

PROVIDER REIMBURSEMENT REVIEW BOARD HEARING DECISION

98-D79

PROVIDER -Stanislaus Medical Center
Modesto, CA

DATE OF HEARING-
March 23, 1998

Provider No. 05-0183

Cost Reporting Period Ended -
June 30, 1983

vs.

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

CASE NO. 95-0436

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ISSUE:

Was HCFA's denial of an exception to the routine cost limit filed within 180 days of the revised NPR in accordance with the Medicare statutes and regulations?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Stanislaus Medical Center is a general, short term, acute care hospital owned and operated by Stanislaus County, and is located in Modesto, California. On July 12, 1984, the Intermediary issued a Notice of Program Reimbursement ("NPR") for the June 30, 1983 Medicare cost report. In addition, the Intermediary issued a Revised Notice of Program Reimbursement ("RNPR") on April 10, 1993.¹ The revised NPR reclassified a certain amount of Housekeeping costs from the Adults and Pediatric cost center to the ICU. This resulted in an additional \$20,606 payment to the Provider.

On September 13, 1993, the Provider filed a request for an amendment to the Routine Cost Limit ("RCL") seeking an amount of \$48.06 per day, based upon atypical costs.² This request was filed within 180 calendar days from the date of the RNPR, but more than 180 beyond the original Notice of Program Reimbursement. The Intermediary recommended to HCFA that the request be approved in the amount of \$25.90 per day, for atypical medical records, housekeeping and social services.

The Health Care Financing Administration ("HCFA") denied the Provider's request for an exception to the Routine Cost Limits (RCL) on November 2, 1994.³ On December 7, 1994, the Provider appealed HCFA's denial 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.⁴

The Provider was represented by Thomas J. Weiss Esq., of Seyfarth, Shaw, Fairweather, & Geraldson. The Intermediary was represented by Bernard M. Talbert, Esq., of the Blue Cross and Blue Shield Association.

¹ Id.

² Provider Exhibit 2.

³ Id. at 3.

⁴ Id. at 4.

PROVIDER'S CONTENTIONS:

The Provider points out that 42 C.F.R. § 413.30(c) reads in pertinent part as follows:

“[P]rovider requests regarding applicability of cost limits. A provider may request a reclassification, exception, or exemption from the cost limits imposed under this section. In addition, a hospital may request an adjustment to the cost limits imposed under this section. The provider's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement. *Id.* The Provider argues that the governing regulation at 42 C.F.R. § 405.30 does not distinguish between original and revised NPRs.

In support of its position, the Provider cites Care Unit Hospital Of Dallas (Fort Worth, Tex.) v. Mutual of Omaha, PRRB Dec. No. 95-D26, March 8, 1995, Medicare and Medicaid Guide (CCH) ¶ 43,222, Rem'd HCFA Admin. May 5, 1995, Medicare and Medicaid Guide (CCH) ¶ 43,510 (“Care Unit”). In the Care Unit decision, the Board ruled that the intermediary improperly denied the provider's exception request based on the intermediary's contention that the request was untimely because it was filed within 180 days of a revised, but not original NPR.

The Provider also points out the recent HCFA Administrator's Decision in St. Joseph's Medical Center v. Blue Cross and Blue Shield Association/Blue Cross of California, PRRB Dec. No. 98-D25, January 27, 1998, (“St. Joseph's”). By order dated March 31, 1998, the Administrator vacated the St. Joseph's decision and remanded it to the Board for consideration of the relationship between the exception requests and the revised NPRs.⁵ The Provider now contends, that as a result of this action, there is now no authoritative decision on this particular issue.

INTERMEDIARY'S CONTENTIONS:

The Intermediary points out that the Board dismissed a previous appeal from the Provider (stemming from a revised NPR) for lack of jurisdiction and made a specific finding that: “[a] revised NPR does not reopen the entire cost report to appeal or extend the 180 day appeal period for the original NPR; consequently, only the adjustments in the revised NPR were appealable”.⁶

The Intermediary contends that the Provider is attempting to request a RCL exception 10 years after the initial NPR was issued, which was 7-12-84. It is incorrectly requesting a RCL

⁵ Provider's Post Hearing Brief at p. 3. (The decision was vacated by the Administrator subsequent to the hearing in this case).

⁶ Intermediary Position Paper at p. 5.

exception through the revised NPR, dated 4-10-93, which did not contain a RCL adjustment. In addition, the costs claimed to be excessive and qualifying for the exception were incurred, and were known, at the time of the first NPR.

The Intermediary contends that pursuant to 42 C.F.R § 405.1889, once the intermediary revises a determination on the amount of Medicare program payment, such as the revised NPR dated 4-10-93, these revisions are considered to be a separate and distinct determination which may be appealed. However, the provider is only entitled to appeal the specific adjustments made by the intermediary in its revised NPR. In the instant case, the Intermediary made no adjustment to the RCL through the revised NPR of 4-13-93. In addition, the Provider's exception request is more than 180 days past the initial NPR dated 7-12-84.

CITATIONS OF LAWS, REGULATIONS AND PROGRAM INSTRUCTIONS:

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

§ 1395x(v)(1)(A) - Reasonable Cost

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

§ 405.1835-.1841 - Board Jurisdiction

§ 405.1885-.1889 - Effect of a Revision

§ 413.30(c) - Provider Requests Regarding Applicability of Cost Limits

§ 413.40(e) - Hospital Requests Regarding Adjustments to the Payment Allowed Under the Rate-of-Increase Ceiling

3. Case Law:

Care Unit Hospital of Dallas (Fort Worth, Tex.) v. Mutual of Omaha, PRRB Dec. No. 95-D26, March 8, 1995, Medicare and Medicaid Guide (CCH) ¶ 43,222, Rem'd. HCFA Admin. May 5, 1995, Medicare and Medicaid Guide (CCH) ¶ 43,510.

St. Joseph's Medical Center v. Blue Cross and Blue Shield Association/Blue Cross of California, PRRB Dec. No. D25, January 27, 1998.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board finds that there are two key considerations which must be addressed to resolve the issue at hand. The first is whether a provider can appeal and file for an exception request based on a Revised Notice of Program Reimbursement. Secondly, the Board must determine if the revised NPR touched on or encompassed any of the items in the Provider's appeal.

With respect to the first issue, the Board notes that 42 C.F.R. § 413.30(c), governing exception requests for the RCL, makes no distinction between original and revised NPRs. This is in contrast to the parallel clause in 42 C.F.R. § 413.40(e), which governs exception requests under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). Under the TEFRA exception process, the regulation was amended in 1995 to clearly state that exception requests must be submitted within 180 days of the initial NPR. However, the Secretary has opted not to impose this same requirement relative to RCL exception requests. Absent specific guidelines, and the fact that 42 C.F.R. § 413.30(c) does not distinguish an initial NPR from an amended or revised NPR, the Board concludes that, in the instant case, the Provider is entitled to file an exception request based on the Intermediary's Revised Notice of Program Reimbursement After Administrative Resolution, dated April 10, 1993.

The Board finds that it must apply the reopening rules at 42 C.F.R. § 405.1885-1889. Those regulations indicate that the revised NPR does not reopen the entire cost report to appeal, nor does it extend the 180 day appeal period for an earlier NPR. The Board notes that the revised NPR merely reopens those issues adjusted by the revised NPR, and only those adjustments may be appealed.

The Board notes that, in the case at hand, the Intermediary reopened the Medicare cost report to affect an administrative resolution of a cost reporting issue. An adjustment was made to reclassify routine costs, specifically Housekeeping Services, which is one of the components of the atypical costs the Provider sought to recover via its exception request to the RCL. Given that the Housekeeping Services costs in the reopening are the same costs in the RCL exception request, the Board finds that the revised NPR, did indeed, touch on the subject matter under appeal.

The Board rejects the Intermediary's argument that the Provider is merely attempting to request an RCL exception 10 years after the initial NPR. The exception was requested following the Intermediary's reopening and adjustment of Housekeeping Services, following a protracted administrative settlement process. It would appear inconsistent for the Intermediary to reopen the cost report, on one hand, but then deny the full reimbursement impact by refusing to recognize the same atypical housekeeping costs referenced in the RCL exception request.

The Board finds that the evidence indicates that the Provider's request for an exception to the RCL was based on three factors: (1) Housekeeping Services; (2) Social Service; and (3) Medical Record/Library Service. In that the revised NPR specifically adjusts Housekeeping

Services, the Board finds that the cost report is reopenable under 42 C.F.R. § 1885-1889, but limited to the issue of the atypical Housekeeping Services.

DECISION AND ORDER:

HCFA's denial of the Provider's exception request was improper and is reversed. The Provider's exception request is remanded to HCFA for a determination and review of the documentation relating solely to the Housekeeping Services component of the Provider's RCL exception request.

Board Members Participating:

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

Date of Decision: July 30, 1998

FOR THE BOARD:

Irvin W. Kues
Chairman