Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Eduardo Trinidad, M.D.
(PTAN: 260002995)
(NPI: 1780663203),
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-586

Decision No. CR4989

Date: December 13, 2017

DECISION

National Government Services (NGS), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), reactivated the Medicare billing privileges of Eduardo Trinidad, M.D. (Petitioner or Dr. Trinidad) effective January 17, 2017. Petitioner requested a hearing before an administrative law judge to dispute this effective date. Because NGS approved Petitioner's revalidation enrollment application that it received on January 17, 2017, it correctly determined that the effective date for Petitioner's reactivated billing privileges is January 17, 2017. Therefore, I affirm the effective date determination.

I. Background

By letter dated July 15, 2016, NGS informed Dr. Trinidad that he must revalidate his Medicare enrollment by September 30, 2016. CMS Exhibit (Ex.) 1. In a letter dated October 4, 2016, NGS notified Dr. Trinidad that it had not received a revalidation application by the September 30, 2016 deadline. CMS Ex. 2. Finally, by letter dated December 15, 2016, NGS notified Dr. Trinidad that his Medicare enrollment and billing privileges were deactivated effective December 12, 2016, because he had not revalidated his enrollment information. CMS Ex. 3. NGS mailed a copy of each of these letters,

addressed to Dr. Trinidad at 1690 University Ave W, Ste 315B, Saint Paul, MN 55014 (1690 University Avenue address); it mailed a second copy of the letters to P.O. Box 856569, Minneapolis, MN 22485-6569 (P.O. Box address). CMS Exs. 1-3. The 1690 University Avenue address was listed as Dr. Trinidad's correspondence address on a reassignment application he submitted to NGS in 2013. CMS Ex. 9 at 4. The P.O. Box address is listed as the "pay to" address for Dr. Trinidad in a database maintained by NGS. CMS Ex. 12.

On January 17, 2017, NGS received a Medicare Enrollment Application, Form CMS-855I, and a Reassignment of Medicare Benefits, Form CMS-885R, completed on behalf of Dr. Trinidad by staff at Psych Recovery, Inc. (Psych Recovery). CMS Exs. 4, 5. Those applications list Dr. Trinidad's correspondence and primary practice address as 2550 University Ave W, Suite 229 N, St. Paul, MN, 55114 (Psych Recovery address). CMS Ex. 4 at 6; CMS Ex. 5 at 3. NGS ultimately approved these applications. *See* CMS Ex. 6.

After Psych Recovery received denials of Medicare claims for services rendered by Dr. Trinidad, Psych Recovery personnel requested that NGS reconsider the effective date of reactivation of Dr. Trinidad's Medicare billing privileges.[1] CMS Ex. 7. By letter dated March 10, 2017, NGS issued a reconsidered determination concluding that January 17, 2017, was the correct effective date of reactivation. CMS Ex. 8. The reconsidered determination explained:

> A revalidation application was not received within the allowed timeframes, and Dr. Trinidad's enrollment was subsequently deactivated on December 12, 2016 for a failure to complete the mandatory revalidation. A new application submission was received on January 17, 2017 and the revalidation process was approved for completion. The receipt date of an approved application serves as the date of reactivation. In this instance, the original PTAN is maintained with a gap in coverage from the original date of deactivation to the day prior to the date of reactivation. Claims for services rendered during the gap in coverage (December 12, 2016 through

[1] Psych Recovery staff apparently believed that, in approving Dr. Trinidad's revalidation application, NGS had removed the period of deactivation. *See* CMS Ex. 7 at 1. This belief was not unreasonable, since the approval letter NGS sent Psych Recovery listed the effective date of Dr. Trinidad's Medicare enrollment as May 15, 2009, and did not mention that there would be a period of deactivation from December 12, 2016 through January 16, 2017. *See* CMS Ex. 6. Nevertheless, the reconsidered determination clarified this point. *See* CMS Ex. 8.

> January 16, 2017) are not subject to reimbursement from Medicare. Reference the Medicare Program Integrity Manual, Chapter 15, Section 15.29.4.3 for clarification.

CMS Ex. 8 at 2.

Petitioner requested a hearing before an administrative law judge and the case was assigned to me. I issued an Acknowledgement and Pre-Hearing Order, dated April 25, 2017 (Pre-Hearing Order), that required each party to file a pre-hearing exchange consisting of a brief and any supporting documents. Pre-Hearing Order ¶ 4. CMS filed its brief (CMS Br.), which incorporated a motion for summary judgment, and 14 proposed exhibits (CMS Exs. 1-14). Petitioner filed a motion for summary judgment (P. Br.). Petitioner did not offer any proposed exhibits; nor did he object to the exhibits offered by CMS. Therefore, in the absence of objection, I admit CMS Exs. 1-14. Neither party offered the written direct testimony of any witness as part of its pre-hearing exchange. As stated in my April 25, 2017 Pre-Hearing Order, "[a]n in-person hearing to cross-examine witnesses will be necessary only if a party files admissible, written direct testimony, and the opposing party asks to cross-examine." Pre-Hearing Order ¶ 10. Therefore, an in-person hearing is not necessary, and I decide this case based on the parties' written submissions, without regard to whether the standards for summary judgment are satisfied.

II. Issue

The issue in this case is whether NGS, acting on behalf of CMS, properly established January 17, 2017, as the effective date of reactivation of Petitioner's Medicare enrollment and billing privileges.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(15), 498.5(*l*)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Discussion

A. Applicable Legal Authority

The Social Security Act (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). 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).

A supplier must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The regulations define "*Enroll/Enrollment*" as "the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services." 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. 42 C.F.R. § 424.515. However, CMS reserves the right to perform revalidations at any time. 42 C.F.R. § 424.515(d), (e). 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's 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's 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).

B. Findings of Fact and Conclusions of Law[2]

1. NGS received Dr. Trinidad's application to revalidate his Medicare billing privileges on January 17, 2017.

Psych Recovery staff submitted Forms CMS-855I and CMS-855R to revalidate Dr. Trinidad's Medicare enrollment and to reassign his Medicare payments to Psych Recovery. CMS Exs. 4, 5. NGS received the applications on January 17, 2017. CMS Exs. 4 at 1; 5 at 1. NGS approved the applications and reactivated Dr. Trinidad's Medicare billing privileges effective January 17, 2017. CMS Exs. 6, 7, 8.

[2] My findings of fact and conclusions of law appear as numbered headings in bold italic type.

2. The effective date of reactivation for Dr. Trinidad's Medicare billing privileges is January 17, 2017.

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).

It is undisputed that NGS received an application to revalidate Dr. Trinidad's Medicare enrollment, along with an application to reassign his Medicare payments to Psych Recovery, on January 17, 2017. CMS Exs. 4, 5. It is also undisputed that NGS subsequently approved those applications. CMS Ex. 6. Accordingly, as required by regulation, the effective date of reactivation of Dr. Trinidad's Medicare enrollment is January 17, 2017.

3. I have no authority to review the deactivation of Dr. Trinidad's Medicare billing privileges on December 12, 2016.

Petitioner argues that Dr. Trinidad's Medicare enrollment should not have been deactivated because NGS did not send notice of the requirement to revalidate and of the deactivation to Dr. Trinidad at the Psych Recovery address. P. Br. at 4-6. Petitioner does not contend that the 1690 University Avenue address and the P.O. Box address to which the revalidation requests were sent were invalid addresses for Dr. Trinidad. *See* P. Br. at 5. Instead, Petitioner's argument appears to be that a CMS contractor must send revalidation notices to all possible practice locations before deactivating a supplier's Medicare enrollment. *Id.* (citing Medicare Program Integrity Manual (MPIM), CMS Pub. 100-08, § 15.29.2).

I do not agree with Petitioner that the MPIM requires contractors to send revalidation notices to every possible practice location on file for a supplier.[3] Moreover, even if the

[3] In section 15.29.2 of the MPIM, CMS directs contractors that send revalidation letters by mail (rather than email) to mail "two revalidation notices to the provider/supplier's correspondence and special payment address and/or practice location address." Only if the contractor discovers that one of the locations is incorrect or the revalidation letter is returned as undeliverable is the contractor instructed to send an additional letter to "an address not used for the initial mailing." As noted, in the present case, NGS mailed copies of the revalidation letters to two addresses it had on file for Dr. Trinidad. CMS Ex. 1. There is no indication that either of the letters was returned as undeliverable. It therefore appears that NGS did all it was required to do to notify Dr. Trinidad of the need to revalidate his Medicare enrollment.

MPIM did impose such a requirement, I would still be without authority to overturn the deactivation of Dr. Trinidad's Medicare enrollment. That is because my jurisdiction in this case is limited to reviewing the effective date of the approval of Petitioner's reactivation enrollment application. 42 C.F.R. § 493.3(b)(15). I do not have jurisdiction to review CMS's deactivation of Petitioner's Medicare billing privileges because deactivation is not an "initial determination" and deactivation decisions have a separate review process. *See* 42 C.F.R. §§ 424.545(b), 498.3(b); *see also Willie Goffney, Jr., M.D.*, DAB No. 2763 at 4-5 (2017).

Thus, even if Petitioner were correct in asserting that NGS mishandled the request to revalidate Dr. Trinidad's Medicare enrollment information, this would not be a basis to grant Dr. Trinidad an earlier effective date. As an appellate panel of the Departmental Appeals Board observed in *James Shepard, M.D.*, DAB No. 2793 (2017), providers and suppliers may not challenge indirectly an action for which the regulations prohibit direct administrative review. *Id.* at 8. In *Shepard*, the panel held that the supplier could not obtain review of a CMS contractor's rejection of a previous enrollment application by challenging the effective date of enrollment based on a later approved application. For the same reasons articulated by the panel in *Shepard*, Dr. Trinidad's arguments in the present case amount to a backdoor challenge to a contractor determination—here, deactivation—for which there are no administrative appeal rights. *See id.*

Finally, to the extent Petitioner contends I should grant him an earlier effective date based on principles of equity or fairness, I may not set aside CMS's lawful exercise of its discretion based on principles of equity. *See, e.g.*, *Central Kansas Cancer Inst.*, DAB No. 2749 at 10 (2016); *see also Shepard*, DAB No. 2793 at 9.

V. Conclusion

I affirm CMS's determination that the effective date of Dr. Trinidad's Medicare enrollment and billing privileges is January 17, 2017.

/s/
Leslie A. Weyn
Administrative Law Judge