PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

98-D88

PROVIDER -
Baylor University Medical Center
Dallas, Texas

Provider No. 45-0021

vs.

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

DATE OF HEARING-
March 12, 1998

Cost Reporting Periods Ended -
June 30, 1987 and June 30, 1988

CASE NOs. 90-1201 and 91-1310

INDEX

ISSUES:

1. Was the Intermediary's adjustment offsetting intercompany interest income proper?

2. Was the Intermediary's adjustment disallowing staff physician Part A salary costs proper?

3. Was the Intermediary's adjustment offsetting investment income earned on loans to physicians proper?

4. Was the Intermediary's adjustment disallowing intercompany interest expense proper? (On-the-Record)

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Baylor University Medical Center ("Provider") is a non-profit, general short-term hospital located in Dallas, Texas. It filed its Medicare cost reports for fiscal years ended June 30, 1987 ("FY 87") and June 30, 1988 ("FY 88") claiming the above disputed issues as part of its allowable costs. Blue Cross and Blue Shield of Texas ("Intermediary") issued Notices of Program Reimbursement ("NPRs") contesting those claimed costs. The Provider appealed those adjustments to the Provider Reimbursement Review Board ("Board"). The Provider's appeals meet the jurisdictional requirements of 42 C.F.R. §§ 405.1835-.1841. The Provider was represented by Michael Price, Esquire, of Burford & Ryburn, L.L.P. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross and Blue Shield Association.

Issue No. 1 -- Intercompany Interest Income Offset

Facts:

The Provider and all affiliate hospitals of the Baylor Health Care System ("BHCS") transfer cash account balances into a single investment account. This is done in order to maximize investment returns. Records were maintained to ensure separate identification of the funds' sources. In addition, interest income is computed and credited to hospitals in BHCS that have positive balances in the investment fund. On the other hand, if a particular affiliate hospital has a negative cash balance in the investment fund, interest expense is charged to that hospital. The Provider and affiliates refer to this consolidation of cash accounts and recording of interest income as "pooled interest income."

In adjustment number 35 of the Intermediary's Adjustment Report to the Provider's FY 87 cost report, $261,966[1] was identified as "short term operating interest income" and used by the Intermediary as an offset against interest expense, including capital-related interest expense. A similar adjustment was made to the Provider's FY 88 cost report; however, the amount of "short term interest income" used as an offset for fiscal year 1988 was $1,085,378[2] as reflected in adjustment number 72. The Provider contests both of these adjustments because the interest income, although properly classified by the Intermediary as short term operating interest income, was used as offsets against

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[1] See Intermediary Exhibit I-4 (1987).

[2] See Intermediary Exhibit I-3 (1988).

long-term or capital-related interest expenses rather than against administrative and general expenses. This resulted in a reduction in Medicare reimbursement of approximately $65,000 in FY 87 and $87,000 in FY 88.

PROVIDER'S CONTENTIONS:

The Provider contends that according to Provider Reimbursement Manual, HCFA Pub. 15-1 ("HCFA Pub. 15-1") § 2338(c) interest expense incurred on funds borrowed for operating expenses must be allocated with administrative and general expenses, not capital-related expenses. As such, the Intermediary's adjustments in using short term operating interest income as an offset against capital related expenses were improper and should be reversed. In addition, HCFA Pub. 15-1, § 2150.2(c) mandates that intercompany interest income and expense are not recognized by the Medicare program as costs or revenues.

The Provider argues that interest income should not be offset against interest costs because the income is earned from a related organization. The regulation at 42 C.F.R. § 413.153(b)(3)(i) mandates that interest expense incurred between related parties is not allowable. Therefore, it follows that interest income earned between related parties should not be offset against interest costs.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends it had never accepted the interest in question as exempt from the income offset required by 42 C.F.R. § 413.153. In computing the income offset, it apportioned the income against both operating income and capital related income on a proportional basis. The Provider is now arguing that the offset should not be applied to capital related interest. The distinction between capital related interest and operating interest is important. During the fiscal periods under appeal, capital related costs were reimbursed on a cost basis per 42 C.F.R.
§ 412.113(a). Therefore, any income offset applied to capital borrowings reduced total reimbursable allowable capital costs. To the extent that a provider has an operating loan i.e., for working capital, reimbursement would be covered by the Prospective Payment System ("PPS") payments for operating costs. Only operating income that would be apportioned to outpatient services or PPS exempt units would be reimbursable on a cost basis. That amount is typically minimal. Therefore, an incentive exists to minimize the apportionment of income to capital related interest.

Given the Provider's change in position, the issue can be stated as:

> Was the Intermediary's apportionment of investment income to both capital related interest and non-capital related interest correct?

The Intermediary's position comes directly from 42 C.F.R. § 413.130(f) - Interest Expense:

(1) A provider must include in its capital-related costs interest expense, as described in 42 C.F.R. § 413.153, if such expense in incurred in -

(i) Acquiring land or depreciable assets (either through purchase or lease) used for patient care;

or

(2) If investment income offset if required under § 413.153(b)(2)(iii), only that portion of investment income that bears the same relationship to total investment income, as the portion of capital-related interest expense bears to total interest expense, is offset against capital-related costs.

Id.

The Provider cited Florida Medical Center Inc. v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Florida, PRRB Dec. No. 93-D63, July 28, 1993, Medicare and Medicaid Guide (CCH) ¶ 41,618 ("Florida Medical Center") in support of its position. When the facts of that decision are analyzed and considered with the HCFA Administrator's modification, the case supports the Intermediary's adjustment. In Florida Medical Center, the Board agreed with two provider arguments. First, it excluded $113,000 of investment income on a loan between the provider and one of its owners. The Board next apportioned the remaining interest against all three categories of interest, i.e., capital related, operating and nonallowable. The HCFA Administrator agreed with the Board on the exclusion of income on the loan to the owner from any offset. However, the Administrator reversed the Board's allocation of income generated from patient care activities to the nonallowable interest category. It is clear even from the Board's decision that patient care generated income was applied pro rata to interest expense without attempting to parse the income into operating versus capital sources. The Provider's argument has no support from the Florida Medical Center decision.

The Intermediary asks what is capital related interest income? There are isolated situations were funds are borrowed for capital needs and accounts are held for specific purposes related to a borrowing i.e., a debt service reserve fund, and the income earned is not exempt from offset. The Provider might be arguing that only income earned under this rare situation is offsetable against the related capital interest expense. The Provider has identified no support for its theory that there is a definable category of capital related interest income. Further, to the extent a hospital deposits funds received from patients or third party payors into accounts that earn interest, the ultimate source of that patient care revenue is the combination of a facility's capital (equipment/facility) and operational resources. The Provider's concept of operating interest income and capital related interest income has no logical starting place.[3]

The Intermediary notes that the Provider also referenced HCFA Pub. 15-1 § 2338. To support its position, it argues that the primary subject matter of that section is the allocation of capital interest expense to the related assets. Subsections (a) and (b) of that section explain how interest and other asset costs (taxes, insurance, etc.) are allocated based upon the nature and use of the assets. Subsection (c) deals with non-capital interest and instructs inclusion with A&G expenses. That is a natural allocation statistic for interest expense related to working capital. HCFA Pub. 15-1 § 2338 does not address income offsets. The offset process comes first and is done pro rata in accordance with 42 C.F.R. § 413.130(f). Once the total net interest is identified, then HCFA Pub. 15-1 § 2338 comes into play. There is nothing in that section to support the Provider's theory.

Issue No. 2 -- Staff Physician Part A Salary Costs

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[3] Transcript ("Tr.") at 44.

Facts:

The Provider, in affiliation with Southwestern Medical School, operates a graduate medical education program. As a part of that program, approximately 130 full-time residents are under the supervision of the Provider's staff physicians. The physicians, as part of the graduate medical education program, provide extensive training and education to the residents. This graduate medical education program has been approved by appropriate governing bodies. Costs of the program and physician salary costs were reported as allowable medical education costs on the Medicare cost report. The Intermediary disallowed all hospital-based physician compensation, claiming that the Provider's documentation was insufficient and contending that actual log or calendar entries are required to support physician time associated with administrative services and resident training programs. This resulted in the disallowance of $1,468,676 in FY 87 and $1,644,431 in FY 88. It reduced Medicare reimbursement by $47,000 in FY 87 and $50,000 in FY 88.

PROVIDER'S CONTENTIONS:

The Provider's position is twofold. First, a large number of physicians are compensated for hospital services only and, therefore, detailed time studies are not required by current regulations. Second, data submitted by the Provider is sufficient to allocate compensation between allowable and nonallowable physicians services.

Regarding the physicians performing only provider-based services, the Provider argues that it compensates a large number of physicians for various services rendered to the hospital. The services range from general administrative services performed within and for hospital ancillary departments, to training of interns and residents. A list of all physicians compensated for hospital services is presented in Provider Exhibit 5(A). The list summarizes total compensation by physician, percentage of time by services, and allocated salaries by services. Compensation to physicians numbered 1 through 35 on Exhibit 5(A) should be allowed because these services are related to the hospital only and are not related to direct physician patient care. Support for allowing the cost is at 42 C.F.R. § 405.481(d) which states that in general, compensation paid to a physician shall be allocated among all services provided by the physician. However, if a provider certifies that the physician services are attributable solely to the provider and if, in addition, the physician performs all billing and collecting for provided physician services, then physician compensation should be allocated to the provider only. The Provider maintains, by records submitted to the Intermediary and submission of the Board position paper, that the physicians listed on Provider Exhibit 5(A) were compensated solely for services rendered to the Provider by the physicians. In addition, any physician whose billing was performed by the Provider is not listed on Exhibit 5(A). As such, the Provider is in compliance with 42 C.F.R. § 405.481(d), and the physician compensation costs should be allowed as costs related to patient care. Thus, $1,468,676 of the costs disallowed should be allowed under 42 C.F.R. § 405.481(d).

Regarding physicians performing provider and patient services, the Provider argues that the remaining physicians' compensation disallowed and presented on Exhibit 5(A) should be allowed because time summaries presented to the Intermediary are reasonable and adequate for reimbursement purposes. In addition, disallowing the total physician costs is in direct violation of the Social Security Act and 42 C.F.R. § 413.9, both of which require the reimbursement of reasonable costs incurred by providers. The Provider obtained estimates from its hospital-based physicians on the amount of time spent training interns and residents and performing other Part A services. The Intermediary already had a copy of the detailed time summaries. It would not accept this information or copies of

contracts describing these services. In essence, the Intermediary is insisting that the Provider prepare the equivalent of time studies in order to obtain reimbursement.

The Provider argues that the Provider Reimbursement Manual specifically acknowledges that detailed time studies are not required. HCFA Pub. 15-1 § 2182.3(E)(4) clearly states that detailed records are not required. The estimates obtained from physicians are the best evidence available and reasonably support the allocation of Medicare Part A reimbursable and nonreimbursable services. Furthermore, the Intermediary has presented no evidence or documentation for questioning the accuracy of the time studies.

Finally, the Provider notes that a comprehensive study was performed in 1985 to support physician time allocations. The Provider's resident training program and operations have remained consistent from 1983 through 1987, so the time study has relevance for the period from 1983 to 1987. This time study was accepted and used by the Intermediary for the 1983 cost report base year audit.[4] HCFA Pub. 15-1 §§ 2304.A and 2304.B state that apportionment of costs should be current, accurate, and support program payments. The Intermediary's 100 percent disallowance is arbitrary and capricious, and the Intermediary has supplied no evidence or documentation for questioning the accuracy of the Provider's studies.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the allocation of physician compensation costs is addressed under 42 C.F.R. § 405.481(b) which outlines the general rule on the allocation of physician compensation:

> Except as provider in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs in proportion to the percentage of total time that is spent in furnishing each category of services, between:
>
> (1) Physician services to the provider (as described in § 405.480);
>
> (2) Physician services to patients (as described in § 405.550); and
>
> (3) Activities of the physician, such as funded research, that are not reimbursable under either Part A or Part B of Medicare.

Id.

Paragraph (d) of § 405.481 further addresses when all of the compensation to the physician is for services to the provider:

> Generally, the total physician compensation received by a physician will be allocated among all services furnished by the physician, unless:

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[4] See Provider Exhibit 5(B) for Intermediary work paper.

(1) The provider certifies that the compensation is attributable solely to the physician's services to the provider; and

(2) The physician bills all of his or her patients for the physician services he or she furnishes to those patients and personally receives the payment from such billings. If related directly or indirectly to the provider or an organization related to the provider within the meaning of 42 C.F.R. § 405.427, these payments are not compensation for physician services to the provider.

Id.

The Provider has not certified that the compensation paid to the physicians was solely for physician services to the Provider. This is supported by the Provider's own determination that the physicians are performing administrative services, teaching services, research, and "other" activities which in most cases have not been defined or supported as being related to patient care. Under paragraph (g) of 42 C.F.R. § 405.481, the provider must keep time records or other information to support the allocation of the physician compensation. The Provider has failed to maintain any records which would permit the Intermediary to validate the allocation of the physicians' compensation. Further, the limit on compensation paid to physicians for provider services is addressed in 42 C.F.R. § 405.482:

(a) Principle and scope. (1) Except as provided in paragraphs (a)(2) and (3) of this section, HCFA will establish reasonable compensation equivalent (RCE) limits on the amount of compensation paid to physicians by providers. These limits will be applied to a provider's costs incurred in compensating physicians for services to the provider, as described in § 405.480(a).

(2) Limits established under this section will not apply to costs of physicians compensation attributable to furnishing inpatient hospital services that are paid for under the prospective payment system implemented under § 405.470 to 405.477.

Id.

The physicians at the Provider are not providing services for the inpatient hospital only but for outpatient and units excluded from the prospective payment system. Therefore, the compensation of the physicians should be subject to the limits established under this regulation. Further,
§ 1861(v)(1)(A) of the Social Security Act requires that only reasonable cost will be reimbursed. Reasonable cost cannot be determined without adequate, auditable records. Further, HCFA Pub. 15-1 § 2182 interprets the Medicare regulations regarding the allocation of physician compensation. This section reiterates the regulation requirement that a provider must be able to support the allocation of the physicians' time between the different services performed.

Issue No. 3 -- Staff Physician Interest Income Offset

Facts:

In adjustment number 39 of the Intermediary's Adjustment Report to the Provider's FY 87 cost report, the

Intermediary identified $69,300 as interest income from loans to staff physicians. The Intermediary offset this income against interest expense claimed by the Provider. An adjustment of $71,435 was made to the Provider's FY 88 cost report for this interest income. This resulted in a reduction in Medicare reimbursement of approximately $22,000 in FY 87 and $19,000 in FY 88.

PROVIDER'S CONTENTIONS:

The Provider contends that the issue narrows solely to whether loans made by hospitals to physicians on its staff are properly classified as loans to related or unrelated parties. The Provider, based upon the Florida Medical Center Board decision, takes the position that such loans should be classified as loans to related of parties. The Intermediary takes the position that loans to staff physicians are not, in and of themselves, capable of being classified as loans to related parties.

The Provider further argues that the only issue raised in the Intermediary's position paper concerning these physician loans was that such loans should be classified as loans to unrelated parties. For the first time at the appeal hearing, the Intermediary attempted to raise an issue concerning whether the physicians were on staff at the Provider's hospital. The Intermediary should not be allowed to raise new issues for the first time at the Board hearing. To allow the Intermediary to do so in this case is even more egregious in light of the Intermediary's representation in its position paper that the loans in question were made to "staff physicians".[5] As such, expanding the scope of the issue on appeal at this time, as attempted by the Intermediary, would be in violation of the Provider's due process rights.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that there are two parts to the inquiry. First, was the loan which generated the interest a transaction between related parties? Second, if there was a related loan, is interest paid to a provider automatically exempt from offset? The questions are interrelated. As a general rule, interest expense on a loan from a related party is non-allowable by 42 C.F.R.
§ 413.153(b)(3)(ii). The regulation is silent on the effect of otherwise offsetable interest paid by a related party to a provider. Further, related parties are defined in 42 C.F.R. § 413.17. Parties are related by ownership or control. It is inconceivable that a doctor has an ownership interest in the hospital. It is impossible for the hospital to own the individual doctors. At best, this is a relationship through control (42 C.F.R. § 413.17(b)(3)):

> (3) Control. Control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

Id.

In most related party situations, it is the intermediary asserting common control. Here, the Provider is making the assertion. The identification of the physicians as staff physicians is not sufficient to support a finding that the

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[5] See Intermediary's position paper for Case No. 91-1310 (FYE 6/30/88) pg. 26 and Intermediary's position paper for Case No. 90-1201 (FYE 6/30/87) pg. 30

physician has control over the hospital. The interest income that the Provider is seeking to exempt from offset is not on a related party loan.

The Intermediary further contends that even if a finding was made that the debtor/physician and the hospital were related, an offset is not automatically precluded. A provider cannot avoid an interest income offset by simply loaning excess operating funds to a related party in lieu of placing the funds in its own bank account or certificate of deposit. Further, as with issue No.1 above, the Provider incorrectly relies on Florida Medical Center. That case does not state a blanket rule that interest income paid to a or paid by a related party is not offsetable against provider interest expense. In that appeal, the provider claimed a substantial amount of interest on a loan not related to patient care. As a point of fact, in Florida Medical Center, the Board found and the HCFA Administrator agreed that the funds loaned to the owner did not come for patient care operations. Therefore, the interest on the related party loan was offset against the interest incurred on a loan not related to patient care. At the Provider, the funds loaned to the physicians came from patient care operations. The Provider has never suggested otherwise; therefore, the interest earned was properly offset.

The Intermediary further argues that under 42 C.F.R. § 413.153 interest expense must be necessary and proper to be included in reimbursable costs. Necessary requires that the interest expense be reduced by investment income as outlined in 42 C.F.R. § 413.153(b)(2)(iii). Finally, the income earned on the loans to the staff physicians do not qualify for the exception to the offset of interest income against interest expense.

Issue No. 4 -- Interest Expense On Transplant Patients' Deposits:

Facts:

In its position papers for both FY 87 and FY 88, the Provider raised an issue with regard to the Intermediary's adjustment concerning certain interest expenses. For FY 87, the challenge was with regard to Adjustment Number 31 which disallowed $114,802 of interest expense based upon the Intermediary's classification of this interest expense as interest from a related party.[6] For FY 88, the challenge was with regard to Adjustment Number 71 which disallowed $38,258 of interest expense based upon the Intermediary's classification of this interest expense as interest from a related party.[7] The interest expense incurred for both years was paid to patients who had placed funds with the Provider as deposits on potential transplant services.

PROVIDER'S CONTENTIONS:

The Provider contends that the Intermediary's adjustment for these items of interest expense in both years was based upon the Intermediary classifying the interest expense as interest expense to a related party - namely interest

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[6] See Provider's Position Paper pp. 2-3 and Intermediary's Position Paper pp. 4-5 in Case Number 90-1210.

[7] See Provider's Position Paper pp. 4-5 and Intermediary's Position Paper pp. 5-6 in Case Number 91-1310.

paid by the Provider to its home office.[8] The Provider challenges both of these adjustments because the Intermediary misclassified the interest expense as interest expense to a related party. The affidavit attached to the post-hearing as Provider Exhibit "2" establishes that the interest expense incurred and made the subject of this portion of the appeal amounted to interest paid to unrelated parties rather than related parties as determined by the Intermediary. Specifically, the affidavit and the exhibits attached to that affidavit establish that the interest expense made the subject of the Intermediary's adjustments for both fiscal years in question were amounts paid by the Provider to patients who had deposited funds with the Provider to hold for potential transplant services. As such, the evidence establishes that the interest expense incurred by the Provider was not paid to a related party as contested by the Intermediary, but was instead interest paid to unrelated parties. It is this misclassification which the Provider is contesting and for which the Provider requests relief from the Board.

INTERMEDIARY'S CONTENTIONS:

The Intermediary notes that accepting arguendo the accuracy of the description in the Provider's affidavit, the description does not establish the interest expense as reimbursable interest under 42 C.F.R. § 413.153. A critical element of interest to be allowed under that regulation is that it be paid upon a necessary loan. A basic element of meeting the test of "necessary" is that the loan is made to satisfy a financial need of the provider as defined in 42 C.F.R. § 413.153(b)(2)(1).

The Intermediary notes that the Provider has identified a policy or practice of requiring potential transplant patients to make an advance deposit to cover the costs of transplants, if they occur. The existence of this policy does not establish the fact that the Provider is unable, from its normal operations and revenue expense cycle, to have adequate resources to support the cost necessary to accomplish a transplant procedure. Therefore, the funds advanced by potential transplant recipients fail to meet the basic test of being necessary to satisfy a financial need. Therefore, the interest paid to the potential recipients fails the basic test of allowability.

The Intermediary notes that the Provider's argument hints at a potential reimbursement problem which leads to an unanswered question, i.e., what happens to the funds advanced by the transplant recipients prior to any medical procedure? The logical assumption is that the money is placed in some interest earning account. Inherent in the Provider's argument is the characterization of the advances as loans. The loan is, as argued above, not necessary for a patient care related financial need. It would follow that any interest on the proceeds of that loan would not be offsetable against otherwise allowable interest expense. However, all that can be surmised from the Provider's presentation is the existence of a theory that might be helpful to mitigate against the adjustment of what is clearly a non-allowable interest expense by adjusting the interest offset. However, the Provider has not furnished any workable audit trail. Therefore, the Intermediary's adjustment should stand.

CITATION OF LAWS, REGULATIONS, AND PROGRAM INSTRUCTIONS:

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[8] See Intermediary's Position Paper pp. 5-6 in Case No. 91-1310 and pp. 4-5 in Case No. 90-1210.

1. Law:

§ 1861(v)(1)(A)	-	Reasonable Cost

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

§ 405.480	-	Payment for Services of Physicians to Providers: General
§ 405.481 et seq.	-	Allocation of Physician Compensation Costs
§ 405.482	-	Limits on Compensation for Services of Physicians in Providers
§ 405.550	-	Conditions for Payment of Charges for Physician Services to Patients in Providers: General Provisions
§§ 405.1835-.1841	-	Board Jurisdiction
§ 412.113(a)	-	Capital-Related Costs
§ 413.9	-	Cost Related to Patient Care
§ 413.17 et seq.	-	Cost to Related Organization
§ 413.130(f) et seq.	-	Interest Expense
§ 413.153(b)(2) et seq.	-	Necessary

3. HCFA Pub. 15-1:

§ 2150.2 et seq.	-	Determination of Allowable Costs
§ 2182 et seq.	-	Services of Physicians in Providers
§ 2304 et seq.	-	Adequacy of Cost Information
§ 2338 C	-	Allocation of Interest And Other Expenses Related to Assets

4. Cases:

Florida Medical Center Inc. v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Florida, PRRB Dec.No. 93-D63, July 28, 1993, Medicare and Medicaid Guide (CCH) ¶ 41,618.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after considering the law, regulations, program instructions, facts, parties' contentions, evidence and post hearing briefs, finds and concludes as follows:

Issue No. 1 -- Intercompany Interest Income Offset

The Board finds that the Intermediary properly offset the interest income allocated by BHCS to the Provider. There was no dispute concerning the nature and amount of the investment income offset. The amount of income credited to the Provider consisted of its share of pooled income at the "home office" level. This consisted of transferred cash balances resulting primarily from the Providers' operations.

The question before the Board is whether the income offset should be allocated between operating interest only, or applied to both operating and capital related interest expense. The regulation at 42 C.F.R. § 413.130(f)(2) clearly addresses that issue. It states that if a provider has capitalized interest expense, an investment income offset is required under 42 C.F.R.
§ 413.153(b)(2)(ii) on an apportional basis based upon the percentage of capital-related interest expense to total interest expense. The Intermediary calculated the investment income offset on this basis.

Issue No. 2 -- Staff Physician Part A Salary Costs

The Provider has properly determined a portion of its physician compensation as allowable Medicare Part A services. The regulation at 42 C.F.R. § 405.481(d) requires an allocation of physician compensation among all services furnished by physicians. However, the regulation also provides an exception for allocation where a provider: (1) certifies that the compensation is attributable solely to physician services and (2) the physician bills for all of his/her patients. The regulation does not define certify.

The Board finds the Provider's arguments and supporting evidence persuasive that a portion of the physicians did meet the above regulatory exclusion for allocation. Both parties and the Board conclude that the Provider had an extensive resident training program. This required the training and supervision of the residents by physicians in appropriate medical disciplines. The Provider has captured the relevant physician activity in Exhibit No. 5 of the FY 87 appeal. That presents a detailed analysis of hospital based physician activity. The first 34 physicians listed in the Exhibit clearly indicate that 100% of the physician effort was for Part A service, i.e., administrative, teaching and other. The Board finds this schedule as prima facie evidence that these physicians were solely Provider staff physicians who do meet the "certification" exclusion of 42 C.F.R.
§ 405.481(d). This de facto time study meets the certification requirement. A mere statement "certifying" that physicians only perform Part A services does not guarantee that an exclusion has been met. Supporting documentation needs to be presented. The Provider has done this via Exhibit No. 5.

The Board does note that physicians 34-50 (Walker-Spencer) did perform non-Part A services. As such, appropriate allocation agreements or time studies are required. As such, these physicians do not meet the above regulatory exclusion, and their compensation is not allowed. Thus, the Board allows some physician compensation while denying other compensation based on the relevant documentation offered by the Provider.

Issue No. 3 -- Staff Physician Interest Income Offset

The Board finds that the income earned by the Provider from loans to physicians who worked at Provider should be offset against allowable interest expense. There was extensive argument and testimony as to whether the physicians were "related" to the Provider through ownership or control as defined in 42 C.F.R. § 413.17. In reviewing the testimony and evidence, the Board concludes that the physicians were not employees of the Provider. They were employed by a separate, unrelated corporation. As such, the interest income from such loans was just another form of investment income to the Provider. That income earned should be offset as required by 42 C.F.R. § 413.153(b)(2)(iii).

Issue No. 4 -- Interest Expense on Transplant Patients' Deposits

The Board finds that the interest expense paid on deposits made by prospective patients for transplant services is not allowable. In order for Medicare to recognize interest expense, one of the key facts is that a loan be necessary. See 42 C.F.R. § 413.153(b)(2). The loan must be made to satisfy a financial need of a provider. The deposits are merely a prepayment of services required by the Provider. They are not loans, per se. Thus, any interest expense paid by the Provider on these deposits is not allowable.

DECISION AND ORDER:

Issue No. 1 -- Intercompany Interest Income Offset

The Intermediary properly offset the investment income allocated by BHCS to the Provider by applying it to both operating and capital-related interest expense. The Intermediary's adjustments are affirmed.

Issue No. 2 -- Staff Physician Part A Salary Costs

The portion of the physician compensation which related to physicians that performed only Part A administrative and teaching services is allowed. Conversely, the compensation of physicians who performed both administrative/teaching activities and professional services is denied due to the lack of documentation. The Intermediary's adjustments are modified.

Issue No. 3 -- Staff Physician Interest Income Offset

The Intermediary properly offset the interest income on loans the Provider made to its non-related staff physicians. The Intermediary's adjustments are affirmed.

Issue No. 4 -- Interest Expense on Transplant Patients' Deposits

The Interest expense claimed by the Provider on deposits made by transplant patients was not paid on loans related to patient care. The Intermediary's adjustments are affirmed.

Board Members Participating:

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

Date of Decision: September 04, 1998

FOR THE BOARD:

Irvin W. Kues
Chairman