PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

ON THE RECORD
2005-D71

PROVIDER -
Saint Joseph Community Hospital
Mishawaka, Indiana

Provider No.: 15-0029

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
AdminaStar Federal - Indiana

DATE OF HEARING -
June 28, 2005

Cost Reporting Periods Ended -
December 31, 1998 and December 31, 1999

CASE NOs.: 02-0399 and 02-1946

INDEX

ISSUES:

Were the Intermediary's adjustments to the count of full-time equivalent interns and residents proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the proper amount of Medicare reimbursement to a provider of medical services.

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration (HCFA)) is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' payment and audit functions under the Medicare program are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due the providers under Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. §1395(h), 42 C.F.R. §§413.20(b) and 413.24(b).

At the close of its fiscal year, a provider must submit a cost report to the fiscal intermediary showing the costs it incurred during the fiscal year and the proportion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 42 C.F.R. §405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board (Board) within 180 days of the issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

The Medicare program reimburses teaching hospitals for their shares of costs associated with direct graduate medical education (GME) and indirect medical education (IME). The calculation for reimbursement requires a determination of the total number of full-time equivalent residents (FTEs) in the teaching program. 42 C.F.R §413.86 sets the standards under which medical residency programs may be established and reimbursed. Generally, the regulations limit a residency program to the number of residents that the program had for the most recent cost reporting period ending on or before December 31, 1996. However, the regulation at 42 C.F.R. §413.86(g)(6) creates an exception to the limit for "a new residency training program." 42 C.F.R. §413.86(g)(7)[1] states that "a new medical residency training program means a medical residency that received initial

[1] The regulatory language quoted here is from the C.F.R. for the fiscal year ended 12/31/98. The regulatory language for the two years at issue did not change; only the section of the code where it is found changed: 413.86(g)(7) for 1998 and 413.86(g)(9) for 1999. Both the Provider and the Intermediary referred to the section numbers contained in later versions of the Code. The Provider referenced the governing section as 42 C.F.R. 413.86(g)(12) (C.F.R. 2001) and the Intermediary as 42 C.F.R. 413.96(g)(13) (C.F.R. 2001). For the sake of consistency, all references to the controlling regulation section are to the 1998 code section.

accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." The issue in dispute in this appeal is whether the Provider's program qualifies as a new program under 42 C.F.R. §413.86(g)(6). "New" status would qualify the Provider's residency program for exclusion from the limit for the two years under appeal.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

St. Mary Community Hospital and St. Joseph Community Hospital merged on December 31, 1995 into Ancilla Health Care, Inc. For reimbursement purposes, an acute care license was maintained for each facility. Ancilla Health Care, Inc., d/b/a St. Joseph Community Hospital (Provider), is an acute care nonprofit general short-term facility located in Mishawaka, Indiana that is reimbursed by Medicare through the prospective payment system. On June 27, 1997, Ancilla Health Care, Inc., d/b/a St. Mary Community Hospital in South Bend, Indiana surrendered its license as an acute care hospital. Ancilla Health Care was the sponsoring institution for an American Osteopathic Association (AOA) graduate medical education internship and family practice residency program at St. Mary. Ancilla consolidated all of St. Mary's inpatient services, including the AOA educational program, at St. Joseph. St. Mary did not close but continued to operate an outpatient center along with an urgent care center under the acute care license with Ancilla/St. Joseph. For the fiscal years ended 12/31/98 and 12/31/99, the Provider asserted that the medical residency program at St. Joseph qualified as a new program as defined by 42 C.F.R. §413.86(g)(7) and was not subject to the residency training cap for those periods.

AdminStar Federal (Intermediary) examined the circumstances surrounding the establishment and operation of the Provider's residency program and concluded that the Provider's program was relocated from St. Mary. Therefore, it did not qualify as a new program. The Intermediary subsequently adjusted the Provider's claimed intern and resident counts to the limit previously established for St. Mary.

PARTIES' CONTENTIONS:

The Provider contends that the residency program at St. Joseph qualifies as a new medical residency program. The Provider argues that the regulation at 42 C.F.R. §413.86(g)(7) states that "a new medical residency training program means a medical residency that received initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." HCFA, in its Program Memorandum Transmittal No. A-99-51 dated December 1, 1999, prescribes a two-step process to apply the regulation:

> First, determine if the hospital residency program qualifies as "new," meaning, it received initial accreditation by the appropriate accrediting body or began training residents on or after January 1, 1995.

> Second, determine whether or not the hospital had residents before January 1, 1995.

The Provider argues that it successfully met both steps. Prior to 1995, St. Joseph had no accreditation for a residency program. The accreditation that existed from the AOA was for a different hospital that was separately incorporated and held its own provider number and tax identification number. Accordingly, the accreditation received from the AOA must be new to the Provider and an "initial accreditation" from Medicare. The Provider asserts, therefore, that it met the first standard. As to the second standard, the Provider argues that it did not have a residency program prior to 1995 and did not, therefore, have residents prior to that date.

The Provider further argues that, while it meets both requirements, it is only required to meet one. 42 C.F.R. §413.86(g)(7) states that "a new medical residency training program means a medical residency that received initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." The use of the word "or" establishes that meeting either one of these requirements is sufficient to qualify as "new." In this case, the Provider began training residents after January 1, 1995, and under the plain language of the statute, the program is a new residency training program.

The Provider also disputes the Intermediary's claim that sponsorship is determinative of new program status. The Provider argues that the regulation has a precise definition for a new program, and sponsorship is not a part of that definition. Further, the Provider contends that Transmittal No. A-99-51 specifically refutes the Intermediary's claim that a hospital's sponsorship has any role in determining whether it qualifies to receive an adjustment, regardless of whether or not it had residents before January 1, 1995."

The Intermediary contends that the medical residency program at St. Joseph is not a new program within the meaning of 42 C.F.R. §413.86 but, rather, an established program that was "relocated" from St. Mary. The Intermediary argues that, while 42 C.F.R. §413.86(g)(7) states that "a new medical residency training program means a medical residency that received initial accreditation by the appropriate accrediting body…," Ancilla's correspondence with the AOA's accrediting body makes it clear that it was not seeking initial accreditation. When St. Mary Community Hospital and St. Joseph Community Hospital merged into Ancilla Health Care, Inc., Ancilla maintained the approval for the AOA graduate medical education program. After Ancilla discontinued St. Mary's operation as an acute care facility, Ancilla applied to the AOA to continue its graduate medical education internship and family practice residency program at St. Joseph. In its May 12, 1997 request to the AOA, Ancilla argued for continuation of the approval, stating that the program director remained the same and the teaching physicians continued to serve the graduate physicians in the program. Ancilla further argued that the physicians enjoyed the same privileges at St. Joseph as at St. Mary as a result of a common set of medical staff bylaws. Ancilla also noted that the Boards of the two hospitals were consolidated effective with the merger and, therefore, governance of the program remained the same. On April 21, 1998 the Executive Committee of the Council on Postdoctoral Training (ECCOPT) granted "continuing approval" of the residency

training program at "Ancilla Health Care (St. Joseph Hospital/St. Mary Community Hospital)." The Intermediary argues that the ECCOPT recognized Ancilla as the operator/sponsoring institution of the residency program, considered St. Joseph & St. Mary to be a single enterprise and did not consider the program to be a "new" program.

The Intermediary further argues that the AOA's instructional publication *Basic Documents for Postdoctoral Training* states that "Sponsoring institutions must submit a new application for approval as a new doctoral postdoctoral training site if there is a significant change in its organization structure. . . ." A change in the training site name without other organizational changes is not considered a significant change in the organization structure and does not require a new application. Ancilla was not required to file a new application, which lends further support to the fact that was not considered a new program by the AOA, but merely a change in the training site name.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of Medicare law and guidelines, the parties' contentions and the evidence presented in the record, finds and concludes that the Intermediary's adjustment of the Provider's intern and resident count to the limit established for St. Mary was proper.

The question for the Board is whether the residency program at St. Joseph qualifies as a new program as defined by 42 C.F.R. §413.86(g)(7).

The history of the residency program is undisputed. Ancilla is its sponsor and originally operated it from the St. Mary location. When Ancilla surrendered St. Mary's acute care license, it requested accreditation from the AOA for the program's operation at St. Joseph. Ancilla's request argued that the program at St. Joseph would be a continuation of the existing approved program and that no changes in its operation or service delivery would be made. The language of the request appears inconsistent with the Provider's claim of initial accreditation. However, ambiguities created by the competing language of the regulation and HCFA's implementing guidance allowed both parties to advance credible arguments in support of their respective positions. The Board's review of the record indicated that no regulation specifically addresses the Provider's circumstances and, absent such specificity, interpretation falls to the Board.

42 C.F.R. §413.86(g)(7) states that "a new medical residency training program means a medical residency that received initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." The Provider argues that prior to the transfer of the program to St. Joseph, that facility never had a residency program and had never trained residents. Consequently, the AOA certification granted to the program at St. Joseph must necessarily be an initial certification that allowed St. Joseph to train residents after the January 1st deadline. The Provider bases its argument on the premise that the certification and the training activities are tested on a facility specific basis. The Board disagrees. The language of the regulation does not support a facility-specific based test. The regulation defines a new residency program as a "medical

residency that received initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." The regulation is specific to the program, not the facility at which it is located. Further, HCFA Program Memorandum A-99-51 at section VII (A) states that the language of 42 C.F.R. §413.86(g)(7) "does not mean that it is the first time a particular hospital began training residents in a program on or after January 1, 1995, but the program was in existence at another hospital prior to January 1, 1995." The Memorandum clarifies the language of the regulation and directly addresses the same circumstances raised in the Provider's appeal. The Board acknowledges that its effective date is beyond the period during which the program was established at St. Joseph. Nevertheless, the Memorandum provides the Secretary's interpretation of the regulatory language that governs this transaction. The Board considers this interpretation reasonable and finds that the deciding factor for determining a "new" program for residency training cap purposes is the program, not the hospital.

The residency program was in existence and certified by the AOA prior to its relocation to St. Joseph's. No substantive changes were made in its operation or the organizational structure of its sponsor. Accordingly, the Board finds that the Provider's program does not qualify as a new program under 42 C.F.R. §413.86(g)(7). The Board also finds that the program's FTEs were accounted for in prior periods for cap purposes while the program was at St. Mary. The Board concludes that the Intermediary's adjustment of the Provider's intern and resident counts to the limit established for St. Mary was proper.

DECISION AND ORDER:

The Intermediary's adjustment of the Provider's intern and resident counts to the limit established for St. Mary was proper.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West

FOR THE BOARD:

DATE: September 29, 2005

Suzanne Cochran, Esquire
Chairperson