PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

ON-THE-RECORD

98-D15

PROVIDER -Methodist Hospital
St. Louis Park, MN

Provider No. 24-0053

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
Blue Cross and Blue Shield of
Minnesota

DATE OF HEARING-
December 17, 1997

Cost Reporting Period Ended -
October 31, 1984

CASE NO. 91-2414M

INDEX

ISSUE:

Was the Intermediary's denial of the reclassification of accrued surgery residency costs from the operating room cost center to the interns and residents cost center in calculating the Provider's base year graduate medical education cost proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Methodist Hospital ("Provider") is a 338-bed, non-profit, general, short-term hospital located in St. Louis Park, Minnesota. Since 1967, the Provider and Park Nicollet Medical Foundation ("Park Nicollet") have jointly participated in graduate medical education ("GME") programs with the University of Minnesota, which included an accredited Surgery Residency Program. Under the program, surgery residents from the University of Minnesota were assigned to the General Surgical Service and the Thoracic Surgical Service at Park Nicollet. For the fiscal year ended October 31, 1984 ("GME Base Year"), three surgical residents were assigned to Park Nicollet, of which one-third of their rotation was spent at the Provider. Since one full-time equivalent ("FTE") surgical resident's time was spent at the Provider, the Provider reported an accrued expense of $22,800 to account for the cost associated with one FTE resident count. The cost of the surgical residents was reported in the operating room cost center rather than the interns and residents cost center.

Based on its audit of the Provider's GME base year, Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Minnesota ("Intermediary") made various adjustments to the Provider's GME costs and resident count, which were used in determining the Provider's average per resident amount for GME activities. The Provider appealed several of the adjustments issued with Intermediary's Notice of Average Per Resident Amount ("NAPRA") to the Provider Reimbursement Review Board ("Board") and has met the jurisdictional requirements of 42 C.F.R. § 405.1835-.1841. The sole issue remaining before the Board in this case concerns the Intermediary's refusal to reclassify the accrued surgery residency costs from the operating room cost center to the interns and residents cost center for purposes of the GME calculation.

PROVIDER'S CONTENTIONS:

The Provider contends that it incurred the surgery residency costs during its GME base year, and that the amount should be recognized as an incurred expense regardless of when it was actually paid. In support of its position, the Provider submitted a copy of a check, dated July 20, 1994, which shows that a payment of $22,800 was made to Park Nicollet for the 1984 surgical residents costs. The Provider rejects the Intermediary's disallowance of the costs based on the fact that the accrued expense was not liquidated within one year, as required by § 2305 of the Provider Reimbursement Manual ("HCFA Pub. 15-1"). The Provider contends that § 2305 is invalid because it conflicts with the governing regulation at 42 C.F.R. § 413.24(a), which requires providers to use the accrual method of accounting defined as follows:

> Under the accrual basis of accounting, revenue is reported in the period when it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

42 C.F.R. § 413.24(a)(2) (emphasis added).

The Provider asserts that the Intermediary is required under the regulation to recognize the incurred costs. Unlike the rules set forth in the Code of Federal Regulations, the provisions of HCFA Pub. 15-1 are interpretive guidelines that are not adopted in accordance with the notice and comment requirements of the Administrative Procedure Act. Accordingly, if there is any inconsistency between the regulations and HCFA Pub. 15-1, the regulations control.

In further support of its position, the Provider refers to the circuit court's decision in Charlotte Memorial Hospital and Medical Center v. Bowen, 860 F.2d 595, 598 (4th Cir. 1988), wherein the court held that under 42 C.F.R. § 413.24 the Medicare program must recognize accrued costs for purposes of calculating the amount of Medicare reimbursement, regardless of any contrary provisions in HCFA Pub. 15-1. In that case, the court's ruling pertained to a deferred compensation plan where there was some possibility that the accrued costs would not actually be paid. Since the costs in the instant case are not subject to the same possibility of nonpayment, the Provider believes its surgery residency costs should be allowed in its GME base year.

Even assuming the application of HCFA Pub. 15-1 § 2305 is correct, the Provider contends that the Intermediary's application is inappropriate in this case. Whereas accrued liabilities that are not paid within a one-year period are not allowed under § 2305, they are allowed in the cost reporting period when the liquidation of the liabilities actually occur. This appeal involves the calculation of the Provider's GME base year costs established through the Intermediary's auditing process. Accordingly, if the costs incurred for the surgery residents are not allowed in the per resident amount for the GME base year, they will never be allowed. The rules governing the calculation of the GME base year costs do not provide for subsequent adjustment to the per resident amount. Accordingly, the remedial provision of HCFA Pub. 15-1 § 2305 which allows an accrued cost in the year that the liability is paid would never take effect. Therefore, the Provider concludes that it is unfair and inappropriate to disallow the surgery residency costs incurred in the GME base year based on the fact that they were not paid within a year after they were incurred.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that it properly applied the regulations in developing the Provider's cost per resident amount for the GME base year. With respect to the accrual of $22,800 for surgical residency costs reported by the Provider in the operating room cost center, the Intermediary advises that it did not reclassify the costs to the interns and residents cost center during the GME base period audit because it found that the accrual had not been paid within one year as required under HCFA Pub. 15-1 § 2305. The Intermediary accepts the Provider's documentation which shows that the accrual was paid in 1994, ten years after the GME base year. Based on this subsequent submission of documentation supporting the 1994 payment, the Intermediary will allow the expense in the Provider's 1994 cost reporting period in accordance with the provisions of HCFA Pub. 15-1 § 2305. However, it is the Intermediary position that this treatment precludes any change to the GME rate determined in the Provider's 1984 GME base period.

The Intermediary argues that HCFA Pub. 15-1 § 2305.A states that:

> A. General.--A short term liability must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred, subject to the exceptions specified in §§ 2305.1 and 2305.2. . . .Where the liability (1) is not liquidated within the 1 year time limit, or (2) does not qualify under the exceptions specified in §§ 2305.1 and 2305.2, the cost incurred for the related goods and services is not allowable in the cost reporting period when the liability is incurred, but is allowable in the cost reporting period when the liquidation of the liability occurs.

HCFA Pub. 15-1 § 2305.A.

The Intermediary states that the liability in question does not qualify for an exception under HCFA Pub. 15-1 §§ 2305.1 or 2305.2. Accordingly, the Intermediary advises that it did not make a GME base period audit adjustment for the surgical residency costs since the accrued expense was reported in the operating room cost center and not the interns and residents cost center. While a reclassification could have been made, the Intermediary contends that it would have disallowed the costs for nonliquidation of the liability within one year. The Intermediary reasons that it passed in making any adjustments since there would have been no impact on the GME cost per resident amount.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Laws - 42 U.S.C.:

§ 1395ww(h)	-	Payments for Direct Medical Education Costs
§ 1395x(v)(1)(A)	-	Reasonable Cost

2. Regulations - 42 C.F.R.:

§ 405.1835-.1841	-	Board Jurisdiction
§ 413.24	-	Adequate Cost Data and Cost Finding
§ 413.85	-	Cost of Educational Activities
§ 413.86	-	Direct Graduate Medical Education Payments

3. Program Instructions - Provider Reimbursement Manual, Part I (HCFA Pub. 15-1):

§ 2305	-	Liquidation of Liabilities

4. Case Law:

Charlotte Memorial Hospital and Medical Center v. Bowen, 860 F.2d 595, 598 (4th Cir. 1988).

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties contentions, and evidence in the record, finds and concludes that the Intermediary correctly applied the provisions of HCFA Pub. 15-1 § 2305.A. Since the record shows that the accrued surgery residency costs were not paid within a year of incurrence, the accrued amount is not allowable in the Provider's cost reporting period ended October 31, 1984. The Board finds that HCFA Pub. 15-1 § 2305ff sets forth specific requirements and exceptions for the liquidation of liabilities, and that the manual provision does not conflict with the regulatory policy established under the Medicare program.

DECISION AND ORDER:

The Intermediary's denial of the reclassification of accrued surgery residency costs from the operating room cost center to the interns and residents cost center in calculating the Provider's base year graduate medical education cost was proper. The Intermediary's determination is affirmed.

<u>Board Members Participating</u>:

Irvin W. Kues
James G. Sleep
Teresa B. Devine
Henry C. Wessman, Esquire

<u>FOR THE BOARD</u>:

Irvin W. Kues
Chairman