

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2017-D20

PROVIDER –
Stormont-Vail Healthcare, Inc.
Topeka, Kansas

Provider No.: 17-0086

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

DATE OF HEARING –
May 27, 2016

Cost Reporting Period Ended –
September 30, 2009

CASE NO.: 13-1203

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ISSUE

Whether the Provider, Stormont-Vail Healthcare, Inc. (“Stormont-Vail”), was the legal operator of Baker University Nursing School pursuant to 42 C.F.R. § 413.85(f)(1) (2008), thus qualifying under the Medicare program for pass-through reimbursement for the reasonable costs of its operation.¹

DECISION

After considering the Medicare law and regulations, the evidence presented, and the parties’ contentions, the Provider Reimbursement Review Board (“Board”) finds that, based on the criteria set forth in 42 C.F.R. § 413.85(f)(1) as requisite conditions for pass-through reimbursement, Stormont-Vail did not qualify for pass-through reimbursement of the reasonable cost of the nursing program for its fiscal year ending September 30, 2009 (“FY 2009”).

INTRODUCTION

Stormont-Vail is an acute care hospital located in Topeka, Kansas. Stormont-Vail has a nursing program operated on its campus known as the Baker University Nursing School. For FY 2009, Stormont-Vail reported costs related to the Baker University Nursing School on its Medicare cost report for pass-through (reasonable cost) reimbursement of the nursing program. The Medicare Contractor, Wisconsin Physicians Service, determined that Stormont-Vail’s nursing program did not meet all five criteria specified at 42 C.F.R. § 413.85(f) to qualify as a provider-operated program. In accordance with this determination, the Medicare Contractor made adjustments to Stormont-Vail’s FY 2009 cost report, reclassifying the costs and statistics from the nursing school cost center to the administrative and general cost center.

Stormont-Vail appealed those adjustments to the Board and met the jurisdictional requirements for a hearing before the Board. The Board conducted a telephonic hearing on May 27, 2016. Brooke Bennett Aziere of Foulston Siefkin LLP represented Stormont-Vail. Jerrod Olszewski, Esq. of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF FACTS

On October 12, 1990 Stormont-Vail entered into a contract with Baker University for the operation of a nursing program on Stormont-Vail’s campus.² When Congress enacted the Medicare inpatient prospective payment system (“IPPS”),³ it allowed for the payment of certain approved nursing and allied education activities on a reasonable cost or “pass-through” basis when a provider is the operator of the program.⁴ In order for a provider to be considered an

¹ Provider’s Final Position Paper at 3; Transcript of Proceedings at 5–6, *Stormont-Vail Healthcare, Inc. v. Wisconsin Physicians Service*, Provider Reimbursement Review Board (May 27, 2016) (Case No. 13-1203) [hereinafter Tr.].

² Provider’s Final Position Paper at Exhibit A.

³ On October 1, 1983, Congress amended the Social Security Act and adopted a new payment system known as the Prospective Payment System for the operating costs of inpatient hospital services. *See* Social Security Amendments of 1983, Pub. L. No. 98-21, § 601(e), 96 Stat. 331 (codified as amended at 42 U.S.C. § 1395ww(d) (1983)).

⁴ 42 U.S.C. § 1395ww(a)(4); 42 C.F.R. § 413.85(d).

operator of the nursing program, 42 C.F.R. § 413.85(f)(2) requires that the provider issues degrees or diplomas for the nursing school. The parties stipulated that Stormont-Vail does not issue degrees or diplomas for the nursing program.⁵⁶

However, a provider may also be considered to be the operator of a nursing or allied health program if it meets all of the following criteria⁷:

- (i) Directly incur the training costs
- (ii) Have direct control of the program curriculum. (A provider may enter into an agreement with an educational institution to furnish basic academic courses required for completion of the program, but the provider must provide all of the courses relating to the theory and practice of the nursing or allied health profession involved that are required for the degree, diploma, or certificate awarded at the completion of the program.)
- (iii) Control the administration of the program, including collection of tuition (where applicable), control the maintenance of payroll records of teaching staff or students, or both (where applicable), and be responsible for day-to-day program operation. (A provider may contract with another entity to perform some administrative functions, but the provider must maintain control over all aspects of the contracted functions.)
- (iv) Employ the teaching staff.
- (v) Provide and control classroom instruction and clinical training (where classroom instruction is a requirement for program completion), subject to the parenthetical sentence in paragraph (f)(1)(ii) of this section.⁸

The parties stipulated that Stormont-Vail meets criteria (i), (iv) and (v)—that is, Stormont-Vail directly incurred the training costs, employed all teaching staff, and provided and controlled both classroom instruction and clinical training associated with operation of its nursing program.⁹

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The subject of the dispute in this appeal is whether Stormont-Vail had direct control of the program curriculum and control of the administration of the program.

⁵ See Stipulations, *Stormont-Vail Healthcare, Inc. v. WPS Government Health Administrators*, Provider Reimbursement Review Board, at 10 [hereinafter Stipulations].

⁶ Note that Baker University School of Nursing issues two academic degrees: the Bachelor of Science in Nursing and the Associate Degree in Nursing. In addition, Baker University issues appropriate degrees upon satisfactory completion of the distinct academic program corresponding to that degree. See Medicare Contractor's Final Position Paper at Exhibit I-5, 5.

⁷ Medicare Program; Payment for Nursing and Allied Health Education, 66 Fed Reg. 3358, 3375 (Jan. 12, 2001) (to be codified at 42 C.F.R. pts. 413 & 422).

⁸ 42 C.F.R. § 413.85(f)(1).

⁹ See Stipulations at 7–9.

Stormont-Vail contends that it developed and implemented the nursing program curriculum and that Baker University did not have any control over the process.¹⁰ Stormont-Vail argues that the nursing program's curriculum committee, which bore full responsibility for all curriculum-related issues, was comprised of three nursing program faculty members and an assistant dean of the nursing program who were all employees of Stormont-Vail.¹¹ Periodically one or two nursing students were on the committee, but there were no Baker University representatives on the curriculum committee.¹²

Stormont-Vail further explains that the curriculum committee's recommendations were made to the nursing program faculty senate which consisted of nursing program faculty—all of whom were employees of Stormont-Vail.¹³ The nursing program faculty reported to and worked with the assistant dean of the nursing program on all curriculum matters.¹⁴ Additionally, the student admissions coordinator, a Stormont-Vail employee, was responsible for degree audits and entering changes with respect to courses.¹⁵ Stormont-Vail asserts that it did not need to obtain Baker's approval on any curriculum matters.¹⁶

With respect to control of the administration of the nursing program, Stormont-Vail offered testimony from the dean of the nursing school, a Stormont-Vail employee, who testified that, in her capacity as dean, she:

1. Set the rate of tuition and fees¹⁷;
2. Was involved in the hiring process for the program's faculty and staff¹⁸; and
3. Oversaw the student admissions coordinator, a Stormont-Vail employee, who was responsible for direct contact with prospective students and recruitment, maintaining student admission files, and processing student applications.¹⁹

Stormont-Vail also points out that the dean directed and oversaw other Stormont-Vail employees involved in the administration of the nursing program including: (1) the graduate alumni specialist, who maintained records and confirmed that students met all requirements for graduation; (2) the assistant dean of the nursing program who was involved in the resolution of student-faculty disputes; (3) the program manager who handled logistical responsibilities such as scheduling courses and classrooms, managing clinical placements for the nursing program students, and serving as the chair of the program evaluation and outcomes committee; and (4) the librarian for the Health Sciences Library.²⁰

¹⁰ Provider's Post Hearing Brief and Proposed Decision at 6–7 [hereinafter Provider's Post Hearing Brief]; Tr. at 23–25, 37, 54–55.

¹¹ *Id.*

¹² *Id.*

¹³ See Provider's Post Hearing Brief at 8; Tr. at 23–24.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Tr. at 28–29.

¹⁸ *Id.* at 28.

¹⁹ Provider's Post Hearing Brief at 15–16; Tr. at 31.

²⁰ Provider's Post Hearing Brief at 16–17; Tr. at 34–38.

Although it is clear that Stormont-Vail staff contribute significantly to the day-to-day operation of the nursing program, the Board also analyzed the provisions of the Agreement between Baker University and Stormont-Vail Medical Center regarding the operation of the nursing school.²¹ This agreement states that Baker University controls the administration of the nursing program as well as the nursing school curriculum.²² Specifically, Section II of the agreement states: “Baker shall supervise and administer, through the School of Nursing, student services such as admissions, student records and financial accounts for all students.”²³

Further, Section VI states:

The curriculum content of the Nursing Programs, as well as any modifications thereto, shall be initiated through the Dean and Nursing School Faculty and reviewed and decided according to the established protocols utilized by Baker and approved by the Provost. The Provost of Baker shall be the chief academic officer responsible for overall coordination and review of all academic programs in the University. The Dean of the School of Nursing will be jointly approved by Baker and the Medical Center, will report to the Medical Center CEO and the Provost of Baker, and will administer the Nursing Programs in close collaboration and cooperation with the Provost of Baker.²⁴

Section VII of the agreement states that the Baker administration and the Medical Center administration shall set all tuition and fee charges for the School of Nursing²⁵ but that Baker University collects the tuition fees and redistributes seventy percent of those fees to Stormont-Vail.²⁶ Taken in combination, these contract provisions provide clear evidence that Baker University, and not Stormont-Vail, controls the curriculum and certain key aspects of the administration of the nursing program (*e.g.*, Baker University collected and distributed the tuition). The Board acknowledges that witness testimony offered at the hearing emphasized Stormont-Vail’s control of the curriculum and administration of the nursing program. However, the Board finds that there is inadequate physical documentation in the record to support and corroborate the testimony. Furthermore, the testimony did confirm that Baker University, rather than Stormont-Vail, performed certain key administrative functions such as “issuing the degree, collecting the tuition, and really monitoring” as well as registrar services and student recruitment/marketing expertise.²⁷

²¹ Medicare Contractor’s Final Position Paper at Exhibit I-5; Provider’s Final Position Paper at Exhibit A.

²² Medicare Contractor’s Final Position Paper at Exhibit I-5, 2.

²³ *Id.*

²⁴ *Id.* at 4.

²⁵ *Id.* at 5.

²⁶ *Id.* at 4.

²⁷ Tr. at 42, 52.

Absent corroborating evidence to validate and contextualize witness testimony, the Board finds that the clearly specified terms of the agreement between Stormont-Vail and Baker University shift the preponderance of the evidence in favor of the Medicare Contractor's conclusion that Baker University (and not Stormont-Vail) is the legal operator of the nursing program based on the Medicare criteria specified at 42 C.F.R. § 413.85(f)(1).

After reviewing the entire record, the Board concludes that Stormont-Vail did not meet all of the Medicare criteria specified at 42 C.F.R. § 413.85(f)(1) to qualify as the legal operator of the Baker University Nursing School. Specifically, the Board finds that Stormont-Vail neither controlled the curriculum nor the administration of the program. As such, Stormont-Vail does not qualify for pass-through reimbursement for the reasonable cost of the nursing program.

DECISION AND ORDER:

After considering the Medicare law and regulations, the evidence presented, and the parties' contentions, the Board finds that, based on the criteria set forth in 42 C.F.R. § 413.85(f)(1) as requisite conditions for pass-through reimbursement, Stormont-Vail did not qualify for pass-through reimbursement of the reasonable cost of the nursing program for its fiscal year ending September 30, 2009.

BOARD MEMBERS PARTICIPATING:

Clayton J. Nix, Esq.
L. Sue Andersen, Esq.
Charlotte F. Benson, CPA
Jack Ahern, MBA, CHFP
Gregory Ziegler

FOR THE BOARD:

_____/s/
L. Sue Andersen, Esq.
Chairperson

DATE: July 11, 2017