

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Martha Singer, MD
(PTAN: CA192373),
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-826

Decision No. CR4789

Date: February 9, 2017

DECISION

The effective date of the Medicare enrollment and billing privileges of Petitioner, Martha Singer, MD, is April 5, 2016, with retrospective billing privileges beginning March 6, 2016.

I. Background and Procedural History

Petitioner is an orthopedic surgeon. Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 1 at 1. Petitioner submitted a Medicare enrollment application to Noridian Healthcare Solutions, LLC (Noridian), a Medicare administrative contractor, that Noridian received January 21, 2016. CMS Ex. 1. Noridian informed Petitioner, via email messages sent on January 28, February 5, and February 10, 2016, that her application was incomplete and requested that she make various corrections to the application.¹ CMS Ex. 2. On February 29, 2016, Noridian rejected the application after

¹ CMS contends that “[t]he regulations specify that applications that are rejected have no appeal rights. 42 C.F.R. § 424.525(d)” and that “CMS’s rejection of an enrollment application is not an initial determination and, therefore, the rejection may not be (Footnote continued next page.)

all required corrections were not submitted in accordance with a February 28, 2016 deadline. CMS Ex. 2 at 1.

Petitioner submitted a new enrollment application on April 5, 2016. CMS Ex. 3. In a letter dated April 27, 2016, Noridian granted Petitioner's application, at which time it assigned a Provider Transaction Access Number (PTAN). CMS Ex. 4. Noridian favorably assigned a March 6, 2016 effective date of billing privileges based on its apparent interpretation that 42 C.F.R. § 424.521(a) allowed for an earlier effective date of billing privileges based on the 30-day retrospective billing provision contained in that regulation. See CMS Ex. 4 at 1; see CMS Brief (Br.) at 3; 42 C.F.R. § 424.521(a).

In a letter dated May 4, 2016, Petitioner requested reconsideration of the April 27, 2016 determination and requested that the effective date of her enrollment be changed to September 1, 2015, which is a date that precedes her initial filing of her enrollment applications. CMS Ex. 7; see CMS Ex. 1. Noridian issued a reconsidered determination on July 7, 2016, at which time it determined that "[t]he 855I application, which was received April 5, 2016, was processed and given the effective date of March 6, 2016," and that "[t]his effective date includes the 30 days from receipt of application that is allowed for a newly enrolling Sole Proprietor." CMS Ex. 8 at 2. The letter further explained that "[t]he requested effective date of September 1, 2015 cannot be honored." CMS Ex. 8 at 2.

Petitioner submitted a request for a hearing by an administrative law judge (ALJ) that was dated July 25, 2016, and filed on August 12, 2016. I issued an Acknowledgment and Pre-Hearing Order (Order) on August 24, 2016, in which I directed the parties to file their respective pre-hearing exchanges, to include briefs and supporting exhibits, by specified deadlines. I also gave notice in Section 4 of my Order that a party may file a motion for summary judgment with its pre-hearing exchange.

CMS filed a motion for summary judgment and a pre-hearing brief, along with CMS Exs. 1 through 9, on September 28, 2016.² Petitioner filed a brief in opposition to CMS's

(Footnote continued.)

challenged on appeal." CMS Br. at 4-5. CMS further argues that "[t]his Tribunal is not reviewing Noridian's adherence to procedures for verifying information submitted as part of an enrollment application." CMS Br. at 6.

² After Petitioner did not submit a pre-hearing exchange and failed to respond to an Order directing her to show cause and file her pre-hearing exchange, I ordered that Petitioner's request for hearing be dismissed. Petitioner thereafter submitted a motion to *(Footnote continued next page.)*

motion for summary judgment, along with three exhibits.³

In the absence of any objections, I admit CMS Exs. 1 to 9 and P. Exs. 1 to 3. Neither party has requested an in-person hearing for the purpose of obtaining testimony or cross-examination. The matter is ready for a decision on the merits.⁴

II. Jurisdiction

I have jurisdiction to decide this case. *See* 42 C.F.R. §§ 498.3(b)(15), 498.5(l)(2).

III. Discussion

A. Issue

The issue in this case is:

Whether the effective date of Petitioner's Medicare enrollment and billing privileges is April 5, 2016, with a retroactive effective date of billing privileges of March 6, 2016.

(Footnote continued.)

vacate the dismissal in which she demonstrated good cause for reopening of the request for hearing. In a separate Order issued contemporaneously with this decision, I granted Petitioner's motion to vacate the dismissal of her request for hearing.

³ Petitioner filed four exhibits in support of her motion to vacate the dismissal and her response to CMS's motion for summary judgment, and she did not mark, identify, or paginate her submissions as required by my Order. Three of these exhibits pertain to her response to CMS's motion for summary judgment. In lieu of rejecting these submissions, I will admit these three exhibits as follows: Petitioner Exhibit (P. Ex. 1), letter dated August 16, 2016; P. Ex. 2, email correspondence dated September 30, 2015; P. Ex. 3, email correspondence dated October 3, 2015.

⁴ CMS has argued that summary disposition is appropriate. It is unnecessary in this instance to address the issue of summary disposition, as neither party has requested an in-person hearing.

B. Background law

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers. Act §§ 1835(a) (42 U.S.C. § 1395n(a)); 1842(h)(1) (42 U.S.C. § 1395u(h)(1)). Petitioner is a “supplier” of services under the Act and the regulations. A “supplier” furnishes services under Medicare, and the term “supplier” applies to physicians or other practitioners and facilities that are not included within the definition of the phrase “provider of services.” Act § 1861(d) (42 U.S.C. § 1395x(d)). Pursuant to 42 C.F.R. § 424.505, a provider or supplier must be enrolled in the Medicare program and be issued a billing number to have billing privileges and to be eligible to receive payment for services rendered to a Medicare-eligible beneficiary.

The effective date of enrollment in Medicare of a physician, nonphysician practitioner, and physician and nonphysician practitioner organizations is governed by 42 C.F.R. § 424.520(d). Pursuant to section 424.520(d), the effective date of enrollment for a physician or nonphysician practitioner may only be the later of two dates: the date when the practitioner filed an application for enrollment that was subsequently approved by a Medicare contractor charged with reviewing the application on behalf of CMS; or, the date when the practitioner first began providing services at a new practice location. As applicable here, an enrolled physician or nonphysician practitioner may retrospectively bill Medicare for services provided to Medicare-eligible beneficiaries up to 30 days prior to the effective date of enrollment, if circumstances precluded enrollment before the services were provided. 42 C.F.R. § 424.521(a).

C. Findings of Fact, Conclusions of Law, and Analysis⁵

1. Pursuant to 42 C.F.R. § 424.520(d), Petitioner’s effective date of Medicare enrollment is April 5, 2016, the date of filing of the Medicare enrollment application that Noridian was able to process to approval.

2. Petitioner was authorized pursuant to 42 C.F.R. § 424.521(a)(1) to bill Medicare for services provided to Medicare-eligible beneficiaries up to 30 days prior to her effective date of enrollment, i.e., beginning on March 6, 2016.

⁵ Findings of fact and conclusions of law are set forth in bold and italics.

Petitioner, in her request for hearing, seeks an earlier date of September 1, 2015, as the effective date for her Medicare enrollment and billing privileges. There is no dispute that Noridian received the enrollment applications that it ultimately processed to approval on April 5, 2016. CMS Ex. 3. Therefore, the earliest possible effective date for Petitioner's Medicare enrollment and billing privileges is April 5, 2016, the date the applications were filed, as the regulation specifically provides that the effective date is the later of the date of filing a Medicare enrollment application that was subsequently approved or the date services were first provided. 42 C.F.R. § 424.520(d). Retrospective billing may be permitted for 30 days prior to the effective date of enrollment and billing privileges pursuant to 42 C.F.R. § 424.521, and Noridian allowed Petitioner to bill for services effective 30 days prior to the submission of the applications, effective March 6, 2016. CMS Ex. 4 at 1. Accordingly, I conclude that, pursuant to 42 C.F.R. § 424.520(d), the effective date of Petitioner's Medicare enrollment and billing privileges is April 5, 2016, with an earliest possible billing date beginning March 6, 2016, in accordance with 42 C.F.R. § 424.521(a)(1).

Petitioner explains that she “was under the impression from the office manager at [her] prior office that there was a window of time—a year?—after surgery in which to submit Medicare billing.” P. Br. Petitioner further contends that she attempted to register for Noridian's Endeavor online user portal on September 30, 2015, and Noridian rejected her Endeavor registration request shortly thereafter. P. Exs. 2, 3. Petitioner has not submitted any evidence that she submitted a Medicare enrollment *application* (i.e., Form CMS-855I) that could be processed to approval until April 5, 2016; Petitioner's attempt to register for the Endeavor portal does not evidence that she submitted an enrollment application that could be processed to approval at that time. In fact, it appears that Petitioner's registration for Endeavor was rejected on October 3, 2015, due to the lack of a valid National Provider Identifier. P. Ex. 3.

Petitioner asks to be “paid for work she [has] done for patient[s] covered by [M]edicare.” P. Br. Petitioner further remarks that “the obstacles to trying to register with Noridian are unreasonably difficult.” P. Br. (emphasis in original). As much as I may agree with Petitioner that successfully navigating the Medicare enrollment process may be a challenge for a sole practitioner such as Petitioner, she does not identify any *error* by the contractor that I, as the presiding ALJ, am empowered to rectify. *See* 42 C.F.R. § 424.520(d) (directing earliest possible effective date for enrollment); 42 C.F.R. §§ 498.3, 498.5 (addressing initial determinations that may be appealed to an ALJ). Petitioner's request amounts to a request for equitable relief, and I simply do not have the authority to grant equitable relief in the form of an earlier effective date of enrollment. *US Ultrasound*, DAB No. 2302 at 8 (2010) (“[n]either the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements.”). Petitioner points to no authority by which I may grant it relief from the applicable regulatory requirements, and I have no authority to declare statutes or regulations invalid or ultra vires. *1866ICPayday.com, L.L.C.*, DAB

No. 2289 at 14 (2009) (“[a]n ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground.”).

IV. Conclusion

For the foregoing reasons, I conclude that the effective date of Petitioner’s Medicare enrollment and billing privileges is April 5, 2016, with a 30-day period for retrospective billing beginning on March 6, 2016.

_____/s/
Leslie C. Rogall
Administrative Law Judge