PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION

ON THE RECORD
2007-D62

PROVIDER -
Hi-Desert Medical Center
Joshua Tree, CA

Provider No.: 05-0279

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
National Government Services, LLC - CA

DATE OF HEARING -
October 17, 2006

Cost Reporting Period Ended -
June 30, 1994

CASE NO.: 96-2468

INDEX

ISSUE:

Whether the Intermediary's determination of non-allowable physician office and vacant space costs was proper.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due 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. §1395h, 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 issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

The costs of private physician office buildings that are connected to or affiliated with a hospital are not covered under Medicare Part A. However, the physician office buildings may receive services from the hospital's facility or staff. In those instances, Medicare requires that a portion of the hospital's costs be allocated to the physician private offices so that Medicare does not subsidize these costs. The amount to be allocated is derived from statistics developed for the hospital's overhead costs. This case involves the extent to which such costs should be allocated to the private physician offices.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Hi-Desert Medical Center (Provider) is a California district hospital located in Joshua Tree, California. During the fiscal year ended (FYE) June 30, 1994, the Provider operated a 56-bed general acute care hospital, a 120-bed hospital-based skilled nursing facility and a hospital-based home health agency.

In December 1993, the Provider acquired an off-campus medical office building referred to as the Rarick Building. During the audit of the Provider's FYE 1994, cost report, Blue Cross of California (Intermediary)[1] established the following non-reimbursable costs centers and square footage statistics for the Rarick Building.

Rarick Building Physician Offices	862 square feet
Rarick Building Vacant Space	1,737 square feet

The square footage statistic was used in the allocation of the following overhead cost centers:

a. Old Capital - Related Costs/Building & Fixtures
b. Old Capital - Related Costs/Major Movable Equipment
c. New Capital - Related Costs/Building & Fixtures
d. New Capital - Related Costs/Major Movable Equipment
e. Operation of Plant

With the exception of the allocation of New Capital - Related Costs/Building & Fixtures, the Provider disagrees with the allocation of these overhead cost centers to the Rarick Building.

The Provider appealed the Intermediary's adjustments to the Board pursuant to 42 C.F.R. §§405.1835-405.1841 and met the jurisdictional requirements of those regulations. The Provider was represented by Patrick Jordan, Petrak & Associates, Inc. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider contends that the allocation of Old Capital - Related Costs/Building & Fixtures and Major Movable Equipment (Old Capital Costs) to the Rarick Building Physician Offices and Rarick Building Vacant Space cost centers is inappropriate. The Provider points out that the cost reporting instructions provide that the Old Capital - Related Costs/Building and Fixtures and Major Movable Equipment cost centers relate to assets placed into service prior to January 1, 1990. Since the Rarick Building was not acquired until December of 1993, there are no Old Capital Costs applicable to the Rarick Building, and the assignment of square footage statistics to the Rarick Building for the allocation of Old Capital Costs is improper for cost finding purposes.

The Provider acknowledges that there should be an allocation of New Capital - Related Costs for Building and Fixtures to the Rarick Building.[2] However, the Provider states that it did not provide equipment to the Rarick Building Physician Offices or Vacant Space locations; therefore, an allocation of New Capital - Related Costs/Major Movable Equipment to these cost centers would be inappropriate. The Provider asserts that the

[1] National Government Services, LLP – CA is currently the Provider's fiscal Intermediary.
[2] Provider Position Paper at pages 1 and 3 in footnote 1.

absence of any equipment assigned to the Rarick Building in any of the Provider's fixed asset listings at Exhibit P-3 through P-6 corroborates the Provider's claim that equipment was not provided to the Rarick Building.

The Provider notes that the Intermediary's adjustment resulted in a $63,435 allocation of Operation of Plant costs to the Rarick Building. The Provider contends that any benefits or services received by the Rarick Building were minimal to nonexistent, and that the allocation of these costs to the Rarick Building is improper for cost finding purposes. The Provider indicates that direct costs assigned to the Operation of Plant cost center were as follows:

Department	Salaries	Other	Total
Security	41,667	13,524	55,191
Plant Operations – Other than Utilities	0	3,604	3,604
Plant Operations – Utilities	0	356,432	356,432
Total	41,667	373,560	415,227

The Provider claims that none of the utility costs of $356,432 was applicable to the Rarick Building. The Provider presented summaries of its utility service invoices for the months of December 1993 and May 1994[3] as evidence that no utility expenses for the Rarick Building are recorded in the Plant Operation departmental cost center.

With respect to Security and Plant Operations – other than utilities costs, the Provider asserts that most, if not all of these costs, were incurred for the main hospital building and not for the Rarick Building. However, if square footage statistics must be used to assign some of the Operation of Plant costs, it should be weighted by a factor to reflect the non-utilization of utilities cost by the Rarick Building. This would result in a fair amount of the non-utility costs being assigned to the Rarick Building.

The Provider contends that the assigned statistics results in an inappropriate allocation of cost to the Rarick Building that received little or no services or benefits from the allocated overhead cost centers. The Provider argues that it is common practice to make adjustments to assigned statistics to reasonably align cost allocations with the utilization of overhead services. These include the weighting of square footage statistics based on the time such square footage was utilized by a given cost center during a cost reporting period, the removal of cafeteria statistics for off campus departments where employees cannot readily utilize those services and the removal of Medical Record statistics from provider components that maintain their own medical records.

The Provider disagrees with the Intermediary's contention that it seeks application of the direct assignment of cost method under CMS Pub. 15-1 §2312. Rather, the Provider seeks the removal of inappropriate statistics assigned by the Intermediary in the application of the step-down method.

[3] Provider Exhibits P-7 and P-8, respectively.

The Intermediary concedes that the cost allocation methodology it used to settle the cost report is not as accurate as the discrete cost finding methodology whereby all costs are assigned to the department that actually benefited from the overhead cost center. However, the Intermediary argues that where a provider has not used discrete cost findings, the overhead allocated to reimbursable and non-reimbursable cost centers must be consistent among all overhead cost centers. The Rarick Building derives some benefits from the applicable overhead cost centers and should receive its fair share of overhead cost using appropriate square footage statistics. The Intermediary asserts that the Provider's arguments imply the application of discrete cost finding or direct assignment of costs. However, the Provider did not seek the Intermediary's approval to change its cost finding methodology in accordance with CMS Pub. 15-1, Section 2312. Moreover, even if the Provider elects to use discrete costing, it cannot selectively use that method for certain cost centers but it must be consistently applied to all cost centers.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and guidelines, the parties' contentions and the evidence presented, the Board finds and concludes that the Intermediary improperly allocated Old Capital-Related costs and New-Capital Costs/Major Movable Equipment to the Rarick Building, and that the Provider did not adequately support its request for a reduced allocation of Operation of Plant costs to the Rarick Building. The Board remands the issue to the Intermediary to determine whether the Provider properly accumulated and allocated costs from the Old Capital Costs and the New Capital Related-Costs/Building and Fixtures cost centers.

The Provider does not dispute the Intermediary's establishment of the Rarick Building as a non-reimbursable cost center and argues that some indirect overhead costs should be allocated to it. Instead, the issue is whether the Rarick Building received any benefit from the Old Capital Costs and New Capital for Major Movable Equipment cost center, and whether the allocation of overhead costs from the Operation of Plant cost center should be reduced.

The Provider is not requesting direct assignment of cost but merely discrete cost finding in instances where it is clear that the Rarick Building receives no benefit from the overhead cost centers. The Board agrees with the Provider that the allocation of Old Capital-Related Costs/Building and Fixtures and Major Movable Equipment cost center to the Rarick Building is inappropriate. The regulation at 42 C.F.R. §412.302 and cost reporting instructions provide that Old Capital-Related Costs/Building and Fixtures and Major Movable Equipment relate to assets placed into service prior to January 1, 1990. Since the Rarick Building was not acquired until December of 1993, there are no Old Capital costs applicable to the Rarick Building, and the assignment of square footage statistics to the Rarick Building for the allocation of Old Capital costs is improper for cost finding purposes.

Even though Old Capital costs should not be assigned to the Rarick Building, the record does not indicate whether the Provider has accumulated all of the costs associated with

Old and New Capital costs in the proper overhead cost centers and appropriately allocated them among the Rarick Building and the main hospital buildings based upon square footage.[4] The Board remands this matter to the Intermediary to determine whether the Provider properly accumulated New Capital-Related Costs/Building and Fixtures and allocated these costs based on the proper square footage associated with new capital.

With respect to the allocation of the New Capital-Related Costs/ Major Movable Equipment cost center, the Provider presented schedules of equipment, at Exhibits P-3 through P-6 to document that there were no assets purchased for the Rarick Building. In reviewing the record, the Board found only one charge or entry for signage for the Rarick Building. See Exhibit P-6, report 12 on page 5. Based upon this evidence, the Board finds that the Provider has presented substantial evidence to demonstrate that the Rarick Building did not receive any major movable equipment and should not receive an overhead allocation from this cost center.

With respect to the Operation of Plant cost center, the Board finds that the Provider did not provide sufficient documentation to demonstrate that it did not pay for any utilities for the Rarick Building and that most security costs were associated with the hospital. The Board notes that the Provider only presented utility bills for two months. See Exhibit P-7and P-8. The Board finds that documentation for two months is insufficient to support the Provider's position that it did not pay any utility costs for the Rarick Building. Moreover, the Provider did not furnish documentation to support its position that the vast majority of security personnel were utilized by the hospital. The Board finds that the Intermediary's use of square footage to allocate Operation of Plant costs to the Rarick Building costs was proper.

DECISION AND ORDER:

The Intermediary's adjustment related to Old Capital-Related Costs and New Capital-Related Costs/Major Movable Equipment are reversed. The Intermediary's adjustment related to Operation of Plant is affirmed. The Board remands to the Intermediary to determine whether the Provider properly accumulated New Capital-Related Costs/Building and Fixtures and allocated them based on appropriate square footage to the benefiting cost centers, including the Rarick Building.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Elaine Crews Powell, CPA
Anjali Mulchandani-West
Yvette C. Hayes

[4] The record indicates that the Provider reported the same square footage statistic for both Old and New Capital cost centers. See Exhibit I-4, audit workpaper 11-1.4.

DATE: August 15, 2007

FOR THE BOARD:

Suzanne Cochran, Esquire
Chairperson