

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Roopa Ram, M.D., and Excel Health of Haskell, PLLC
(PTANs: 257949ZVZZ, 518689)
(NPIs: 1104949882, 1295104578),
Petitioners,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-241

Decision No. CR4944

Date: October 2, 2017

DECISION

Petitioners, Roopa Ram, M.D. and Excel Health of Haskell, PLLC, appeal the determination establishing the effective date of their enrollment and billing privileges as Medicare suppliers. For the reasons explained below, I find that Novitas Solutions (Novitas), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), properly determined that the effective date of Petitioners' Medicare enrollment is July 14, 2016, with retrospective billing permitted as of June 14, 2016.¹ I therefore affirm the effective date of Petitioners' Medicare enrollment and billing privileges.

¹ Novitas identified June 14, 2016, as the "effective date" of Petitioners' enrollment. CMS Exhibit (Ex.) 4 at 2. However, by regulation, the "effective date" of enrollment is the date Novitas received enrollment applications from Petitioners that it eventually approved. *See* 42 C.F.R. § 424.520(d). In this case, Novitas received Petitioners' enrollment applications on July 14, 2016. *See, e.g.*, CMS Ex. 7 at 1. CMS may permit a supplier to "retrospectively bill" for services for up to 30 days prior to that effective date. 42 C.F.R. § 424.521(a). Because June 14, 2016 is 30 days prior to the date Novitas received Petitioners' applications, it appears that Novitas used the term "effective date" to refer to the date from which Petitioners are authorized to retrospectively bill for Medicare services. For clarity, I use the term "effective date" in this decision to refer to

I. Background

The following facts are undisputed. Roopa Ram, M.D. (Dr. Ram) is a family practice physician and the sole owner of Excel Health of Haskell, PLLC (Excel Health), a group medical practice or clinic. CMS Ex. 7 at 1-2. Kimberly Willse is the designated contact person for Excel Health. CMS Ex. 7 at 3.

On February 9, 2016, Ms. Willse submitted a Medicare enrollment application via the Medicare Provider, Enrollment, Chain, and Ownership System (PECOS) to Novitas on behalf of Excel Health. *See* Petitioners' (P.) Ex. 1; *see also* Request for Hearing (RFH). The application incorrectly identified Srinivasan Ramaswamy, M.D., as the owner of Excel Health. *See* P. Ex. 1; *see also* RFH. On February 17, 2016, Novitas sent an email to Ms. Willse, requesting additional information and supporting documents. CMS Ex. 10. On February 22, 2016, Novitas sent a letter to the attention of Ms. Willse. CMS Ex. 9. In that letter, Novitas stated: "We are closing this request and returning your application(s) [because] . . . [t]he incorrect scenario was selected for the organization structure." CMS Ex. 9 at 1. The letter further advised that, to resubmit the application, "you must complete a new Medicare enrollment application(s)." *Id.*

On July 14, 2016, Ms. Willse submitted enrollment applications on behalf of Dr. Ram and Excel Health. CMS Exs. 6-8. Novitas approved the applications on August 9, 2016, with an effective date of July 14, 2016. CMS Ex. 4.

Petitioners requested reconsideration of the effective date on October 4, 2016. On November 15, 2016, Novitas issued a reconsidered determination upholding July 14, 2016, as the effective date pursuant to 42 C.F.R. § 424.520(d), with a retrospective billing date of June 14, 2016, pursuant to 42 C.F.R. § 424.521(a). The determination further stated that:

The reconsideration request and all the documents on file have been reviewed. On February 9, 2016, Novitas Solutions received a web CMS-855I enrollment application for Srinivasa Ramaswamy, MD to establish an enrollment file for Excel Health of Haskell PLLC. The application was returned on February 22, 2016 due to Roopa Ram, MD, not Srinivasa Ramaswamy, MD, being the sole owner of Excel Health of Haskell PLLC.

* * *

the effective date of enrollment that is established by regulation (July 14, 2016), not the date from which retrospective billing is authorized (June 14, 2016).

On July 14, 2016, Novitas Solutions received a web CMS-855I enrollment application for Roopa Ram, MD to establish the sole owner enrollment file for Excel Health of Haskell, PLLC. The application was approved on August 9, 2016

* * *

Roopa Ram, MD has not provided evidence to support an earlier effective date.

CMS Ex. 1 at 2.

Petitioners requested a hearing before an administrative law judge on December 28, 2016.² RFH. The case was assigned to me, and I issued an Acknowledgement and Pre-Hearing Order dated January 9, 2017 (Order). My Order directed each party to file a pre-hearing exchange consisting of a brief and any supporting documents. The Order also set forth the deadlines for those filings. Order ¶ 4. In response to the January 9, 2017 Order, CMS filed a brief (CMS Br.), including a motion for summary judgment and 14 exhibits (CMS Exs. 1-14). Petitioners filed a brief (P. Br.) objecting to CMS's motion for summary judgment and four exhibits (P. Exs. 1-4). Neither party objected to the exhibits offered by the opposing party. In the absence of objection, I admit CMS Exs. 1-14 and P. Exs. 1-4. Neither party offered the written direct testimony of any witness as part of its pre-hearing exchange. As stated in my January 9, 2017 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.” Order ¶ 10. Therefore, an in-person hearing is not necessary and I decide this case based on the parties' written submissions.

II. Issue

The issue in this case is whether Novitas, acting on behalf of CMS, properly established July 14, 2016, as Petitioners' effective date for enrollment in Medicare.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

² In the request for hearing, Petitioners argued that August 1, 2015, should be the effective date of their Medicare enrollment. RFH. However, after the request was filed, Petitioners retained counsel. Counsel filed Petitioners' Brief (P. Br.). In the brief, Petitioners request “an effective date consistent with [their] February 9, 2016 approvable application.” P. Br. at 2.

IV. Discussion

A. Applicable Legal Authority

A provider or supplier that seeks billing privileges under Medicare must “submit enrollment information on the applicable enrollment application.” 42 C.F.R.

§ 424.510(a). A “provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor,” and the application must include “complete, accurate, and truthful responses to all information requested within each section as applicable to the provider or supplier type.” 42 C.F.R.

§ 424.510(d)(1)-(2). “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 may reject an enrollment application; however, CMS’s (or the contractor’s) decision to reject the application is a matter of discretion that is not subject to appeal. 42 C.F.R. § 424.525(d); *see also* 42 C.F.R. § 424.502 (definition of *Reject/Rejected*). If CMS or its contractor rejects an enrollment application, the supplier must submit a new enrollment application. 42 C.F.R. § 424.525(c). For suppliers that are physicians or non-physician practitioners, or physician or non-physician practitioner organizations, the effective date for Medicare enrollment and billing privileges is the date on which the supplier files an enrollment application that is subsequently approved or the date on which the supplier first began providing services at a new practice location, whichever is later. 42 C.F.R. § 424.520(d).

B. Findings of Fact and Conclusions of Law³

1. *Novitas rejected Petitioners’ February 9, 2016 enrollment application.*

Petitioners argue that Novitas’ letter of February 22, 2016, did not reject their February 9, 2016 enrollment application, but merely returned the application. P. Br. at 4. Petitioners argue that Novitas’ action in returning the application does not fall within the regulatory definition of “*reject/rejected*.” *Id.* I disagree.

The regulations define “reject” or “rejected” as follows:

Reject/Rejected means that the provider or supplier’s enrollment application was not processed due to incomplete information, or that additional information or corrected information was not received from the provider or supplier in a timely manner.

³ My findings of fact and conclusions of law appear as numbered headings in bold italic type.

42 C.F.R § 424.502. Petitioners appear to contend that the definition is not met because Novitas did not use the word “rejected” in its February 22 letter, because Petitioners did not submit incomplete or untimely information, and because Novitas did not give Petitioners an opportunity to correct their enrollment application. P. Br. at 4.

Petitioners’ arguments are without merit. Novitas’ February 22, 2016 letter stated that Petitioners’ February 9 enrollment application was closed. P. Ex. 2; CMS Ex. 9. The letter made clear that Novitas would not take any further action on the February 9 enrollment application. *Id.* Novitas further required Petitioners to submit a new enrollment application. *Id.* This instruction is consistent with the regulation requiring that, once an enrollment application is rejected, a supplier must submit a new enrollment application. *See* 42 C.F.R. § 424.525(c). Further, and consistent with the February 22, 2016 letter, Novitas did not process Petitioners’ February 9 enrollment application. An application that is not processed, and which a supplier must replace with a new application, is rejected within the meaning of the regulation regardless of whether Novitas used the word “rejected” in its letter.

Petitioners’ remaining arguments—that Novitas failed to cite a proper basis for rejecting their application and that Novitas failed to offer them an opportunity to correct their application—are beyond the scope of my authority.⁴ As discussed in the following section, because I have concluded that Novitas rejected Petitioners’ February 9 enrollment application, I may not review whether Novitas acted properly in rejecting the application.

2. I have no authority to review Novitas’ rejection of Petitioners’ February 9, 2016 enrollment application.

A supplier has no right to an administrative law judge hearing when an application is rejected. *James Shepard, M.D.*, DAB No. 2793 at 3 (2017); *see also* 42 C.F.R. § 424.525(d). Even if Petitioners were correct in asserting that Novitas mishandled their February 9, 2016 enrollment application, this would not be a basis to grant them an earlier effective date. As an appellate panel of the Departmental Appeals Board (DAB)

⁴ Moreover, if I had authority to review Novitas’ rejection of Petitioners’ February 9 enrollment application, I would not conclude that Novitas acted improperly. Contrary to Petitioners’ argument, the February 9 enrollment application was incomplete because it failed to include the name of Excel Health’s sole owner, Dr. Ram. CMS Ex. 1. Thus, even under Petitioners’ reading of the regulation, Novitas was authorized to reject the application. Additionally, Petitioners acknowledge that the February 9 enrollment application was the second one in which they improperly listed Dr. Ramaswamy, and not Dr. Ram, as the owner of Excel Health. RFH. Thus, it is not accurate to say that Petitioners did not have an opportunity to correct their enrollment application.

observed in *Shepard*, the supplier’s argument that the Medicare contractor “failed to give him timely or otherwise adequate notice of the [enrollment] application’s deficiencies . . . is an implicit request that we assess the reasonableness or legality of [the contractor’s] decision to reject the . . . application. However, section 424.525(d) plainly prohibits ALJ or Board review of that decision . . .” DAB No. 2793 at 8. As was the case in *Shepard*, Petitioners’ arguments in the present case amount to a backdoor challenge to a contractor determination for which there are no administrative appeal rights. *Id.*

3. *Petitioners are not entitled to an effective date of February 9, 2016.*

Petitioners ask me to grant them an effective date of February 9, 2016, because they submitted an “approvable application” on that date. P. Br. at 1, 3-4. As I have concluded above, in rejecting Petitioners’ February 9 enrollment application, Novitas determined that the application was not approvable because it did not correctly identify Dr. Ram as the sole owner of Excel Health. As an appellate panel of the Departmental Appeals Board observed, an enrollment application “must be approvable *and approved* to form the basis of an effective date.” *Lindsay Zamis, M.D.*, DAB No. 2802 at 11 (2017) (emphasis added).

A rejected enrollment application cannot be the basis for an enrollment effective date. This is because, as described below, submission of a new enrollment application triggers a new effective date calculation based on the date the contractor receives the new application. *See* 42 C.F.R. § 424.520(d). I cannot grant a February 9, 2016 effective date for Petitioners’ Medicare enrollment unless I set aside Novitas’ rejection of that enrollment application. As I have explained above, the regulations do not permit me to exercise such authority. *See* 42 C.F.R. § 424.525(d).

4. *By regulation, the effective date of Petitioners’ Medicare enrollment cannot be earlier than July 14, 2016, the date Petitioners submitted applications that Novitas subsequently approved.*

Because Novitas, on behalf of CMS, rejected Petitioners’ February 9, 2016 application, Petitioners were required to submit new enrollment applications. The date of filing an enrollment application directly impacts the effective date for Medicare billing privileges. As stated in the regulations:

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).

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. *Tri-Valley Family Medicine, Inc.*, DAB No. 2358 at 6-7 (2010) (citing 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008)); *see also Alexander C. Gatzimos, MD, JD, LLC*, DAB No. 2730 at 5-15 (2016) (explaining that CMS did not change the definition of the date of filing when it stated that “[t]he ‘date of filing’ is the date on which the provider or supplier submitted its CMS-855 application via mail or Internet-based PECOS [Provider Enrollment, Chain and Ownership System].”) (citing 79 Fed. Reg. 72,500, 72,521 (Dec. 5, 2014)).

It is undisputed that Novitas received new enrollment applications on behalf of Dr. Ram and Excel Health, along with an application to reassign benefits, on July 14, 2016. CMS Exs. 6-8. It is also undisputed that Novitas subsequently approved those applications. CMS Ex. 4. Accordingly, as required by regulation, the effective date of Petitioners’ Medicare enrollment is July 14, 2016. Pursuant to 42 C.F.R. § 424.521(a)(1), Petitioners are permitted to retrospectively bill for services for up to 30 days prior to the effective date of enrollment.

To the extent Petitioners contend I should grant them 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 Petitioners’ Medicare enrollment and billing privileges is July 14, 2016, with retrospective billing permitted as of June 14, 2016.

/s/
Leslie A. Weyn
Administrative Law Judge