PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

ON-THE-RECORD
98-D63

PROVIDER -
Bluegrass Regional Medical Center
Frankfort, Kentucky

Provider No. 18-0127

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
AdminaStar of Kentucky

DATE OF HEARING-
May 21, 1998

Cost Reporting Period Ended -
July 31, 1993

CASE NO. 96-0535

INDEX

ISSUE:

Were the Intermediary's adjustments to Medicare bad debts proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Bluegrass Regional Medical Center ("Provider") is a proprietary, medical/surgical hospital located in Frankfort, Kentucky.[1] The Provider timely filed its Medicare cost report for the fiscal year ended July 31, 1993, in which it claimed reimbursement for $66,050 in Medicare bad debts.[2] On August 28, 1995, AdminaStar of Kentucky ("Intermediary") issued a Notice of Program Reimbursement ("NPR") for the subject cost reporting period. The NPR incorporated adjustments disallowing $40,404 of the Provider's claimed bad debts due to amounts not agreeing with Intermediary records, accounts not being billed for at least 120 days, and subsequent recoveries of individual bad debt claims.[3]

On January 22, 1996, the Provider appealed the Intermediary's bad debt disallowance to the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§ 405.1835-.1841, and met the jurisdictional requirements of those regulations. The amount of Medicare reimbursement in controversy reflected in the Provider's filing was the entire bad debt adjustment of $40,404. However, on January 17, 1996, the Intermediary issued an amended NPR which added back $25,698 of the previously disallowed bad debts. The amount of bad debts still considered unallowable by the Intermediary is attributable only to accounts that had not been billed for at least 120 days.[4] In addition, subsequent to its January 17, 1996 amended NPR, the Intermediary acknowledged that an additional amount of previously disallowed bad debts needed to be added back to the Provider's claim. Therefore, that amount in controversy is reduced to $7,698.[5]

The Provider was represented by Charles S. McCandless, Esquire, Manager, Appeals, Columbia/HCA Healthcare Corporation, the Provider's parent organization. The Intermediary was represented by Bernard M. Talbert, Esquire, Associate Counsel, Blue Cross and Blue Shield Association.

---

1 Provider's Position Paper at 1.

2 Provider's Position Paper at 4.

3 Intermediary's Position Paper at 2.

4 Id. Provider's Position Paper at 7.

5 See Intermediary's Position Paper at 2 and Provider's Position Paper at 7, previously noted.

PROVIDER'S CONTENTIONS:

The Provider contends that writing off delinquent deductible and coinsurance balances due from Medicare beneficiaries in less than 120 days from the date of initial billing does not render the bad debt nonallowable. The program intends that providers be reimbursed for Medicare bad debts when they uniformly employ reasonable collection efforts to Medicare and non-Medicare accounts and exercise sound business judgment in evaluating whether delinquent accounts are collectible. Further, the program intends that providers be reimbursed for Medicare bad debts when they determine and document the debts according to the specified criteria regardless of when the determination is made.[6]

The Provider contends that it met all of the requisite criteria for allowability of its Medicare bad debts except for the so-called "120 day rule".[7] Specifically, the Medicare bad debts claimed related only to deductible and coinsurance amounts owed by Medicare beneficiaries for covered inpatient and outpatient services, the Provider's formal collection policy was applied uniformly to both Medicare and non-Medicare patients, and the Provider's claim for reimbursement was made in the cost reporting period in which the amounts due from the beneficiaries were deemed worthless.

The Provider contends that the Intermediary's interpretation of the Provider Reimbursement Manual, Part I ("HCFA Pub. 15-1") § 310.2 is misplaced.[8] The Provider argues that the manual instruction was created to serve as a presumptive test and not as a "rule" that establishes a mandatory holding period of 120 days before delinquent accounts may be deemed allowable Medicare bad debts.

The Provider asserts that HCFA Pub. 15-1 § 310.2 is one of several guidelines used to establish proof of reasonable collection effort. The other guidelines of HCFA Pub.15-1 § 310 must be considered in assessing whether a reasonable collection effort was made by a provider under the particular circumstances. For example, an outstanding patient account that remains unpaid 120 days from the date of initial billing may reasonably be presumed to be uncollectible only if "reasonable and customary attempts to collect a bill" were made by the provider. This presumption of uncollectibility is only one measure of a provider's reasonable collection efforts. Therefore, a provider's reasonable collection efforts are ultimately assessed by the existence or nonexistence of other criteria (i.e., similar collection effort for Medicare and non-Medicare billings, prompt issuances of billing, use of subsequent bills, collection letters, telephone calls and collection agencies) delineated by Medicare regulations and manual instructions.

---

6 Provider's Position Paper at 9.

7 Id.

8 Provider's Position Paper at 10.

The Provider contends that the Board has held the 120 day factor as not controlling in the determination of whether or not a provider exercised adequate collection efforts.[9] Recently, in Lourdes Hospital (Paducah, Ky.) v. Blue Cross and Blue Shield Association/AdminaStar of Kentucky, PRRB Dec. 95-D58, August 31, 1995, Medicare & Medicaid Guide (CCH) ¶ 43,585, modif'd HCFA Admin., October 25, 1995, Medicare & Medicaid Guide (CCH) ¶ 43,723 ("Lourdes"), the Board stated in pertinent part that:

> the Intermediary's application of HCFA Pub. 15-1 § 310.2 as the sole basis to disallow the Provider's bad debts was improper. The Board finds that section 310.2 is merely a guideline for establishing reasonable collection efforts and noncollectibility. Other factors delineated in 42 C.F.R. § 413.80(e) and HCFA Pub. 15-1 § 310 also must be considered. Such factors include similar collection efforts for Medicare and non-Medicare patients, prompt issuance of billings, use of subsequent bills, collection letters, telephone calls and collection agencies. 42 C.F.R. § 413.80(e) and HCFA Pub. 15-1 § 310.

Lourdes, Medicare & Medicaid Guide (CCH) ¶ 43,585.

Additionally, in King's Daughters' Hospital (Ashland, Ky.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Kentucky, Inc., PRRB Dec. 91-D5, Nov. 14, 1990, Medicare & Medicaid Guide (CCH) ¶ 38,950, decl'd rev. HCFA Admin., December 26,1990 ("King's Daughters'"), the Board concluded that the provider's Medicare bad debts which were written off less than 120 days from the date of the initial billing to patients should be allowed. The Board held that the intermediary's application of HCFA Pub.§ 310.2, Presumption of Noncollectibility to disallow the under 120 day bad debt write-offs was improper.

The Provider rejects the Intermediary's contention that it is bound by instructions contained in letters issued by the Health Care Financing Administration's (HCFA) Bureau of Policy Development.[10] The Provider explains that the Intermediary, in response to the Board's decisions in King's Daughters' and Lourdes, argues that it is bound by instructions contained in HCFA letters dated April 1, 1992,[11] and September 15, 1995,[12] respectively. These letters interpret the Omnibus Budget Reconciliation Act ("OBRA") of 1987 as amended by the Technical and Miscellaneous Revenue Act of 1988 and OBRA of 1989. The September 15, 1995 letter states in part:

---

9 Provider's Position Paper at 11.

10 Provider's Position Paper at 12.

11 Exhibit I-5.

12 Exhibit I-4.

> the policy permits claiming of bad debts in 120 days or less only when providers are able to show that a particular debt was "actually uncollectible when claimed as worthless" in accordance with the criterion in section 308(3). If providers were permitted to satisfy this criterion based merely on a showing of vigorous collection efforts for some shorter period after mailing the first bill, the effect would be to afford the provider the same presumption contained in section 310.2, but prior to the expiration of the 120 day period. Such an interpretation would not be in keeping with the policy.

HCFA letter dated September 15, 1995.

The Provider asserts that interpretive letters such as those from HCFA's Bureau of Policy Development are accorded relatively minor authoritative importance. The Provider notes that the Administrator of HCFA declined to review the Board's decision in King's Daughters', and affirmed the Board's decision in Lourdes. According to the Provider, the Administrator stated in Lourdes:

> [t]he Board found that the Provider demonstrated that it made reasonable collection efforts and that the debts written off in less than 120 days were actually uncollectible. This finding is supported by the record and consistent with HCFA policy. . .
>
> Applying the above-cited sections of the Act, regulations, and the PRM to the facts presented in the records, the Administrator finds that the Intermediary incorrectly determined that the bad debts claimed by the Provider may not be paid by Medicare. The Administrator finds that a reasonable construction of the PRM is that for debts claimed in 120 days or less from the first billing, no presumption of noncollectibility exists but, rather, the provider must establish that the debts are actually uncollectible. The Administrator finds that in the instant cases the evidence in fact establish that the debts were uncollectible . . .

Administrator's Decision, Lourdes, October 25, 1995.

Finally, the Provider contends that the facts in this case show that it met all regulatory requirements of 42 C.F.R. § 413.80 regarding reimbursement of Medicare bad debts.[13] The Provider asserts that it made inquiries of the patients' financial resources and insurance information at the time of admission. Itemized bills were sent to each patient shortly after discharge. Both Medicare and non-Medicare delinquent accounts were written off at the end of the billing cycle, which was less than 120 days. Both Medicare and non-Medicare accounts were sent to a collection agency, and Medicare accounts that were written off as bad

---

[13] Provider's Position Paper at 13.

debts were claimed in the Medicare cost report. The Prover asserts that it clearly demonstrated that it made reasonable collection efforts and that the debts written off in less than 120 days were actually uncollectible.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that its adjustment disallowing the Provider's bad debts that had not remained unpaid for at least 120 days is proper. The Intermediary asserts that the Provider did not prove these accounts were otherwise uncollectible.

The Intermediary asserts that its adjustment is supported by a letter dated September 15, 1995, from HCFA's Bureau of Policy Development regarding Lourdes. In part, the letter states:[14]

> [a]s discussed above, the policy permits claiming of bad debts in 120 days or less only when providers are able to show that a particular debt was "actually uncollectible when claimed as worthless" in accordance with the criterion in section 308(3) [of HCFA Pub. 15-1]. If providers were permitted to satisfy this criterion based merely on a showing of vigorous collection efforts for some shorter period after mailing the first bill, the effect would be to afford the provider the same presumption contained in section 310.2, but prior to the expiration of the 120 day period. Such an interpretation would not be in keeping with the policy.

HCFA letter dated September 15, 1995.

Accordingly, the Intermediary argues that bad debts must be shown to be uncollectible on a case-by-case basis if they are not billed for at least 120 days. With respect to the instant case, the Provider has merely argued that it has uniformly applied collection efforts to Medicare and non-Medicare patients, and in some cases this process did not last 120 days. There has been no showing on a case-by-case basis that there is something unique about these accounts that makes them uncollectible.

The Intermediary contends that the disallowance of bad debts written off prior to 120 days from the date of the first billing is supported by 42 C.F.R. § 413.80(e) and HCFA Pub. 15-1 § 308, which provide the following four criteria for a Medicare bad debt to be allowable:

> (1) The debt must be related to covered services and derived from deductible and coinsurance amounts.
>
> (2) The provider must be able to establish that reasonable collection efforts were made.

---

[14] Intermediary's Position Paper at 3. Exhibit I-4.

> (3) The debt was actually uncollectible when claimed as worthless.
>
> (4) Sound business judgment established that there was no likelihood of recovery at anytime in the future.

42 C.F.R. § 413.80(e), HCFA Pub. 15-1 § 308.

Moreover, HCFA Pub. 15-1 § 310 explains the characteristics of a reasonable collection effort and the presumption of non-collectibility. This presumption, occurring at HCFA Pub. 15-1 § 310.2 states "[i]f after reasonable and customary attempts to collect a bill, the debt remains unpaid more than 120 days from the date the first bill is mailed to the beneficiary, the debt may be deemed uncollectible." This section relieves the Provider of having to prove that the debt is uncollectible if the bill has been outstanding for at least 120 days. However, if the debt has been written off prior to 120 days from the first bill, the Provider must prove and document that the debt was actually uncollectible at the time of write-off.

Finally, the Intermediary argues that even if the Board determines the Provider has shown these accounts to be uncollectible on a case-by-case basis, OBRA 1987 prevents the Intermediary from allowing them. This statute, commonly referred to as the "moratorium", prohibits any change in bad debt policy in effect as of August 1, 1987. In a letter dated April 1, 1992, HCFA's Bureau of Policy Development explains how the moratorium relates to the 120 day rule, as follows:[15]

> [t]herefore, under the moratorium, if an intermediary's practice as of August 1, 1987 was to permit bad debts claimed in 120 days or less, with adequate proof that the debt was uncollectible, the intermediary should continue that practice. In the same manner, an intermediary should continue to disallow any bad debts claimed in 120 days or less if that was the intermediary's consistent policy as of Aug. 1, 1987.

HCFA letter dated April 1, 1992.

The Intermediary asserts that its policy as of August 1, 1987, was to disallow any bad debts claimed in 120 days or less. This policy is evidenced by a copy of the audit program used by the Intermediary in June 1987, to review the Provider's 1986 cost report.[16] Specifically, Step 2.G of the program states "[d]etermine that the period of time from the first billing to the write-off is at least 120 days unless the patient is considered indigent or medically indigent." Therefore, the Intermediary concludes that since its policy as of August 1, 1987, was to remove any accounts not meeting the 120 day criterion, it must continue to do so.

---

[15] Exhibit I-5

[16] Exhibit I-6.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

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

§ 1395x(v)	-	Reasonable Cost
§ 1395e note (OBRA 1987 § 4008(c) as amended)	-	Continuation of Bad Debt Recognition for Hospital Services

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

§§ 405.1835-.1841	-	Board Jurisdiction
§ 413.80(e)	-	Criteria for Allowable Bad Debt

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

§ 308	-	Criteria for Allowable bad Debt
§ 310	-	Reasonable Collection Effort
§ 310.2	-	Presumption of Noncollectibility

4. Case Law:

Lourdes Hospital (Paducah, Ky.) v. Blue Cross and Blue Shield Association/AdminaStar of Kentucky, PRRB Dec. 95-D58, August 31, 1995, Medicare & Medicaid Guide (CCH) ¶ 43,585, modif'd HCFA Admin., October 25, 1995, Medicare & Medicaid Guide (CCH) ¶ 43,723.

King's Daughters' Hospital (Ashland, Ky.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Kentucky, Inc., PRRB Dec. 91-D5, Nov. 14, 1990, Medicare & Medicaid Guide (CCH) ¶ 38,950 decl'd rev. HCFA Admin., December 26, 1990.

5. Other:

HCFA letter dated September 15, 1995.

HCFA letter dated April 1, 1992.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions, and evidence presented, finds and concludes that the Intermediary properly disallowed a portion of the Medicare bad debts claimed by the Provider. The Provider did not establish that the debts at issue were actually uncollectible when they were claimed as worthless as required by program regulations.

Regulation 42 C.F.R. § 413.80(e) provides four (4) criteria that a provider must meet with respect to a receivable from a beneficiary in order to claim that receivable as a bad debt. In general, a provider must establish that the debt relates to covered services and is derived from deductible and coinsurance amounts, that reasonable collection efforts were made, that the debt was actually uncollectible when claimed, and that sound business judgment indicates there is no likelihood of future recovery.

Program instructions at HCFA Pub. 15-1 § 310.2 address "noncollectibility", the criteria underscored above. The manual states "[i]f after reasonable and customary attempts to collect a bill, the debt remains unpaid more than 120 days from the date the first bill is mailed to the beneficiary, the debt may be deemed uncollectible". The Board concludes that unless a provider demonstrates that a Medicare debt is uncollectible by other means, the provider must comply with the 120 day requirement.

With respect to the instant case, the Board finds no documentary evidence in the record establishing the subject bad debts as uncollectible. The Board agrees with the Intermediary's contention that the Provider has merely argued that it has uniformly applied collection efforts to both Medicare and non-Medicare patients. There is no evidence distinguishing the subject accounts as uncollectible. Accordingly, the Board is compelled to rely upon the 120 day rule to determine uncollectibility, as did the Intermediary, and find that the subject accounts are not reimbursable.

The Board acknowledges the Provider's reference to the decisions rendered in Lourdes and King's Daughters' to support its position that the 120 day rule is merely one of many guidelines that must be consideration in determining whether or not a receivable can be claimed as a bad debt. The Board, however, distinguishes the instant case from Lourdes, in that, in Lourdes there was substantial evidence including testimony and the provider's historical experience that established the subject debts as uncollectible. Similarly, in King's Daughters' the facts and evidence clearly indicated that the provider met all of the Medicare bad debt criteria with the one exception of the 120 day rule.

Finally, the Board agrees with HCFA's application of the bad debt moratorium enacted by OBRA 1987, as amended, to the 120 day rule, stated as follows:

> [t]herefore, under the moratorium, if an intermediary's practice as of August 1, 1987 was to permit bad debts claimed in 120 days or less, with adequate proof

> that the debt was uncollectible, the intermediary should continue that practice. In the same manner, an intermediary should continue to disallow any bad debts claimed in 120 days or less if that was the intermediary's consistent policy as of Aug. 1, 1987.

HCFA letter dated April 1, 1992.

DECISION AND ORDER:

The Intermediary properly disallowed a portion of the Medicare bad debts claimed by the Provider. The Intermediary's adjustments are affirmed.

Board Members Participating:

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

Date of Decision: June 11, 1998

FOR THE BOARD:

Irvin W. Kues
Chairman