PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2020-D08

PROVIDER –
Bartlett Regional Medical Center

PROVIDER NO. –
02-0008

vs.

MEDICARE CONTRACTOR –
Noridian Healthcare Solutions, LLC/
Federal Specialized Services, Inc.

DATE OF HEARING –
February 5, 2019

Cost Reporting Periods Ended–
6/30/2011, 6/30/2012, 6/30/2013,
6/30/2014, and 6/30/2015

CASE NOS.: 15-1656; 15-3267;
17-0608; 18-0376; 18-0374

INDEX

ISSUE STATEMENT:

Whether the contributions made by the State of Alaska can be counted as "reasonable cost" by the Bartlett Regional Hospital ("Bartlett" or "Provider") for purposes of reimbursement under the Medicare Rural Demonstration Project?[1]

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board" or "PRRB") finds that the Medicare Contractor properly adjusted the cost reports for fiscal years ("FYs") 2011 through 2015 to remove either claimed or protested amounts for the pension plan payments that the State of Alaska made pursuant to Alaska Statute § 39.35.280.

INTRODUCTION:

Bartlett is a small, acute care hospital located in Juneau, Alaska, and is an affiliate of the City and Borough of Juneau.[2] Bartlett's designated Medicare contractor[3] was Cahaba Safeguard Administrators ("Cahaba") for FYs 2011, 2012, and 2013[4] and Noridian Healthcare Solutions ("Noridian") for FYs 2014 and 2015. Cahaba and Noridian will collectively be referred to as simply "the Medicare Contractor."

Bartlett filed appeals for these five fiscal years challenging the Medicare Contractor's audit adjustments to disallow certain pension plan payments made by the State of Alaska, *allegedly* on behalf of Bartlett (hereinafter "on-behalf pension plan payments"),[5] from being counted as "reasonable cost" by Bartlett for the purposes of Medicare reimbursement.[6] On February 5, 2019, the Board held a live, consolidated hearing on all five fiscal years under appeal. Bartlett was represented by Daniel J. Hettich, Esq., of King & Spalding, LLP. The Medicare Contractor was represented by Ed Lau, Esq. of Federal Specialized Services.

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[1] Transcript ("Tr.") at 5:15-19; Parties' Stipulation of Undisputed Facts at ¶ I (e) (Jan. 8, 2019) ("Stip.").
[2] Provider's Final Position Paper at 1 (June 1, 2018); Stip. at IV (a).
[3] CMS' payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries ("FIs") and these functions are now contracted with organizations known as Medicare administrative contractors ("MACs"). The term "Medicare contractor" refers to both FIs and MACs as appropriate.
[4] Each fiscal year ends on June 30th.
[5] The Board notes that, as discussed *infra* in this decision, these "on behalf" pension plan payments cover liabilities that the employer would have been obligated to make under the PERS participating agreement but for the later passage of Alaska Statute § 39.35.280. The Board used the term "on behalf" for simplicity since the Provider uses that term throughout the record. In using that term, the Board is not suggesting or finding that, *for purposes of Medicare reimbursement*, that the State is, in fact, making those payment "on behalf" of the relevant PERS participating employers since, as discussed *infra* in this decision, the Board is finding that PERs participating employers do not have a legal obligation relative to those State payments made pursuant to Alaska Statute § 39.35.280.
[6] Provider's Final Position Paper at 1, 11.

STATEMENT OF FACTS:

Most of the facts of this appeal have been stipulated and agreed to by the parties. Public employers in Alaska may participate in the State of Alaska's Public Employees' Retirement System ("PERS") pension plan.[7] Starting in 1970, the City and Borough of Juneau has participated in the PERS program on behalf of Bartlett and its other affiliates.[8] Until 2006, PERS was a "defined benefit, cost-sharing, multiple-employer public employee retirement plan established and administered by the State to provide pension and postemployment healthcare benefits for eligible State and local government employees."[9]

Due to actuarial errors, and other factors, the State of Alaska identified a significant unfunded liability for existing PERS participants and this unfunded liability resulted in the funding of PERS obligations dropping from over 100 percent to approximately 75 percent.[10] In 2008, the State of Alaska passed Alaska Statute § 39.35.255(a) to cap the obligation of employers who were required to make payments to PERS toward the unfunded liability.[11] Specifically, this statute set the cap at 22 percent of the salaries paid to current and past employees entitled to receive benefits under the defined benefit system. Additionally, based on the availability of funds, the State of Alaska was obligated to pay "an amount . . . that when combined with the total employer contributions . . . is sufficient to pay the plans past service liability at the contribution rate adopted . . . for that fiscal year."[12]

During the fiscal years at issue, *i.e.*, FYs 2011 through 2015, Bartlett participated in a Medicare Rural Demonstration Project, under which it was paid by Medicare for inpatient services based on its "reasonable costs." For each of the five fiscal years at issue, Bartlett made direct pension contributions to PERS and the State of Alaska made on-behalf pension payments. For FYs 2011, 2012 and 2013, Bartlett claimed these on-behalf pension payments on its Medicare cost report and, and for FYs 2014 and 2015, Bartlett protested these on-behalf pension payments on its Medicare cost report. In each of the five fiscal years at issue, the Medicare Contractor removed the amounts Bartlett claimed/protested for the State's on-behalf payments, but allowed the amounts that Bartlett directly contributed to the pension plan.[13]

The Medicare Statute at 42 U.S.C. § 1395x(v)(l)(A) defines "reasonable costs" of Medicare services as "the cost actually incurred," and further states such costs "shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included . . . ." Similarly, 42 C.F.R. § 413.9(c)(3) specifies that "[r]easonable cost includes all necessary and proper expenses *incurred* in furnishing services, such as administrative costs, maintenance costs, and premium payments for employee health and pension plans."[14]

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[7] Stip. at ¶ III.
[8] *Id.* at IV (b); *see also* Exhibit P-10(a) (copy of original PERS agreement executed June 26, 1978).
[9] Stip. at III; *see also* Exhibit P-7(a) at 136.
[10] Tr. at 60.
[11] 2008 Alaska Sess. Laws Ch. 13 (S.B. 125).
[12] Alaska Statute § 39.35.280. Also see Provider's Final Position Paper at 4.
[13] Stipulations at I (g), (h).
[14] (Emphasis added.)

Alaska Statute § 39.35.255(a) describes employers' obligations to make PERS contributions as follows:

> Each employer shall contribute to the [PERS] system every payroll period an amount calculated by applying a rate of 22 percent of the greater of the total of all base salaries
>
> (1) paid by the employer to employees who are active members of the system, including any adjustments to contributions required . . . ; or
>
> (2) paid by the employer to employees who were active members of the system during the corresponding payroll period for the fiscal year ending [June 30, 2008.]

Further, Alaska Statute § 39.35.280 describes the State of Alaska's obligations to make PERS contributions associated with PERS participating employers as follows:

> [T]he state ***shall*** *contribute* to the plan . . . an amount for the ensuing fiscal year that, when combined with the total employer contributions . . . is sufficient to pay the plan's past service liability at the contribution rate adopted by the board . . . ."[15]

However, there is an exception to the 22 percent cap that occurs if an employer *terminates* a program currently covered by the 22 percent cap. In that situation, the employer must cover the full "past service liability" amount. More specifically, Alaska Statute § 39.35.625 states that, if an employer "*terminates* participation of a department, group, or other classification of employees" it "shall pay to the plan each payroll period until the past service liability of the plan is extinguished . . . ."[16] without the benefit of the 22 percent cap, and without the assistance of state on-behalf payments.[17]

The parties dispute whether the on-behalf pension plan payments made by the State of Alaska can be counted as a "reasonable cost" by Bartlett for purposes of reimbursement under the Medicare Rural Demonstration Project.

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[15] (Emphasis added.)

[16] (Emphasis added.)

[17] More specifically, Alaska Statute § 39.35.625 states:

> Notwithstanding AS 39.35.255 [which requires a 22 percent contribution rate from employers], an employer that *terminates* participation of a department, group, or other classification of employees in the plan under AS 39.35.615 or that *terminates* participation in the plan under AS 39.35.620 shall pay to the plan each payroll period until the past service liability of the plan is extinguished . . . .

(Emphasis added.)

Finally, in § 901(a) of the Omnibus Reconciliation Act of 1980,[18] Congress added 42 U.S.C. § 1320b-4 to specify, in pertinent part, that "the following items shall *not* be deducted from the operating costs of" a nonprofit hospital:

> (1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.
>
> (2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.
>
> (3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

In December 2012, CMS revised the Provider Reimbursement Manual, CMS Pub. 15-1 ("PRM 15-1"), to implement this statutory provision. Specifically, PRM 15-1 § 600 states the general principle that "[f]or cost reporting periods beginning on or after October 1, 1983, grants, gifts, and income from endowments, *whether or not the donor restricts the use for a specific purpose*, are ***not*** deducted from a provider's operating costs in computing reimbursable cost."[19] In PRM 15-1, CMS defines restricted and unrestricted grants and gifts as follows:

> 602.1 Unrestricted Grants, Gifts, and Income from Endowments.--Unrestricted grants, gifts, and income from endowments are funds, cash or otherwise, given to a provider without restriction by the donor as to their use.
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> 602.2 Restricted Grants, Gifts, and Income from Endowments.--Restricted or designated grants, gifts, and income from endowments are funds, cash or otherwise, which must be used only for a specific purpose designated by the donor. This does not refer to unrestricted grants, gifts, or income from endowments which have been restricted for a specific purpose by the provider.

The Board recognizes that PRM 15-1 § 2156 addresses gifts or grants in the context of governmental support to state and local governmental providers and, in this regard, suggests that restricted gifts or grants are offset. However, this guidance is outdated and incorrect because it was issued in May 1976[20] and has not been updated to reflect the 1980 addition of 42 U.S.C. § 1320b-4.

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[18] Pub. L. 96-499, § 901(a), 94 Stat. 2599, 2611 (1980).
[19] PRM 15-1 § 600 (Rev. 455, Dec. 2012).
[20] *See* PRM 15-1 Transmittal No. 153 (May 1976).

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Bartlett maintains that under generally accepted accounting principles, and relevant Governmental Accounting Standards Series ("GASB") pronouncements, it "incurred" the costs of the on-behalf payments made by the State of Alaska in excess of 22 percent of payroll.[21] Bartlett argues that the on-behalf pension payments made by the State of Alaska should be counted as "reasonable costs" for the purposes of reimbursement under the Medicare Rural Demonstration Project because it incurred these costs. In support of its position, Bartlett argues that it – Bartlett - is legally responsible for the *full* amount of its pension obligation regardless of who makes payments in excess of 22 percent of payroll.[22] Bartlett asserts that the State of Alaska passed a law that requires it to make payments, to the extent funds are available, "on behalf" of Bartlett and that this law does not change the fact that Bartlett is considered *contractually* obligated under its PERS participation agreement to meet the *full* amount of the pension obligation costs.[23]

Bartlett acknowledges that the change from GASB 27[24] to GASB 68 required that the State of Alaska report the unfunded Defined Pension plan liability on their FY 2015 financial statement.[25] However, Bartlett points out that, in a footnote in the FY 2015 financial statement, the State of Alaska notes that the term "legally responsible" for the purposes of GASB 68 should not be interpreted to mean that the State is "legally obligated" for such underlying net pension liabilities; but rather the reporting of such amounts merely reflects an "economic reality" that the State is making payments "on behalf" of participating employers.[26] Accordingly, Bartlett claims its actions and financial documents show that those pension payments made in excess of 22 percent of payroll are an expense of Bartlett that the State of Alaska merely is paying on Bartlett's behalf.[27] In this regard, Bartlett's witness (who the Board recognized as "an expert in GASB, general accounting, and in financial statement preparation; and . . . in general accounting principles as they relate to PERS."[28]) testified that its PERS participation agreement[29] supports the position that Bartlett retains the "legal responsibility" to make pension contributions, and the fact that the State of Alaska makes on-behalf payments does not change Bartlett's legal obligation.[30]

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[21] Exhibit P-24 at ¶¶ 27-32 (Decl. of Max E Mertz (Nov. 6, 2018)).
[22] Provider's Post-Hearing Brief, 8 (Mar. 21, 2019).
[23] *Id.*
[24] *See* Tr. 86-88.
[25] Exhibit P-7e at 135; Exhibit P-4-b at 28. In FY 2015 the State of Alaska and Bartlett reported their proportional share of the pension liability on their financial statements. Tr. at 86-93.
[26] *See* Exhibit P-7-e at 135. In the footnote, the following is stated: "On November 25, 2015, however, GASB staff advised the Department of Administration and the Department of Law that the term 'legally responsible' for purposes of GASB 68 should not be construed in a legally enforceable sense, and that the reporting of net pension liability attributable to special funding situations on the State's balance sheet does not mean that the State is legally obligated for such underlying net pension liabilities. Rather, the reporting of such amounts merely reflects an 'economic reality' that the State is making state assistance payments on behalf of participating employer's pursuant to AS 39.35.280 and AS 14.25.085." *See also* Tr. at 105-107.
[27] Provider's Final Position Paper at 12; Exhibit P-22 at 4.
[28] Tr. at 49-50.
[29] Exhibits P-10(a) through Exhibit P-10(m).
[30] Tr. at 105-107. *See also* Tr. at 55-63.

Bartlett goes on to argue that, if it is legally obligated to make the on-behalf pension payments, then these payments must be considered a gift or grant that are not subject to offset pursuant to 42 U.S.C. § 1320b-4.[31] In this regard, Bartlett states that Medicare reimbursement rules are clear that a "gift" or "grant" received to help meet costs is not to be used as an offset to Bartlett's operating costs.[32]

Finally, Bartlett argues that, based on PRM 15-1 § 1005, they are a related party to the State of Alaska and that, as a result, any pension costs paid by the State is an allowable cost that can be included on their cost reports. They state that "a party can be related to another if it exerts either ownership or control over the other."[33] In making this argument, they assert that the State of Alaska through its hospital license agreement requirement has the ability to exert control over Bartlett. Similarly, they maintain that the State of Alaska exerts control over Bartlett via the PERS agreement[34] that is in place between the State of Alaska and the City and Borough of Juneau.[35]

The Medicare Contractor asks the Board to uphold its disallowance of the on-behalf payments made by the State of Alaska based on several theories. First, the Medicare Contractor argues that the regulations and the PRM 15-1 require a provider to actually pay (*i.e.*, incur) a pension cost, in the first instance, in order for those costs to be reimbursable, and that the provider must report such costs on a cash accounting basis.[36] Moreover, the Medicare Contractor argues that both Bartlett and the State of Alaska had specific and separate obligations under Alaska State law to fund PERS and that the State of Alaska made the on-behalf pension payments at issue in order to satisfy its specific obligation under Alaska State law. Specifically, the State's obligation to make the on-behalf pension payment at issue is not related to Bartlett's legal obligation to make its 22 percent of payroll contributions. According to the Medicare Contractor, Bartlett had no further legal obligation or liability beyond its 22 percent contribution rate for all five fiscal years at issue.[37]

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that the contributions made by the State of Alaska cannot be considered a "reasonable cost" of Bartlett *for purposes of Medicare program reimbursement* under the Medicare Rural Demonstration Project for FYs 2011 through 2015.

42 U.S.C. § 1395x(v)(l)(A) states that the reasonable costs of Medicare services must be a "cost actually incurred." The Board finds that, *for purposes of the Medicare program*, Bartlett did not "incur" the pension costs above its 22 percent contribution rate because, for FYs 2011 through 2015, it was not obligated to make payments above that statutory payment limit. Rather, for

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[31] Provider's Post-Hearing Brief at 16-17.
[32] *Id.* at 18-24.
[33] Provider's Final Position Paper at 20 (quoting 42 C.F.R. § 413.17).
[34] *See* Exhibit P-10(a).
[35] Provider's Final Position Paper at 20-22.
[36] Medicare Contractor's Post Hearing Brief, 11 (Mar. 22, 2019).
[37] *See id.* at 12-13 (citing Tr. at 112, 126).

these years, Bartlett's only legal obligation was the 22 percent contribution required by Alaska Statute § 39.25.255(a). Specifically, this statute states in pertinent part:

> Each employer *shall contribute* to the system every payroll period an amount calculated *by applying a rate of 22 percent* of the greater of the total of all base salaries . . . .
>
> (1) paid by the employer to employees who are active members of the system, including any adjustments to contributions required . . . , or
>
> (2) paid by the employer to employees who were active members of the system during the corresponding payroll period for the fiscal year ending [June 30, 2008.]

This Alaska statute was incorporated into the original 1978 PERS contract as the agreement included the statement that "[a]ny reference in this agreement to any statutory provisions or to any regulations ***shall include*** *amendments, additions, or deletions*, both expressed and implied which may be affected."[38] The Board's finding that Bartlett had no legal obligation to make payments to PERS above the 22 percent statutory cap for FYs 2011 through 2015 is supported by testimony from the Provider's witness. At the hearing, Bartlett's witness testified that, in 2008, the State legislature enacted the 22 percent employer pension funding cap limit to address employer concerns about how to fund the unfunded PERS plan liabilities that resulted, at least in part, by State actuarial assumption errors.[39] The plain language of the State statute, buttressed by

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[38] Exhibit P-10-a at 5 (emphasis added). In this regard, the Board notes that the contract's discussion of contributions by the employer includes references to the relevant statutory provisions and, as such, incorporates the Alaska Statute § 39.25.255(a) (*i.e*., 22 percent cap) into the contract: "The Political Subdivision agrees to make contributions each year which are sufficient to meet the normal cost attributable to inclusion of its employees including actuarial and administrative costs and to amortize the past service costs for its employees over a period of not more than 40 years. The contributions shall be computed ***according to the relevant provisions of the statutes*** and the amount determined by the actuary." *Id*. at 3 (emphasis added).

[39] The Provider' witness provided the following testimony in this regard:

> So, generally through early-2000s, 2000/2001, the State of Alaska reported to the participants that it was adequately funded. As a matter of fact I think it was, if memory serves, 102 percent in 2001. In that year a couple of things happened, one, they identified some *errors that had been made by the actuaries*. The actuaries identified those *errors in some of their assumptions* that they were using in the calculations they were making. And then the other thing that happened was, there was this tremendous stock market adjustment, and so you had a reduction in the value of the assets that had been placed to fund these liabilities, and you had an increase in the liabilities themselves. And so as a result within a couple of fiscal years you went from being at least 100 percent funded to about 0.75 percent funded. And it went down from there. . . .
>
> So, maybe to backup a little bit between 2001 when these errors were identified and these changes occurred, and people had a new realization, in 2006 there was a lot of public discourse, discourse in the legislature, discourse between the municipality participants and the state, in general, about what to do about this. As a result of that interaction the State chose to change the PERS system from what's called an Agent Multiple Employer Defined Benefit System to a cost-sharing system in 2006. . . .

the witness' testimony, makes clear that, regardless of whether the State appropriated funds to pay the actuarially determined pension contribution, Bartlett's payment obligation to the PERS was capped at 22 percent. Any amount the State paid, whether categorized by the State and Bartlett as "on behalf" pension payments or not, cannot be treated as a financial obligation of Bartlett *for purposes of the Medicare program* because Bartlett had no legal obligation to pay amounts over 22 percent for FYs 2011 through 2015, even if the State failed to do so.[40]

While the Provider asserts Alaska's on-behalf payments are voluntary by arguing "the State ***may*** contribute funding for the difference between the 22 percent and the actuarially determined rate . . . .", [41] the Board disagrees (and further notes that this argument is irrelevant if the Provider has no obligation to pay it in the first instance as the Board has already found[42]). The following plain language of Alaska Statute § 39.35.280 makes clear that the State contribution is mandatory rather than permissive: "[T]he state ***shall*** *contribute* to the plan . . . an amount for the ensuing fiscal year that, when combined with the total employer contributions . . . is sufficient to pay the plan's past service liability at the contribution rate adopted by the board . . . ."[43] Thus, the State is required *by statute* to make pension plan contributions above 22 percent of Bartlett's payroll.[44]

Regarding Bartlett's position that the State of Alaska's on-behalf pension payments are a "gift" or "grant" which should not be offset, the Board finds the State payments were made pursuant to

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> So, the system continued to exist, there was no change to the employees, to impact to the employees in terms of the promises that were made to those employees that were existing at the time. They closed the plan to new participants and replaced the Defined Benefit System, with the Defined Contribution System, so everybody that was hired after the date was enrolled in the defined contribution system, but employees who were already participating in the Defined Benefit Plan continued, they were grandfathered, if you will. So, those employees will remain in the Defined Benefit Plan until they retire or [*sic* are] terminated. . . .
> 2008 is when the cap that you discussed earlier was implemented in state law. So the state was seen very high, actually required contribution rates that the municipal employers were concerned about their ability to make those payments. And *so because of that, there was as political solution, if you will, which set the rate at 22 percent* ***with the State agreeing to make payments above that amount***.

Tr. at 59 – 62 (emphasis added).

[40] Indeed, the discussion at *supra* note 39 and accompanying text suggests that the State may have been motivated to assume the obligation to make the on-behalf pension payments, in large part, due to the following facts: (1) the need for these payments in the first instance stemmed, in material part, from its own actuarial assumption errors and (2) *the State of Alaska was itself the* ***largest*** *employer contributing to PERS* and, as such had the most at stake in ensuring the continued overall solvency of PERS. *See* Exhibit P-20; Tr. at 171-173. In this regard, Exhibit P-20 at 29 demonstrates that the State of Alaska *as an employer* had the clear majority interest in PERS since, for example, 52.96 percent of the ***total*** 2014 PERS contributions are attributed to the State *itself* as an "employer" (28.39 percent for the State's 2014 payments as an employer pursuant to Alaska Statute § 39.25.255(a) plus 24.57 percent for the 2014 on-behalf pension payments made pursuant to Alaska Statute § 39.35.280 that are attributable to the State *itself* as an employer).

[41] Provider's Post-Hearing Brief at 7 (emphasis added).

[42] Similarly, arguments about enforceability of the State's obligation are red herrings as they do not change the statutory 22 percent cap on the *participating* employer's obligation.

[43] (Emphasis added.)

[44] Indeed, GASB 68 required that the State of Alaska report the unfunded Defined Pension plan liability on their financial statements.

the statutory obligation of Alaska Statute § 39.35.280,[45] and were paid *directly* to PERS to fulfill that obligation of the State.[46] Because the State of Alaska was required by State statute to make the pension payments, these on-behalf payments do not constitute a gift or grant and cannot be considered as such since, as discussed above, Bartlett is not itself obligated to make the on-behalf pension payments.

In further support of this conclusion, the Board finds that, contrary to Bartlett's position, Bartlett is not entitled to treat the State's contribution as its own incurred costs. In support of its position, Bartlett asserts that it would have been responsible for these on-behalf pension payments in the event that it *terminated* participation in the PERS.[47] However, the facts of this case are that Bartlett did ***not*** *terminate* from PERS during the five fiscal years at issue, *i.e.*, FYs 2011 through 2015. Accordingly, it is clear that Bartlett did *not* incur any reimbursable PERS termination costs during those five fiscal years. Indeed, based on its review of the relevant Alaska Statutes, it is the Board's understanding that, *upon termination from PERS*, Bartlett would not have to refund any of the State's *previous* on-behalf payments but rather it would be responsible to fund its unfunded termination liability only *on a* ***going forward*** *basis*.[48] Bartlett's own witness confirmed that he had the same understanding. Specifically, when the FSS representative cross examined the witness and asked him whether "the State of Alaska could take back the on-behalf payments that were made," he replied: "No."[49]

Finally, the Board finds that the State of Alaska and Bartlett are not related parties by control. The Board finds that Bartlett's statements that the licensure requirement and PERS agreement constitute control such that it is related to the State of Alaska[50] are self-serving. As the Medicare contractor stated: "[t]he Provider's argument would make every hospital in the nation a related party to their respective state."[51] Medicare's policy is clear that it is the "reality of the control"[52] that determines if the parties are related and there is simply no evidence in the record that the State of Alaska had "the power, directly or indirectly, significantly to influence or direct the actions or policies" of Bartlett, in order for Bartlett to be consider a related party under Medicare policy.[53]

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[45] *See also* Tr. at 111-112.
[46] *Id.*
[47] *Id.* at 66 – 69.
[48] Exhibit P-14-a; Tr. at 66-67.
[49] Tr. at 125-26. *See also* Tr. at 15 (Provider representative stating "when Alaska created that cap on contributions they also said that if a provider were to terminate from the program they would *no longer* get any contributions or assistance." (emphasis added)); Tr. at 65-69; Exhibit P-14-c (providing a summary of the "actuarial method used to calculate termination costs" and stating the "termination cost liability" is the difference between "the total funding on hand to fund future retirement benefits for the member to retire today" from "the total funding that would have been provided if the member had continued actively in the plan until the expected retirement age").
[50] Provider's Final Position Paper at 21.
[51] Medicare Contractor's Post Hearing Brief at 29; Exhibit P-10-a. The PERS participation contact is simply a contract for retirement benefits, can be terminated by either party at any time, and does not transfer any of the Provider's operation control to the State.
[52] PRM 15-1 § 1004.3.
[53] PRM 15-1 § 1002.3.

DECISION AND ORDER:

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that the Medicare Contractor properly adjusted the cost reports for FYs 2011 through 2015 to remove either claimed or protested amounts for the pension plan payments that the State of Alaska made pursuant to Alaska Statute § 39.35.280.

BOARD MEMBERS PARTICIPATING:

Clayton J. Nix, Esq.
Charlotte F. Benson, C.P.A.
Gregory H. Ziegler, C.P.A.
Robert Evarts, Esq.
Susan Turner, Esq.

FOR THE BOARD:

7/1/2020

X Clayton J. Nix

Clayton J. Nix, Esq.
Chair
Signed by: Clayton J. Nix -A