

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D6

PROVIDERS–

HealthEast 2007 Paramed Ed–CPE CIRP Group
HealthEast 2008 Paramed Ed–CPE CIRP Group

Provider Nos.: Appendix A

vs.

MEDICARE CONTRACTOR –

National Government Services

DATE OF HEARING -

May 13, 2016

Cost Reporting Periods Ended -
August 31, 2007; August 31, 2008

CASE NOs.: 10-0991GC; 10-1158GC

INDEX

	Page No.
Issue Statement.....	2
Decision.....	2
Introduction.....	2
Statement of facts.....	2
Discussion, Findings of Facts, and Conclusions of Law.....	3
Decision.....	5
Appendix A.....	6

ISSUE STATEMENT

Whether the Medicare Contractor's adjustment to the Clinical Pastoral Education ("CPE") costs from being reported as an allied health educational activity to an administrative and general expense is correct.¹

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Provider Reimbursement Review Board ("the Board") finds that the Medicare Contractor properly reclassified the Clinical Pastoral Education costs from allied health pass through costs to administrative and general costs as the home office is the operator of the program and does not qualify as a provider for purposes of 42 C.F.R. § 413.85(f).

INTRODUCTION

HealthEast Care System ("HealthEast") is a non-profit organization located in St. Paul, Minnesota that includes 4 hospitals and 14 clinics, including the three hospitals that are participants in the two group appeals presently before the Board: HealthEast St. John's Hospital; HealthEast St. Joseph's Hospital; and HealthEast Bethesda Hospital² ("the Hospitals").³

The Medicare Contractor, National Government Services, Inc., determined that the Hospitals' clinical pastoral education program did not meet the requirements for a pass-through payment and reclassified these costs to administrative and general cost on each of the Hospital's cost reports.⁴

Each of the Hospitals timely appealed the adjustments to their FYEs 2008 and 2009 cost reports and met the jurisdictional requirements for a hearing before the Board. On May 13, 2016, the Board held a telephonic hearing at the request of the parties. Ross D'Emanuele of the HealthEast Care System represented the Hospitals. Jerrod Olszewski, Esq. of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF FACTS

Medicare allows for pass through payment of CPE program costs if the program meets the criteria specified at 42 C.F.R. § 413.859(d)(1)(i). The educational activity must be recognized by a national approving body or State licensing authority; the operator of the educational program must meet the criteria specified in 42 C.F.R. § 413.85(f)(1); and the program must enhance the quality of health care at the provider.

42 C.F.R. § 413.85(f)(1) requires that the provider meet all of the following requirements:

¹ Transcript ("Tr.") at 6.

² HealthEast Bethesda Hospital currently operates under the same legal name and federal tax identification number as HealthEast Care System. *Tr.* at 64-69.

³ *Tr.* at 9.

⁴ Medicare Contractor's Final Position Papers at 3.

- (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 both classroom instruction and clinical training (where classroom instruction is a requirement for program completion).

If the provider issues the degree, diploma, or other certificate upon successful completion of an approved education program, it is assumed to meet all of the criteria set forth in paragraph (f)(1) unless there is evidence to the contrary.⁵

The Hospitals argue that they correctly allocated home office costs related to the CPE training to the Hospitals.⁶ After reviewing the program, the Medicare Contractor eliminated the CPE program costs (frequently referred to as “pass through payment”) and reclassified these costs as administrative and general costs on each of the Hospital’s cost reports.⁷

The parties do not dispute that HealthEast operates the CPE program.⁸ Rather, the parties dispute whether HealthEast, as a home office, can be a “provider” under the criterion outlined in 42 § C.F.R. 413.85(f) which would allow CPE costs to be passed through, and directly reimbursed, to the Hospitals.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

HealthEast believes that it meets all the requirements of 42 C.F.R. § 413.85 and, as a home office, can be considered an “operator” of the program under Medicare regulations. HealthEast contends that the term “provider,” specifically used in the regulation to allow training cost

⁵ 42 C.F.R. § 413.85(f)(2).

⁶ Provider Final Position paper at 1 and Provider Exhibit P-3.

⁷ Medicare Contractor’s Final Position Papers at 3.

⁸ Provider Exhibit P-3. *See also Tr.* at 30 where the Providers’ representative stated at the hearing, “There is only one entity that runs payroll and employs individuals at any of the three hospitals, and that is HealthEast Care System.”

reimbursement, not only includes hospitals, nursing facilities, and other Medicare-certified entities which may operate allied health programs, but also groups of hospitals operating under a unified corporate umbrella, allowing for operational efficiencies and cost savings by consolidating under a single accreditation.⁹

HealthEast states that the relevant Medicare cost report instructions at CMS Manual 15-1, Chapter 4 have not been updated since 1983. It asserts that the healthcare arena has changed substantially since that time with hospitals converting from standalone or freestanding status to being part of a health system and this results in health care providers becoming more efficient and decreases costs. HealthEast believes that Congress could not have envisioned penalizing hospitals, who are trying to decrease healthcare costs, simply due to a name emblazoned on the accreditation notice.¹⁰

Lastly, HealthEast concedes that perhaps home office-allocated CPE costs should not be allowable as allied health pass through costs in accordance with 42 C.F.R. § 413.85(d)(2)(ii), but argues that since over 70% of CPE training costs and approximately 80% of CPE training hours are directly attributable to the individual hospital training sites it is the Hospitals that should be allowed to pass through these costs. Similarly, HealthEast argues that the Hospitals provide day-to-day clinical training and record resident stipends and site preceptor (teacher) costs on the financial statements at the specific hospitals.¹¹ For these reasons, the Hospitals should be allowed to pass through their direct CPE costs.

Although the Board recognizes that the way HealthEast has chosen to organize and run the CPE program may be cost effective and promote efficiency, the Board disagrees with HealthEast's contentions that it meets the requirements of 42 C.F.R. § 413.85(f).

The Board finds that the Hospitals in these appeals do not meet all the criteria in 42 C.F.R. § 413.85(f) because most of the operation of the CPE program is handled through the home office. Specifically, the Hospitals do not meet the criteria of 42 C.F.R. § 413.85(f) because they do not control the program curriculum which is directed by three supervisors from the home office.¹² The home office administers the program and employs the teaching staff.¹³ HealthEast issues the certificate of completion.¹⁴ Finally the ACPE accreditation is a single accreditation to Health East, not to each individual hospital provider.¹⁵

Likewise, the Board finds HealthEast cannot be defined as a "provider" of services under 1861(u) of the Social Security Act which defines a provider as follows:

(u) Provider of services

The term "provider of services" means a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home

⁹ Provider's Final Position Paper at 1 (Oct. 31, 2015).

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Tr.* at 32-33. *See also* Medicare Contractor Exhibit I-4 at 1-2.

¹³ Medicare Contractor Exhibit I-4 at 2.

¹⁴ *Id.* at 4.

¹⁵ Provider Exhibit P-3.

health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.¹⁶

HealthEast is not a hospital or any other facility type that the Medicare statute classifies as a provider. The Board concludes that 42 C.F.R. § 413.85(d) allows for payment of nursing and allied health cost on a reasonable cost basis only when *the provider* meets the criteria in paragraph (f) as *an operator* of an approved education program. The Providers, i.e., the individual Hospitals, concede that they are not the operators of the CPE program and that they cannot meet the provisions of 42 C.F.R. § 413.85(f). And HealthEast, as the home office,¹⁷ cannot be considered a “provider” so the provisions of 42 CFR § 413.85(f) are inapplicable to it. The Board finds that the Medicare Contractor was correct to disallow the allocation of CPE costs to the Hospitals.¹⁸

DECISION:

After considering the Medicare law and regulations, the parties contentions, and the evidence submitted, the Board finds that the Medicare Contractor properly reclassified the CPE costs from allied health pass through costs to administrative and general costs as the home office is the operator of the program and does not qualify as a provider for purposes of 42 C.F.R. § 413.85(f).

BOARD MEMBERS:

L. Sue Andersen, Esq.
Charlotte F. Benson, C.P.A.
Gregory H. Ziegler CPA, CPC-A

FOR THE BOARD

/s/

L. Sue Andersen, Esq.
Chairperson

DATE: November 21, 2017

¹⁶ Medicare regulations, 42 C.F.R. § 489.2(b), expand this definition to include critical access hospitals, community mental health centers, and religious nonmedical health care institutions.

¹⁷ Provider’s Post-hearing Brief, Exhibits F and G.

¹⁸ The Board’s decision in this case is consistent with the Eighth Circuit Court of Appeals decision in *Baptist Health v. Thompson*, 458 F.3d 768, 776, 778 (8th Cir. 2006), found at Exhibit I-9 of Medicare Contractor’s Final Position Papers, which concluded that the Secretary’s requirement that providers directly operate approved educational activities in order to receive pass through reimbursement was reasonable and that a corporation that owns several provider hospitals does not, itself, qualify as a provider under the statute.



Model Form G: Schedule of Providers in Group

Group Name: HealthEast Paramed Ed - CPE

Group Case : Pending

Date Prepared: April 27, 2010

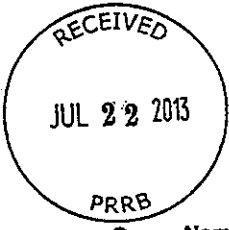
CN10-0991GC

				A	B	C	D	E	F	G
Provider No.	Provider Name (City, County, State)	FYE	Intermediary	Date of NPR	Date of Appeal	No of Days	Audit Adj No.	Reimbursement Amount	Original Case No.	Add/Transfer Date
1	24-0063 HealthEast St Joseph's (St Paul, Ramsey, Minnesota)	8/31/2007	Noridian	✓ 2/24/2009	✓ 8/14/2009	171	12 & 14	40,000	09-2147	✓ 4/27/2010
2	24-2004 HealthEast Bethesda (St Paul, Ramsey, Minnesota)	8/31/2007	Noridian	✓ 3/12/2009	✓ 8/27/2009	168	7, 9 & 10	70,000	09-2187	✓ 4/27/2010
3	24-0210 HealthEast St John's (St Paul, Ramsey, Minnesota)	8/31/2007	Noridian	✓ 2/12/2009	✓ 7/29/2009	167	11, 14 & 15	40,000	09-2093	✓ 4/27/2010

APPENDIX A

✓ Information verified
 by Contractor per review dated
7/16/13 J. Bloom,
 Appeals Coordinator

9



Model Form G: Schedule of Providers in Group

Group Name: HealthEast 2008 Paramed Ed - CPE

Group Case : 10-1158GC

Date Prepared: February 26, 2013

				A	B	C	D	E	F	G
Provider No.	Provider Name (City, County, State)	FYE	Intermediary	Date of NPR	Date of Appeal	No of Days	Audit Adj No.	Reimbursement Amount	Original Case No.	Add/Transfer Date
1	24-2004 HealthEast Bethesda (St Paul, Ramsey, Minnesota)	8/31/2008	Noridian	✓ 1/19/2010	7/12/2010	174	✓ x 3	✓ 60,000	n/a	✓ 7/12/2010
2	24-0063 HealthEast St Joseph's (St Paul, Ramsey, Minnesota)	8/31/2008	Noridian	✓ 9/28/2012	2/28/2013	153	✓ 6	✓ 30,000	n/a	✓ 2/26/2013
3	24-0210 HealthEast St John's (St Paul, Ramsey, Minnesota)	8/31/2008	Noridian	✓ 9/28/2012	2/28/2013	153	✓ 4, 5 & 9	✓ 40,000	n/a	✓ 2/26/2013

✓ Information traced
 by Contractor per review dated
7/19/13 J. Bloom,
 Appeals Coordinator