

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Huron Valley Physicians PLLC,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-635

Decision No. CR4746

Date: November 29, 2016

**DECISION**

The Centers for Medicare & Medicaid Services (CMS) determined that the effective date for the reactivation of the Medicare billing privileges for Huron Valley Physicians PLLC (Huron Valley or Petitioner) was January 19, 2016. Huron Valley requested a hearing before an administrative law judge to dispute this effective date. For the reasons stated below, I affirm CMS's determination.

**I. Background and Procedural History**

Huron Valley is an enrolled clinical or group practice in the Medicare program. *See* CMS Exhibits (Exs.) 1, 5. On March 9, 2015, a CMS administrative contractor sent a notice to Huron Valley to revalidate its Medicare enrollment information by submitting a completed CMS-855 enrollment application or reviewing, updating, and certifying its enrollment information through CMS's internet-based system, called the Provider Enrollment, Chain and Ownership System (PECOS). CMS Ex. 1 at 1-2. The notice stated that if Huron Valley used PECOS, it could either electronically sign the revalidation application or mail a signed certificate statement separately to the CMS

administrative contractor. CMS Ex. 1 at 1-2. Further, the notice informed Huron Valley that if it failed to revalidate its enrollment information within 60 days, the CMS administrative contractor might deactivate Huron Valley's Medicare billing privileges. CMS Ex. 1 at 3.

When Huron Valley did not respond to the revalidation notice, the CMS administrative contractor contacted Huron Valley by telephone in June 2015, and again by mail in July 2015. CMS Exs. 2, 3. In its July 8, 2015 notice, the CMS administrative contractor stated that it was terminating Medicare payments to Huron Valley and that Huron Valley needed to immediately revalidate its enrollment or face possible deactivation. CMS Ex. 3. Huron Valley did not revalidate its enrollment and, in a September 1, 2015 notice, the CMS administrative contractor deactivated Huron Valley's billing privileges. CMS Ex. 4.

On January 8, 2016, the CMS administrative contractor received, via PECOS, a revalidation enrollment application from Huron Valley. CMS Ex. 5 at 5. The CMS administrative contractor later received a signed certification statement for the enrollment application on January 19, 2016. CMS Ex. 5 at 1-4. On March 29, 2016, the CMS administrative contractor issued an initial determination that provided Huron Valley with a February 6, 2016 effective date for Medicare billing privileges. CMS Ex. 6. Huron Valley requested reconsideration of the effective date due to "unforeseen circumstances" that caused a delay in revalidating; Huron Valley sought a September 1, 2015 effective date for billing privileges. CMS Ex. 7. In a May 19, 2016 reconsidered determination, the CMS administrative contractor upheld the initial determination. CMS Ex. 8. On July 27, 2016, a CMS hearing officer revised the reconsidered determination and gave Huron Valley an earlier effective date of January 19, 2016. CMS Exs. 8, 9.

Huron Valley requested a hearing to dispute the effective date of its billing privileges. 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 and prehearing brief (CMS Br.) along with nine exhibits Petitioner submitted a brief (P. 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 party 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 assign January 19, 2016, as the effective date for reactivation of Huron Valley'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 authorizes the Secretary of Health and Human Services to promulgate regulations governing the enrollment process for providers and suppliers. 42 U.S.C. §§ 1302, 1395cc(j). Providers and suppliers 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, they 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 provider or supplier fails to comply with revalidation requirements. 42 C.F.R. § 424.540(a)(3). A provider or supplier that is deactivated may file a rebuttal with CMS; however, CMS's decision to deactivate a provider or supplier is not an "initial determination" subject to greater review. 42 C.F.R. §§ 424.545(b); 498.3(b). When CMS deactivates a provider or supplier's 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 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. A CMS administrative contractor received Petitioner's revalidation enrollment application on January 8, 2016, and Petitioner's signed certification statement for the application on January 19, 2016, and the CMS administrative contractor ultimately approved that application.***

Huron Valley submitted an enrollment application to revalidate its enrollment information using PECOS on January 8, 2016. CMS Ex. 5 at 5-9. Huron Valley submitted a signed certification statement for the enrollment application that CMS received on January 19, 2016. CMS Ex. 5 at 1-4. The CMS administrative contractor approved Huron Valley's enrollment application and reactivated its Medicare billing privileges effective February 6, 2016. CMS Ex. 6 at 1. On July 27, 2016, a CMS hearing officer revised the effective date for Huron Valley's Medicare billing privileges to January 19, 2016. CMS Ex. 9 at 2.

- 2. The effective date for Petitioner's Medicare billing privileges is January 19, 2016.***

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 administrative 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. Further, when a provider or supplier files an enrollment application through PECOS, but separately provides a signed certification statement, then the effective date for Medicare billing privileges is the date of the signature. MPIM § 15.5.15.2(5).

In the present case, the CMS hearing officer properly determined that Huron Valley's effective date for reactivation of Huron Valley's Medicare billing privileges is January 19, 2016, because that is the date that Huron Valley's authorized official signed the certification statement for the enrollment application that Huron Valley filed via PECOS.

