

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D33

PROVIDER–
Beaumont Hospital, Wayne (formerly known as
Oakwood Annapolis Hospital)

Provider No.: 23-0142

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

HEARING DATE –
October 19, 2017

Cost Reporting Periods Ended –
December 31, 2008; December 31, 2009;
December 31, 2012

CASE NOS.: 14-3449; 14-3627 and
15-3186

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ISSUE STATEMENT:

Whether the Provider is entitled to higher Graduate Medical Education (“GME”) and Indirect Medical Education (“IME”) full-time equivalent (“FTE”) resident caps for a new Family Medicine residents training Program?¹

DECISION:

After considering the Medicare law and regulations, the evidence presented, and the parties’ contentions, the Provider Reimbursement Review Board (“Board”) finds the Medicare Contractor improperly calculated the Provider’s GME and IME FTE resident caps. The Board directs the Medicare Contractor to adjust the Provider’s new Family Medicine resident training program cap to 29.28 for both GME and IME.

INTRODUCTION:

Beaumont Hospital, Wayne (“Beaumont-Wayne” or “Provider”) is a Medicare-certified short-term acute care hospital located in Wayne, Michigan. Beaumont-Wayne’s designated Medicare Administrative Contractor is Wisconsin Physicians Service (“Medicare Contractor”).

Beaumont-Wayne started a new Family Medicine residents training program on July 1, 2004. Under 42 C.F.R. § 413.79(e)(1), Beaumont-Wayne had three years to establish the FTE caps for its new program. This three-year period ended June 30, 2007. The Medicare Contractor did not compute Beaumont-Wayne’s FTE cap until 2013 and the Provider disputes the methodology used in calculating the FTE cap.

Beaumont-Wayne timely appealed the Medicare Contractor’s FTE cap determinations to the Board, and met the jurisdictional requirements of 42 C.F.R. §§ 405.1835-405.1840. The Board held a telephonic hearing on October 19, 2017. Kenneth R. Marcus, Esq., of Honigman Miller Schwartz & Cohn LLP represented Beaumont-Wayne. John Hamada, Esq., of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF THE FACTS:

Beaumont-Wayne established a new medical education program on July 1, 2004. Based on 42 C.F.R. § 413.79(e)(1) (2007), the Provider had a three year window in which to establish its permanent FTE caps. These regulations² state in pertinent part:

- (1) If a hospital had no allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, and it establishes a new medical residency training program on or after January 1, 1995, the hospital’s unweighted FTE resident cap under paragraph (c) of this section may be adjusted based on the product of the highest number of residents in

¹ Parties’ Stipulations at ¶1.

² 42 C.F.R. § 413.79(e)(2007).

any program year during the third year of the first program's existence for all new residency training programs and the number of years in which residents are expected to complete the program based on the minimum accredited length for the type of program. The adjustment to the cap may not exceed the number of accredited slots available to the hospital for the new program.

- (i) If the residents are spending an entire program year (or years) at one hospital and the remainder of the program at another hospital, the adjustment to each respective hospital's cap is equal to the product of the highest number of residents in any program year during the third year of the first program's existence and the number of years the residents are training at each respective hospital.

In 2012, the Centers for Medicare and Medicaid Services ("CMS") revised the regulations at 42 CFR § 413.79(e) as follows:

If a hospital had no allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, and it establishes a new medical residency training program on or after January 1, 1995, but before October 1, 2012, the hospital's unweighted FTE resident cap under paragraph (c) of this section may be adjusted based on the product of the highest number of residents in any program year during the third year of the first program's existence for all new residency training programs and the number of years in which residents are expected to complete the program based on the minimum accredited length for the type of program. The adjustment to the cap may not exceed the number of accredited slots available to the hospital for the new program...

- (i) If a hospital begins training residents in a new medical residency training program(s) for the first time on or after January 1, 1995, but before October 1, 2012, and if the residents are spending portions of a program year (or years) at one hospital and the remainder of the program at another hospital(s), the adjustment to each qualifying hospital's cap for a new medical residency training program(s) is equal to the sum of the product of the highest number of FTE residents in any program year during the third year of the first new program's existence and the number of years in which residents are expected to complete the program based on the minimum accredited length for each type of program and the number of years the residents are training at each respective hospital. ...

Beaumont-Wayne's new Family Medicine Residency training program was approved for 30 training slots.³ During the first three years of the program some residents spent part of their time training at Beaumont Hospital-Dearborn and Beaumont Hospital-Trenton (referred to as "out-rotations"). The Medicare Contractor adjusted Beaumont-Wayne's GME and IME FTE caps to reflect the out-rotations at these hospitals. This appeal challenges how the Medicare Contractor handled the out-rotations when calculating the Provider's GME and IME caps.

Beaumont-Wayne believes that the Medicare Contractor improperly calculated its GME and IME caps using the methodology in the 2012 regulations instead of the methodology in the regulations that were in effect during the three years ending June 30, 2007.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

The Medicare Contractor contends that the 2012 regulations are a clarification of the 2007 regulations and are to be used as a guide in calculating the Provider's GME and IME caps for its new Family Medicine Residency training program. Using the 2012 regulation as a guide, the Medicare Contractor adjusted Beaumont-Wayne's GME and IME caps by removing the portion of the residents that rotated to Dearborn and Trenton. This resulted in a GME cap of 23.96 and an IME cap of 23.87.⁴ The Medicare Contractor contends this method of calculating the Provider's FTE caps is appropriate because Dearborn and Trenton, would need to establish GME/IME FTE resident caps. The Medicare Contractor believes its method is supported by the regulations, accurately computes the allowable caps, and equitably allocates them to the hospitals that participated in the program during the three-year growth period.⁵

Beaumont-Wayne disagrees that the 2012 regulation is a clarification and believes the Medicare Contractor's use of that regulation constitutes impermissible retroactive rulemaking.⁶ Beaumont-Wayne maintains that the 2007 regulation is clear that an adjustment for out-rotations applies only if the provider's residents out-rotated for an entire program year (or years).⁷ Because the Medicare Contractor does not contend that any of its out-rotations were for an entire year, Beaumont-Wayne believes there should be no adjustment.⁸ Further, the Provider points out that even if out-rotations are to be considered in calculating its FTE caps, the Medicare Contractor's calculation is incorrect because it did not correctly select the highest number of residents in any program year.⁹

The Board compared the 2007 regulation and the 2012 regulation and finds that these regulations treat out-rotations differently. Specifically, the 2007 regulation discusses out-rotations and states in part "if the residents are spending an entire program year or years..."¹⁰ The 2012 regulation modified this section stating "if the residents are spending portions of a program year (or years)".

³ *Tr.* at 138.

⁴ Medicare Administrative Contractor Exhibit I-1 at 10.

⁵ Medicare Contractor's Final Position Paper at 15-16.

⁶ Provider's Final Position Paper at 3.

⁷ Provider's Final Position Paper at 5.

⁸ Provider's Final Position Paper at 5.

⁹ Medicare Administrative Contractor Final Position Paper at 15; Stipulation Agreement at 4.

¹⁰ 42 C.F.R. § 413.79(e)(2007).

Additionally, the Board reviewed the record and did not find any evidence that the methodology in the 2012 regulation was CMS' policy prior to the implementation of that regulation.¹¹ Therefore, the Board finds the 2012 regulation is not simply a clarification but rather a change to the way out-rotations are handled in the calculation of the GME/IME FTE caps for new medical residency training programs.

Since the Board finds the 2012 regulation is not a clarification, the Board concludes 42 C.F.R. § 413.79(e)(1) (2007) must be used to calculate the GME and IME caps for the new Family Medicine training program at Beaumont-Wayne. The Board finds the plain language of the 2007 regulation is clear that no adjustment is required for out-rotations unless "the residents are spending an *entire* program year (or years) at one hospital and the remainder of the *program* at another hospital". The record in this case clearly shows that the residents only spent portions of the year at the other hospitals not an entire program year.¹² Therefore, the Board concludes the Medicare Contractor was incorrect in adjusting Beaumont-Wayne's GME and IME FTE caps for out-rotations.

For this case the Board finds the highest number of residents in any program year during the third year of the Family Medicine training program was PGY-1 year with 9.76 FTEs for both IME and GME.¹³ This amount is then multiplied by "the number of years in which residents are expected to complete the program," which is three years for Family Medicine resulting in an FTE cap of 29.28 for both the GME and IME. This cap of 29.28 does not exceed the 30 accredited slots for this new program and since the parties stipulated that neither of the hospitals to which Beaumont's residents rotated requested nor received adjustments to their FTE caps,¹⁴ no further adjustment is needed to this amount.¹⁵ Therefore the Board agrees with Beaumont-Wayne that its new Family Medicine training program resident cap should be 29.28 for both GME and IME.¹⁶

DECISION AND ORDER:

After considering the Medicare law and regulations, the evidence presented, and the parties' contentions, the Board finds that the Medicare Contractor improperly calculated the Provider's GME and IME FTE resident caps. The Board directs the Medicare Contractor adjust Beaumont-Wayne's new Family Medicine resident training program cap to 29.28 for both GME and IME.

¹¹ The Medicare Contractor stated at the hearing that the 2007 regulation was not clear on how out rotations are to be included in the calculation of the GME/IME FTE cap (Transcript ("Tr") at 185). When asked if CMS provided any guidance prior to 2012 on how the cap was to be calculated, the Medicare Contractor's representative replied that they were not aware of any such guidance (Tr at 176). The Board requested that the Medicare Contractor provide in a post hearing brief any pre-2012 documentation of the method of calculating the GME/IME FTE caps (tr at 177). This information was not provided in the Medicare Contractor's post hearing brief.

¹² Providers reply to MAC's Final Position Paper at 5.

¹³ Stipulation agreement at 3.

¹⁴ See Stipulations at ¶¶ 11 and 13.

¹⁵ The Board agrees with the Medicare Contractor that while it is possible under the Provider's methodology that a cap increase could exceed the accredited slots, this simply is not the case in these appeals.

¹⁶ This is the amount calculated by the Provider. See Provider's Post-Hearing Brief at 15.

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

/s/
L. Sue Andersen, Esq.
Chairperson

DATE: April 17, 2018