

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Benner Chiropractic PC
PTAN: J100221932/NPI: 1508258245
Petitioner,¹

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-4061

Decision No. CR4939

Date: September 19, 2017

DECISION

Petitioner, Benner Chiropractic PC, is a group chiropractic practice in Saratoga Springs, New York, that applied to enroll in the Medicare program. Its principals, Alicia Berg and Ronald James Benner, are chiropractors who also filed Medicare enrollment applications, in order to reassign their Medicare benefits to the group practice. (I will refer to the group practice and its principals collectively as “Petitioners.”) The Centers for Medicare & Medicaid Services (CMS) granted enrollment for all three applications with a billing date of May 3, 2015 (and, by inference, an effective date of June 1, 2015). Petitioners challenge that billing date, which, as explained below, I treat as a challenge to the effective date. *See* 42 C.F.R. § 498.3(b)(15).

For the reasons set forth below, I find that June 1, 2015 is the earliest possible effective date for Petitioners’ enrollments and that CMS had the authority to grant Petitioners a May 3, 2015 billing date.

¹ Also a part of this case are the enrollment applications of Alicia Berg (PTAN: J400222647; NPI: 1073678975) and Ronald James Benner (PTAN: J400222657; NPI: 1982781365). CMS Ex. 7.

Background

In letters dated July 1 and 7, 2015, the Medicare contractor, National Government Services, advised Petitioners that it approved their Medicare enrollments with an effective billing date of May 3, 2015. CMS Exhibits (Exs.) 6 and 7. Petitioners sought reconsideration, asking that the “effective date” be changed to March 9, 2015, the date Benner Chiropractic began actively treating Medicare patients. CMS Exs. 8 at 2; 9 at 3. In reconsidered determinations, dated July 27 and 28, 2015, the contractor affirmed the May 3 date, finding that Benner Chiropractic’s application was received on June 1, 2015, and the regulations “permit the effective date to be retroactive 30 days back from the date the application was received.” CMS Ex. 8 at 6; CMS Exs. 10, 11.

Petitioners appealed.

Although CMS has moved for summary judgment, neither party proposes any witnesses, so an in-person hearing would serve no purpose. *See* Acknowledgment and Prehearing Order at 3, 5-6 (¶¶ 4(c)(iv), 8-10 (September 10, 2015). This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

With its prehearing motion and brief (CMS Br.), CMS submits 11 exhibits (CMS Exs. 1-11). Petitioners’ submissions include three exhibits (P. Exs. 1-3). In the absence of any objections, I admit into evidence CMS Exs. 1-11 and P. Exs. 1-3.

Discussion

Because Petitioner Benner Chiropractic submitted its subsequently-approved enrollment application on June 1, 2015, its Medicare enrollment can be no earlier than that date, and Chiropractors Berg and Benner could not assign their benefits to Benner Chiropractic until the practice was enrolled in the program.²

Program requirements. 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

² I make this one finding of fact/conclusion of law.

a CMS-approved paper application or an electronic process approved by the Office of Management and Budget. 42 C.F.R. § 424.502.³

When CMS determines that a nonphysician practitioner meets the applicable enrollment requirements, it grants Medicare billing privileges, which means that the practitioner can submit claims and receive payments from Medicare for covered services provided to program beneficiaries. For nonphysician practitioners, the effective date for billing privileges “is the *later* of the date of filing” a subsequently-approved enrollment application or “the date an enrolled . . . 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 the Medicare contractor receives an application. *Karthik Ramaswamy, M.D.*, DAB No. 2563 at 2 (2014).

If a nonphysician practitioner meets all program requirements, CMS allows it 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. . . .” 42 C.F.R. § 424.521(a)(1).

The Medicare contractors have created much confusion because they are inclined to conflate the effective date with the retrospective billing date, as the contractor did in this case. The original notice letters do not even mention the effective date itself; they refer to “PTAN [Provider Transaction Access Number] Effective Date.” CMS Exs. 6 and 7. The reconsidered determinations offer a slight improvement because they note that Benner Chiropractic’s application was received on June 1, 2015, but they nevertheless mischaracterize the “effective date” as May 3. CMS Ex. 8 at 6; CMS Exs. 10 and 11. In fact, May 3 is the retrospective billing date. The distinction is important; I have the authority to review “the effective date of . . . supplier approval.” 42 C.F.R. § 498.3(b)(15). But nothing in the regulations gives me the authority to review CMS’s determinations regarding retrospective billing.

Here, Alicia Berg and Ronald Benner were enrolled in the Medicare program and assigning their benefits to a different group practice when, in applications filed March 25 and 30, 2015, (CMS Forms 855R) they sought to reassign those benefits to Benner Chiropractic. CMS Exs. 1 and 2. See 42 C.F.R. § 424.80(b) (allowing suppliers to reassign their claims in limited situations). But Benner Chiropractic was not then enrolled in the program. Thereafter, Benner Chiropractic filed its own application (CMS Form 855B) on **June 1, 2015**. The contractor asked for additional development, which Petitioners provided (CMS Exs. 4 and 5), and the contractor subsequently approved the June 1 enrollment application.

³ CMS’s electronic process is referred to as PECOS (Provider Enrollment, Chain, and Ownership System).

