PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
On the Record

2021-D19

PROVIDER-
Alta Vista Regional Hospital

Provider No.: 32-0003

vs.

MEDICARE CONTRACTOR –
WPS Government Health Administrators

RECORD HEARING DATE –

November 12, 2020

Cost Reporting Period Ended –
08/31/2008

CASE NO. – 14-0442

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ISSUE STATEMENT

Whether the Medicare Contractor properly calculated the volume decrease adjustment ("VDA") owed to the Provider for the significant decrease in inpatient discharges that occurred in its cost reporting period ending August 31, 2008 ("FY 2008").[1]

DECISION

After considering the Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the Medicare Contractor improperly calculated the VDA payment for Fiscal Year ("FY") 2008 for Alta Vista Regional Hospital ("Alta Vista" or "Provider"), and that Alta Vista should receive a VDA payment in the amount of $788,754.

INTRODUCTION

Alta Vista is a non-profit acute care hospital located in Las Vegas, New Mexico. Alta Vista was designated as a Sole Community Hospital ("SCH") during the fiscal year at issue.[2] The Medicare contractor[3] assigned to Alta Vista for this appeal is WPS Government Health Administrators ("Medicare Contractor"). In order to compensate it for a decrease in inpatient discharges, Alta Vista requested a VDA payment of $994,521 for FY 2008.[4] The Medicare Contractor calculated Alta Vista's FY 2008 VDA payment to be $0.[5] Alta Vista timely appealed the Medicare Contractor's final decision and met all jurisdictional requirements for a hearing before the Board.

The parties requested and the Board approved a record hearing on November 12, 2020. Alta Vista was represented by Ronald K. Rybar of The Rybar Group, Inc. The Medicare Contractor was represented by Scott Berends, Esq. of Federal Specialized Services.

STATEMENT OF FACTS AND RELEVANT LAW

Medicare pays certain hospitals a predetermined, standardized amount per discharge under the inpatient prospective payment system ("IPPS") based on the diagnosis-related group ("DRG") assigned to the patient. These DRG payments are also subject to certain payment adjustments. One of these payment adjustments is referred to as a VDA payment, and it is available to SCHs if, due to circumstances beyond their control, they incur a decrease in patient discharges of more than 5 percent from one cost reporting year to the next.[6] VDA payments are designed to

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[1] Medicare Contractor's Supplement to its Final Position Paper and Response to Provider's Revised Final Position Paper (hereinafter "Medicare Contractor FPP") at 3.
[2] Stipulations at ¶ 1.
[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 and relevant.
[4] Stipulations at ¶ 7.
[5] Stipulations at ¶ 9. Since DRG payments exceed the 2008 fixed costs, the VDA payment is $0
[6] 42 U.S.C. § 1395ww(d)(5)(D)(ii).

compensate a hospital for the fixed costs it incurs for providing inpatient hospital services in the period covered by the VDA, including the reasonable cost of maintaining the necessary core staff and services.[7] The implementing regulations, located at 42 C.F.R. § 412.92(e), reflect these statutory requirements.

42 C.F.R. § 412.92(e) (2008) directs how the Medicare Contractor must determine the VDA once an SCH demonstrates it experienced a qualifying decrease in total inpatient discharges. In pertinent part, § 412.92(e)(3) states:

> (3) The intermediary determines a lump sum adjustment amount *not to exceed*[8] the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs . . . .
>
> (i) In determining the adjustment amount, the intermediary considers— . . .
>
> (B) The hospital's fixed (and semi-fixed) costs, other than those costs paid on a reasonable cost basis under part 413 of this chapter. . . .

In the preamble to the final rule published on August 18, 2006,[9] CMS referenced the Provider Reimbursement Manual, Pub. No. 15-1 ("PRM 15-1") § 2810.1 (Rev. 356), which provides further guidance related to VDAs and states in relevant part:

> B. Additional payment is made . . . for the fixed costs it incurs in the period in providing inpatient hospital services including the reasonable cost of maintaining necessary core staff and services, not to exceed the difference between the hospital's Medicare inpatient operating cost and the hospital's total DRG revenue.
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> Fixed costs are those costs over which management has no control. Most truly fixed costs, such as rent, interest, and depreciation, are capital-related costs and are paid on a reasonable cost basis, regardless of volume. Variable costs, on the other hand, are those costs for items and services that vary *directly*[10] with utilization such as food and laundry costs.

It is undisputed that Alta Vista experienced a decrease in discharges greater than 5 percent from FY 2007 to FY 2008 due to circumstances beyond its control, and that, as a result, Alta Vista

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[7] *Id.*
[8] (Emphasis added).
[9] 71 Fed. Reg. 47869, 48056 (Aug. 18, 2006).
[10] (Emphasis added).

was eligible to have a VDA calculation performed for FY 2008.[11] Alta Vista requested a VDA payment in the amount of $994,521 for FY 2008.[12] However, when the Medicare Contractor made the FY 2008 VDA calculation, it determined that Alta Vista was not entitled to a VDA payment because it had already been fully compensated for its fixed/semi-fixed costs.[13] The chart below depicts how the Medicare Contractor and Alta Vista each calculated the VDA payment.

	Medicare Contractor calculation using fixed costs[14]	Provider/PRM calculation using total costs[15]
a) Prior Year Medicare Inpatient Operating Costs	$8,304,042	$8,304,042
b) IPPS update factor	1.033	1.033
c) Prior year Updated Operating Costs (a x b)	$8,578,075	$8,578,075
d) FY 2008 Operating Costs	$7,358,907	$7,358,907
e) Lower of c or d	$7,358,907	$7,358,907
f) DRG/SCH payment	$ 6,364,386	$ 6,364,386
g) CAP (d-f)	$ 994,521	$ 994,521
h) FY 2008 Inpatient Operating Costs	$7,358,907	$7,358,907
i) Fixed Cost percent	79.31	1.00
j) FY 2008 Fixed Costs (h x i)	$5,836,442	$7,358,907
k) Total DRG/SCH Payments	$6,364,386	$6,364386
l) VDA Payment Amount (The Medicare Contractor's VDA is based on the amount by which line d exceeds line f)	$ 0[16]	
m) VDA Payment Amount (The Providers VDA is based on the amount by which line d exceeds line f.)		$ 994,521

The parties to this appeal dispute the application of the statute and regulation used to calculate the VDA payment.[17]

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Alta Vista stipulates that the VDA inpatient operating costs should be reduced by the excess staffing which, based on their calculation, does not apply to FY 2008,[18] and then reduced by the FY 2008 DRG payments. Alta Vista's calculation results in a VDA payment in the amount of $994,521.[19] This differs from the Medicare Contractor's VDA payment calculation. The

[11] Stipulations at ¶ 6.
[12] *Id.* at ¶ 7.
[13] *Id.* at ¶ 9.
[14] *Id.* at ¶¶ 9, 11.
[15] *Id.* at ¶ 7.
[16] Since DRG payments exceed the 2008 fixed costs, the VDA payment is $0.
[17] Stipulations at ¶ 12.
[18] Exhibit P-1 at 33.
[19] Stipulations at ¶ 7.

Medicare Contractor removes the variable costs from the inpatient operating costs which results in a $0 payment.[20] The Board, in their VDA calculation, removed the variable costs from both the inpatient operating costs and the DRG payments.

In the calculation of the fixed/semi-fixed costs percentage, the Medicare Contractor removed variable costs by using Worksheet A-8 adjustments on Alta Vista's cost report. The Medicare Contractor contends that specific instructions how to determine the fixed/semi-fixed costs are not provided in the statutes, regulations or Provider Reimbursement Manual.[21] Therefore, the Medicare Contractor used the cost report to calculate fixed/semi-fixed costs. The Medicare Contractor argues that the Administrator agreed with this approach and, further, that this approach was found not to be arbitrary or capricious in the *Unity* decision.[22]

Although Alta Vista did not remove variable costs from the VDA payment, it does agree with the Medicare Contractor's calculation of the fixed/semi fixed costs percentage of 79.31 percent.[23] Alta Vista notes, however, that the "burden of justifying the treatment of costs as fixed or variable falls to the Secretary (or her agent) not the Provider," and cites to 42 C.F.R. § 412.92(e)(3)(i)(A) for the proposition that the regulation directs the Medicare Contractor to determine the appropriate VDA payment to compensate a hospital for its full amount of fixed costs.[24]

Alta Vista also asserts that it does not agree with variable costs being removed from either the operating or the DRG payments.[25] However, Alta Vista disputes the Medicare Contractor's approach that removes variable costs from the operating payments and not from the DRG payments, because, according to Alta Vista, this methodology does not fully compensate the hospital for its fixed and semi-fixed inpatient operating costs.[26] Alta Vista's position is that removing the variable costs from the DRG payments (as was done with the operating payments) would assure an accurate matching of revenue with expenses, because the DRG payment is intended to cover both fixed *and* variable costs.[27]

In its recent decisions,[28] the Board has disagreed with the methodology used by various Medicare contractors, including the methodology used by the Medicare Contractor in this appeal, to calculate VDA payments because that methodology compares fixed costs to total DRG payments and only results in a VDA payment if the fixed costs exceed the total DRG payment amount. In these cases, the Board has recalculated the hospitals' VDA payments by estimating

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[20] *Id.* at ¶ 9
[21] *Id.*; Medicare Contractor FPP at 15-16.
[22] Medicare Contractor FPP at 28-30.
[23] Stipulations at ¶ 11.
[24] Provider's Revised Final Position Paper at 8.
[25] *Id.* at 9-10. Alta Vista requested a Final VDA payment of $994,521 which does not include a reduction of variable costs in the operating costs or the DRG payments.
[26] *Id.* at 9.
[27] *Id.*
[28] *St. Anthony Reg'l Hosp. v. Wisconsin Physicians Servs.*, PRRB Dec. No. 2016-D16 (Aug. 29, 2016), *modified by*, Adm'r Dec. (Oct. 3, 2016); *Trinity Reg'l Med. Ctr. v. Wisconsin Physicians Servs.*, PRRB Dec. No. 2017-D1 (Dec. 15, 2016), *modified by*, Adm'r Dec. (Feb. 9, 2017); *Fairbanks Mem'l Hosp. v. Wisconsin Physicians Servs.*, PRRB Dec. No. 2007-D11 (June 9, 2007), *modified by*, Adm'r Dec. (Aug. 5, 2007).

the fixed portion of the hospital's DRG payments (based on the hospital's fixed cost percentage as determined by the Medicare contractor), and comparing this fixed portion of the DRG payment to the hospital's fixed operating costs, so there is an apples-to-apples comparison.

The Administrator has overturned these Board decisions, stating:

> [T]he Board attempted to remove the portion of DRG payments the Board attributed to variable costs from the IPPS/DRG revenue. . . . In doing so the Board created a "fixed cost percentage" which does not have any source of authority pursuant to CMS guidance, regulations or underlying purpose of the VDA amount. . . . The VDA is not intended to be used as a payment or compensation mechanisms that allow providers to be made whole from variable costs, i.e., costs over which providers do have control and are relative to utilization. The means to determine if the provider has been fully compensated for fixed costs is to compare fixed costs to the total compensation made to the provider . . . .[29]

Recently, the U.S. Court of Appeals for the Eighth Circuit ("Eighth Circuit") upheld the Administrator's methodology in *Unity HealthCare v. Azar* ("*Unity*"), stating the "Secretary's interpretation was not arbitrary or capricious and was consistent with the regulation."[30]

At the outset, the Board notes that the CMS Administrator decisions are not binding precedent, as explained by PRM 15-1 § 2927.C.6.e:

> e. Nonprecedential Nature of the Administrator's Review Decision.—Decisions by the Administrator ***are not precedents*** for application to other cases. A decision by the Administrator may, however, be examined and an administrative judgment made as to whether it should be given application beyond the individual case in which it was rendered. If it has application beyond the particular provider, the substance of the decision will, as appropriate, be published as a regulation, HCFA Ruling, manual instruction, or any combination thereof so that the policy (or clarification of policy [*sic*] having a basis in law and regulations may be generally known and applied by providers, intermediaries, and other interested parties.[31]

Moreover, the Board notes that Alta Vista is not located in the Eighth Circuit and, thus, the *Unity* decision is not binding precedent in this appeal.

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[29] *Fairbanks Mem'l Hosp. v. Wisconsin Physicians Servs.*, Adm'r Dec. at 8 (Aug. 5, 2015), *modifying*, PRRB Dec. No. 2015-D11 (June 9, 2015).
[30] 918 F.3d 571, 579 (8th Cir. 2019).
[31] (Bold and italics emphasis added.)

Significantly, *subsequent to the time period at issue in this appeal*, CMS essentially adopted the Board's methodology for calculating VDA payments. In the preamble to the FFY 2018 IPPS Final Rule,[32] CMS prospectively changed the methodology for calculating the VDA to one which is very similar to the methodology used by the Board. Under this new methodology, CMS requires Medicare contractors to compare the estimated portion of the DRG payment that is related to fixed costs to the hospital's fixed costs, when determining the amount of the VDA payment.[33] The preamble to the FFY 2018 IPPS Final Rule makes this change effective for cost reporting periods beginning on or after October 1, 2017, explaining that it will "remove any conceivable possibility that a hospital that qualifies for the volume decrease adjustment could ever be less than fully compensated for fixed costs as a result of the application of the adjustment."[34]

Pursuant to 42 C.F.R. § 405.1867, the Board must give great weight to interpretive rules and general statements of policy. As set forth below, the Board finds that the Medicare Contractor's calculation of Alta Vista's VDA methodology for FY 2016 was incorrect because it was *not* based on CMS' stated policy as delineated in PRM 15-1 § 2810.1 and the Secretary's endorsement of this policy in the preambles to the relevant Final Rules.

The Medicare Contractor determined Alta Vista's VDA payment by comparing its FY 2008 fixed costs to its total FY 2008 DRG payments. However, neither the language nor the examples[35] in PRM 15-1 compare only the hospital's fixed costs to its total DRG payments when calculating a hospital's VDA payment. Similar to the instructions in PRM 15-1, the preambles to both the FFY 2007 IPPS Final Rule[36] and the FFY 2009 IPPS Final Rule[37] reduce the hospital's cost only by excess staffing (not variable costs) when computing the VDA. Specifically, both of these preambles state:

> [T]he adjustment amount is determined by subtracting the second year's MS-DRG payment from the lessor of: (a) The second year's cost minus any adjustment for excess staff; or (b) the previous year's costs multiplied by the appropriate IPPS update factor minus any adjustment for excess staff. The SCH or MDH receives the difference in a lump-sum payment.

It is clear from the preambles to these Final Rules that the only permissible adjustment to the hospital's cost for calculating the VDA is for excess staffing. Therefore, the Board finds that the Medicare Contractor did not calculate Alta Vista's VDA using the methodology laid out by CMS in PRM 15-1 or the Secretary in the preambles to the FFY 2007 and 2009 IPPS Final Rules.

Rather, the Board finds the Medicare Contractor calculated Alta Vista's FY 2008 VDA based on an otherwise *new* methodology that the Administrator adopted through adjudication in her

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[32] 82 Fed. Reg. 37990, 38179-38183 (Aug. 14, 2017).
[33] This amount continues to be subject to the cap specified in 42 C.F.R. § 412.92(e).
[34] 82 Fed. Reg. at 38180.
[35] PRM 15-1 § 2810.1(C)-(D).
[36] 71 Fed. Reg. 47869, 48056 (Aug. 18, 2006).
[37] 73 Fed. Reg. 48434, 48631 (Aug. 19, 2008).

decisions described as follows: the "VDA [payment] is equal to the difference between its fixed and semi-fixed costs and its DRG payment . . . subject to the ceiling[.]"[38] The Board suspects that the Administrator developed this new methodology using fixed costs because of a seeming conflict between the methodology explained in the FFY 2007 and 2009 IPPS Final Rules/PRM and the statute. Notably, in applying this new methodology through adjudication, CMS did not otherwise alter its written policy statements in either the PRM or Federal Register until it issued the FFY 2018 IPPS Final Rule.[39]

The statute at 42 U.S.C. § 1395ww(d)(5)(D)(ii) is intended to fully compensate the hospital for its fixed costs:

> In the case of a sole community hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.[40]

In the final rule published on September 1, 1983 ("FFY 1984 IPPS Final Rule"), the Secretary further explained the purpose of the VDA payment: "[t]he statute requires that the [VDA] payment adjustment be made to compensate the hospital for the fixed costs it incurs in the period . . . . An adjustment will *not* be made for truly variable costs, such as food and laundry services."[41] However, the VDA payment methodology as explained in the FFY 2007 and 2009 IPPS Final Rules and PRM 15-1 § 2810.1 compares a hospital's total cost (reduced for excess staffing) to the hospital's *total* DRG payments and states in pertinent part:

> C. Requesting Additional Payments.—. . . .
>
> 4. Cost Data.—The hospital's request must include cost reports for the cost reporting period in question and the immediately preceding period. The submittal must demonstrate that the Total Program Inpatient Operating Cost, excluding *pass-through costs, exceeds DRG payments*, including outlier payments. *No adjustment is allowed if DRG payments exceeded program inpatient operating cost*. . . .

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[38] *Lakes Reg'l Healthcare v. BlueCross BlueShield Ass'n*, Adm'r Dec. 2007-D16 at 8 (Sept. 4, 2007); *Unity Healthcare v. BlueCross BlueShield Ass'n*, Adm'r Dec. 2007-D15 at 8 (Sep. 4, 2007); *Trinity Reg'l. Med. Ctr. v. Wisconsin Physician Servs.*, Adm'r Dec. 2017-D1 at 12 (Dec. 15, 2016).
[39] 82 Fed. Reg. at 38179-38183.
[40] (Emphasis added.)
[41] 48 Fed. Reg. 39752, 39781-39782 (Sept. 1, 1983) (emphasis added).

> D. Determination on Requests.— . . . . The payment adjustment is calculated under the same assumption used to evaluate core staff, i.e. *the hospital is assumed to have budgeted based on prior year utilization and to have had insufficient time in the year in which the volume decrease occurred to make significant reductions in cost*. Therefore, the adjustment allows an increase in cost up to the prior year's total Program Inpatient Operating Cost (excluding pass-through costs), increased by the PPS update factor.
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> EXAMPLE A: Hospital C has justified an adjustment to its DRG payment for its FYE September 30, 1987. . . . Since Hospital C's FY 1987 Program Inpatient Operating Cost was less than that of FY 1986 increased by the PPS update factor, *its adjustment is the entire difference between FY 1987 Program Inpatient Operating Cost* ***and FY 1987 DRG payments***.
>
> EXAMPLE B: Hospital D has justified an adjustment to its DRG payment for its FYE December 31, 1988. . . . Hospital D's FY 1988 Program Inpatient Operating Cost exceeded that of FY 1987 increased by the PPS update factor, so *the adjustment is the difference between FY 1987 cost adjusted by the update factor* ***and FY 1988 DRG payments***.[42]

At first blush, this would appear to conflict with the statute and the FFY 1984 IPPS Final Rule which limit the VDA to fixed costs. The Board believes that the Administrator tried to resolve this seeming conflict by establishing a new methodology, through adjudication in the Administrator decisions, stating that the "VDA is equal to the difference between its *fixed and semi-fixed costs* and its DRG payment . . . subject to the ceiling."[43] Based on its review of the statute, regulations, PRM 15-1 and the Eighth Circuit's decision, the Board respectfully disagrees that the Administrator's methodology complies with the statutory mandate to "fully compensate the hospital for the fixed costs it incurs."[44]

Using the Administrator's rationale, a hospital is fully compensated for its fixed costs when the total DRG payments issued to that hospital are equal to or greater than its fixed costs. This assumes that the entire DRG payment is payment ***only*** *for the* ***fixed*** *costs* of the services actually furnished to Medicare patients. However, the statute at 42 U.S.C. § 1395ww(a)(4) makes it clear that a DRG payment includes payment for both fixed *and* variable costs of the services rendered because it defines operating costs of inpatient services as "**all** routine operating costs . . . and includes the ***costs*** *of all services* for which payment may be made[.]" The Administrator cannot simply ignore 42 U.S.C. § 1395ww(a)(4) and deem all of a hospital's DRG payments as payments solely for the fixed cost of the Medicare services actually rendered when the hospital, in fact, incurred both fixed and variable costs for those services.

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[42] (Emphasis added.)
[43] *St. Anthony Reg'l Hosp.*, Adm'r Dec. at 13; *Trinity Reg'l Med. Ctr.*, Adm'r Dec. at 12.
[44] 42 U.S.C. § 1395ww(d)(5)(D)(ii).

Indeed, the Board must conclude that the purpose of the VDA payment is to compensate an SCH for all the fixed costs associated with the qualifying volume decrease (which must be 5 percent or more). This is in keeping with the assumption stated in PRM 15-1 § 2810.1.D that "the hospital is assumed to have budgeted based on prior year utilization and to have had insufficient time in the year in which the volume decrease occurred to make significant reductions in cost." This approach is also consistent with the directive in 42 C.F.R. § 412.92(e)(3)(i)(A) that the Medicare contractor "considers . . . [t]he individual hospital's needs and circumstances" when determining the payment amount.[45] Clearly, when a hospital experiences a decrease in volume, the hospital should reduce its variable costs associated with the volume loss, but the hospital will always have some variable cost related to furnishing Medicare services to its *actual* patient load.

Critical to the proper application of the statute, regulation and PRM provisions related to the VDA, are the unequivocal facts that: (1) the Medicare patients to which a provider furnished *actual* services in the current year are not part of the volume decrease, and (2) the DRG payments made to the hospital for services furnished to Medicare patients in the current year is payment for *both* the fixed and variable costs of the *actual* services furnished to those patients. Therefore, in order to fully compensate a hospital for its fixed costs in the current year, the hospital must receive a payment for the variable costs related to its *actual* Medicare patient load in the current year, as well as its full fixed costs in that year.

The Administrator's methodology clearly does not do this, as it takes the portion of the DRG payment intended for variable costs incurred in the current year and impermissibly characterizes it as payment for the hospital's fixed costs. The Board can find no basis in 42 U.S.C. § 1395ww(d)(5)(D)(ii) allowing the Secretary to ignore 42 U.S.C. § 1395ww(a)(4) – which makes it clear that the DRG payment is payment for both fixed and variable costs - and deem the entire DRG payment as payment solely for fixed costs. The Board concludes that the Administrator's methodology does not ensure that a hospital, eligible for a VDA adjustment, has been fully compensated for its fixed costs and, therefore, is not a reasonable interpretation of the statute.

Finally, the Board recognizes that, while PRM 15-1 § 2810.1 and 42 U.S.C. § 1395ww(d)(5)(D)(ii) do not fully address how to remove variable costs when calculating a VDA adjustment, it is clear that the VDA payment is *not* intended to fully compensate the hospital for its variable costs.[46] Additionally, based on 42 U.S.C. § 1395ww(a)(4), the Board finds that DRG payments are intended to pay for both variable and fixed costs for Medicare services *actually* furnished. The Board concludes that, in order to ensure the hospital is fully compensated for its fixed costs and be consistent with the PRM 15-1 assumption that "the hospital is assumed to have budgeted based on the prior year utilization," the VDA calculation must compare the hospital's fixed costs to that portion of the hospital's DRG payments attributable to fixed costs.

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[45] The Board recognizes that 42 C.F.R. § 412.92(e)(3)(i)(B) (2008) instructs the Medicare contractor to "consider[]" fixed and semifixed costs for determining the VDA payment amount but this instruction does not prevent payment through the DRG of the variable costs for those services *actually* rendered.

[46] 48 Fed. Reg. at 39782.

As the Board does not have the IPPS actuarial data to determine the split between fixed and variable costs related to a DRG payment, the Board opts to use the Medicare Contractor's fixed/variable cost percentages as a proxy. In this case the Medicare Contractor determined that Alta Vista's fixed costs (which includes semi-fixed costs) were 79.31 percent[47] of the Provider's Medicare costs for FY 2008. Applying the rationale described above, the Board finds the VDA in this case should be calculated as follows:

Step1: Calculation of the CAP

2007 Medicare Inpatient Operating Costs	$8,304,042[48]
Multiplied by the 2008 IPPS update factor	1.033[49]
2008 Updated Costs (max allowed)	$8,578,075
2008 Medicare Inpatient Operating Costs	$7,358,907[50]
Lower of 2007 Updated Costs or 2008 Costs	$7,358,907
Less 2008 IPPS payment	$6,364,386[51]
2008 Payment CAP	$ 994,521

Step 2: Calculation of VDA

2008 Medicare Inpatient Fixed Operating Costs	$5,836,349[52]
Less Excess Staffing	
Less 2008 IPPS payment – fixed portion (79.31[53] percent)	$5,047,595 [54]
Payment adjustment amount (subject to CAP)	$ 788,754

Since the payment adjustment amount of $788,754 is less than the CAP of $994,521, the Board concludes that Alta Vista's VDA payment for FY 2008 should be $788,754.

DECISION

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the Medicare Contractor improperly calculated Alta Vista's VDA payment for FY 2008, and that Alta Vista should receive a FY 2008 VDA payment in the amount of $788,754.

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[47] Stipulations at ¶ 11.
[48] *Id*.
[49] *Id*.
[50] *Id*.
[51] *Id*.
[52] The $5,836,344 is calculated by multiplying $7,358,907 (the 2008 Medicare Inpatient Operating Costs) by 0.7931 (the fixed cost percentage determined by the Medicare Contractor). The immaterial difference between $5,836,344 and the $5,836,442 listed in Stipulations ¶ 11 is due to rounding the fixed cost percentage.
[53] *Id.*
[54] The $5,047,595 is calculated by multiplying $ 6,364,386 (the FY 2008 SCH payments) by 0.7931 (the fixed cost percentage determined by the Medicare Contractor). The immaterial difference between $5,047,595 and the $5,047,675 listed in Stipulations ¶ 11 is due to rounding the fixed cost percentage.

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FOR THE BOARD:

6/30/2021

X Clayton J. Nix

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