

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Lizette Alvarez, M.D.,  
(PTAN: 122950093),

Petitioner,

v.

Center for Medicare & Medicaid Services.

Docket No. C-18-80

Decision No. CR5017

Date: January 31, 2018

**DECISION**

I grant summary judgment sustaining the determination of a Medicare contractor, as affirmed upon reconsideration, establishing an effective date of May 16, 2017 of reactivation of Medicare billing privileges for Petitioner, Lizette Alvarez, M.D.

**I. Background**

Petitioner requested a hearing in order to challenge the effective date of reactivation of her Medicare billing privileges. CMS moved for summary judgment, filing a brief and seven exhibits that are identified as CMS Ex. 1-CMS Ex. 10. Petitioner opposed the motion and cross-moved for summary judgment. Petitioner filed five proposed exhibits that are identified as P. Ex. 1-P. Ex. 5 in support of her opposition and cross-motion.

It is unnecessary that I rule as to the admissibility of the parties' exhibits inasmuch as I grant CMS's motion for summary judgment based on undisputed material facts and governing regulations. However, I cite to some of the parties' exhibits only for the purpose of illustrating those facts that are undisputed.

## II. Issue, Findings of Fact and Conclusions of Law

### A. Issue

The issue is whether a Medicare contractor properly determined May 16, 2017 to be the effective date of reactivation of Petitioner's Medicare billing privileges.

### B. Findings of Fact and Conclusions of Law

This case is governed by a regulation, 42 C.F.R. § 424.540. In relevant part the regulation states:

(a) *Reasons for deactivation.* CMS may deactivate the Medicare billing privileges of a provider or supplier for any of the following reasons:

\* \* \* \*

(3) The provider or supplier does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information.

(b) *Reactivation of billing privileges.*

(1) When deactivated for any reason other than nonsubmission of a claim, the provider or supplier must complete and submit a new enrollment application to reactivate its Medicare billing privileges or, when deemed appropriate, at a minimum, recertify that the enrollment information currently on file with Medicare is correct.

42 C.F.R. § 424.540.

A contractor's decision to deactivate a provider's reimbursement privileges is not a determination that gives hearing rights to the affected individual or entity. *See* 42 C.F.R. §§ 498.3(b), (d). Consequently, a provider or supplier whose Medicare billing privileges are deactivated may not challenge the contractor's decision to deactivate. I have no authority to decide that challenge.

CMS has published guidance to its contractors concerning what effective participation date to assign to a supplier or provider that seeks to reactivate its participation. That date shall be the date when that the contractor receives a re-enrollment application that it processes to completion. Medicare Program Integrity Manual (MPIM), ch. 15 § 15.27.1.2 (effective Mar. 18, 2015). That guidance is consistent with regulatory requirements governing the effective date of participation of newly participating suppliers and providers. 42 C.F.R. § 424.520(d); *Willie Goffney Jr., M.D.*, DAB No. 2763 (2017).

Given that, the only question I may consider is whether the contractor properly assigned a provider or a supplier whose billing privileges are deactivated a correct effective reactivation date. The propriety of the contractor's action in determining to reactivate is governed by 42 C.F.R. §§ 424.540(b)(1) and 424.520(d). The latter regulation states that:

(d) The effective date for billing privileges for physicians . . . is the later of -

- (1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or
- (2) The date [an enrolled physician] first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d)(1)-(2).

The *earliest possible* effective reactivation date that a contractor may assign to a provider or supplier whose billing privileges are deactivated is that date that the provider or supplier files a new enrollment application with the contractor that the contractor subsequently approves. The contractor has no authority to assign a retroactive reactivation date to a provider or a supplier whose billing privileges were deactivated on a date prior to the date when the provider or supplier submits a new enrollment application for the purpose of reactivating his or her billing privileges. Moreover, I do not have authority to order a contractor to assign a retroactive reactivation date.

The undisputed facts of this case are that on December 7, 2016, the contractor sent Petitioner a letter requesting that she revalidate her Medicare enrollment information. CMS Ex. 3 at 1-2. Petitioner did not reply to this request and, on May 1, 2017, the contractor deactivated Petitioner's Medicare billing privileges. CMS Ex. 5 at 1-2. On May 16, 2017, Petitioner filed a new enrollment application with the contractor, seeking reactivation of her billing privileges. CMS Ex. 6. The contractor approved this

application on May 23, 2017 and assigned Petitioner an effective reactivation date of May 16, 2017. CMS Ex. 8 at 1-3. The consequence of the contractor's action is that Petitioner may not receive Medicare reimbursement for the services that she provided to beneficiaries during the period that runs from May 1 through May 15, 2017.

These undisputed facts establish that the contractor acted entirely consistent with regulatory requirements in establishing May 16, 2017 as the date of reactivation of Petitioner's billing privileges. May 16, 2017 is the *earliest* date on which the contractor could reactive Petitioner's privileges because that is the date on which the contractor received Petitioner's application for reenrollment that the contractor subsequently approved. As I have stated, neither the contractor nor I may assign Petitioner a reactivation date that is retroactive to May 1, 2017 the date of deactivation of her billing privileges.

Petitioner protests that her failure to reply to the contractor's original request of December 7, 2016 that she update her enrollment information is not her fault and she should not be penalized for her failure to provide the requested information. P. Br. She contends that she never received the contractor's December 7, 2016 letter, asserting that the contractor sent it to a practice address that Petitioner hadn't used since 2011. *Id.* at 5. That argument is one that I have no authority to hear and decide because it effectively consists of a challenge to the contractor's decision to deactivate Petitioner's Medicare billing privileges.<sup>1</sup>

Petitioner also asserts that the contractor's decision to deactivate her billing privileges effective May 1, 2017 and its subsequent determination to reactivate them as of May 16, 2017, are unfair. P. Request for Hearing at 9-10. She contends that she is blameless for her failure to respond to the request for updated enrollment information, that she provided services during the period of deactivation that have substantial value, and that she should not be subjected to a loss of compensation for those services.

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<sup>1</sup> CMS asserts that the contractor sent the request to the address that Petitioner supplied to the contractor. I do not address that assertion because it relates to the propriety of the contractor's decision to deactivate Petitioner's billing privileges. I note, however, that Medicare regulations require all participating suppliers and providers to resubmit and recertify the accuracy of their enrollment information every five years. 42 C.F.R. § 424.515. Petitioner was thus obligated to provide the contractor with updated information even if she never received the contractor's December 7 letter.

These arguments are equitable and I have no authority to grant relief predicated on them.  
*US Ultrasound*, DAB No. 2302 at 8 (2010).

\_\_\_\_\_/s/\_\_\_\_\_  
Steven T. Kessel  
Administrative Law Judge