PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2004-D19

PROVIDER –
Twining Village
Holland, PA

Provider No. 39-5432

vs.

INTERMEDIARY –
Blue Cross Blue Shield Association/
Veritus Medicare Services

DATE OF HEARING -
August 28, 2003

Cost Reporting Periods Ended
December 31, 1996
December 31, 1998

CASE NOS. 99-0729 & 01-0036

INDEX

ISSUE:

Was it proper for the Intermediary to make an adjustment to remove the hours in the ancillary areas used to allocate nursing administration on Worksheet B-1 of the Medicare cost report?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

This appeal arises from a downward adjustment to Twining Village's claim for Medicare reimbursement.

One of the basic principles of Medicare law is the prohibition against cross-subsidization of costs, i.e., the Medicare Program will not bear the costs of services rendered to non-Medicare patients and non-Medicare patients will not bear the costs of services to Medicare patients. 42 U.S.C. 1395(x)(v)(1)(A). In order to ensure compliance with this and many other Medicare reimbursement principles, the Medicare Program's payment and audit functions are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due providers under Medicare law and under interpretative guidelines published by the Centers for Medicare and Medicaid Services (CMS).

After the close of its fiscal year, a provider must submit a Medicare cost report to its fiscal intermediary. The purpose of the cost report is to compute proper payment for services rendered to Medicare beneficiaries. 42 C.F.R. §413.20. The intermediary reviews the cost report and determines the total amount of Medicare reimbursement due the provider, which it publishes in a Notice of Program Reimbursement (NPR). 42 C.F.R. 405.1803.

There are many elements of cost and charges, numerous statistical allocations, and many computations that comprise the cost report upon which the determination of Medicare reimbursement is based. An essential element of the cost reporting process is determining how much of a provider's allowable cost should be apportioned to the Medicare program. This process is known as "cost finding."

Through the cost finding or "step-down" allocation process, a facility's overhead costs such as building depreciation, administrative and general and nursing administration are allocated to the revenue-producing departments such as radiology, laboratory, and the therapy cost centers. Medicare reimbursement principles set forth the allocation bases (square footage, accumulated cost, etc.) upon which, as well as the order in which, the non-revenue producing cost centers are stepped down to the revenue-producing cost centers. When a provider uses a step-down allocation process that varies from that prescribed by Medicare (without approval of the fiscal intermediary), the intermediary makes the adjustments that it feels are necessary in order to bring the cost report into compliance with the program's reimbursement principles. Such is the nature of the adjustments at issue in this case.

Twining Village is a Skilled Nursing facility (SNF) certified to provide Medicare services. The SNF is located within a larger retirement facility that also provides non-Medicare services such as personal care, assisted care and independent living.

In the cost reports at issue here, the Provider allocated the costs accumulated in the nursing administration cost center to the three ancillary therapy cost centers: physical therapy, occupational therapy and speech therapy. Believing that the Provider's allocation of these costs did not conform to Medicare reimbursement principles and that the allocations resulted in excess cost being paid by Medicare, the fiscal intermediary made adjustments to remove the allocations to the therapy cost centers.

The Provider disagreed with the adjustments and filed a timely request for hearing for both the FYE 12/31/96 and the FYE 12/31/98. The amount of Medicare reimbursement in dispute is approximately $37,576.

The Provider was represented at the hearing by Robert Talecki, consultant. The Intermediary was represented by James Grimes, Esq., of the Blue Cross Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the allocation of nursing administration costs to its therapy departments is a normal and allowable allocation, that other provides audited by the Intermediary received an allocation of Nursing Administration to their therapy department, and that this allocation was accepted by the Intermediary for cost reporting years 1993, 1994 and 1995.

The Provider maintains that nursing administration's control and supervision of therapy departments is necessary in order to ensure proper control of therapy expenses, and that such supervision is applicable to both Provider-employed and contract therapy personnel. In addition, regardless of employment status, all therapy personnel are required to be inserviced by the Provider.

A nursing administration organizational chart, a job description for the Director of Nursing, and a written statement from the Director of Nursing attesting to her involvement in decisions regarding patients' needs for therapy services were submitted by the Provider in support of its contention that nursing administration controls and supervises the therapy departments. In addition, the Director of Nursing testified at the hearing that only nursing administration personnel have the expertise and medical background required to properly control the therapy departments. The Director of Nursing testified further that other personnel within the nursing administration department also have daily, direct interaction with the therapy department.

The Provider also points out that the Skilled Nursing Facility Manual, HIM-12, section 206, requires skilled nursing facilities that furnish services under arrangement to exercise professional responsibility over the arranged-for services. The Director of Nursing

testified that the nursing department performs all of the duties that are required to satisfy this requirement.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Provider has attempted to avoid the recommended cost finding methodology by claiming that the Director of Nursing works with the therapy department, as well as other departments, in order to coordinate the overall care of patients. It is expected that the Director of Nursing would communicate and coordinate with other departments. For example, the Director might work with the dietary department to ensure that a patient's diet is adjusted to meet his or her needs. However, that does not mean that the Director of Nursing is responsible for the dietary department or that the costs of administering nursing services should be allocated to the dietary department. The purpose of interdepartmental coordination and communication within a skilled nursing faculty is to ensure that quality services are being provided to residents. For example, when the nursing staff communicates with the physical therapy department about a resident's progress, it is not for the purpose of managing the department. Rather, it is aimed at ensuring coordination of routine nursing care functions such assisting the resident with transfer and ambulation.

No documentation detailing the Nursing Director's activities was submitted, however, she gave testimony describing her duties and interactions with the therapy department. The Intermediary argues that the testimony did not describe actual administration and oversight within the ancillary department, but merely the kind of interaction and cooperation that one would expect of a department head carrying out her supervisory duties over nursing activities.

The Director of Nursing has the responsibility to develop and maintain nursing service objectives, participate in recruitment, hiring and firing of nursing personnel, assign duties and delegate responsibilities to nursing personnel, and to evaluate the performance of nursing personnel. Those duties, however, do not extend to the therapy department. The therapy personnel do not report to the nursing director. She did not have the authority to hire and fire therapy personnel, and she did not participate in recruiting and hiring therapy personnel. The Intermediary maintains that the only thing she does that is outside supervision of the routine area and affects the therapy department is that she "communicates on a daily basis and reviews plans of care and treatment options." The real oversight and supervision of the contracted therapy service was under the direction of the nursing home administrator. Under these circumstances, no allocation of nursing administration costs to the therapy cost centers is appropriate.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and Program instructions, parties' contentions and evidence presented, finds and concludes that the Intermediary properly removed the Provider's nursing administration cost allocation from the therapy cost center.

The Board finds that there was no support for the Provider's contentions that the documentation submitted justifies the allocation of nursing administration costs to the ancillary cost centers. Neither the job description or the organizational spare chart provided documentation of any responsibility for the therapy department or actual time spent in that department by nursing administration personnel.

The Board also finds that the Provider did not adhere to the regulations and program instructions in allocating nursing administration cost to the ancillary cost centers. First, the Provider did not use the recommended statistic of actual nursing hours in its allocation. Second, the program instructions at section 2306.1 of HIM 15-1 states: "all costs of non-revenue producing centers are allocated to all centers which they serve…" The Provider did not establish that the personnel whose salaries are included in the Nursing Administration cost center actually provided services to the ancillary therapy cost centers.

In summary, the Board finds that the testimony of the Director of Nursing, as well as the documentation submitted, failed to substantiate the Provider's claim of actual oversight and supervision of therapy services.

DECISION AND ORDER:

The Intermediary's adjustment removing therapy hours and therapy aide hours from total nursing hours for the purpose of allocating the cost in the nursing administration cost center was proper. The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Dr. Gary Blodgett
Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, CPA

DATE: April 30, 2004

FOR THE BOARD:

Suzanne Cochran, Esquire
Chairman