Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Decatur Health Imaging, LLC
(NPI: 1508973017),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-795

Decision No. CR4759

Date: December 13, 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 Decatur Health Imaging, LLC (Decatur or Petitioner) was March 7, 2016. Decatur requested a hearing before an administrative law judge to dispute this effective date. Because the CMS administrative contractor received an enrollment application to reactivate Decatur's billing privileges on March 7, 2016, and the CMS administrative contractor approved that application, March 7, 2016, is the correct effective reactivation date for Decatur's billing privileges.

I. Background and Procedural History

Decatur is an Independent Diagnostic Testing Facility (IDTF) located in Decatur, Alabama. CMS Exhibit (Ex.) 8 at 17-18, 114-15. On July 9, 2015, Steven Fletcher, M.D., who had a 6.7% ownership stake in Decatur, passed away. CMS Ex. 1; CMS Ex. 8 at 133; Petitioner's Ex. 1. On October 23, 2015, a CMS administrative contractor notified Decatur that it received verified information that Dr. Fletcher was deceased. The CMS administrative contractor also informed Decatur that "changes of this nature must

be reported by submission of an 855 change request to delete the individual from the provider or supplier's Medicare record" within 90 days or the CMS administrative contractor would deactivate Decatur's Medicare billing privileges. CMS Ex. 3.

In response to the letter, Decatur filed a CMS-855R (Reassignment of Medicare Benefits enrollment application), which the CMS administrative contractor received on December 22, 2015. CMS Ex. 4. On December 31, 2015, the CMS administrative contractor notified Decatur by letter that it received Decatur's enrollment application, but that the CMS administrative contractor was closing Petitioner's request because "[t]he CMS-855R application is not necessary for the transaction in question. The provider enrollment is already deactivated." CMS Ex. 6. The CMS administrative contractor appears to have made this statement because CMS had deactivated Dr. Fletcher's enrollment in the Medicare program on August 10, 2015, due to his death. CMS Ex. 18.

On January 25, 2016, the CMS administrative contractor deactivated Decatur's Medicare billing privileges because Decatur was not in compliance with Medicare requirements. CMS Ex. 7. On March 7, 2016, Decatur filed a CMS-855B enrollment application to reactivate its Medicare billing privileges and update Decatur's ownership information, including the removal of Dr. Fletcher as an owner. CMS Ex. 8 at 106, 110, 112, 133; CMS Ex. 9. On April 18, 2016, the CMS administrative contractor approved Decatur's enrollment application and set March 7, 2016, as the effective date for the reactivation of Decatur's billing privileges. CMS Ex. 15 at 1.

In its timely filed reconsideration request, Decatur requested an earlier effective date of January 25, 2016, which was the date of deactivation. Decatur asserted that it filed the wrong application (CMS-855R) based on the instructions from the CMS administrative contractor's representative. Petitioner contended that it would have filed a CMS-855B if the December 31, 2015 letter from the CMS administrative contractor stated that Decatur needed to file that form instead of the CMS-855R. CMS Ex. 16.

On June 20, 2016, the CMS administrative contractor's hearing officer issued an unfavorable reconsidered determination in which the hearing officer denied that the CMS administrative contractor provided incorrect instructions to Decatur. However, the hearing officer admitted that in two separate phone calls, representatives of the CMS administrative contractor told Decatur that it needed to file a CMS-855B and CMS-855R, respectively. CMS Ex. 17.

Petitioner timely requested a hearing to dispute the reconsidered determination. On August 15, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order) establishing 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 18 exhibits. Petitioner submitted its brief (P. Br.) and five 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 the opposing 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. Pre-Hearing Order ¶ 10; CRDP § 19(d).

III. Issue

Whether CMS had a legitimate basis to assign March 7, 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), (b)(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). As an IDTF, Petitioner is a supplier. 42 C.F.R. § 498.2 (definition of *Supplier*).

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 supplier seeking billing privileges under the Medicare program must "submit enrollment information on the applicable enrollment application. Once the . . . supplier successfully completes the enrollment process . . . CMS enrolls the . . . supplier into the Medicare program." 42 C.F.R. § 424.510(a). CMS then establishes an effective date for billing privileges. For IDTFs, the effective date is determined under the provisions in 42 C.F.R. § 410.33(i).

Further, for IDTFs, "[c]hanges in ownership . . . must be reported to the Medicare fee-for-service contractor on the Medicare enrollment application within 30 calendar days of the change." 42 C.F.R. §§ 410.33(g)(2), 424.516(b). A failure to timely report the change in ownership may result in deactivation. 42 C.F.R. § 424.540(a)(2).[1] 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 supplier's billing privileges for not reporting a change to information supplied on the enrollment application, the supplier may apply for reactivation of 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. The CMS administrative contractor received an enrollment application (CMS-855B) from Petitioner on March 7, 2016, which the CMS administrative contractor ultimately approved.

The CMS administrative contractor received Petitioner's CMS-855B enrollment application on March 7, 2016. CMS Ex. 8 at 106; CMS Ex. 9. Petitioner submitted the enrollment application to reactivate its Medicare billing privileges and update CMS on individuals with an ownership interest in Petitioner. CMS Ex. 8 at 110, 112. After receiving the enrollment application, the CMS administrative contractor requested additional information from Petitioner, and Petitioner timely provided that information. CMS Exs. 10-14. The CMS administrative contractor subsequently approved the application and reactivated Petitioner's Medicare billing privileges effective March 7, 2016. CMS Ex. 15.

2. The effective date for the reactivation of Petitioner's Medicare billing privileges is March 7, 2016.

The regulations provide the following rules regarding an IDTF's effective date for Medicare billing privileges:

> *Effective date of billing privileges.* The filing date of the Medicare enrollment application is the date that the Medicare contractor receives a signed provider enrollment application

[1] This regulation cross-references 42 C.F.R. § 424.520(b) for the requirement to report changes to information provided on an enrollment application. This cross-reference was correct when the Secretary promulgated 42 C.F.R. Part 424 in 2006. 71 Fed. Reg. 20,754, 20,779 (Apr. 21, 2006). However, in 2008, the Secretary moved the regulation related to reporting requirements to 42 C.F.R. § 424.516. Unfortunately, the Secretary did not modify 42 C.F.R. § 424.540 to account for the new citation. 73 Fed. Reg. 69,725 69,939-941 (Nov. 19, 2008).

> that it is able to process to approval. The effective date of billing privileges for a newly enrolled IDTF is the later of the following:
>
> (1) The filing date of the Medicare enrollment application that was subsequently approved by a Medicare fee-for-service contractor; or
>
> (2) The date the IDTF first started furnishing services at its new practice location.

42 C.F.R. § 410.33(i). Consistent with these regulations, CMS published guidance to its contractors that the effective date for the reactivation of Medicare billing privileges is the date when the contractor receives the completed enrollment application that the contractor ultimately processes to approval. Medicare Program Integrity Manual (MPIM) § 15.27.1.2.

In the present case, the CMS administrative contractor correctly determined that Petitioner's effective date for its reactivated Medicare billing privileges is March 7, 2016, because that is the date on which Petitioner filed the enrollment application that the CMS administrative contractor approved.

Petitioner argues that the CMS administrative contractor provided Petitioner with incorrect information resulting in Petitioner's failure to file the correct CMS-855 form and deactivation. Although Petitioner asserts that this argument goes to the effective date of reactivation, Petitioner's argument essentially questions the legitimacy of the deactivation. P. Br. at 2-4. I cannot entertain this argument because I have no jurisdiction to review the CMS administrative contractor's decision to deactivate Petitioner. I only have jurisdiction to review the Secretary's "initial determinations," and CMS's decision to deactivate billing privileges is not an initial determination. *See* 42 C.F.R. § 498.3. Instead, the Secretary provided suppliers with a right to further review from CMS. 42 C.F.R. § 424.545(b).

I note that the CMS administrative contractor informed Petitioner of the death of one of its owners and reminded Petitioner of its duty to provide CMS with updated information. CMS Exs. 2, 3. The CMS administrative contractor did not need to provide this notice because Petitioner was obligated to timely notify CMS of this on its own. The CMS administrative contractor also provided Petitioner with 90 days to update its information with CMS when the regulations only provide for 30 days. 42 C.F.R. § 410.33(g)(2). Therefore, by the time Petitioner was deactivated, there had been a prolonged failure to properly report the death of one of its owners.

Finally, in its reconsideration request, Petitioner stated that if it did not prevail in its appeal, it "will be required to attempt to collect amounts due from patients." CMS Ex. 16 at 3. However, the regulations state:

> If any provider or supplier furnishes an otherwise Medicare covered item or service for which payment may not be made by reason of [deactivation], any expense incurred for such otherwise Medicare covered item or service **shall be the responsibility of the provider or supplier.** The provider or supplier may also be criminally liable for pursuing payments that may not be made by [deactivation], in accordance with section 1128B(a)(3) of the Act.

42 C.F.R. § 424.555(c) (emphasis added).

V. Conclusion

I affirm CMS's determination that Petitioner's effective date for the reactivation of its Medicare billing privileges is March 7, 2016.

/s/
Scott Anderson
Administrative Law Judge