PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

ON THE RECORD
99-D31

PROVIDER -
Circle City Hospital
Corona, CA

Provider No. 05-0329

vs.

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

DATE OF HEARING-
January 20, 1999

Cost Reporting Period Ended -
November 30, 1990

CASE NO. 93-1475

INDEX

ISSUE:

Was the Intermediary's adjustment offsetting revenue associated with physician and guest meals, while, at the same time, setting up a nonreimbursable cost center for these nonallowable costs, proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Circle City Hospital (Provider) is a 99 bed short term acute care hospital operated by a wholly owned subsidiary of American Medical International, Inc. (AMI). Effective March 1, 1995, AMI was acquired by National Medical Enterprises, Inc. and the combined entity was renamed Tenet Healthcare Corporation.

The Provider set up a nonreimbursable cost center on its cost report for guest meals, the cost of which is not covered by Medicare. It offset revenue associated with employee meals but, because of the nonreimbursable cost center for guest meals, calculated the guest meal revenue and removed it from the offset. Blue Cross of California (Intermediary), during its audit of the Provider's cost report, established a revenue offset associated with the costs of nonallowable meals. First, it calculated the revenue for guest meals, without the mark-up above the cost to employees. Second, the Intermediary calculated the imputed revenue for meals that physicians received free. The Intermediary then offset these amounts against cafeteria costs on cost report Worksheet A-8. The Intermediary analyzed the as filed Worksheet A-8 adjustment pertaining to employee and guest cafeteria meals and determined that the adjustment was understated. The adjustment was revised in order to eliminate additional cafeteria costs based on the unrecovered costs pertaining to non-patient activities.

The Provider filed an appeal of several issues from its September 20, 1992 Notice of Program Reimbursement (NPR) with the Provider Reimbursement Review Board (Board). All issues but one have been resolved or withdrawn. The appeal has met the jurisdictional requirements of 42 C.F.R. 1835-.1841. The Medicare effect for the remaining issue is approximately $700.00.

The Provider was represented by Steve Dominguez of Tenet Healthcare Corporation, and the Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the Intermediary violated manual instructions when it set up both the nonreimbursable cost center and the revenue offset for physician meals. The Provider Reimbursement Manual, Part I ("HCFA Pub. 15-1 ") § 2328 clearly prohibits the imposition of a revenue offset when a nonallowable cost center is established. This section states:

> Nonallowable cost centers to which general service costs apply should be entered on the cost report allocation worksheets after all general service costs centers. General service costs would then be distributed to the nonallowable cost centers in the routine "step-down" process. Revenue derived from nonallowable activities must not be offset against the nonallowable cost centers prior to or during the cost finding process.

HCFA Pub. 15-1 § 2328

The Provider argues that the Board addressed this same issue in Piedmont Medical Center (Rock Hill, S.C.) v. Blue Cross and Blue Shield Association/ Blue Cross and Blue Shield of South Carolina, PRRB Dec. No. 96-D22, March 25, 1996, Medicare and Medicaid Guide ("CCH") § 44,111, decl'd rev, HCFA Admin., May 8,1996. In that case, the provider had included an offset of guest meals revenue on its cost report. The Intermediary, on the audited cost report, set up a nonreimbursable cost center for guest meals without reversing the revenue offset. The provider relying on HCFA Pub. 15-1 §2328, argued that the intermediary could not leave the revenue offset in place while setting up the nonreimbursable cost center. While also arguing that the revenue offset was an appropriate way to remove the cost of guest meals, the provider stated that it would accept the nonreimbursable cost center if the revenue offset was removed. The Board held that guest meals revenue should not be offset against cafeteria costs when a nonreimbursable cost center has been set up. It further held that the nonreimbursable cost center, rather than the revenue offset, was a more appropriate method for determining the cost of guest meals. Moreover, the Board noted that the more accurate cost-finding would occur if the guest meals revenues were not offset. Since the Administrator declined to review the Board's decision, the Provider maintains that this is clearly HCFA's policy.

The Provider also points out that the Board had previously addressed this issue by deciding that a revenue offset could be used rather than a nonreimbursable cost center. The Board has never, however, taken the position that both the offset and the nonreimbursable cost center were allowed. In Valley Baptist Medical Center (Harlington, Tex.) v. Blue Cross and Blue Shield Association. Blue Cross and Blue Shield of Texas, Inc., PRRB Dec. No. 90-D60, September 18, 1990, Medicare and Medicaid Guide ("CCH") ¶ 38,861, rev'd HCFA Administrator, November 16, 1990, Medicare and Medicaid Guide ("CCH") ¶ 38,945 ("Valley Baptist Medical Center"), the Board discussed the history of HCFA's treatment of costs attributable to guest meals. Before April 1978, HCFA allowed a total revenue offset for all meals revenue, without distinguishing between guest meals and other meals. Pursuant to HCFA Pub. 15-1 § 2105.2, which was added at this time, and until early 1981, providers could either make a total revenue offset or calculate the cost of guest meals. Based upon instructions issued by HCFA on April 22, 1981 pertaining to the enforcement of HCFA Pub 15-1 § 2105.2, the Board concluded that HCFA intended that nonallowable cost centers rather than revenue offsets should be set up to accumulate the costs of guest meals.

The Board, however, in Valley Baptist Medical Center, held that a revenue offset was more appropriate than the methodology used by both the provider and the intermediary for guest meals cost finding. The Administrator, in reversing the Board, stated that a nonallowable cost center must be used instead of a revenue offset. The Administrator found that:

> The revenue offset method ordered by the PRRB is inappropriate in this case. It does not follow Medicare program instructions and the PRRB failed to show that this method determined guest meal costs more accurately than the step-down technique approved by the intermediary. Both § 2328 of the PRM and § 332 of the PRM, Part II, referred to by the PRRB, deny use of a revenue offset for determining non-reimbursable costs when overhead and general service costs are involved and can be determined. §2328 states that Worksheet A-8 will be used for "...nonallowable costs to which general service costs are not applicable..." §332, which gives instructions for the use of Worksheet A-8, states that the revenue offset should only be entered in the event that "cost" cannot be determined.

Valley Baptist Medical Center at ¶ 38,945. (emphasis added)

> The Provider also notes that in another case on this same issue, the Board held that the revenue offset approach was proper. See University of Minnesota Hospitals and Clinic v. Blue Cross and Blue Shield/blue Cross and Blue Shield of Minnesota, PRRB Dec. No 91- D29, March 29, 1991, Medicare and Medicaid Guide ("CCH") ¶ 39,134. The Provider states that the relevance to the instant case is that neither the Board nor the intermediary took the position that both a revenue offset and a nonallowable cost center were appropriate.

INTERMEDIARY'S CONTENTIONS:

The Intermediary points out that under the Provider's food service operation, the dietary department prepares meals which are served to hospital patients, employees and guests. The patient meals are directly delivered through the dietary department, while the employees and guests meals are served through the cafeteria. All costs which are related to these meals are accumulated on the Provider's general ledger in the dietary cost center. Since all of the costs for the food service operation were reported in the dietary cost center, the Provider offset all of the revenue associated with both employee meals and guests meals against the dietary cost center on Worksheet A of the cost report.

The Intermediary further points out that it set up cost allocation statistics to create a nonreimbursable cost center for guest meals. Based on this adjustment, a portion of the

dietary costs applicable to guest meals was reclassified to a nonreimbursable cost center based on the percentage of total cafeteria meals sold to visitors.

The Intermediary contends that its adjustments pertaining to guest meals were made in accordance with HCFA Pub. 15-1 § 2105.2 which states the following:

> The cost of meals for other than provider personnel, whether served in cafeteria, coffee shop, canteen, etc. is unallowable under the program because it is not related to patient care.

HCFA Pub. 15-1 § 2l05.2

The Intermediary argues that its Worksheet A-8 adjustment for cafeteria sales properly includes revenue from both employees and guest meals. In addition to this, a nonreimbursable cost center also needs to be established to accumulate the cost of guest meals.

The Intermediary contends that the methodology it used to compute reimbursable cafeteria cost results in the removal of the full cost of guest meals from reimbursable cost. If 100 percent of the revenue offset for guest meals would have been eliminated, the result would have been less than the full cost of guest meals being removed from reimbursable cost. If only employee meals revenue was offset on worksheet A-8, this would have served to reduce cafeteria costs allocated on Worksheet B to both reimbursable and nonreimbursable cost centers. Accordingly, the full cost of guest meals would not be allocated to the nonreimbursable cost center and the Medicare program would have to bear more than its share of the overhead which would be allocated to the reimbursable cost centers.

The Intermediary contends that in order to ensure that each cost center absorbs its full cost of cafeteria overhead, a revenue offset after the stepdown cost finding process would have to be made. The Intermediary points out that its methodology is supported by decisions rendered by the HCFA Administrator, including the decision in St. Joseph Infirmary v. Blue Cross Association/Blue Cross and Blue Shield of Kentucky Inc., PRRB Dec. No. 80-D61, August 12, 1980, Medicare and Medicaid Guide ("CCH") § 30,391, modified by HCFA Administrator Dec., October 7, 1980, Medicare and Medicaid Guide ("CCH") §3l,015, which stated in part:

> The Deputy Administrator found that a more accurate and more appropriate method of cost finding is to allocate such items of overhead to the cafeteria on the basis of the cafeteria's direct costs. Following this allocation, the cafeteria revenue is offset against total costs, which include the direct costs plus the overhead costs. By this method, the proportionate distribution of overhead costs is preserved. Without using this method of

> allocation, the full cost of the cafeteria meals cannot be determined. This method provides for the removal of unrecovered cost of employee meals.

Id.

The Intermediary contends that while there may not be a correct method to determine a particular cost, its methodology applies the most accurate or a reasonably accurate method. The Provider has failed to show that its method determined physicians's meal costs more accurately than the step-down technique approved by the Intermediary. Both § 2328 and § 332 of the HCFA Pub. 15-2, Part II, deny use of a revenue offset for determining nonreimbursable costs when overhead and general service costs are involved and can be determined. Section 2328 states that Worksheet A-8 will be used for... nonallowable costs to which general service costs are not applicable..... Section 332, which gives instructions for the use of Worksheet A-8, states that the revenue offset should only be entered in the event that "cost" cannot be determined.

The Intermediary argues that if the Providers' method is used and the revenue is offset against the cafeteria expenses prior to allocation, the cafeteria cost center would reflect a small direct cost. Thus, very little of the overhead would be allocated to the cafeteria spreading a disproportionate amount of overhead to the other cost centers.

The Intermediary argues that its method of offsetting the cafeteria revenue against total costs after allocating the overhead to the cafeteria preserves the distribution of overhead costs. This method allows for the removal of nonallowable cost of visitors meals and a more accurate determination of the unrecovered cost of employee meals.

The Intermediary further contends that its method is consistent with the requirements of Section 328 in Part II of the Provider Reimbursement Manual which states in part:

> When income from grants, gifts, and endowments lowers the balance in a cost center, the amount of such income is restored to the cost center for the purpose of allocating overhead.

Id.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Regulations 42 C.F.R.

§405.1835-.1841 - Board Jurisdiction

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

§2328	-	Distribution of General Service Costs to Nonallowable Cost Areas
§2105.2	-	Cost of Meals for Other Than Provider Personnel

3. Program Instructions - Provider reimbursement Manual Part II (HCFA Pub. 15-2):

§ 328	-	Cost Allocation
§ 332	-	Worksheet D Apportionment of Inpatient Ancillary Services to the Healthcare Program

4. Cases:

Piedmont Medical Center (Rock Hill, S.C.) v. Blue Cross and Blue Shield Assn./BCBS of S.C., PRRB Dec. No. 96-D22, March 25, 1996, Medicare and Medicaid Guide ("CCH") ¶44,111, Decl'd rev. HCFA Admin. May 8, 1996.

Valley Baptist Medical Center (Harlington Tex.) v. Blue Cross and Blue Shield Assn/ Blue cross and Blue Shield of Texas Inc., PRRB Dec. No. 90-60,September 18, 1990, Medicare and Medicaid Guide ("CCH") ¶38,861, rev'd HCFA Administrator, Nov. 16, 1990, Medicare and Medicaid Guide ("CCH") ¶38,945.

University of Minnesota Hospitals and Clinic v. Blue Cross and Blue shield Assn./Blue cross and Blue Shield of Minnesota, PRRB Dec. No. 91-D29, March 29, 1991, Medicare and Medicaid Guide ("CCH") ¶39,134.

St Joseph Infirmary v. Blue Cross and Blue Shield Association/Blue cross and Blue Shield of Kentucky Inc., PRRB Dec. No. 80-D61, August 12, 1980, Medicare and Medicaid Guide ("CCH"), ¶30,391, Modified by HCFA Adm. Dec. October 7, 1980, Medicare and Medicaid guide ("CCH") ¶31,015.

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's adjustment to the as-filed cafeteria costs was proper. The Board finds that the Intermediary's adjustments were made in accordance with HCFA pub. 15-1 §2105.2 which states the following:

> The cost of meals for other than provider personnel, whether served in cafeteria, coffee shop, canteen, etc. is unallowable under the program because it is not related to patient care.

Id.

The Board agrees with the Intermediary's adjustment for cafeteria sales which properly includes revenue from both employees and guest meals. The Board also agrees that a nonreimbursable cost center should be established to accumulate the cost of guest meals.

The Board finds that the Provider has failed to show that its method determined physician meal costs more accurately than the step-down technique approved by the Intermediary. Sections 2328 and 332 of the Provider Reimbursement Manual Part II, deny use of a revenue offset for determining nonreimbursable costs when overhead and general revenue costs are involved and can be determined. Section 2328 states that Worksheet A-8 will be used for "...nonallowable costs to which general service costs are not applicable..." Section 322, which gives instructions for the use of Worksheet A-8, states that the revenue offset should only be entered in the event that "cost" cannot be determined.

The Board agrees with the Intermediary's analysis of the steps to be taken to analyze the cafeteria and dietary meals. There should be a split of revenue between visitors and employees. Since physicians are not charged for meals, an amount should be imputed for those meals and offset on worksheet A-8. Since visitors pay more than employees the offset should be reduced to offset the same amount of revenues would have been charged to employees, and finally compute B-1 statistics to allocate to the non-reimbursable cost center.

The Board concludes that a more accurate and more appropriate method of cost finding is to allocate such items of overhead to the cafeteria on the basis of the cafeteria's direct costs. Following this allocation, the cafeteria revenue is offset against total costs, which include the direct costs plus overhead costs. By this method, the proportionate distribution of overhead costs is preserved. Without using this method of allocation, the full cost of the cafeteria meals cannot be determined. This method also provides for the removal of unrecovered cost of employee meals.

DECISION AND ORDER:

The Intermediary properly adjusted the Provider's cafeteria costs. The Intermediary's adjustments are affirmed.

Board Members Participating:

Irvin W. Kues
James G. Sleep
Henry C. Wessman, Esq.
Martin W. Hoover, Jr. Esq.
Charles R. Barker

Date of Decision: March 25, 1999

FOR THE BOARD:

Irvin W. Kues
Chairman