

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON-THE-RECORD
98-D70

PROVIDER -Stanislaus Medical Center
Modesto, CA

DATE OF HEARING-
June 18, 1998

Provider No. 05-0183

Cost Reporting Period Ended -
June 30, 1985

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
Blue Cross of California

CASE NO. 94-1740

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ISSUE:

Did the Intermediary's Notice of Reopening (NPR) and issuance of a revised NPR meet the requirements of 42 C.F.R. § 405.1885 and § 405.1887?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Stanislaus Medical Center is a general service, short term acute care hospital owned and operated by Stanislaus County.¹ It is located in Modesto, California, and was formerly known as Scenic General Hospital.

The original Notice of Program Reimbursement (NPR) for the fiscal year ended June 30, 1985 was issued on August 8, 1988. On December 27, 1989, the Intermediary issued a Notice of Reopening and Correction to the original NPR covering the fiscal year ending 6/30/85.² The stated purpose of the reopening was to review the Provider's graduate medical education costs. No further action was taken until September 16, 1993, at which time the Intermediary issued a revised NPR incorporating adjustments which decreased the Provider's graduate medical education costs and increased the intern and resident count.³

On February 10, 1994 the Provider appealed the revised NPR to the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. § 405.1835-.1841, and has met the jurisdictional requirements of those regulations.

The Provider was represented by Thomas P. Knight of Toyon Associates, Inc. The Intermediary was represented by Bernard M. Talbert, Esq., of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

One of the issues raised by the Provider in its appeal was whether the revised NPR should be considered null and void because it was issued more than three years after the original NPR.⁴ The Provider contends that although the Intermediary's issuance of a Notice of Reopening was timely, the Intermediary failed to issue a revised NPR until September 16, 1993. This was approximately five years after the original NPR and three years nine months after the issuance of the Notice of Reopening.

¹ Provider's Position Paper at p.1.

² Provider Exhibit P-2.

³ Id at P-3.

⁴ Intermediary Exhibit I-3.

The Provider contends that the Intermediary's issuance of the revised NPR was not in accordance with the time requirements set forth in the regulations. Specifically it cites 42 C.F.R. § 405.1885 which states "[n]o such determination or decision may be reopened after such 3-year period. . . ." The Provider argues that the Intermediary would have us believe that as long as it issues a Notice of Reopening within three years from the original determination there is no limitation on when the Intermediary must issue a revised NPR. This, the Provider believes, is contrary to both the actual wording of the regulation as well as its intent.

The Provider points out that 42 C.F.R. § 405.1887 provides that parties to a determination are to be allowed a "reasonable" period of time to present any additional evidence or argument in support of their position. In the instant case, the Intermediary initiated a reopening in order to change its prior determination. At the point in time the Intermediary decided to re-examine direct medical education costs (12/27/89), it still had 1 year and 8 months to complete its examination and issue a revised NPR and be within the three year statute of limitations. This was certainly a "reasonable" period of time to present evidence or argument as provided at 42 C.F.R.

§ 405.1887. Since the Intermediary failed to issue a revised NPR within a "reasonable" period of time, as required by the regulation, the Provider contends the revised NPR should be considered null and void.

The Provider contends its position is supported by the HCFA Administrator's decision which reversed the Board's finding in University of California Medical Center v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of California, PRRB Dec. 96-D71, September 27, 1996, Medicare & Medicaid Guide (CCH) ¶ 44,703, rev'd, HCFA Admin., November 29, 1996, Medicare & Medicaid Guide (CCH) ¶ 45,031. While that case involved a different matter, the HCFA Administrator determined that where a provider submitted documentation after an unreasonable amount of time had passed, it was within HCFA's discretion to deny the request as untimely. If HCFA is to apply a timeliness requirement on providers, then there must also be a timeliness requirement for intermediaries. In particular, the Administrator's decision stated that "[t]he Administrator thus finds that the revised exception requests were submitted after an unreasonable amount of time had passed and thus it was within HCFA's proper discretion to have denied them as untimely".⁵ The Provider contends that the same logic should be applied in the instant case. Since the Intermediary did not issue a revised NPR within a reasonable amount of time from the Notice of Reopening (i.e. within three years), the revised NPR should be considered untimely.

The Provider contends that the intent of the regulations at 42 C.F.R. § 405.1885 and § 405.1887 was to establish a finite period of time within which changes to previously issued determinations could be made. Without these regulations, cost reporting periods would never be considered closed. If the Intermediary is allowed to issue a revised NPR five years after the

⁵ Provider Exhibit P-4 at p. 4.

original NPR and more than the three years after its own Notice of Reopening, the purpose of the regulation to establish finality in cost report determinations is meaningless.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that all of its actions complied with both the Medicare regulations and that the Notice of Reopening and the revised NPR are valid. The December 27, 1989 Notice of Reopening was within 3 years of the original NPR date of August 8, 1988 and is therefore valid and complied with the current regulatory provision. In addition, the Intermediary points out the regulations are silent regarding the timing of the issuance of the revised NPR subsequent to a valid Notice of Reopening.

The Intermediary contends its position is supported by the Board's position in Rapides Regional Medical Center Alexandria, LA v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Louisiana, PRRB Dec. 94-D5, December 30, 1993, Medicare & Medicaid Guide (CCH) ¶ 42,054, declined rev. HCFA Admin., February 9, 1994. In that case, involving the same type of issue, the Board found in favor of the Intermediary since the regulations do not specifically require the actual revision, i.e., the revised NPR, to be made within the three-year period. The Board found that the Notice of Reopening was a timely and proper notice within the scope of the Medicare regulations, and that the revised NPR was proper and not prohibited by the three-year regulatory rule for reopening.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Law - 42 U.S.C.:

§ 1395x(v) - Reasonable Cost

2. Regulations - 42 C.F.R.:

§§ 405.1835-.1841 - Board Jurisdiction

§ 405.1885 - Reopening a Determination or Decision

§ 405.1887 - Notice of Reopening

3. Case Law:

University of California Medical Center v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of California, PRRB Dec. 96-D71, September 27, 1996, Medicare & Medicaid Guide (CCH) ¶ 44,703, rev'd. HCFA Admin., November 29, 1996, Medicare & Medicaid Guide (CCH) ¶ 45,031.

Rapides Regional Medical Center, Alexandria, LA v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Louisiana, PRRB Dec. 94-D5, December 30, 1993, Medicare & Medicaid Guide (CCH) ¶ 42,054, declined rev. HCFA Admin., February 9, 1994.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board finds that the Intermediary issued a timely notice of reopening on September 16, 1993. Although there is nothing in the regulations or manual instructions indicating the time period to complete a specific action initiated by a reopening, the Board believes that a reopening action should not serve to hold the cost report open for an indefinite period of time. In the instant case, the Board notes that the revised NPR was not issued until approximately three years and nine months after the notice of reopening.

With the above in mind, the Board looked to the regulations for additional guidance. Section 42 C.F.R. 405.1835 provides for an automatic Board hearing if the intermediary issues its NPR more than twelve months after the Medicare cost report is received. Section 42 C.F.R. 405.1885 allows the Intermediary to reopen a cost report within three years from the initial NPR. Additionally, section 42 C.F.R. 405.1887 provides for a “reasonable” period of time for the parties to a reopening to present additional evidence or arguments in support of their positions. While none of these regulations specifically address the issue at hand, the Board’s interpretation of the regulations is that no party is provided with an indefinite period of time to complete an action, and that the time for completion of the action should be “reasonable.”

The Board would be inclined to recognize and adopt a three year time frame as being reasonable in the typical case. However, the case at hand involves the correct determination of Direct Graduate Medical Education Costs (DGMEC). The stated purpose of the reopening was for the Intermediary to redetermine the intern/resident Full Time Equivalent (FTE) count in accordance with new HCFA regulations issued in late 1989. During 1990 and 1991 GME reaudits were a major initiative along with the intermediaries’ regular audit workload. These circumstances, coupled with the absence of a regulation mandating closure of a reopening within a specified period, lead the Board to find that the Intermediary responded in a reasonable period of time.

DECISION AND ORDER:

The Intermediary’s reopening of the Provider’s Medicare cost report for the year ended June 30, 1985 was timely and in accordance with Medicare regulations.

Board Members Participating:

Irvin W. Kues
James G. Sleep
Henry C. Wessman, Esquire

Date of Decision: July 02, 1998

FOR THE BOARD:

Irvin W. Kues
Chairman