of summary affirmance (CMS Br.) and eleven exhibits (CMS Exs. 1-11). Petitioner submitted a prehearing brief (P. Br.) and fourteen exhibits (P. Exs. 1-14). CMS subsequently filed a reply brief (CMS Reply Br.).

## **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). Neither CMS nor Petitioner offered any written direct testimony. Therefore, I issue this decision based on the written record. Order ¶ 11; CRDP § 19(d).

### III. Issue

Whether CMS had a legitimate basis to establish December 12, 2016, as the effective date for reactivation of Petitioner'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).

A supplier must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The term "*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)(1). 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. 42 C.F.R. § 424.515. CMS reserves the right to perform revalidations at any time. 42 C.F.R. § 424.515(d). 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 a 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 December 12, 2016, the CMS administrative contractor received Petitioner's enrollment application (CMS-855I), which the CMS administrative contractor ultimately approved.***

Petitioner submitted a CMS-855I enrollment application on December 12, 2016, to revalidate its enrollment as a supplier in the Medicare program. CMS Ex. 4. After Petitioner submitted additional information to complete his application, the CMS administrative contractor approved Petitioner's application and reactivated its Medicare billing privileges effective December 12, 2016. CMS Exs. 5-7.

***2. The effective date for Petitioner's Medicare billing privileges is December 12, 2016.***

The effective date for Medicare billing privileges for . . . non-physician practitioners . . . 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. 69,769 (Nov. 19, 2008); *Donald Dolce, M.D.*, DAB No. 2685 at 8 (2016).

In the present case, the CMS administrative contractor's approval of the December 12, 2016 enrollment application indicated that the effective date was September 1, 2011, CMS Ex. 7 at 1, but then states that "the effective date reflects a gap in coverage from 12/01/2016 to 12/12/2016 for failure to respond to the revalidation requested development." CMS Ex. 7 at 2. Although this is an atypical way to express the effective date for reactivation, the hearing officer confirmed this "gap" in the reconsidered determination, so I will treat December 12, 2016 as the effective date. CMS Ex. 11 at 2.

The CMS administrative contractor properly determined that Petitioner's effective date for reactivation of its Medicare billing privileges is December 12, 2016, because that is the date that Petitioner filed its enrollment application that the CMS administrative contractor ultimately approved. *Decatur Health Imaging, LLC*, DAB No. 2805 at 5-6 (2017).

Petitioner argues that there should be no gap in coverage from December 2-12, 2016, because once reactivated, Petitioner should be able to bill during the deactivated period. P. Br. at 4-7. Petitioner alternatively argues that even if CMS can assign a new effective date following reactivation, Petitioner should be given a 30-day retrospective period of billing under 42 C.F.R. § 424.521. P. Br. at 7-8. However, the regulations expressly

