PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

ON THE RECORD
2000-D40

PROVIDER -University of Wisconsin
Hospital and Clinics
Madison, Wisconsin

Provider No. 52-0098

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association
Blue Cross and Blue Shield of Wisconsin

DATE OF HEARING-
February 10, 2000

Cost Reporting Period Ended -
June 30, 1994

CASE NO. 95-0535

INDEX

ISSUE:

Was HCFA's denial of the Provider's request for an exception rate for self-dialysis training using an accelerated method proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The University of Wisconsin Hospital & Clinics ("Provider") is a Medicare certified hospital located in Madison, Wisconsin. The Medicare Intermediary is Blue Cross and Blue Shield of Wisconsin ("Intermediary").

On April 27, 1994, the Provider filed an exception request for Continuous Ambulatory Peritoneal Dialysis "CAPD" and Continuous Cycling Peritoneal Dialysis "CCPD" self dialysis training rates. On June 21, 1994, HCFA denied the exception request for the CAPD and CCPD self-dialysis training rates. The request was denied because HCFA determined that the Provider did not submit its projected costs in accordance with Sections 2721 and 2725.5 of HCFA Pub. 15-1.

The Provider filed a timely request for a hearing with the Provider Reimbursement Review Board ("Board") on December 22, 1994, pursuant to 42 C.F.R.§§1835-.1841, and 42 C.F.R §413.170(h)(2) and has met the jurisdictional requirements of those regulations. The Medicare reimbursement is approximately $32,000.

The Provider was represented by James M. Johnson, Acting Chief Financial Officer, University of Wisconsin Hospital and Clinics. The Intermediary was represented by Bernard M. Talbert, Esq. of the Blue Cross and Blue Shield Association, Chicago.

PROVIDER'S CONTENTIONS:

The Provider contends that it calculated its cost per session using actual data from its 1992-93 fiscal year. The calculated cost per session rates were to be used as the Provider's projected costs per session and are the rates that both the Provider and Intermediary agreed to be the exception rates. These projected costs per session were outlined in the I- series cost analysis which was submitted to the Intermediary as part of the Provider's exception request. The Provider also submitted this same data for the 1990-91 and 1991-92 fiscal years.

The Provider points out that the 1990-91 and 1991-92 I-series cost analyses were submitted to document its costs in accordance with section 2725.5 of HCFA Pub. 15-1. The Provider argues that its exception request was solely based on the accelerated method exception criteria. The Provider contends that it was not requesting an exception rate due to the fact that its costs per session were higher than its composite rate, but rather solely based on the fact that it was using an accelerated training method.

The Provider contends that HCFA was wrong in denying the Provider's self-dialysis exception request because the Provider did not submit its projected costs and it failed to submit its exception request in accordance with HCFA Pub. 15-1 § 2721 and § 2725.5. The required documentation under §2721 of HCFA Pub. 15-1 is not relevant to exception appeals that are solely based on the accelerated method criteria. The Provider points out that it was not requesting an exception rate because its costs per session were higher than its composite rate, but rather solely on the fact that it is using an accelerated training rate.

INTERMEDIARY'S CONTENTIONS:

The Intermediary argues that the Provider did not follow Medicare instructions as set forth at HCFA Pub. 15-1 § 2725.5 and § 2725.6 Section 2725.6 states the required information necessary to support a facility's request for an exception for self-dialysis training costs. These elements are as follows:

a) a copy of the facility's training program
b) computation of the facility's cost per treatment for maintenance and training sessions including an explanation of the cost differences between the two modalities
c) class size and patient's training schedules
d) number of training sessions required by treatment modality to train patients

e) number of patients trained for the current year and the prior 2 years on a monthly basis
f) projection for the next twelve months of future training candidates
g) how training sessions are staffed

The cost relating to (g) above involves the cost of technical staff. HCFA Pub. 15-1 noted above goes on to state that to justify the higher staff cost, an ESRD facility must submit the following with their request:

a) the number of technical staff assigned to train patients
b) a projection of information in item (a) above
c) a computation of the cost per treatment for the prior two years
d) the rationale in allocation of staff time to home training, home support, and other duties.

The Intermediary points out that HCFA's denial letter stated:

> Under the accelerated training exception criteria, section 2725 of the Provider Reimbursement Manual (PRM), a renal facility's exception is limited to the lesser of its projected costs or the amount it would have received in training its self dialysis patients. In evaluating UWH&C's exception request for its training programs, we could not make this comparison, since the provider did not submit projected costs as required by sections 2721 and 2725.5 of the Provider Reimbursement Manual.

Exhibit I-2

Since the Provider did not submit the required information, the request was denied. The Intermediary points out that in the Intermediary comment in the signed list of issues:

> the provider calculated its cost per session using actual data from the 1992-1993 fiscal year. It was the intention of the provider that this calculation was also to be used as the projected cost per session. To the best of our knowledge the provider did not indicate that this was the projected cost in the information submitted. However, as part of the Intermediary review we did not take exception to the projected cost since they could apply inflation to the 1993 information that would increase the cost per section (sic)... [1]

The Intermediary concludes that the Provider did not submit the required information for an exception request for self dialysis training using the accelerated method.. As a result, HCFA denied the request and did not allow any additional amount for reimbursement purposes.

CITATION OF LAWS, REGULATIONS AND PROGRAM INSTRUCTION.

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

§405.1835-.1841 et seq. - Board Jurisdiction

§413.170(h)(2) - Appeals

2. Program Instructions Provider Reimbursement Manual-Part 1 (HCFA Pub. 1

§2721 - Exception Requests- All Facilities

§2725.5et seq. - Self Dialysis Training Costs

---

[1] See Exhibit I-3.

FINDINGS OF FACT CONCLUSION OF LAW AND DISCUSSION:

The majority of the Board, after consideration of the facts, parties' contentions, evidence presented, finds that the Provider is entitled to an exception rate for self-dialysis training using an accelerated method.

The majority of the Board finds that the Provider submitted its exception request under the Medicare Manual HCFA Pub. 15-1 §2725. In accordance with that section the Provider supplied the necessary information for HCFA to make a determination. There was a question as to why the Provider was supplying 93 cost data for the 94 cost period. The Board notes that question was answered in the Intermediary's position paper which stated in part:

> the provider calculated its cost per session using actual data from the 1992-1993 fiscal year. It was the intention of the provider that this calculation was also to be used as the projected cost per session.[2]

The majority of the Board finds that the Provider requested $332 and $393 but the Intermediary recommended $262 and $368 which was in accordance with the HCFA manual § 2725.5B6 which states in part:

> a renal facility may request an increase to its composite training rate limited to the lesser of:
>
> C The facility's training cost per treatment; or
>
> C The total amount the facility would have received in training a patient.

The majority of the Board finds that the Intermediary's recommendation was based on the lack of projected costs. However, the majority of the Board notes that HCFA's denial was based on the fact that a comparison could not be made. However, a comparison is not required. The majority of the Board finds that the HCFA denial was a form over substance issue. The majority of the Board finds that the Intermediary reviewed the exception request and found it was acceptable and that the cost was reasonable.

DECISION:

HCFA's denial of the Provider's request for exception rate for self-dialysis training using an accelerated method was not proper. The Intermediary's denial is reversed.

Board Members Participating:

Irvin W. Kues
Henry C. Wessman, Esq. (Dissenting opinion)
Martin W. Hoover, Jr. Esq.
Charles R. Barker

Date of Decision: March 28, 2000

For The Board

Irvin W. Kues
Chairman

---

[2] Intermediary Position Paper- page 4

Dissenting Opinion of Henry C. Wessman

I disagree with the Majority decision in this case, and chose to dissent.

It is an axiom of administrative law that the Plaintiff, in this case, the University of Wisconsin Hospital and Clinic ("Provider"), bears the burden of proof to carry the cause forward throughout the administrative appeals process. Jurisprudence demands that the cause be vigorously advanced, with clarity, and with substance. In this appeal, the plaintiff presents neither.

As an administrative law tribunal, the PRRB can only consider, in a Hearing on the Record, materials that are presented in the record at the time of Hearing, namely, the Position Papers of parties, with Exhibits. This tenet is specifically reinforced regarding End-stage Renal Dialysis (ESRD) cost exception requests, the issue at appeal in this case, at PRM 15-1 § 2726.1, based upon 42 C.F.R. § 413.194(c)(2).

In the Record before us, neither party clarifies, nor distills, either the amount in controversy, or the year for which the cost exemption is requested, and thus there is a failure to state a claim upon which relief can be granted. HCFA's action, to deny the exception request, was an appropriate summary judgement on this case. Intermediary Position Paper, Exhibit I-2. I concur with HCFA, the disclarity with which the Provider advances its cause, together with the ambiguous endorsement of the Intermediary (See Intermediary Position Paper, Exhibit I-3. Unnumbered page 4) as it passes the exception request on to HCFA, demands such summary dismissal. I lack the apparent clairvoyance displayed by my colleagues as to the missing factual substance of this appeal: what is the year for which the Provider is seeking relief, is it current, or is it prospective? Is it FY '94, FY '95, or FY '96? What is the amount in controversy, the cause (remedy) advanced by the plaintiff, the basis upon which relief can be granted? Is it $262.73 for CAPD (Provider's Position Paper - Page 1), or is it $332.42? Provider's Position Paper - Exhibit P-1. Is it $368.16 for CCPD (Provider's Position Paper - Page 1), or is it $393.56? Provider's Position Paper - Exhibit P-1. An even more basic question: what was the actual Medicare payment that serves as the benchmark for this ESRD exception request? What is the current and/or projected costs that are being compared? To what payment/benchmark? Contrary to the opinion of the Majority, this case cannot be clothed in a platitudinous "form over substance" award to the Provider, because there is no "substance".

Finally, 42 C.F.R. Subpart H: Payment for End-Stage Renal Disease (ESRD) Services and Organ Procurement Costs must, at least in my humble opinion, be read in toto. This is an extension of the in pari materia ("on the same subject") canon of statutory law. The same principle holds for any manual instructions promulgated pursuant to the C.F.R. and statute. Thus, globally, the "accelerated training" cost exception (42 C.F.R. § 413.190(f), identified under 42 C.F.R. § 413.182 (d) as a "Criteria for approval of exception requests" in ESRD, must meet all of 42 C.F.R. § 413.180 "Procedures for requesting exceptions to payment rates"' including the budgetary projections required under (f), "Documentation of § 413.180. To read the statute, code, or manual in any other way is simply too narrow. These requirements were known to the Provider, and listed beginning at § 2721 through 2726 of PRM 15-1. These requirements were not met, and this substantive void served as the basis for HCFA's denial of the exception request. Provider's Position Paper, Exhibit P-3, Page 2. In my opinion, HCFA's denial of a cost exception request for "accelerated training" was appropriate, and should be upheld. To do otherwise sets a dangerous precedent of substituting the conjecture of the PRRB for substantive fact.

Henry C. Wessman, Esq.