

PROVIDER REIMBURSEMENT REVIEW BOARD HEARING DECISION

2000-D17

PROVIDER - DePaul Health Center

DATE OF HEARING-
August 11, 1999

Provider No. 26-0104

Cost Reporting Period Ended -
June 30, 1988

vs.

INTERMEDIARY - Mutual of Omaha

CASE NO. 92-1549

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ISSUE:

Was the computation and allocation of the cashiering, accounts receivable, and collections cost center done correctly and done in accordance with the regulations?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

DePaul Health Center (Provider) is a Medicare certified, acute care hospital located in St. Louis, Missouri. Blue Cross Blue Shield of Missouri was the Provider's fiscal intermediary during the cost reporting period under appeal. Mutual of Omaha (Intermediary) is Blue Cross Blue Shield of Missouri's successor as fiscal intermediary.

The Provider filed the current appeal from a revised Notice of Amount of Program Reimbursement ("NPR") dated September 30, 1991. On May 28, 1996, the Provider advised the Provider Reimbursement Review Board ("Board") that all of the issues had been resolved and withdrew the appeal requesting the right to reinstate the appeal if payment had not been made under the settlement agreement. The Board closed the appeal on June 27, 1996. On August 15, 1997, the Provider requested reinstatement because settlement had not been completed. The Board granted the reinstatement request on December 9, 1997.

On February 5, 1998, the Provider advised the Board that the "other therapy costs" issue from the original appeal of the revised NPR had not been resolved. Through this February 5 letter, the Provider added the issues of the cost of billing for physicians' services and depreciation computation. [On its original as filed Medicare cost report for FYE 6/30/88, the Provider self-disallowed, using Worksheet A-8, \$466,082 in physicians' billing costs.¹ The costs were removed from the Cashiering, Accounts Receivable and Collections ("Cashiering") cost center.² The Intermediary audited the cost report and, through audit adjustment 10, increased the physician billing cost disallowance on Worksheet A-8 to \$547,574. Id. Audit adjustment 10 was incorporated into the original NPR dated October 31, 1989.³]

On March 31, 1998, the Board dismissed the physicians' billing and depreciation issues from the appeal, finding that the issues had been adjusted on the original NPR dated October 31, 1989, and not on the revised NPR which was the basis for the current appeal. The Board held that 42 C.F.R. § 405.1889 limited review of a revised NPR to those matters adjusted by the revised NPR and does not reopen the entire cost report to appeal.

¹ Transcript (Hereinafter "Tr.") at 21-25, 28-29.

² Provider's Exhibits, Exhibit P-2, pg. 4; Tr. at 15.

³ Tr. at 15-16, 21-25.

Prior to the August 11, 1999 hearing, the Board made an additional jurisdictional decision on this case. In addition to the “other therapy costs” issue mentioned above, the Provider attempted to add three more issues. The Board determined that two of the three issues (public relations and SNF operating room) were adjusted on the original NPR and consequently, found that it lacked jurisdiction over these issues.⁴ The third issue was related to the Cashiering cost center. The Board noted in its June 7, 1999 letter that the Provider had briefed this issue as it related to the physicians’ billing issue on which the Board had previously denied jurisdiction. Therefore, the Board informed the Provider that it could submit arguments related to the substantive issue of the Cashiering adjustment, but not in the context of the physicians’ billing adjustment. Prior to the hearing, the Provider indicated that it had withdrawn and/or resolved all issues except the Cashiering issue.⁵

On the revised NPR dated September 30, 1991, the Intermediary made adjustments 2R11, 2R18, and 2R19.⁶ In common, these adjustments affected costs included in the Cashiering cost center. Adjustment 2R11 eliminated \$9,875 in directly assigned capital cost from Cashiering.⁷ At the hearing, the Intermediary agreed to reverse adjustment 2R18, and the Provider agreed to withdraw its objection to adjustment 2R19.⁸ Therefore, the only remaining issue for the Board to make a determination on is adjustment 2R11 as it affects the Cashiering cost center on the revised NPR.⁹ The Provider argued extensively in its Position Paper and in its Post Hearing Brief that adjustment 2R11 was incorrect, and since it relates to the Cashiering cost center, it is appropriate for the Board to rule on the physicians’ billing issue.¹⁰ The Board has issued determinations on March 31, 1998 and June 7, 1999 indicating that it does not have jurisdiction of the physicians’ billing adjustment in the current appeal of the revised NPR.

As noted above, the current appeal concerns adjustments made by the Intermediary on the revised NPR for FYE 6/30/88 dated September 30, 1991. The Board has determined that the Provider has met the jurisdictional requirements of 42 C.F.R. §§ 405.1835-.1841 for the Cashiering adjustment that

⁴ See PRRB jurisdictional letter dated June 7, 1999.

⁵ See Provider’s Hearing on Record “Note” on Table of Contents.

⁶ Tr. at 7; Provider Position Paper at Exhibit P-1-7 to P-1-9; Provider’s Hearing on Record Exhibit P-1.

⁷ See “Provider’s Exhibits P-1.

⁸ Tr. at 4, 20.

⁹ See Provider’s Hearing on Record “Note” on Table of Contents.

¹⁰ Physician billing costs were adjusted from the Cashiering cost center on the original NPR.

occurred on the revised NPR.¹¹ The amount of Medicare reimbursement in controversy is approximately \$200,000.¹² The Provider is represented by Eugene J. Boron, Reimbursement Consultant. The Intermediary is represented by Tom Bruce, Appeals Supervisor, Mutual of Omaha.

PROVIDER'S CONTENTIONS:

The Provider acknowledges that the Board does not have jurisdiction over the original appeal of the 1989 NPR.¹³ However, the Provider contends that when Intermediary adjustment 2R11 is written correctly, (2R11 involves the Cashiering cost center adjustment in the current appeal), the Board does have jurisdiction in the current appeal over the physician billing adjustment made on the 1989 NPR.¹⁴ It is the Provider's position that the disagreement regarding the 1991 NPR pertains to adjustment 2R11 (Provider Exhibit P-1) and its relationship to the physicians' billing cost center. The Provider believes that the Intermediary's position is that adjustment 2R11 is correct as written, and since the phrase, "Physician Billing expenses," is not mentioned in the adjustment, the Board lacks jurisdiction over the physicians' billing issue.

The Provider's argument centers on the correctness of adjustment 2R11 which the Intermediary made on the revised NPR dated September 30, 1991. The Provider contends that the Intermediary's adjustment, which reads, "[t]o adjust directly assigned capital related costs to agree to audit findings. HCFA Pub 15-1, Sec. 118; 42 C.F.R. § 413.24.", is erroneous because it is not complete.¹⁵ The Provider points out that the Intermediary has stated it is correct, but contends that the Intermediary does not quote any regulatory basis for its decision.

The Provider contends that HCFA Pub. 15-Part 2, Sections 3617 (Exhibit P-3, p.6) and 3618 (Exhibit P-3, p.7) require that cost centers (including nonreimbursable), which receive services from the general cost centers, should likewise receive the allocation of the costs applicable to the services. The Provider notes that adjustment 2R11 "adjusts the directly assigned capital related costs (for Cashiering and Admin/General) to agree to audit findings." The Provider asserts that the physicians' billing cost center and Personal Laundry cost center receive Cashiering and Admin/General services. Therefore, the Provider contends that the physicians' billing and the personal laundry cost centers should have been included in adjustment 2R11. However, the Provider asserts that, their "gross charges" statistics are not recorded on Worksheet B-1 (PPHB Exhibit P-2, p. 20, col 4E) as nonreimbursable cost centers.

¹¹ See Board jurisdictional decision dated June 7, 1999.

¹² Provider Position Paper (dated May 20,1999) at Section 1, pg. 1.

¹³ Provider's Post Hearing Brief ("PPHB") at 5.

¹⁴ Tr. at 10, Provider's Post Hearing Brief at 5.

¹⁵ Provider's Hearing on Record, pg. 4; PPHB at Exhibit P-1.

As a result, the Provider contends that these two nonreimbursable cost centers (physicians' billing and personal laundry) did not receive an allocation of the Cashiering and Admin/General costs. Further, since the Intermediary agreed to reverse adjustment 2R18, personal laundry "gross charges" are restored on Worksheet B-1 (PPHB Exhibit P-2, p.20 col 4E, line 97A). After this reversal, the physicians' billing cost center is the only cost center receiving services from the Cashiering and Admin/General cost centers, but not its proper allocation of costs from them.¹⁶ The Provider contends that a proper application of adjustment 2R11 (PPHB Exhibit P-4) would correct this error because it would record the physicians' billing "gross charges" statistics on Worksheet B-1¹⁷ in accordance with HCFA Pub. 15-2, Sections 3617 & 3618 (PPHB Exhibit P-3, p.6-7).

The Provider acknowledges that if a nonreimbursable physicians' billing cost center were to be established as it proposes, then the physicians' billing costs would be eliminated twice, once in the nonreimbursable cost center and once in the original Worksheet A-8 adjustment. The Provider asserts that the Intermediary agrees that a nonreimbursable physicians' cost center should have been established originally, however, since the Worksheet A-8 adjustment was made on the original NPR and the Board has ruled several times that it does not have jurisdiction over this issue, the Intermediary cannot change this adjustment through the current appeal.

The Provider contends that if the above initial correction (establishment of a nonreimbursable cost center, PPHB Exhibit P-4) is not made, the physicians' billing cost center would be the only cost center which receives services from the Cashiering and Admin/General cost centers and is unaffected by adjustment 2R11, (PPHB Exhibit P-1). The Provider believes this is wrong.

The Provider asserts that it and the Intermediary agree that the Board has jurisdiction over adjustment 2R11 on the revised NPR, however the Intermediary disagrees with the inclusion of the physicians' billing "gross charges" statistics on Worksheet B-1 (PPHB Exhibit P-2, p. 20, col 4E, line 97B). The Provider, however, argues that physicians' billing receives services from Cashiering and Admin/General cost centers, whose costs are being adjusted by 2R11. The Provider points out that although physicians' billing costs are not affected by adjustment 2R11, it should be since HCFA Pub. 15-2 Sections 3617 (PPHB Exhibit P-3, p.5-6) and 3618 (PPHB Exhibit P-3, p.7) state that all cost centers, which receive services from general service cost centers, must be allocated the applicable costs. Therefore, the Provider contends that its proposed adjustment, 2R11 (PPHB Exhibit P-4), which results in a duplicate elimination of physicians' billing costs, should be incorporated into a revised

¹⁶ The Provider is proposing a nonreimbursable physicians' billing cost center. The Provider's argument centers on its assertion that the physicians' billing adjustment on the original NPR was incorrect since these costs were eliminated by a direct Worksheet A-8 adjustment rather than the establishment of a nonreimbursable cost center.

¹⁷ See PPHB Exhibit P-2, p.20, col 4E, line 97B.

cost report. In concert with this proposed adjustment, the Provider is also proposing to reverse the adjustment of the Worksheet A-8 elimination of the physicians' billing costs on the original NPR.¹⁸

The Provider cites various regulations and program instruction sections to support the reversal of the A-8 elimination. 42 C.F.R. § 413.5(a), HCFA Pub. 15-1 §§ 2302.8, 2328, HCFA Pub. 15-2, §§ 3617, 3618. The Provider contends that the aforementioned cites state that any nonreimbursable cost center (i.e. physicians' billing) which receives services from general service cost centers (i.e. Cashiering and Admin/General) should also receive its applicable costs by the establishment of a nonreimbursable cost center. In addition, Worksheet A-8 will continue to be used for nonallowable costs to which general service costs are not applicable.

The Provider argues further by noting that, at the hearing, the Intermediary stated its opinion that adjustment 2R11 is proper and written correctly.¹⁹ The Provider takes exception to this because it believes that a properly written adjustment, 2R11, should include an allocation of Cashiering to all cost centers which receive their services. The Provider believes the reversal of adjustment 2R18 (PPHB Exhibit P-1) corrects the non-allocation of the Cashiering and Admin/General cost centers to the Personal Laundry cost center, however, there is not an allocation of Cashiering costs to the physicians' billing cost center. To correct this "non-allocation", the Provider proposes to amend adjustment 2R11 by recording the physicians' billing "gross charges" statistics on Worksheet B-1. The Provider points out that as currently written, adjustment 2R11 only decreases the Cashiering Admin/General cost centers. Therefore, all the cost centers, which have "gross charges" statistics on Worksheet B-1 (PPHB Exhibit P-2, p. 19-20), have their capital cost allocation reduced. These cost centers include all those which receive services from Cashiering and Admin/General except physicians' billing. Therefore, the Provider proposes that an initial correction needs to be made to adjustment 2R11, as recorded on PPHB at Exhibit P-4.

The Provider continues by noting that after its proposal to amend adjustment 2R11, physicians' billing costs of \$547,574 remain eliminated on Worksheet A-8 (PPHB Exhibit P-2, p.4, line 76), and Cashiering costs of \$103,117 (PPHB Exhibit P-5-1) are also allocated to the physicians' billing cost center established on Worksheet B. The Provider notes that this scenario results in a dual allocation of Cashiering and Admin/General costs to the physicians' billing cost center. The Provider contends that without its proposed adjustment, the physicians' billing cost center does not receive its correct allocation of Cashiering costs.

The Provider further contends that the original Worksheet A-8 elimination should not have been done because physicians' billing qualified as a cost center in accordance with HCFA Pub. 15-1 § 2302.8. The Provider also notes HCFA Pub. 15-1 § 2328 which states:

¹⁸ PPHB at 7.

¹⁹ Tr. at 23.

[n]onallowable cost centers to which general service costs apply should be entered on the cost allocation worksheets after all General Service Cost Centers. General Service costs would then be distributed to the nonallowable cost centers in the routine stepdown process.

HCFA Pub. 15-1 § 2328.

The Provider also acknowledged at the hearing that its Worksheet A-8 elimination of physicians' costs on its original cost report was incorrect.²⁰ The Provider contends that Worksheet A-8 should only be used for nonallowable costs to which general service costs are not applicable.

The Provider contends that while the Intermediary reversed adjustment 2R18 (PPHB Exhibit P-1) so that it is in accordance with the program instructions, it refuses to correct adjustment 2R11 with the addition of the Provider's proposed adjustment 2R11. The Provider notes the Intermediary's contention that the Board does not have jurisdiction over the physicians' billing costs. However, as previously explained, when adjustment 2R11 is written properly (i.e. proposed adjustment at Exhibit P-4), the Board does have jurisdiction because the physicians' billing Worksheet B-1 statistics should be recorded so that all cost centers, including nonreimbursable, which receive services from general service cost centers (i.e., Cashiering and Admin/General), also receive the corresponding costs.

The Provider argues in its post hearing brief that the unit cost multiplier, which the Intermediary used to compute the original Worksheet A-8 physicians' billing adjustment, was significantly higher than all other Provider departments' unit cost multiplier.

In conclusion, the Provider acknowledges that it was incorrect in eliminating physicians' billing costs via a Worksheet A-8 elimination. In addition, the Provider believes the Intermediary compounded the error when it increased the elimination using a unit cost multiplier from worksheet B to compute the adjustment on Worksheet A-8 of the original NPR. The Provider believes that a correction of adjustment 2R11 on the revised NPR is the vehicle to correct the original mistake. It is the Provider's position that it is within the Board's jurisdiction to order the correction of adjustment 2R11 by 1) establishing a nonreimbursable physicians' billing cost center on a revised cost report, and 2) ordering the reversal of the original Worksheet A-8 physicians' billing adjustment.

INTERMEDIARY'S CONTENTIONS:

The Intermediary points out that the Provider maintains its objection to audit adjustment 2R11 throughout its Position Paper, Provider's Hearing on Record submission, and through testimony at the hearing. The Intermediary also notes that the Provider makes the same two arguments against this

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Tr. at 28.

adjustment.²¹ First, that the costs included in the Cashiering, Accounts Receivable, and Collections cost center should be allocated to other (unspecified by the Provider) nonreimbursable cost centers on the basis of gross charges. And second, all corrections which related to the computation and allocation of the Cashiering cost center must be made.

The Intermediary contends that through these two arguments, the Provider is attempting to revive the physicians' billing cost issue. The Intermediary believes that the Provider would like the physicians' billing adjustment reversed and a nonreimbursable cost center set up (to allocate Cashiering costs to) instead of the A-8 adjustment made on the 1989 NPR. The Intermediary contends that if it were to set up a nonreimbursable cost center in which to allocate cashiering costs to physicians' billing costs, it would simply take away more of the Provider's reimbursement.²²

The Intermediary points out that physicians' billing costs were eliminated on the October 31, 1989 NPR. Since the Provider did not file its request for hearing within 180 days of this NPR, the Intermediary contends the Board does not have jurisdiction over the physicians' billing cost issue. The Intermediary asserts that neither the Board nor it has the authority to reverse the Worksheet A-8 elimination of \$547,574 in physicians' billing cost on the October 31, 1989 NPR. The Intermediary cites 42 C.F.R. §405.1841(a)(1) and §405.1889 in support of its position. The regulation at 42 C.F.R. §405.1841(a)(1) requires that a request for hearing must be filed within 180 days of the date the intermediary's determination (NPR) was mailed to the provider. The regulation at 42 C.F.R. §405.1889 deems a revision a separate and distinct determination for the purpose of an appeal. A revised NPR reopens for appeal only those issues, or costs, affected by the revised NPR. Since physicians' billing cost was not affected by the revised NPR dated September 30, 1991, the Provider has no right to a hearing on this issue.

Regarding the specifics of adjustment 2R11, the Intermediary contends this adjustment, which eliminates \$9,875 in directly assigned capital cost from the cashiering cost center, is proper. The Intermediary contends that the workpaper supporting this adjustment states, "No lease agreement exist [sic] relating to Blue Cross terminal. Provider does not have possession of equipment or unlimited use/control. Propose R-46 to treat Blue Cross lease amount as an operating cost."²³ The Intermediary contends that the Provider has produced neither evidence or arguments that 2R11 is incorrect. The Intermediary asserts that instead of addressing this issue, the Provider merely repeats the two irrelevant arguments noted above.

²¹ Tr. at 7; Provider's Hearing on Record, pg. 4; Intermediary's Response to Provider's Hearing on Record, pgs. 1-2.

²² Tr. at 8.

²³ Intermediary Response to Provider's Hearing on Record, Exhibit I-1.

To summarize its position, the Intermediary asserts that the Board lacks jurisdiction over the October 31, 1989 NPR and cannot reverse the elimination of physicians' billing cost made to this NPR. As a result, the establishment of a nonreimbursable cost center for physicians' billing costs through adjustment 2R11 would result in an incorrect allocation of allowable costs to the nonreimbursable cost center. Therefore, adjustment 2R11 is proper.

CITATIONS OF LAW, REGULATIONS & PROGRAM INSTRUCTIONS:

1. Regulations-42 C.F.R. :
 - §§ 405.1835-.1841 et seq - Board Jurisdiction
 - § 405.1889 - Effect of a Revision
 - § 413.5(a) - Cost Reimbursement-General
 - § 413.24 - Adequate Cost Data and Cost Finding
2. Program Instructions-Provider Reimbursement Manual-Part 1 (HCFA Pub. 15-1):
 - § 118 - Determining Depreciation in Year of Acquisition and Disposal
 - § 2302.8 - Cost Center
 - § 2328 - Distribution of General Service Costs to Nonallowable Cost Areas
3. Program Instructions Provider Reimbursement Manual-Part 2 (HCFA Pub. 15-2):
 - § 3617 - Cost Allocation-General Service Costs
 - § 3618 - Allocation of Old Capital Related Costs

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions, evidence presented, testimony elicited at the hearing, and the parties' post hearing briefs, finds and concludes that there is only one issue outstanding over which it has jurisdiction. The Board finds that issue to be adjustment 2R11, which

relates to directly assigned capital, and was made on the revised NPR dated September 30, 1991.²⁴ That Board also finds that the Provider's argument at the hearing, and in its post hearing brief, focused primarily on a physician billing adjustment made on the original NPR dated October 31, 1989, even though the Board had previously denied jurisdiction over this adjustment in letters to the Provider on March 31, 1998 and again on June 7, 1999.

Based on the evidence, the Board finds that Intermediary adjustment 2R11, made on the revised NPR dated September 30, 1991, was appropriate. The Board also notes the Provider's argument for the establishment of a non-reimbursable cost center on the cost report. The Board considered this alternative, however, it finds that nonallowable costs that were adjusted on the original cost report appeared to be reasonable.

DECISION AND ORDER:

Intermediary adjustment 2R11, which adjusted directly assigned capital related costs to agree with its audit findings, was proper. The Intermediary's adjustment is affirmed.

Board Members Participating:

Irvin W. Kues
James G. Sleep
Henry C. Wessman, Esquire
Martin W. Hoover, Jr., Esquire
Charles R. Barker

Date of Decision: February 9, 2000

FOR THE BOARD:

Irvin W. Kues
Chairman