PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D14

PROVIDER –
High Ridge House, Inc.

Provider No.: 33-1990

vs.

MEDICARE CONTRACTOR –
Cahaba GBA c/o National Government Services, Inc.

DATE OF HEARING –
March 1, 2017

Cost Reporting Period Ended -
December 31, 2010

CASE NO.: 15-1033

INDEX

ISSUE

Whether the Medicare Administrative Contractor ("Medicare Contractor"),[1] Cahaba Safeguard Administrators, LLC ("Cahaba") improperly reclassified Provider costs related to providing housing free of charge for temporary, on-call and other staff, and for housing leasing at market value to the Director of Christian Science Nursing ("DCSN"), to a non-reimbursable cost center.[2]

DECISION

After considering the Medicare laws and regulations, the parties' contentions, and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds:

1) the net costs associated with apartment 16E rented to the DCSN for all of 2010 are related to inpatient care at the hospital;
2) the net costs of apartment 17M for the 7 days it was rented to the Christian Science Nurse ("CSN") are related to inpatient care at the hospital;
3) the net costs of apartment 22R for the 48 days it was rented to a CSN and for the 75 days it was rented to the Christian Science Home Nurse ("CSHN") while on-call at the inpatient hospital, are related to inpatient care at the hospital; and
4) the net costs of apartments 22R and 17M for all other days are not related to patient care at the hospital and are therefore non-reimbursable.

Accordingly, the Board remands this appeal back to the Medicare Contractor to make the necessary adjustments in order to appropriately allocate the costs of these apartments.[3]

INTRODUCTION

High Ridge House, Inc. ("High Ridge" or "Provider") is a religious nonmedical health care institution ("RNHCI") located in Riverdale, New York, in the northwest portion of the Bronx, a borough of New York City. Defined as a RNHCI under 42 C.F.R. Part 403, Subpart G, Medicare pays High Ridge for inpatient hospital services or post-hospital extended care services to its patients exclusively through nursing personnel who are experienced in providing skilled Christian Science nonmedical nursing care.[4] High Ridge has a total of 30 beds, 20 of which are certified by Medicare and an additional 10 beds that are not paid for by Medicare.

During the final settlement and reopening of the cost report, the Medicare Contractor allocated all costs of apartments 16E, 22R and 17M to CO-OP APTS, a non-reimbursable

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[1] Formerly known as Fiscal Intermediaries, the Centers for Medicare and Medicaid Services ("CMS") payment and audit functions under the Medicare program are now contracted to organizations known as Medicare Administrative Contractors. However, the term "intermediary" is still used in various statutes and regulations, and is interchangeable with the terms "Medicare Administrative Contractor" or "Medicare Contractor."

[2] Transcript ("Tr.") at 6.

[3] High Ridge's cost report allocates inpatient care costs to adults and pediatrics ("A&P") and other long term care ("OLTC") costs. *See* Provider's Final Position Paper at 8 and Exhibit P-10 Worksheet A at 90.

[4] 42 U.S.C. § 1395x(ss)(1)(D). *See also* 42 C.F.R. §§ 403.702, 403.720(a)(4).

cost center.[5] The Provider, dissatisfied with the allocation of the costs of the three apartments, timely appealed to the Board and met the jurisdictional requirements for a hearing.[6] The Board conducted a live hearing on March 1, 2017. Susan A. Turner, Esq. and James P. Holloway, Esq. of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. represented High Ridge. Jerrod Olszewski, Esq. of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF THE FACTS

Medicare pays for inpatient hospital services or post-hospital extended care services furnished to a Medicare beneficiary in a RNHCI.[7] The Medicare statute specifically includes RNHCIs in the definition of a Medicare "hospital":

> The term "hospital" also includes a religious nonmedical health care institution (as defined in subsection (ss)(1)), but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i-5 of this title.[8]

Medicare reimburses RNHCIs for their reasonable costs, subject to certain limits on annual cost increases[9] and additional incentives if reimbursable costs are below certain limits.[10] Reimbursable costs must be related to patient care, and include "all necessary and proper costs incurred in furnishing the services, subject to principles relating to specific items of revenue and cost."[11]

Federal regulation further defines necessary and proper costs as those that are "appropriate and helpful in developing and maintaining the operation of patient care facilities and

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[5] Subsequent to the issuance of the notice of program reimbursement ("NPR"), the Provider met with staff from CMS on August 4, 2014. The Medicare Contractor subsequently issued a Notice of Reopening on October 31, 2016, and proposed audit adjustments recognizing the apartment utilized by the maintenance supervisor, apartment 15O, as an allowable cost. The cost and square footage statistic associated with the maintenance supervisor apartment were classified back to the Maintenance of Personnel cost center on Worksheet A, line 13. *See* Provider's Final Position Paper at 5-6 and Exhibit P-10 at 20, 146-47.

[6] The Provider timely appealed adjustments from both the original NPR and the RNPR on January 16, 2015.

[7] 42 U.S.C. § 1395i-5(a).

[8] 42 U.S.C. § 1395x(e).

[9] 42 C.F.R. § 403.752(a) (2010) (citing 42 C.F.R. § 413.40); *see also* 64 Fed. Reg. 67,028 at 67,038 (Nov. 30, 1999) ("We will pay RNHCIs under the same reasonable cost methodology we have used for Christian Science sanatoria.… We will pay RNHCIs the reasonable cost of furnishing covered services to Medicare beneficiaries subject to the rate of increase limits in accordance with the provisions in 42 CFR 413.40, which implement section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248.").

[10] *See generally* 42 U.S.C. §§ 1395x(v), 1395ww(h)(6); 42 C.F.R. §§ 412.22, 413.40.

[11] 42 C.F.R. § 413.9(a). *See* Medicare Contractor Exhibit I-15.

activities. They are usually costs that are common and accepted occurrences in the field of the provider's activity."[12]

High Ridge owns four cooperative apartments (ranging from 550 to 700 square feet) that it makes available primarily to facility personnel. In 2010, these apartments were occupied as follows:

- Apartment 16E - leased to the DCSN for all of 2010.
- Apartment 15O - leased to the maintenance supervisor for all of 2010.[13]
- Apartment 22R - occupied by the CSHN 168 days when the CSHN was not on-call for inpatient care, 75 days when the CSHN was on-call for the inpatient hospital, CSNs for 48 days of the year and was vacant for 74 days of the year.
- Apartment 17M - occupied by a CSN for 7 days, a temporary administrative assistant for 90 days, and a former employee for 91 days and vacant for 177 days.[14]

The Provider allocated the direct and indirect costs of the apartments, offset by lease payments received to both Medicare reimbursable and non-reimbursable cost centers.[15] On the July 23, 2014 NPR, the Medicare Contractor reclassified all the costs and statistics for the four apartments to a non-reimbursable cost center eliminating Medicare reimbursement for these apartments.[16] On December 4, 2014 the Medicare Contractor reversed its decision regarding apartment 15O[17] because the Medicare Contractor decided it was both necessary and related to patient care for the maintenance supervisor to be in close proximity to the hospital.

This appeal relates to a dispute between the parties as to whether the costs for the remaining three apartments, 16E, 22R and 17M, are reimbursable by Medicare as necessary and related to patient care.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Medicare Contractor contends that the costs of apartments 16E, 22R and 17M are not reimbursable because they are not commonly incurred costs and the Provider has not supplied sufficient documentation to prove that the costs are necessary and related to patient care. Specifically, the Medicare Contractor claims that the Provider has not demonstrated that it is necessary and related for patient care to supply housing to the DCSN, the Assistant DCSN, the CSHN, temporary staff, or staff working double shifts.[18]

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[12] 42 C.F.R. § 413.9(b). *See also* Provider Reimbursement Manual ("PRM") CMS Pub 15-1, § 2102.3 at Medicare Contractor Exhibit I-16.
[13] Apartment 15O is not at issue in this appeal, *See* Provider's Final Position Paper at 22 note 6.
[14] Provider's Exhibits P-5 at7-8, and P-37 at 9.
[15] High Ridge's cost report allocates inpatient costs to the A&P and OLTC cost centers. *See* Provider's Final Position Paper at 8.
[16] *See* Provider Exhibit P-10 NPR at 66 and Worksheet A at 90.
[17] *See* Provider Exhibit P-10 RNPR at 7 and revised Worksheet A at 20.
[18] Medicare Contractor's Final Position Paper at 10-13.

In support of its position, the Medicare Contractor cites *Simi Valley Hosp. v. BCBSA/Blue Cross of Cal.*, PRRB Dec. No. 94-D54 (July 14, 1994), in which the Board found that a Simi Valley-owned apartment complex should be included as a non-reimbursable cost center because the provider failed to demonstrate that the apartments were necessary to its patient care activities. Consistent with this decision, the Medicare Contractor concludes that High Ridge has not made a compelling argument that the costs associated with the apartment units relate to patient care.[19]

High Ridge believes it is critical and operationally appropriate to maintain close by housing for its staff. The Provider argues that because it often uses only two CSNs per shift, it must have other CSNs physically and geographically proximate in order to respond in minutes to an emergency or other circumstances.[20] The Provider believes all of the apartments at issue relate to patient care as defined in PRM § 2102.[21]

Additionally, apartment 16E was leased for the entire year by the DCSN who, as a condition of employment, was to be on-call on a "24/7" basis and within a 15-minute commute to the facility.[22] At the hearing, the DCSN testified that there were actual incidents with patients - "at least a couple of times a week" that required her to be present at the facility within 15 minutes when she was not scheduled to work[23] and these incidents were typically for a patient-related matter.[24]

The Provider also explained that the pool of candidates trained to work in a Medicare-certified RNHCI is very small and that it was difficult to obtain qualified individuals due to the high cost of living in the New York City area.[25] Because of the unique nature of a RNHCI, High Ridge could not use a secular nurse registry in the event of a nursing shortage.[26] The Provider explained that of the 26 CSNs it employed in 2010, 21 of these were Journal-Listed Christian Science Nurses ("JLCSN") with higher levels of skill to provide or oversee patient care in a Medicare-certified RNHCI. Of the 21 JLCSNs, only 7 were available within a 50 mile radius of High Ridge. The Provider used some combination of 14 other JLCSNs who resided outside of the 50-mile radius to assure adequate staffing.[27] Because of these limitations, High Ridge utilized temporary "traveling" JLCSNs and CSNs and had to provide temporary housing close to the hospital.

Based on this record, the Board finds the apartment expenses for 16E are necessary and related to patient care. The Board finds the Provider's testimony and documentation support

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[19] *Id.* at 13-14.
[20] Provider's Post-Hearing Brief at 11.
[21] *Id.* at 10-11.
[22] Provider Exhibits P-40 and P-41. Although the DCSN did not have a signed lease for the 2010 cost year, she did in fact live in apartment 16E, and the lack of a signed lease did not alter her existing obligation to be on-call 24/7 as a condition of her employment. Tr. 25-28.
[23] Tr. 42:18-19, 41:1-10.
[24] Tr. 73:4-16.
[25] Provider's Final Position Paper at 23and Exhibit P-16 at 3.
[26] Tr. 111:1-112:15 and Provider's Post-Hearing Brief at 12.
[27] Provider's Final Position Paper at 23-24 and Exhibit P-16 at 3.

the need to have a DCSN within close proximity to the hospital to be available on-site within 15 minutes. Further, the Board finds that the compensation paid to the DCSN appears to be reasonable considering the job responsibilities and any excess cost of the apartments over the rent paid should be allowed as a fringe benefit.[28]

The Board further finds that some of the costs associated with apartments 17M and 22R were reasonable and associated with patient care. The days in which the CSHN was on-call for inpatient care or when a temporary CSN was occupying the apartment are reasonable and necessary costs related to patient care. The Board reached this conclusion because when the CSHN was on-call for inpatient services, she was required to be within close proximity to the hospital. Also, the Provider identified numerous difficulties in obtaining CSNs in New York. The Board finds providing these apartments was reasonable as a means to attract temporary CSNs residing outside the New York City area.

The Board finds costs associated with the remainder of the days in apartments 17M and 22R are not reasonable and necessary costs related to patient care at the hospital. Specifically, the apartment costs associated with the days the CSHN occupied the apartment but was involved with home care and not on-call for the inpatient facility are not costs related to patient care at the RNHCI. Similarly, the apartment costs associated with a former employee are clearly not related to patient care at the hospital. Days in which the apartment was occupied by a temporary administrative assistant are non-reimbursable days as there was no evidence presented in the record indicating that an administrative assistant needed to live in close proximity to the facility.

Finally, both apartments 22R and 17M had a large number of days in which the units were unoccupied. The Board finds that the costs associated with these days are non-reimbursable as they are not related to patient care. The Provider claims that it is cost effective to keep these apartments despite the lack of use[29] during a period of reduced patient census at the hospital. While that may be true, the Board is unconvinced that Medicare should pay the costs of these unoccupied apartments as they are unrelated to patient care as is required by regulation.

The Board's conclusions are supported by its decision in *Montefiore Med. Ctr. v. BCBSA/Empire Med. Servs.*, PRRB Dec. No. 2006-D29 (June 5, 2006) ("Montefiore"). In that case, the Board also found that housing costs, similar to those High Ridge claimed, were allowable costs. Montefiore Medical Center was a 1,129 bed acute care hospital located in New York City and is within ten miles of High Ridge.[30] The Board is unpersuaded that *Simi Valley* is applicable because the availability of qualified staff in Simi Valley, California has not been demonstrated to be the same as the availability of qualified CSNs in metropolitan New York.

[28] Provider's Post-Hearing Brief Exhibit P-40 (Gross pay $2403.85x26 pay periods equal $62,499.32).
[29] Provider's Post Hearing Brief at 12, 16-18.
[30] *See* Provider's Post Hearing Brief at 14.

DECISION AND ORDER

After considering the Medicare laws and regulations, the parties' contentions, and the evidence submitted, the Provider Reimbursement Review Board finds:

1.) the net costs associated with apartment 16E rented to the DCSN for all of 2010 are related to inpatient care at the hospital;
2.) the net costs of apartment 17M for the 7 days it was rented to the CSN are related to inpatient care at the hospital;
3.) the net costs of apartment 22R for the 48 days it was rented to a CSN and for the 75 days it was rented to the CSHN while on-call at the inpatient hospital, are related to inpatient care at the hospital; and
4.) the net cost of apartments 22R and 17M for all other days are not related to patient care at the hospital and are therefore non-reimbursable.

Accordingly, the Board remands this appeal back to the Medicare Contractor to make the necessary adjustments in order to appropriately allocate the costs of these apartments.[31]

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

/s/
L. Sue Andersen, Esq.
Chairperson

DATE: January 10, 2018

[31] High Ridge's cost report allocates inpatient care costs to the A&P and OLTC cost centers. *See* Provider's Final Position Paper at 8.