

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON-THE-RECORD
98-D73

PROVIDER -
Blodgett Memorial Medical Center
Grand Rapids, Michigan

DATE OF HEARING-
June 16, 1998

Provider No. 23-0032

Cost Reporting Period Ended -
June 30, 1985

vs.

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

CASE NO. 91-2671M

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ISSUE:

Was the Intermediary's denial of the Provider's request to revise the 1985 base year average per resident amount to include pathologists teaching expenses proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Blodgett Memorial Medical Center ("Provider") is a general acute care teaching hospital located in Grand Rapids, Michigan. On February 25, 1991, Blue Cross and Blue Shield of Michigan ("Intermediary") issued a Notice of Average Per Resident Amount ("NAPRA"). On August 20, 1991, the Provider requested a revision of the NAPRA because costs which should have been classified as Graduate Medical Education ("GME") costs in the determination of the average per resident amount were treated as operating costs. As stipulated by 42 C.F.R. § 413.86, this request for reopening was made within 180 days of the receipt of the NAPRA. On April 8, 1982, the Intermediary denied the Provider's request.

The Provider disagreed with the Intermediary's adjustments and filed a timely appeal with the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§ 1835-.1841 and has met the jurisdictional requirements of those regulations. The Medicare reimbursement affect is approximately \$16,000.

The Provider was represented by Russell J. Alderink of Blodgett Memorial Medical Center. The Intermediary was represented by Bernard M. Talbert Esq. of the Blue Cross and Blue Shield Association, Chicago.

PROVIDER'S CONTENTIONS:

The Provider points out that Section 1886(h) of the Social Security Act established a new payment policy for GME cost for all cost reporting periods beginning on or after July 1, 1985 under 42 C.F.R. § 413.86, and established the Federal fiscal year ending 1984 cost reporting period as the base year for determining future payments for GME. HCFA was given the responsibility for implementing the new GME regulations and ensuring that each hospital's base year cost per resident was accurately determined. HCFA assigned the responsibility for verifying the GME cost and the resident counts for the base period to the fiscal intermediaries.

The Provider points out that the regulation at 42 C.F.R. § 413.86(e) pertains to the calculation of per resident amounts. In determining the base-period per resident amount under paragraph (e)(1)(ii) of this section, the regulation states:

(C) Upon a hospital's request, includes graduate medical education costs that were misclassified as operating costs during the hospital's prospective payment base year and were not allowable under § 412.113(b)(3) of this chapter during the graduate medical education base period. These costs may be included only

if the hospital requests an adjustment of its prospective payment hospital-specific rate or target amount as described in paragraph (j)(2) of this section.

(iii) If the hospital's cost report for its GME base period is no longer subject to reopening under § 405.1885 of this chapter, the intermediary may modify the hospital's base-period costs solely for purposes of computing the per resident amount

(v) The intermediary notifies each hospital that either had direct graduate medical education costs or received indirect education payment in its cost reporting period beginning on or after October 1, 1984 and before October 1, 1985 of its base-period average per resident amount. A hospital may appeal this amount within 180 days of the date of that notice.

Id.

The Provider argues that the above cited regulation supports its position that in the calculation of the GME base year amount, an intermediary, if requested by a provider, should revise the base year amount and the hospital specific rate if GME costs were misclassified.

The Provider argues that the GME base year amount may include GME costs that were misclassified as operating costs during the Provider's prospective payment base year and were not allowable under 42 C.F.R. § 412.113(b)(3) during the GME base period. If a provider believes that costs which should have been classified as GME costs in the determination of the NAPRA were treated as operating costs in both the determination as well as the PPS hospital-specific-rate or rate-of-increase ceiling calculation, the provider may request the per resident amount and the PPS hospital-specific rate, or the rate of increase ceiling, to be revised. The request must be made no later than 180 days after the date of the NAPRA. The request must include sufficient documentation to demonstrate that the adjustment to the PPS hospital-specific rate or rate-of-increase ceiling is warranted. The costs may be included in the GME base period calculation only if the hospital requests an adjustment of its perspective payment hospital-specific rate. The intermediary may, in the case where the hospital base period cost report is no longer subject to reopening, modify the hospital base-period cost solely for the purpose of computing the per resident amount.

The Provider contends that its pathologists spent a portion of their time in teaching activities related to an approved GME program during the GME base year. The Intermediary confirmed that the Provider had an approved pathology residency program during the GME base year. The Intermediary included the pathology residents in the count of resident FTE's for purposes of calculating the average per resident amount. The costs related to the pathologists' teaching activities were not reclassified to the intern/resident cost center, however, for either the Provider's PPS base year or GME base year. The Provider requested revision of the NAPRA on August 20, 1991 to include the pathologists' teaching costs. The

Intermediary denied the Provider's request on April 8, 1992. The Provider contends that it can show that the pathologists did perform teaching and supervision duties during the GME base year and that their time spent in so doing can be supported.

The Provider points out that according to the HCFA form 339, Allocation of Physician Compensation, for fiscal year 1985, 12.56 percent of the pathologists' time was spent in teaching activities. According to 42 C.F.R. § 405.481, a provider must maintain the information supporting the physician compensation allocation in a form that permits validation by the intermediary. The HCFA Form 339 is supported by a two-week time study conducted from March 18 through March 31, 1985 for the eight pathologists on staff at the Provider.¹ To aid in validation by the Intermediary, the time studies and related summaries are also presented in a modified form.² Modifications were made to clarify the notations made by the pathologists and to appropriately classify time spent as dictated by the original time studies. Based upon the modified time studies, 13.33 percent of the pathologists' time was spent in teaching activities. The increase from 12.56 percent per the HCFA Form 339 to 13.33 percent more accurately reflects the physicians teaching time on the time study summary. The original summary did not break out the doctor's teaching time from other Part A time, since the original intent of the time study was to develop the aggregate Part A and Part B percentages.

The Provider points out that \$1,012,280 for pathologists compensation and benefits were incurred in 1985. Because the pathologists did perform GME-related duties, and because auditable documents from the GME base year exist to support the time spent in performing those duties, the Provider is requesting that 13.33 percent of the pathologists' net compensation and benefits (less the Reasonable Compensation Equivalent disallowance) or \$110,495, be reclassified as GME costs for purposes of determining the Provider's average per resident amount.³ Based upon the reclassification of \$110,495 of pathologists' allowable teaching costs to GME, the Provider is further requesting that the average per resident amount be increased by \$1,867.18.⁴

The Provider asserts that contingent upon the successful revision of the NAPRA, a similar reclassification of pathologists' teaching costs be made for the purpose of reopening the Provider's PPS base year cost report for the GME issue, and recalculating the Provider's HSR, as required by 42 C.F.R. § 413.86. HCFA Form 339, schedule 2, for fiscal 1983, indicates that the pathologists teaching time was 9.8 percent. Applying this against the pathologists'

¹ Provider exhibit VI

² Provider exhibit VII

³ Provider exhibit VIII

⁴ Provider exhibit IX

compensation of \$924,470 results in \$90,578 of costs which should be reclassified to GME costs for the purpose of recalculating the HSR. As fiscal 1983 is not subject to reopening, the request for reopening is limited solely to recalculation of the operating HSR under GME regulations as it applies to subsequent cost reporting periods for which reimbursement is based on the operating HSR, and which can be reopened.

INTERMEDIARY'S CONTENTIONS:

The Intermediary points out that in 1986, Congress passed, and the President signed, Public Law 99-272 establishing a separate payment system for GME costs. The new system required that GME costs for cost reporting periods beginning after June 30, 1985 be paid using a formula which depended upon a teaching hospital's number of residents in a given year times an inflation-adjusted average per resident amount computed for that hospital from data in its first cost reporting period beginning after September 30, 1983 (the GME base period).

Through the Federal Register dated September 29, 1989, 54 Fed. Reg. 40301, the Secretary ordered that all GME costs in the base period be re-audited to ensure that the amounts paid under the new system were properly calculated. The new system devised by the Secretary called for a NAPRA to be issued by the intermediary after the GME base year audit. A provider would then have certain appeal rights with the PRRB, based on what was in the NAPRA.

The Intermediary contends that the documentation furnished by the Provider does not adequately support its contention that 12.67% of the pathologists' time was spent in teaching or supervising interns and residents (I&R). Documentation supplied was for a two-week time study conducted between March 18-31, 1985, for 8 pathologists. Those time studies were used to prepare HCFA Form 339.

The Intermediary points out that the Provider's time studies are in the Provider's position paper.⁵ The Intermediary asserts that there is no evidence that the various activities noted under the "teaching" category of the time studies are related to I&Rs. The Intermediary contends that some of the inadequacies of the time studies are:

1. Conferences are not identified
2. Many entries are not identified
3. Some entries show lectures to medical technicians
4. Five minutes of teaching time is noted on the time study; .25 hour is claimed in the summary
5. In one case, the hours are identified as related to an American Cancer Society meeting
6. For Dr. A, the detail does not trace to the HCFA Form 339

⁵ Provider exhibit VI

7. Daily worksheet is unsigned and has prior year's date

The Intermediary contends that the Provider's time study does not meet the conditions of HCFA Pub. 15-1 § 233.3E or the minimum requirement of being audible per HCFA Pub. 15-1 § 2182.3E. Therefore, since the Intermediary cannot verify that the activity claimed as teaching time is related to I&R, the pathologists' compensation cost should not be reclassified to GME.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

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

- | | | |
|------------------|---|--|
| § 1395x(v)(1)(A) | - | Reasonable Cost |
| § 1395ww(h) | - | Payments for Direct Graduate Medical Education Costs |

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

- | | | |
|---------------------------|---|--|
| § 405.481 | - | Allocation of Physician Compensation Costs |
| § 405.1835-.1841 | - | Board Jurisdiction |
| § 412.113 <u>et. seq.</u> | - | Other Payments |
| § 413.86 <u>et. seq.</u> | - | Direct Medical Education Payments |

3. Program Instructions - Provider Reimbursement Manual, Part I (HCFA Pub. 15-1):

- | | | |
|-----------|---|--------------------------------------|
| § 2182.3E | - | Allocation of Physician Compensation |
| § 2313.3E | - | Special Applications |

4. Other:

HCFA Form 339

54 Federal Register 40301 (September 29, 1989).

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions, and evidence presented, finds and concludes that the Provider did furnish sufficient documentation to substantiate that it did incur pathology teaching costs. The Board finds that the time studies found in the Provider's position papers are ample evidence to support the teaching cost.

The Board finds that the Intermediary counted the number of pathology residents as part of the resident count. These residents were in an approved pathology program, and the pathologists were involved in the teaching program. The Board finds that for each of the pathologists, documentation was kept to indicate the amount of time spent in teaching activities. The documentation was contemporaneous and found in the HCFA Form 339. The Provider did clarify some of the documentation found in the time study.

The Board finds that the Provider was aware of the need to redo the PPS base year audit and supplied evidence which indicated that the pathologists were teaching in 1983. The Board concludes however that the as filed percentage of 12.5% should be used rather than the 13.3%, which was adjusted by the Provider.

DECISION AND ORDER:

The Board finds that the Provider sufficiently documented the amount of time spent by its pathologists in teaching activities. The Intermediary's determination is reversed and the Intermediary is to use the as filed percentage for pathologist teaching time.

Board Members Participating:

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

Date of Decision: July 23, 1998

FOR THE BOARD:

Irvin W. Kues
Chairman