PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

ON THE RECORD
2006-D4

PROVIDER -
Omega Hills, Inc.
Jasper, Indiana

Provider No.: 15-5478

vs.

INTERMEDIARY -
BlueCross Blue Shield Association/
AdminaStar Federal-Indiana (formerly
Anthem Insurance Company)

DATE OF HEARING -
September 8, 2005

Cost Reporting Period Ended -
December 31, 1996

CASE NO.: 99-1295

INDEX

ISSUE:

Was the Intermediary's adjustment to owners' compensation proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due a health care provider.

The Medicare program provides health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare & 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 the program's administration. 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 providers under Medicare law and interpretative 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 portion 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 NPR. 42 U.S.C. §1395oo; 42 C.F.R. §405.1835.

Medicare reimbursement is governed by section 42 U.S.C §1395x(v)(1)(A) of the Social Security Act. In part, the statute provides that the reasonable cost of any service shall be the actual cost incurred, excluding any part of such costs found to be unnecessary in the efficient delivery of needed health services.

Regulations at 42 C.F.R. §413.102(a), as well as program instructions contained in Medicare's Provider Reimbursement Manual, Part I (HCFA Pub. 15-1) §900 state:

> [a] reasonable allowance of compensation for services of owners is an allowable cost provided that the services are actually performed in a necessary function. (Emphasis added.)

Moreover, 42 C.F.R. §413.102(b)(3) defines "necessary" as follows:

> [n]ecessary requires that the function be-
>
> (i) Such that had the owner not furnished the services, the institution would have had to employ another person to perform the services; and

(ii) Pertinent to the operation and sound conduct of the institution.

Also, HCFA Pub. 15-1 §902.2 states:

> [c]ompensation may be included in allowable provider cost only to the extent that it represents reasonable remuneration for managerial, administrative, professional, and other services related to the operation of the facility and rendered in connection with patient care. Services rendered in connection with patient care include both direct and indirect activities in the provision and supervision of patient care, such as administration, management, and supervision of the overall institution. Services which are not related to either direct or indirect patient care, e.g., those primarily for the purpose of managing or improving the owner's financial investment, are not recognized as an allowable cost. (Emphasis added).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Omega Hills, Inc. (Provider) is a 138-bed skilled nursing facility located in Jasper, Indiana. During its cost reporting period ended December 31, 1996, the Provider claimed owners' compensation expenses of $47,200 for the services of its two owners. Anthem Insurance Companies, Inc. (Intermediary) reviewed the Provider's cost report and made an adjustment disallowing $42,400 of the claimed compensation. The Intermediary allowed $4,800 of the compensation for directors' meetings based upon $200 per owner for 12 meetings that occurred during the cost reporting period. The Intermediary disallowed the remaining owners' compensation claimed by the Provider for management and directors' fees paid to its owners.[1]

The Provider appealed the Intermediary's adjustment to the Board pursuant to 42 C.F.R. §§405.1835-405.1841 and met the jurisdictional requirements of those regulations. The amount of Medicare funds in controversy is approximately $15,000.

The Provider was represented by Daniel S. Gaafar, C.P.A., of Bradley & Associates, Inc. The Intermediary was represented by Bernard M. Talbert, Esquire, Associate Counsel, Blue Cross Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of Medicare law and guidelines, parties' contentions, and evidence presented, finds and concludes as follows:

The dispute over the amounts claimed for owners' compensation centers on the nature/need of the services provided by the owners. The controlling regulation for

[1] Provider's Supplemental Position Paper at 2. Intermediary's Position Paper at 4.

owners' compensation at 42 C.F.R. §413.102(a) recognizes compensation of owners as an allowable expense provided the services are actually performed in a necessary function. In addition, 42 C.F.R. §413.102(b)(3)(i) requires that, for a service to be necessary, the institution would have had to employ another individual to perform it had the owner not done so.

In this case the Provider argued that the owners provided services that were necessary for the operation and supervision of the facility. However, the Provider furnished no auditable documentation in support of its contention. Despite the opportunity to offer testimony or other evidence, the Provider limited its evidence to an unsworn listing of the owners' general duties.[2] As submitted, the listing provides no foundation upon which the Board can conclude that the owners actually provided the services that are listed or that the owners were involved, directly or indirectly, with patient care at the facility.

The Provider did present a specific example of the owners "supervision of the overall institution," which was the negotiation of group health insurance. By negotiating on behalf of several providers that they owned, the Provider's owners were able to obtain favorable rates. The Provider explained that if the owners had not negotiated these rates, someone would had to have been hired to perform the negotiations, because the administrators of the individual facilities were not authorized to act on behalf of the other providers. The Board, however, does not find this argument compelling. The owners' negotiation of group health insurance was not a service rendered for the benefit of the Provider alone, but was a one-time activity performed for the financial benefit of the owners' investment in multiple health care facilities.

It is undisputed that the owners had several other business enterprises to which they also devoted time, and that the Provider employed full-time staff to manage and direct the day-to-day operations and patient service delivery functions of the facility. (Exhibit I-1). Absent documentation to the contrary, the Board must conclude that the Provider's staff discharged its managerial and patient service responsibilities and, in so doing, obviated the need for significant involvement by the owners in the facility's daily operations. Accordingly, the Board concludes that the Intermediary properly adjusted the amounts claimed by the Provider for the owners' involvement in the operation of the facility.

DECISION AND ORDER:

The Intermediary properly adjusted the owners' compensation claimed by the Provider. The Intermediary's adjustment is affirmed.

Board Members Participating:
Suzanne Cochran, Esq.
Dr. Gary B. Blodgett
Elaine Crews Powell, C.P.A
Anjali Mulchandani-West

[2] Provider's Supplemental Brief at Exhibit P-1.

FOR THE BOARD:

DATE: November 17, 2005

Suzanne Cochran, Esq.
Chairman