

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2018-D17**

PROVIDER–
St. Anthony North Hospital

HEARING DATE –
June 1, 2016

Provider No.: 06-0104

Cost Reporting Period Ended –
June 30, 2005

vs.

MEDICARE CONTRACTOR –
Novitas Solutions, Inc.

CASE NO.: 07-1015

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ISSUE:

Did the Medicare Contractor improperly reduce the Provider's adjusted indirect medical education ("IME") full time equivalent ("FTE") count from 6.48 to zero?

DECISION:

After considering the Medicare law, the evidence presented, and the Provider's contentions, the Provider Reimbursement Review Board ("Board") finds that the Medicare Contractor properly adjusted the IME full time equivalent ("FTE") count to zero for the Provider's fiscal year end ("FYE") 6/30/2005 cost report.

INTRODUCTION:

St. Anthony North Hospital ("St Anthony North") is a Medicare certified acute care hospital located in Westminster, Colorado. St. Anthony North as well as a second hospital, St. Anthony's Central in Denver, Colorado, share common ownership and entered into an "affiliation agreement" to share intern and resident FTEs that participated in the St. Anthony Central's Family Medicine Medical Education Program.¹ The Medicare Contractor² removed all of the IME FTEs from St. Anthony North's FY 2005 cost report because the affiliation agreement did not meet the regulatory requirements of 42 C.F.R. § 413.86(b).³

St. Anthony North timely appealed from its notice of program reimbursement ("NPR") and met the jurisdictional requirements for a hearing before the Board. The Board conducted a hearing on the record. The Hospital was represented by Daniel Hettich, Esq., King and Spalding, LLC. The Medicare Contractor was represented by Wilson Leong, Esq., Federal Specialized Services.

STATEMENT OF THE FACTS:

Residents rotate between St. Anthony North and St. Anthony Central as part of the Family Medicine Medical Education Program.⁴ In order to ensure that Medicare compensated both providers for their medical education costs, the two hospitals entered into an affiliation agreement to redistribute the FTE "caps" (the pre-determined limits on the number of full time residents each hospital could be paid for as part of the education program).

Medicare allows hospitals to share both direct and indirect graduate medical education ("GME") FTE caps by entering into affiliation agreements. Medicare regulations⁵ define affiliation agreement to mean a written, signed and dated agreement which specifies:

¹ Provider's Supplemental Position Paper at 2-3.

²At the time the NPR was issued, Mutual of Omaha Insurance Company was the Medicare Contractor; the current Medicare Contractor is Novitas Solutions, Inc. (collectively referred to as the "Medicare Contractor").

³Medicare Contractor Final Position Paper at 24; Exhibit I-1, Audit Adjustment Report, at 4.

⁴ Provider's Supplemental Paper at 7-8.

⁵ 42 C.F.R. § 413.86(b) (2003).

1. The term of the Medicare GME affiliation agreement (which, at a minimum is one year), beginning on July 1 of a year;
2. Each participating hospital's direct and indirect GME FTE caps in effect prior to the Medicare GME affiliation;
3. The total adjustment to each hospital's FTE caps in each year that the Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount;
4. The adjustment to each participating hospital's FTE counts resulting from the FTE resident's (or residents') participation in a shared rotational arrangement at each hospital participating in the Medicare GME affiliated group for each year the Medicare GME affiliation agreement is in effect. This adjustment to each participating hospital's FTE count is also reflected in the total adjustment to each hospital's FTE caps (in accordance with paragraph (3) of this definition); and
5. The names of the participating hospitals and their Medicare provider numbers.⁶

The affiliation agreement between St. Anthony North and St. Anthony Central specified that the direct GME cap would be decreased for St. Anthony Central, and increased by the same amount for St. Anthony North.⁷ Relevant to this case, the affiliation agreement states, "Please note that no adjustment is being made to the IME base year cap for either hospital."⁸ The parties stipulated that the reason this statement was written into the agreement was because the Medicare Contractor had "erroneously reduced [St Anthony Central's IME cap] from 33.60 to 21.99" for fiscal years 2000 and 2001.⁹ The Medicare Contractor agreed to resolve this issue but not until September 4, 2007, for fiscal year 2000 and March 31, 2008 for fiscal year 2001.¹⁰

⁶ The definition of an "affiliation agreement" was updated in the Final Rule issued on August 1, 2002 in order to "specify that an affiliation agreement is a written, signed, and dated agreement." 67 Fed. Reg. 49982, 50069 (Aug. 1, 2002). The Final Rule also makes clear what needs to be in an affiliation agreement:

[W]e stated clearly in the May 12, 1998 interim final rule that hospitals must specify the "planned changes to individual hospital counts under an aggregate FTE cap." (63 FR 26341). Although, under existing policy, hospitals might have reported "planned changes" to FTE caps in a number of ways, there is no question that they were required to do so. The revised requirements at § 413.86(b) specify that the hospital must include in the affiliation agreement each participating hospital's direct and indirect GME FTE caps in effect prior to the affiliation. . . . [S]o that all hospitals will report the "planned changes" in the same way, allowing for ease of administration for CMS and fiscal intermediaries.

67 Fed. Reg. at 50071.

⁷ Parties' Stipulation of Undisputed Facts at Section 3.3.

⁸ Medicare Contractor Final Position Paper, Exhibit I-3 at 2.

⁹ Parties' Stipulation of Undisputed Facts at Section 2.1. The stipulation cross references the Provider's Supplemental Position Paper, Exhibits P-1 and P-2, which show adjustments for FYEs 2000 and 2001 as stipulated.

¹⁰ Provider's Supplemental Position Paper, Exhibits P-3 and P-4.

For FYE 2005, the Hospitals redistributed the direct GME FTE caps as indicated in the agreement - a 6.48 FTE increase to St Anthony North and a 6.48 FTE decrease for St. Anthony Central. The Hospitals made the *same* adjustment to the IME caps.¹¹ It was this IME adjustment that the Medicare Contractor disallowed and is the subject of this appeal.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

The St. Anthony Hospitals' affiliation agreement, dated June 22, 2004, was approved by the Medicare Contractor in a July 8, 2004 letter.¹² The affiliation agreement set forth previous caps for direct GME as well as the adjustment to that cap as follows:

	1996 Cap	FTE Transfer	New Cap
St. Anthony Central GME Worksheet E-3 part IV	33.60	-6.48	27.12
St. Anthony North GME Worksheet E-3 part IV	1.67	+6.48	8.15

“St. Anthony North Hospital will be approximately 8.15 FTEs. This will require an adjustment of 6.48 FTEs over the FY '96 cap of 1.67 FTEs. Please note that no adjustment is being made to the IME base year cap for either hospital.”¹³

St. Anthony North argues the IME omission was a mistake due to the unresolved issue related to Central's IME cap. The Provider believes if it had included the correct IME FTE cap in the affiliation agreement, the Medicare Contractor would not have approved the agreement at all.¹⁴ St. Anthony North contends it properly entered into an affiliation agreement with Central for both the IME and GME FTE caps, therefore the Board should find that the Medicare Contractor should not have adjusted the IME FTE count to zero.

Finally, St. Anthony North argues that the Board should hold the hospital harmless because of the Medicare Contractor's improperly reduced St. Anthony Central's IME cap for fiscal years 2000 and 2001 from 33.60 to 21.99.¹⁵ St Anthony Central challenged the Medicare Contractor's adjustment and an agreement was signed to restate St. Anthony Central's IME cap to 33.60. However, as the affiliation agreement was finalized prior to the restatement of St. Anthony Central's FTE cap, the affiliation agreement did not include the redistribution of the 6.48 IME FTEs because it “would have left Central open to the possibility of being undercompensated for the training of its own residents.”¹⁶

The Board reviewed the affiliation agreement and finds that it does not satisfy the requirements of 42 C.F.R. § 413.86(b) with regard to the IME FTE cap. Specifically, this section requires

¹¹ *Id.* at Exhibits P-11 and P-12.

¹² *Id.* at Exhibits P-5 and P-6.

¹³ *Id.* at Exhibit P-5 at 2. The amounts on this chart apply to direct GME only as it references worksheet E-3 part IV of the Medicare cost report. IME is reported on cost report worksheet E Part A.

¹⁴ Provider's Supplemental Position Paper at 3.

¹⁵ Provider's Supplemental Position Paper at 2, 9-10.

¹⁶ Provider's Supplemental Position Paper at 9.

reporting “[e]ach participating hospital’s direct and indirect GME FTE caps in effect prior to the Medicare GME affiliation” and “[t]he total adjustment to each participating hospital’s FTE counts in each year that the Medicare GME affiliation agreement is in effect, for both direct GME and IME.”¹⁷ The Provider’s affiliation agreement did not indicate the IME FTE caps that were in effect prior to the affiliation agreement or the amount of the IME cap adjustment for St. Anthony North or St. Anthony Central. In addition, the affiliation agreement specifically stated, “no adjustment is being made to the IME base year cap for either hospital.”¹⁸

Although the Board can sympathize with the fact that St. Anthony Central had not resolved the problem related to the IME cap on its 2000 and 2001 cost reports until after the affiliation agreement was final, this cannot alter the fact that the signed affiliation agreement states “no adjustment is being made to the IME cap for either hospital.”¹⁹ The Board notes that the affiliation agreement could have, in some manner, identified the problem with St. Anthony Central’s prior years’ IME cap and reflected a transfer of 6.48 FTEs to St Anthony North. Had this been done the affiliation agreement would have reflected the agreement of the parties related to the transfer of the IME cap and met the regulatory requirements.

In conclusion the Board finds that the affiliation agreement does not entitle St. Anthony North to a share of St. Anthony Central’s IME FTE cap as the affiliation agreement does not satisfy the regulatory requirements. The Board finds the Medicare Contractor’s adjustment to reduce St. Anthony North’s FTEs to zero was proper.

DECISION AND ORDER:

After considering the Medicare law, the evidence presented, and the Provider’s contentions, the Board finds that the Medicare Contractor properly adjusted the Provider’s IME FTE count to zero.

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 25, 2018

¹⁷ 42 C.F.R. § 413.86(b). *See also:* 67 Fed. Reg. 49982, 50069 (Aug.1, 2002) and 63 Fed. Reg. 26318, 26338-26341 (May 12, 1998).

¹⁸ Exhibit P-5 at 2.

¹⁹ *Id.*