Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Julio Ortiz, M.D., and
Julio Ortiz, M.D., Medical Services, P.A.,

Petitioners,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-515

Decision No. CR2886

Date: August 9, 2013

DECISION

In August 2012, Petitioners, Julio Ortiz, M.D. (Dr. Ortiz) and his medical practice, Julio Ortiz, M.D., Medical Services, P.A. (Medical Services), submitted Medicare enrollment applications to First Coast Services Options (First Coast), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS). Before then, and since 1969, Dr. Ortiz was enrolled in the Medicare program, but on April 13, 2012, First Coast deactivated his Medicare billing privileges for reasons other than nonsubmission of a claim. Also, while Medical Services had been issued a National Provider Identifier (NPI), it was never enrolled in the Medicare program prior to the August 2012 enrollment applications. First Coast processed Petitioners' August 2012 enrollment applications and established an effective date for Petitioners' Medicare billing privileges. Dissatisfied with the effective date granted, Petitioners appealed arguing that First Coast erroneously deactivated Dr. Ortiz's billing privileges in April 2012, and based on that error, Dr. Ortiz and Medical Services should be entitled to an effective date retroactive to Dr. Ortiz's deactivation date.

For the reasons explained below, I find that the deactivation of Dr. Ortiz's billing privileges is not a determination subject to review in this proceeding and that First Coast properly established the effective date for Petitioners' Medicare billing privileges based on its receipt of Petitioners' August 2012 enrollment applications.

I. Background and Procedural History

On September 30, 2011, First Coast requested that Dr. Ortiz revalidate his existing Medicare enrollment information. *See* CMS Exhibit (Ex.) 12, at 2 ¶ 9. In response, on October 3, 2011, Dr. Ortiz submitted a form CMS-855I – an enrollment application – to revalidate his information. CMS Ex. 3. Several sections of the 855I were incomplete, and Dr. Ortiz listed, for the first time, Medical Services as a practice location. CMS Ex. 3, at 21-26. Before the October 2011 enrollment application, Dr. Ortiz had been affiliated with a practice group named Cardiology Associates of A.M.I. Kendall, Inc. (Cardiology Associates). *See* CMS Ex. 6, at 2. However, in this latest application, Dr. Ortiz did not list Cardiology Associates as a current practice location, nor did he provide a valid NPI number for Medical Services. CMS Ex. 3, at 21-22.

By two letters dated March 12, 2012, First Coast advised Dr. Ortiz and Medical Services of the deficiencies in the October 2011 enrollment application. First Coast required that Dr. Ortiz and Medical Services correct the errors and omissions within 30 days, *i.e.*, no later than April 11, 2012. CMS Ex. 6. Neither Dr. Ortiz nor Medical Services responded to the request for more information. Accordingly, by letter dated April 13, 2012, First Coast denied the October 3, 2011 enrollment application. CMS Ex. 10, at 1-4. First Coast also informed Dr. Ortiz by separate letter (also dated April 13, 2012) that it had deactivated his Medicare billing privileges pursuant to 42 C.F.R. § 424.540(a) for his "failure to respond to the request for additional information mailed on March 12, 2012." CMS Ex. 10, at 5, 8. The deactivation notice advised Dr. Ortiz that he had to submit a new enrollment application to reactivate his billing privileges. CMS Ex. 10, at 5.

On August 9, 2012, Petitioners submitted new enrollment applications, which First Coast received on August 14, 2012. CMS Ex. 7. First Coast processed the applications to completion, and, on December 19, 2012, notified Dr. Ortiz and Medical Services that both were enrolled in Medicare with an "effective date" of July 15, 2012.[1] CMS Ex. 2.

[1] First Coast inaccurately used the term "effective date" to refer to the date when Petitioners may retrospectively bill for Medicare services. By regulation, the "effective date" would ordinarily be the date First Coast received Petitioners' application that it eventually approved. *See* 42 C.F.R. § 424.520(d). CMS may, however, permit Petitioners to "retrospectively bill" for services for up to 30 days prior to that effective date. 42 C.F.R. § 424.521(a). For clarity, this decision uses "effective date" in later sections to refer to the effective date of enrollment that is established by regulation, not the date when Petitioners' retrospective billing begins.

Petitioners requested reconsideration of the effective date. On January 22, 2013, First Coast affirmed its prior determination that the effective date of Petitioners' enrollment and billing privileges was based on the receipt of the August 9, 2012 enrollment applications.[2] CMS Ex. 1. On February 27, 2013, Petitioners timely filed a request for hearing (RFH) to challenge the effective date of their Medicare billing privileges.

On March 15, 2013, I issued an Acknowledgment and Pre-Hearing Order (March 15 Order), which directed the parties to file written briefs and documentary evidence. On April 19, 2013, CMS filed its prehearing brief (CMS Br.) and 12 proposed exhibits (CMS Exs. 1-12), including the written direct testimony of one witness (CMS Ex. 12). On May 15, 2013, Petitioners filed a prehearing brief (P. Br.) and four proposed exhibits (P. Exs. 1-4). In the absence of objections, I admit CMS Exs. 1-12 and P. Exs. 1-4 into the record. In the March 15 Order, I directed the parties to request a hearing if necessary to cross-examine witnesses. *See* March 15 Order at ¶ 9. Petitioner did not present any witness testimony subject to cross-examination, and Petitioner did not request a hearing to cross-examine CMS's witness. Accordingly, I find that there is no need to convene a hearing, and I decide this case on the written record.

II. Discussion

A. Issue Presented

This case presents the following issue:

> Whether First Coast, acting on behalf of CMS, properly established the effective date for the reactivation of Dr. Ortiz's Medicare billing privileges and the enrollment of Medical Services in the Medicare program.

[2] The effective date at issue is the date First Coast reactivated Dr. Ortiz's billing privileges based on the August 2012 application (pursuant to 42 C.F.R. § 424.540(b)(1)) and the date First Coast enrolled Medical Services as a supplier of services in the Medicare program (pursuant to 42 C.F.R. § 424.510(a)). The effective date of reactivation for Dr. Ortiz's billing privileges and the effective date of the enrollment of Medical Services are "initial determinations" under 42 C.F.R. § 498.3(b)(15). *See, e.g.*, *John Heverin, Ph.D.*, ALJ Ruling 2013-6, at 3 (Mar. 19, 2013) ("While the determination to reactivate a supplier's billing privileges is not an 'initial determination,' and therefore not subject to review before an ALJ, establishing an effective date for supplier approval, and thus the supplier's billing privileges, is an 'initial determination' by regulation.").

B. Background Law

Suppliers[3] such as Petitioners must enroll in the Medicare program to "receive payment for covered Medicare items or services from either Medicare (in the case of an assigned claim) or a Medicare beneficiary (in the case of an unassigned claim) . . . ." 42 C.F.R. § 424.505. The regulations at 42 C.F.R. Part 424, subpart P, establish the requirements for a supplier to enroll in the Medicare program. *Id.* §§ 424.510 – 424.516; *see* Social Security Act § 1866(j)(1)(A) (authorizing the Secretary of the U.S. Department of Health and Human Services to establish by regulation the process for enrolling providers and suppliers in the Medicare program). Prospective suppliers must, among other things, submit an enrollment application in order to begin the enrollment process. 42 C.F.R. § 424.510(a).

Deactivated suppliers must also submit a new enrollment application to reactivate their billing privileges if the basis for deactivation was "for any reason other than the nonsubmission of a claim." 42 C.F.R. § 424.540(a)(3), (b)(1). The effective date of enrollment for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is "the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location." *Id.* § 424.520(d).

C. Findings of Fact & Conclusions of Law

1. Petitioners are not entitled to review of the April 13, 2012 deactivation of Dr. Ortiz's billing privileges.

Petitioners explain in their hearing request that the deactivation of Dr. Ortiz's billing privileges was the result of a "great degree of confusion and miscommunication" between Dr. Ortiz's office and First Coast. RFH at 2. Petitioners claim that First Coast deactivated Dr. Ortiz's billing privileges because of "a technicality" and an "administrative glitch." RFH at 2-3. Petitioners request reversal of the contractor's decision and an effective date retroactive to the date of deactivation. RFH at 3.

At its core, Petitioners' hearing request challenges the appropriateness of First Coast's decision to deactivate Dr. Ortiz's billing privileges on April 13, 2012. However, the decision of CMS or its contractor to deactivate the billing privileges of a provider or supplier is not an "initial determination" subject to review by an ALJ. *See* 42 C.F.R. § 498.3(b). By regulation, only an "initial determination" by CMS or its contractor

[3] A "supplier" is "a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." 42 C.F.R. § 400.202.

triggers the appeal rights to an ALJ for an affected provider or supplier. 42 C.F.R. § 498.5(*l*)(1). Therefore, because the deactivation of Dr. Ortiz's billing privileges is not an "initial determination" subject to review, I do not have jurisdiction to consider whether First Coast properly deactivated Dr. Ortiz's billing privileges on April 13, 2012.[4]

2. The denial of the October 2011 enrollment application is final and binding because Dr. Ortiz did not request further review.

The denial of a Medicare enrollment application is an "initial determination" subject to review as long as the affected party preserves its appeal rights by requesting reconsideration and, if necessary, requesting a hearing before an administrative law judge. 42 C.F.R. §§ 498.3(b)(17), 498.5(*l*)(1)-(2). First Coast denied the October 2011 enrollment application because Dr. Ortiz and Medical Services submitted an incomplete application and did not respond to First Coast's request for additional information. CMS Ex. 10, at 1.

Neither Petitioners nor CMS submitted evidence showing that Petitioners requested further review of First Coast's April 13, 2012 denial of the enrollment application within the 60-day timeframe for doing so. Accordingly, I find that Petitioners did not challenge the denial of the October 2011 application in accordance with the regulations. *See* 42 C.F.R. §§ 498.22(b)(3), 498.40(a)(2). That denial, therefore, is final and binding. 42 C.F.R. § 498.20(b). Petitioners have not requested an extension of time to request review of that denial, nor have they proffered any showing of good cause to extend the filing deadline for a request for review. Thus, there is no basis to extend the deadline to request review of the April 13, 2012 contractor's denial.

3. Dr. Ortiz was required to submit a new enrollment application after First Coast deactivated his billing privileges and denied the October 2011 enrollment application.

On April 14, 2012, First Coast deactivated Dr. Ortiz's billing privileges because he had not provided updated enrollment information in response to First Coast's request, nor had Dr. Ortiz timely notified First Coast of a change in his practice location. *See* CMS Ex. 10, at 5; 42 C.F.R. § 424.540(a)(2). Upon being deactivated "for any reason other than the nonsubmission of a claim," the regulation required Dr. Ortiz to submit "a new enrollment application to reactivate [his] Medicare billing privileges, or when deemed appropriate, at a minimum, recertify that the information currently on file with Medicare is correct." 42 C.F.R. § 424.540(b)(1). The conspicuous language of the deactivation notice also advised Dr. Ortiz of this regulatory requirement: "In order to resume billing, **immediately** submit an updated provider enrollment paper application 855 form or

[4] The regulations permit a deactivated provider or supplier to file a "rebuttal" pursuant to 42 C.F.R. § 405.374. 42 C.F.R. § 424.545(b).

review, update and certify your information via the internet-based PECOS [Provider Enrollment, Chain, and Ownership System]." CMS Ex. 10, at 5 (emphasis in original).

Based on Dr. Ortiz's change in practice location, it was not an appropriate option for him to "recertify that the information currently on file with Medicare is correct," because that information did not include the Medical Services practice location. Therefore, because First Coast deactivated Dr. Ortiz's billing privileges for a reason other than the nonsubmission of a claim, he had to submit a new enrollment application to reactivate his billing privileges. Dr. Ortiz recognized this requirement and submitted an enrollment application in August 2012.

4. First Coast properly established the effective date of Petitioners' Medicare billing privileges as August 14, 2012, with retrospective billing starting July 15, 2012.

The regulation addressing the effective date of providers' and suppliers' Medicare billing privileges states:

> The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations *is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor* or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d) (emphasis added). The "date of filing" is the date that the Medicare contractor "receives" a signed provider enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,726, at 69,769 (Nov. 19, 2008).

On August 14, 2012, First Coast received Petitioners' enrollment applications dated August 9, 2012. *See* CMS Ex. 7, at 74 (certified mail envelope containing "MEDICARE Received" date-stamped August 14, 2012). Petitioners do not dispute the date First Coast received the enrollment applications. Therefore, I find that for purposes of establishing an effective date pursuant to 42 C.F.R. § 424.520, First Coast received Petitioners' enrollment applications on August 14, 2012.

First Coast notified Petitioners that it approved their August 2012 Medicare supplier enrollment applications with a retrospective billing date of July 15, 2012. CMS Ex. 2, at 1, 6. First Coast based the effective date on "the receipt date of the application," which is August 14, 2012. CMS Exs. 2, at 1; 7, at 74. The reconsidered determination found that the initial determination properly established the effective date of Petitioners' billing privileges.

First Coast ultimately approved the enrollment applications that it received on August 14, 2012. Dr. Ortiz stated in his enrollment application that he began furnishing services to patients at the Medical Services location on June 1, 1998. Accordingly, the regulation requires that the "effective date" for Petitioners be August 14, 2012, which is the later of the date First Coast received Petitioners' approvable enrollment application versus the date Dr. Ortiz first saw patients at the Medical Services location. *See* 42 C.F.R. § 424.520(d).

Further, under the regulations, CMS may permit retrospective billing if a practitioner meets all program requirements:

> Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician or a nonphysician practitioner organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—
>
> > (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or
> > (2) 90 days [in certain emergencies not applicable to this case].

42 C.F.R. § 424.521(a).

Here, the earliest effective date for retrospective billing privileges that could be granted was 30 days prior to August 14, 2012. Thirty days prior to August 14, 2012, is July 15, 2012. Therefore, First Coast made a valid discretionary decision to permit Petitioners to bill for Medicare services back to July 15, 2012.

III. Conclusion

For the foregoing reasons, I conclude that First Coast properly determined that the effective date of Petitioners' Medicare billing privileges was based on its receipt of Petitioners' August 2012 enrollment applications. Petitioners' effective date, therefore, is August 14, 2012, with retrospective billing privileges starting on July 15, 2012.

_____/s/_____
Joseph Grow
Administrative Law Judge