PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

2000-D6

PROVIDER -
Rocky Mountain Care Time Study Group

Provider Nos. 46-5067, 46-5068,
49-5049, 46-5075

vs.

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

DATE OF HEARING-
September 23, 1998

Cost Reporting Period Ended -
December 31, 1992 - 1995

CASE NO. 96-0053G

INDEX

ISSUE:

Did the Intermediary improperly disallow the time studies the Providers used for allocation of nursing administration, medical records and social services?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The Providers are Medicare certified skilled nursing facilities ("SNFs") which are part of a chain of providers managed by Rocky Mountain Care ("Providers"), a health management company located in the Salt Lake City, Utah. The Medicare cost reporting periods at issue are each Provider's fiscal years ending (“FYEs”) December 31, 1992, 1993, 1994, and 1995. On July 11, 1991, the Providers submitted a letter to its fiscal intermediary, Blue Cross Blue Shield of Utah (“Intermediary”), requesting its approval to use time study allocation statistics for the cost centers of nursing administration, medical records, and social services.

Commencing with the cost reporting year beginning January 1, 1992 and continuing through the cost reporting year ended December 31, 1995, the Providers conducted time studies, accumulated and averaged such data at the end of each cost reporting year, and used the resulting statistics to allocate the indirect costs incurred in the nursing administration, medical records, and social services cost centers. The Providers contracted with an outside processing company, Healthcare Professional Services, Inc. and its successor, Automated Solutions, Inc. ("ASI") to process and tabulate the results of the time studies. Personnel assigned to work in these cost centers were the same employees who participated in the time studies.

In September 1995, when the Intermediary issued its Notices of Program Reimbursement for the Providers’ 1992 cost reporting year, the Intermediary reviewed the summary schedules for the 1992 time studies, reviewed the provisions of program instructions at HCFA Pub. 15-1 §2313.2E, entitled Periodic Time Studies, and applied this instruction to the Providers’ time studies. One of the provisions of this rule is that time studies are to be conducted a minimum of once a week, on a monthly basis. In reviewing the Providers’ time study summary schedules, the Intermediary determined that this provision had not been followed as some Providers had less than 12 time studies per year. The Intermediary rejected the Providers’ time studies for the years of 1992 through 1994 without performing any additional audit procedures. During 1995, the Intermediary conducted a more comprehensive review of the Providers' time studies, and audited them, but because of missing weeks, it also rejected the 1995 time studies.

The Intermediary substituted patient days for the time study allocation statistics for the 1992 through 1995 cost reporting years. The Providers filed timely appeals with the Provider Reimbursement Review Board (“Board”) pursuant to 42 C.F.R. §§ 405.1835-.1841. The Medicare reimbursement effect is approximately $952,406.

The Providers were represented by Charles F. MacKelvie, Esquire, of MacKelvie and Associates, Inc. The Intermediary was represented by James R. Grimes, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDERS' CONTENTIONS:

Medicare regulations require that providers maintain adequate records in support of submitted cost reports. Such regulations state, in pertinent part, that the "data be accurate and in sufficient detail to accomplish the purposes for which it is intended." 42 C.F.R. § 413.24(c). The Providers contend that the time study documentation it accumulated during the subject cost reporting periods is adequate to accurately allocate the indirect costs of the subject cost centers. The Providers conducted time studies for between 6 and 12 weeks annually, varying by individual Provider, but as a chain, 80 percent of the time, or 38 of 48 months. The Providers contend that these time studies are sufficient to satisfy the adequacy standard set forth in the regulation. Id.

The regulations also require that statistical records "must be capable of verification by qualified auditors." 42 C.F.R. § 413.24(a). The Intermediary argues that because the total time study hours do not aggregate to the employer's payroll records, the time studies are not verifiable. The Providers maintain that the employees, as part of their daily responsibilities, have various tasks that are administrative in nature, i.e., such time does not clearly benefit either the certified or the non-certified patients. Because administrative tasks do not specifically benefit the certified versus the non-certified patients, it is improper to directly allocate this common administrative time. Time should be allocated to the cost centers at issue using the percentages derived from conducting the time studies. This concept is not uncommon in the healthcare industry.

The Providers presented affidavits from many of the employees that participated in such time studies attesting to the accuracy of the time studies and noting that their employment included many administrative responsibilities that would account for the time not directly allocated. [1] Two Provider employees, added their testimony at the hearing in support of the accuracy and adequacy of the time study documentation.[2]

Much of the dispute in this matter focuses on the manual instruction contained in HCFA Pub. 15-1 §2313.2E, entitled, Periodic Time Studies. In rejecting the Providers' time study allocation statistics, the Intermediary relied on the provisions of this rule. The Providers contend that the plain reading of this instruction validates the Providers' position that it does not apply to the time studies at issue. The rule states that "[p]eriodic time studies, in lieu of ongoing time reports, may be used to allocate direct

---

1 See Providers Exhibits 20-58, 21-3, 24-98, 25-33 and 26-58.

2 Tr. at 194-218.

salary and wage costs." Id. The Providers presented expert testimony that this Program instruction applied to direct nursing costs, not indirect cost centers.[3]

The Intermediary witness testified that the wages and salaries referred to in this rule are "nursing costs that were used in either a certified or non-certified area [of the SNF]."[4] He also clarified that costs in the indirect cost centers cannot be considered direct in the context of this program instruction.[5] The Providers contend that because the Intermediary's interpretation of this program instruction was in direct contradiction to the language of the instruction, its subsequent rejection of the Providers' time study allocation statistics is also in error.

One of the provisions of the manual instruction regarding periodic time studies requires the provider to conduct a time study for one week per month. The Intermediary's witness testified,[6] and HCFA Pub. 15-1 §2313.2E itself states that it applies to indirect costs. As the Intermediary finalized the cost reports for 1992 through 1994 for the Providers, the auditors discovered that the Providers did not have documentation to support 12 weekly time studies as required by the program instruction. Based on its interpretation of this rule, the Intermediary rejected the time studies without conducting further audit procedures and replaced the statistics with patient days for the subject cost centers. The Providers contend that such audits were insufficient to form the basis of the Intermediary's blanket rejection of the time studies, particularly when there were no workpapers in the record or testimony to support the Intermediary's adjustment in 1992 and selected workpapers but no testimony to support the adjustments for 1993 and 1994.

During the 1995 cost reporting year, the Intermediary conducted a limited scope audit of the Providers' time studies, during which it identified various issues and characterized them as deficiencies. The Intermediary noted such problems in subsequent correspondence with the Providers. Generally, the noted deficiencies can be classified in three categories:(1) the hours recorded on the time study records do not equal the hours paid to the employee; (2) for some employees, the cost center for the time study was different than the cost center where their payroll was recorded; and (3) some of the provider facilities failed to conduct a time study every month. It is the Providers' position that these deficiencies do not invalidate the time study allocation statistics.

The Providers contend that the differences between the hours recorded on the time study and the payroll hours can be explained in two ways. First, salaried employees are neither required to maintain time records nor are they required to work a structured forty-hour work week. These employees were

---

[3] Tr. at 50-51.

[4] Tr. at 253.

[5] Id.

[6] Id.

instructed to record time spent on the time study documentation rather than the actual number of hours worked in a week or day. These hours cannot be reconciled to payroll hours. This would cause a discrepancy between hours recorded on the time study and the payroll hours. Second, the hours spent performing administrative tasks were not recorded in some of the Providers' facilities and for all positions in these three cost centers included administrative functions. Failure to record such hours would result in differences between hours reflected in the time study documentation and hours paid on the payroll.

The Providers argue that these inconsistencies should not result in the rejection of the entire statistic. Rather, it would seem consistent to find differences between salaried hours paid and recorded on the time studies as well as some common administrative time in every position.

The Intermediary noted that some employees were assigned to one cost center to complete the time study documentation but assigned to another cost center for payroll and general ledger purposes. To the extent such misclassifications occurred, and are material, the most logical resolution is to reclassify the cost to the correct cost center.

The Intermediary argues that the Providers are required to conduct time studies for a minimum of 12 weeks per year, one week each month. The Providers maintain, however, that the rule at HCFA Pub. 15-1 §2313.2E refers to direct nursing allocations, not the indirect cost centers at issue in this appeal.

The Providers note that the Intermediary replaced the time study allocation statistics in these three cost centers with patient days. The Providers indicate that this was done in violation of Blue Cross Association Administrative Bulletin No. 781, 76.01, Medicare Cost Reports: Alternative Methods of Allocating General Service Cost Centers, August 24, 1976,[7] which sets forth approved and unallowable allocation statistics for various indirect cost centers. It directs intermediaries to use the noted, approved allocation statistics. For the three cost centers in question, the approved statistic is time spent for medical records and social services, and time supervised for nursing administration. The Intermediary disregarded this directive, rejected the Providers' time studies and replaced the allocation statistics with patient days.

Medicare cost reimbursement regulations require that the costs incurred by providers to care for Medicare beneficiaries not be borne by non-Medicare payers, and vice versa. 42 C.F.R. § 413.5. However, the Intermediary's adjustments shifted a significant portion of the Providers' cost to provide services to Medicare beneficiaries to non-Medicare payers, in violation of this regulation.

The Intermediary did not finalize the Providers' 1992 and 1993 cost reports until the last half of 1995. Prior to that Intermediary action, the Providers believed its time studies for 1992 through 1995 were accurate, in compliance with applicable Medicare regulations, and sufficient for the intended purpose.

---

[7] Intermediary Exhibit 1.

The Providers were led to believe that the program instruction regarding periodic time studies was not applicable to indirect cost centers. The Providers learned of the alleged deficiencies after almost four years of accumulating time study data only to have the Intermediary reject the allocation basis pursuant to a program instruction that the Intermediary now admits does not apply.

The time studies generated for the subject cost reporting periods are comparable to other similar SNFs. An executive with the company that processed time study data for the Providers, testified that it processed similar time study data for 250 to 400 SNFs around the country who were audited by various fiscal intermediaries.[8] The executive further testified that such intermediaries accepted the time study allocation statistics with one notable exception, one chain did not use them to allocate nursing administration costs.[9]

The Provider contends that the Intermediary has accepted cost reports from other SNFs located in Utah that include time study allocation statistics for the cost centers of nursing administration, medical records, and social services. Thus, the Intermediary accepted such time studies on other SNF cost reports while rejecting the Providers' cost reports.[10] According to the Provider the Intermediary is applying different standards to audit and reject the time study statistics of these Providers for the 1992-1995 cost reports, while it has allowed the similar time study statistics for its peers to stand. The Intermediary’s disregard for the Program instructions and regulations, and its inconsistency in applying audit procedures is arbitrary and capricious.

After July 1995, the Intermediary gave the Providers specific direction regarding its expectations of time study allocation statistics and the Providers implemented those recommendations. The time study allocation statistics derived from the subsequent time studies are virtually identical to the allocation statistics for the period 1992 through 1995, which further supports the reasonableness of the Providers' time study allocation statistics during the period at issue.

INTERMEDIARY’S CONTENTIONS:

The Intermediary argued that Medicare regulations at 42 C.F.R. § 413.20 requires "that providers maintain sufficient financial records and statistical data for proper determination of costs payable under the program," and that the financial records and statistical data must be "capable of verification by a qualified auditor." The regulations at 42 C.F.R. § 413.24 describe the cost finding methodology including the step-down method of allocating non-revenue generating cost centers to all cost centers that they serve. Cost report instructions provide the recommended and acceptable statistics for implementation of the step-down methodology. HCFA Pub. 15-1 § 2313.

---

[8] Tr. at 85.

[9] Tr. at 111-112.

[10] Tr. at 113.

The manual instructions at HCFA Pub. 15-1 § 2313 permits a provider to change the statistical allocation basis for a particular cost center, if the change will result in a more accurate allocation and if the provider has obtained permission from the Intermediary. Section 2313.2(E) states that when the provider is seeking to use periodic time studies as a basis for the allocation statistic, seven stated criteria must be met.

The Intermediary argued that the provider did not meet the criteria for a periodic time study, in large part, because the provider's time study did not cover one full week per month. In addition, on audit the Intermediary found errors and inconsistencies which called into question the reliability of the time study. The Intermediary witness testified that the time studies submitted by the provider were missing five, six or even eight months of time, and were therefore incomplete.[11] Because so much time was missing from the time study, the Intermediary concluded the study did not meet the minimal requirements of HCFA Pub. 15-1 § 2313.2. Additionally, the fact that so much data was missing raise questions as to the reliability of the statistic produced by the study. The study relied on only one week of time per month. If five or six months of time is missing, it is difficult to conclude the data is truly representative of a whole year.

In addition, the Providers was not consistent in how it allocated time to different departments. For example, the admissions director would record his/her time in the nursing administration department in some months and then in the social services department in other months.[12] Similarly, the director of staff development recorded time in the nursing administration department. The Intermediary believes this is not the correct place to record staff development time, because staff development is not nursing administration.[13] The result is a mismatch of time and function. The allocation statistic drawn from mismatched time may not produce a true picture of how time within the department was divided between certified and non-certified areas of the Providers.

The Intermediary also found that time recorded on the time sheets did not match the payroll time.[14] This inconsistency raised questions as to the reliability of the time study since the employee was recording far more time on the time sheet than he/she was being paid for on an hourly basis.[15]

The Providers submitted up-dated time reports that were more complete than those reviewed by the Intermediary at the time of audit. The Providers' witness indicated that the time study reports were

---

[11] Tr. at 233, 236, and 241.

[12] Tr. at 232.

[13] Tr. at 242.

[14] Tr. at 235-239.

[15] Tr. at 239.

up-dated a week before the hearing.[16] This up-dating then, occurred as much as six years after the cost years under appeal. The Intermediary contended that this data cannot be relied on since it was not developed contemporaneously with the year in which the Provider is seeking to use it to develop an allocation statistic. The Intermediary is uncertain as to the origin of the updated data and did not have an opportunity to perform an audit. The Intermediary argues that the information that was presented to the Intermediary at the time of audit and which went unchallenged until a week before the hearing, is far more reliable.

The Providers argue that HCFA Pub. 15-1 § 2313.2(E) is not controlling since it speaks to the allocation of direct salary and wage costs. In this case, social services and nursing administration are indirect costs. However, HCFA Pub. 15-1 § 2313.2 starts out by saying that it is not possible to prescribe standard allocation rules for every situation. The rules outlined under subsection (E) relating to periodic time studies, provide a list of basic rules which will produce a reliable time study. The Intermediary contends that it does not matter whether the costs to be allocated are direct or indirect. Either way it is necessary to ensure that the study is representative of the way time is spent during a twelve month period. The requirements of HCFA Pub. 15-1 § 2313.2(E) speak to ensuring that the level of reliability be requiring a minimum of one week per month, selection of a full work week, and not using consecutive weeks in a two-month period. These requirements support the reliability of the time study, and should apply regardless of whether the cost to be allocated is direct cost or indirect.

Further, the Providers tried to discredit the application of HCFA Pub. 15-1 § 2313.2 to the time study at issue but the Providers' witnesses admitted that the time study methodology had been specifically designed to meet the requirements of that manual section. The system adopted by the Providers required it to keep accurate and complete time records for one week each month. The week was to be distributed among the months of the year so that no week would be the same in two consecutive months. The Providers also agreed that each week of the study would be a full work week. The forms followed the work week from Sunday to Saturday. The Providers also agreed the study would be Provider specific. Even if HCFA Pub. 15-1 § 2313.2 did not apply to this case, which the Intermediary argued that it does, the Providers should still be held to the design of the program that they adopted, which incorporated its terms.

The Providers did not keep complete, accurate time studies as intended in the methodology presented to the Intermediary. In addition, there were numerous errors and inconsistencies in the application of the study which developed the allocation statistics. As a result, the Intermediary correctly disallowed the use of the time study and substituted the patient days allocation statistic used by the provider in prior years.

[16] Tr. at 168.

CITATION OF LAW, REGULATIONS, AND PROGRAM INSTRUCTIONS:

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

§ 1395x(v)(1)(A)	-	Reasonable Cost

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

§ 413.5	-	Cost Reimbursement General
§ 413.20	-	Financial Data and Reports
§ 413.24 et seq.	-	Adequate Cost Data and Cost Finding
§§405.1835-.1841	-	Board Jurisdiction

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

§2313.2 et seq.	-	Periodic Time Studies

4. Other:

Blue Cross Association Administrative Bulletin No. 782, 76.01, August 24, 1976.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions, evidence presented, and the Providers' post hearing brief, finds and concludes as follows:

The Board notes that the Medicare regulations require that providers maintain sufficient records to support their claim for reimbursement under the program, and those records must be capable of audit. 42 C.F.R. § 413.20. The regulations also provide a step-down methodology that recognizes that certain non-revenue generating cost centers will provide services to other cost center. 42 C.F.R. § 413.24. The step-down methodology allocates the costs of the non-revenue generating cost centers to the cost centers they serve.

The Board further notes that HCFA Pub. 15-1 § 2313 et seq. provide recommended statistics for the process of allocating the non-revenue generating cost centers and permit a change in the recommended statistical allocation basis when the provider can establish that the change will result in a more accurate allocation of cost. HCFA Pub. 15-1 § 2313.2(E), provides guidelines as to basic criteria to be met when the provider uses periodic time studies to create an allocation statistic.

The Board finds that the criteria found at HCFA Pub. 15-1 § 2313.2(E) applies to any periodic time study used to develop an allocation statistic, regardless of whether the costs to be allocated are direct or indirect. The instructions establish basic requirements to ensure that the time studies reflect the experience of the provider over the entire reporting year. They require that providers use full week time periods; distribute the sample weeks equally throughout the year; avoid sampling the same week in consecutive months; and maintain a contemporaneous study. Id.

The Provider in this case adopted a periodic time study methodology designed to meet the requirements of HCFA Pub. 15-1 § 2313.2(E). The Intermediary raised numerous challenges to the data submitted by the Provider including: the lack of complete data, the inconsistency in inclusion of personnel in the study; and the inability to match payroll records to the time of the study. The Board finds that the initial data submission by the Provider was very incomplete and even the subsequent submission prior to the hearing, was still incomplete.[17] The Board notes that the Provider was able to produce the necessary time studies after July of 1995.

The Board finds that the Provider has the burden of supplying accurate time studies to support its request to change its allocation statistics. The Board finds that the Provider's time studies were incomplete and did not meet the requirements of HCFA Pub. 15-1 § 2313.2(E). The time studies cannot be used to modify the allocation statistic for nursing administration, medical records, and social service cost centers for the fiscal years at issue. The Intermediary's use of days of care as the allocation is affirmed.

DECISION AND ORDER:

The Board finds that the Provider did not supply adequate documentation to support a change in its allocation statistic. The Intermediary adjustment is affirmed.

---

[17] See Provider Exhibit 35.

BOARDMEMBERS PARTICIPATING:

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

Date of Decision: December 1, 1999

FOR THE BOARD:

Irvin W. Kues
Chairman