

Report on Medicare Compliance Volume 29, Number 2. January 20, 2020 CMS Settles Enrollment Case About Retroactive Billing Over 30 Days

By Nina Youngstrom

CMS has agreed to pay a physical therapy practice \$55,000 in a December settlement that's at the intersection of claims and enrollment, and again runs into the question of how far CMS can go to enforce payment requirements not rooted in regulations or laws. The physical therapists are being paid because two provider types are permitted to bill Medicare for services provided up to one year before their enrollment application is approved, notwithstanding a March provision in the *Medicare Program Integrity Manual*,^[1] an attorney says.

“When we see revisions to the Medicare manual that didn't used to affect us and now they do, I am starting to do the research on when, why and how those revisions or *MLN Matters* articles have come about,” says attorney Richelle Marting, with the Forbes Law Group in Overland Park, Kansas. “Is a policy being created without the proper rulemaking process? I have seen so many examples of that in the past year or so.”

When providers and suppliers enroll in Medicare, they are permitted to bill for services performed before the date of their enrollment approval—up to a point, Marting says. In other words, they're able to retroactively bill for their services if their 855 enrollment application is accepted. Providers and suppliers indicate on their enrollment forms when they want their start dates to be. Until 2009, the maximum retroactive effective date was a year for most providers and suppliers because of the one-year timely filing deadline, she says. It almost sounds too good to be true, except that CMS in a 2009 regulation^[2] said that physicians and nonphysician practitioners (NPPs) could not request an enrollment date earlier than 30 days before their application date.

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