

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

South Sound Radiology of Lewis County,
(PTAN: G8918611)
(NPI: 1255677118),

John C. Edwards, M.D.,
(PTAN: G8919283)
(NPI: 1619961570),

Terence T. Chan, M.D.,
(PTAN: G8918909)
(NPI: 1871689794),

Peter Ping Hu, M.D.,
(PTAN: G8918910)
(NPI: 1841350618),

Petitioners,

v.

Centers for Medicare & Medicaid Services

Docket No. C-14-385

Decision No. CR3240

Date: May 23, 2014

DECISION

Petitioners here include a Washington State radiology group medical practice, South Sound Radiology of Lewis County, and three of its physicians: Drs. John C. Edwards, Terence T. Chan, and Peter Ping Hu. South Sound Radiology and the individual physicians separately applied for enrollment in the Medicare program. The Medicare contractor, acting on behalf of the Centers for Medicare & Medicaid Services (CMS),

approved the group practice's application, with an effective billing date of January 1, 2013. It approved the physicians' applications effective May 1, 2013 (with a billing date of April 1, 2013).

Petitioners do not object to the January 1 effective date for the group practice, but challenge the May 1, 2013 effective date for the individual physicians. In reconsidered determinations, dated October 8, 2013, the contractor affirmed the May 1 dates, and Petitioners appealed.

The parties have filed cross-motions for summary judgment (CMS Br., P. Br.) and briefs in opposition. CMS filed ten exhibits and Petitioners filed four. For the reasons set forth below, I grant Petitioners' motion and deny CMS's.

Discussion

The effective date for the physician-petitioners' reassignments is January 1, 2014, the date they began rendering services with South Sound Radiology.¹

To receive Medicare payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. "Enrollment" is the process used by CMS and its contractors to: 1) identify the prospective supplier; 2) validate the supplier's eligibility to provide items or services to Medicare beneficiaries; 3) identify and confirm a supplier's owners and practice location; and 4) grant the supplier Medicare billing privileges. 42 C.F.R. § 424.502. To enroll in Medicare, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1); 424.515(a). An enrollment application is either a CMS-approved paper application or an electronic process approved by the Office of Management and Budget. When CMS determines that a physician or physician organization meets the applicable enrollment requirements, it grants Medicare billing privileges, which means that the physician/physician organization can submit claims and receive payments from Medicare for covered services provided to program beneficiaries. 42 C.F.R. § 424.502.

In this case, on May 1, 2013, South Sound Radiology submitted a Medicare enrollment application for a group practice, Form CMS-855B, to the Medicare contractor, Noridian Healthcare Solutions.² On the same day, Drs. Edwards, Chan, and Hu submitted to the

¹ I make this one finding of fact/conclusion of law.

² South Sound Radiology apparently filed an earlier application that the contractor rejected. CMS Exs. 1, 2; *see* 42 C.F.R. § 424.525. Enrollment applications that are rejected are not afforded appeal rights. 42 C.F.R. § 424.525(d).

contractor their individual 855R applications. CMS Exs. 4, 5, 6. Form 855R is submitted by currently-enrolled physicians in order to reassign their Medicare benefits to a different supplier. Medicare Program Integrity Manual (MPIM), CMS Pub. 100-08, ch. 15 § 15.1.2 (rev. 412, eff. Apr. 30, 2012). *See, e.g.*, CMS Ex. 4 at 5. The contractor approved all of the applications, but gave South Sound Radiology an effective date of January 1, 2013, and gave the physicians a May 1, 2013 effective date, with a billing date of April 1, 2013. *See* 42 C.F.R. § 424.521(a)(1) (allowing a physician or physician organization to bill retrospectively for up to “30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries,” so long as program requirements are met).

Citing 42 C.F.R. § 424.520(d), CMS argues that May 1 is the appropriate effective date for the individual physicians. According to that section, the effective date for Medicare billing privileges “is the *later* of the date of filing” a subsequently approved enrollment application or “the date an enrolled physician . . . first began furnishing services at a new practice location.” 42 C.F.R. § 424.520(d) (emphasis added).

Petitioners, on the other hand, maintain that section 424.520(d) does not apply to currently-enrolled suppliers who apply for reassignment of benefits, and, citing the MPIM, argue that the physicians’ effective date should be the date they began providing services at South Sound Radiology.

As a threshold matter, I am not sure why the group practice application, also filed on May 1, entitled South Sound Radiology to a January 1 effective date. CMS claims that the “effective date for an 855B group application is not restricted by regulations and a date may be assigned by request.” CMS Br. at 5. But section 424.520(d) applies to “physician and nonphysician practitioner organizations.” *See* MPIM ch. 15 § 15.1.2 (instructing that the CMS-855B application should be completed by supplier organizations that will bill Medicare for Part B services). A “physician practitioner organization” is defined as “an entity that enrolls in the Medicare program as a sole proprietorship or organizational entity.” 42 C.F.R. § 424.502. CMS does not explain why a group practice, like South Sound, is not a physician practitioner organization. Nevertheless, the question of the group practice’s enrollment date is not before me, and, to the extent the contractor erred and CMS has (through counsel) accepted that error, CMS will have to live with it.³

³ Had the contractor given South Sound Radiology an enrollment date of May 1, this case could be resolved easily. As CMS points out, both parties must currently be enrolled in the Medicare program before reassignment can take effect. CMS Opposition at 2.

I see nothing in the plain language of section 424.520 to suggest that it does not apply to an application for reassignment filed by a currently-enrolled supplier (855R). A supplier may otherwise be enrolled in the program, but unless he has billing privileges, his enrollment is meaningless. In fact, the regulations list, as part of the enrollment process, “granting the . . . supplier Medicare billing privileges.” 42 C.F.R. § 424.502. To get their billing privileges assigned to South Sound, the physicians here had to file applications. According to subsection 424.520(d), if a supplier files such an application, the effective date for Medicare billing privileges is *no earlier than* the date of filing.

The problem is that CMS seems to have interpreted this regulation differently. In its section on CMS-855R applications, the MPIM does not parrot the language of the regulation, but provides that “the effective date of a reassignment is the date on which the individual began or will begin rendering services with a reassignee.” MPIM ch. 15 § 15.5.20.E5 (rev. 416, eff. Feb. 27, 2012).⁴ CMS has not explained this provision, so I accept it as the agency’s interpretation of its own regulation and defer to it. CMS has not challenged the petitioners’ assertions that they began providing services on January 1.

Thus, January 1, 2013 is the effective date for the physician-petitioners’ Medicare billing privileges.

Conclusion

For the reasons set forth above, I deny CMS’s motion for summary judgment and grant Petitioners’. January 1, 2013 is the physician-petitioners’ effective date for Medicare billing privileges.

/s/

Carolyn Cozad Hughes
Administrative Law Judge

⁴ Although MPIM ch. 15 § 15.5.20.E5 was later revised (rev. 490, eff. Jan. 1, 2014), this subsection was unchanged.