

**PROVIDER REIMBURSEMENT REVIEW BOARD
 DECISION
 ON THE RECORD
 2003-D41**

PROVIDER –
 Collins Health Center
 Pittsburgh, Pennsylvania

Provider No. 39-5789

vs.

INTERMEDIARY –
 Blue Cross Blue Shield Association/
 Veritus Medicare Services



DATE OF HEARING -
 June 18, 2003

Cost Reporting Period Ended
 December 31, 1997
 December 31, 1998

CASE NO. 00-0346
 01-0210

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ISSUE:

1. Was the Intermediary's adjustment to remove nursing administration statistics from the ancillary cost centers on worksheet B-1 proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:Governing Statutes and Regulations:

The Medicare program was established in 1965 under Title XVIII of the Social Security Act ("the Act") to provide health insurance to the aged and disabled. 42 U.S.C. §§ 1395 – 1395cc. The Health Care Financing Administration ("HCFA") (now Centers for Medicare and Medicaid Services ("CMS")) is the operating component of the Department of Health and Human Services charged with administering the Medicare program.

In order to participate in the Medicare program, a provider must file a provider agreement with the Secretary. 42 U.S.C. § 1395cc. The Secretary's payment and audit functions under the Medicare program are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due the providers under the Medicare law and under interpretative guidelines published by CMS. *Id.*

At the close of its fiscal year, a provider must submit a cost report to the fiscal intermediary showing the costs it incurred during the fiscal year and which proportion of these costs are to be allocated to Medicare. 42 C.F.R. § 413.20. The fiscal intermediary audits the cost report and determines the total amount of Medicare reimbursement due the provider. It then publishes in a notice of program reimbursement ("NPR") the individual expenses allowed and disallowed by the intermediary. 42 C.F.R. § 405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board ("Board") within 180 days of the NPR. 42 U.S.C. § 1395oo(a); 42 C.F.R. § 405.1835.

Background of the Provider:

Collins Health Center ("Provider") is a 71-bed skilled nursing facility (SNF) located in Pittsburgh, Pennsylvania. The Provider was audited by its local fiscal intermediary, Veritus Medicare Services ("Intermediary"). On its as-filed cost reports, the Provider allocated nursing administration costs to the routine and ancillary cost centers through Worksheet B-1 of the cost report.¹ The Intermediary removed the ancillary therapy cost centers statistics from the Nursing Cost Allocation Statistics.² At issue in these cases is whether or not the Intermediary's

¹ Worksheet B-1 of the cost report is used to allocate costs on a statistical basis.

² Intermediary's contention, see position paper page 5 of case no. 01-0210.

removal of nursing administration costs allocated to the ancillary cost centers was appropriate for fiscal years ending December 31, 1997 and December 31, 1998.

The Provider was represented by Louis J. Capozzi, Jr., Esquire, Capozzi & Associates, P.C. The Intermediary's representative was Bernard M. Talbert, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that there is no dispute that it provided adequate documentation and time studies to support the allocation of certain nursing administration costs to the ancillary cost centers. The Provider allocated these costs on its cost reports consistent with those time studies.³ HCFA Pub 15-1 § 2304 (Adequacy of Cost Information) and 42 C.F.R. § 413.20(a) (Financial Data and Reports) require that the Provider maintain "sufficient financial records and statistical data for proper determination of costs payable under the program."

The Provider states that, pursuant to HCFA Pub. 15-1 § 2306.1, the costs of all nonrevenue-producing cost centers must be allocated to all centers they serve. The Intermediary's adjustment resulted in nursing administration costs being allocated to routine areas only; however, the Provider's time studies indicate that the nursing department delivers services to the routines areas as well as to the ancillary departments.⁴

The Provider asserts that the Intermediary's exclusion of nursing administration costs allocated to the ancillary cost centers shifts a substantial amount of cost away from the Medicare program in violation of Medicare's "prime directive" against cross-subsidization.

The Provider argues that the Intermediary's reliance on the Board's decision in Westview Manor, PRRB Decision No. 2002-D40 and Northwood Nursing and Convalescent Home, PRRB Decision 2003-D7 is misplaced. In those cases, the Board found that the providers' documentation in support of its allocations did not meet the requirements for periodic time studies set forth in HCFA Pub. 15-1 § 2313.2E. The Provider asks that the Board reconsider and overrule the decisions in those cases for two reasons: first, because they were based on a misapplication of the manual provisions, and second, because they represent an improper adoption of a new interpretation without the required rulemaking. The time studies submitted by the Provider in the instant cases are adequate and consistent with Program requirements for the allocations involved, as reflected in the Intermediary's own supplemental position paper.⁵

³ Provider's assertion, see position paper page 8 of case no. 00-0346.

⁴ See Provider's time studies in Exhibit P-7 of case no. 01-0210.

⁵ See Provider's supplemental position paper page Exhibit P-19.

The Provider cites several cases where the Board has accepted sufficient supporting documentation, as required by 42 C.F.R. § 413.20(a) in the allocation of nursing administration cost to the ancillary cost centers.⁶

The Provider points out that the Intermediary has accepted the Provider's nursing administration allocation for the routine areas without requiring additional explanations or documentation. However, the nursing costs allocated to the ancillary departments were subjected to a different set of rules and additional requirements.⁷

The Provider believes it has furnished time studies and job descriptions that support its allocation of nursing administration costs to the ancillary cost centers as permitted by HCFA Pub. 15-1 § 2307A. Therefore, it contends that there can be no dispute that the Provider's documentation meets the regulatory requirements.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Provider's time studies for the fiscal years in question are not adequate and do not meet the requirements set forth in HCFA Pub. 15-1 § 2313.2E(2), which states that: "A minimally acceptable time study must encompass at least one full week per month of the cost reporting period." The time studies submitted by the Provider for the December 31, 1997, cost reporting period reflect only the last three months of the year.⁸ The time studies for the fiscal year ending December 31, 1998, represented only one week for eight months of the year and lacked the appropriate approval or authorization felt necessary by the Intermediary.⁹

After reviewing the time studies, the Intermediary determined that the nursing hours claimed on the Provider's time studies did not agree with the hours claimed on Worksheet B-1 of the cost report (nursing administration hours).¹⁰ Based on the Intermediary's analysis, it appeared that the nursing hours reported on the cost report in the ancillary departments were much greater than the hours indicated on the time studies. The Intermediary found discrepancies while examining the time

⁶ See Provider's supplemental position paper page 5. Provider references PRRB Decision No. 2003-D8, Blue Ridge Rehabilitation Center, at Exhibit P-31 and PRRB Decision No. 2001-D28, Southwestern Nursing Home, at Exhibit P-5.

⁷ The Provider contends that the Director of Nursing ("DON") is responsible for coordinating nursing with other services (i.e., therapy) and general supervision, assisting in implementing a resident health program to assure that therapy treatments are properly carried out. By regulation the DON is required to perform these functions, and the time studies are representative of the DON's allocation of time spent. See Provider's supplemental position paper at page 8.

⁸ See Intermediary's position paper Exhibit I-12 of case no. 01-0210.

⁹ See Intermediary's supplemental position paper at Exhibit I-26 for time studies.

¹⁰ The Intermediary's analysis in Exhibit I-24 of its supplemental position paper compares the nursing hours reported on the cost report to the actual time spent in the ancillary departments by the nursing personnel. In comparison, the time studies indicated that the actual nursing hours spent were much less than what was reported on the cost report. See page 2 of the Intermediary's supplemental position paper.

studies and, therefore, contends that it could not rely on the documents without proper explanations.

The Intermediary cites two Board cases it believes relate directly to this case.¹¹ The Intermediary states that these cases are similar to the instant cases because the issue is the same: allocation of nursing administration costs to ancillary departments. The Intermediary points out that in both of those cases, the Board ruled in favor of the Intermediary because the Providers failed to maintain proper time studies. The time studies in those cases and in these instant cases were not signed, appeared to have been completed by the same individual, and were lacking written descriptions of the duties actually performed by the nursing staff in support of the ancillary departments.¹²

The Intermediary insists that, based on the Provider's failure to properly document the nursing staff activities by the use of proper time studies, and given the history of the Board decisions, its position is well supported and should be upheld by the Board.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and Program instructions, parties' contentions and evidence presented, finds and concludes that the Intermediary properly removed the Provider's nursing administration cost allocation to the ancillary cost centers.

The Board finds that the Provider did not present adequate documentation to properly allocate the nursing administration costs. The Medicare regulation at 42 C.F.R. § 413.20 requires that "providers maintain sufficient financial records and statistical data for proper determination of costs payable under the Program..." and that that these records be "capable of verification by a qualified auditor..." Medicare regulation, 42 C.F.R. § 413.24, describes the cost finding methodology, including the step-down method of allocating nonrevenue-producing cost centers to all cost centers they serve. The Board finds that the Provider's allocation did not adhere to the aforementioned regulations and program policy in that they failed to adequately document the services provided to the ancillary cost centers by the nursing staff.

The Provider submitted time sheets for the Director of Nursing (DON) position for each fiscal year at issue; however, the Board finds that the time sheets were not signed or dated. In some instances the time sheets appear to have been completed

¹¹ See Intermediary's supplemental position paper Exhibits I-29, I-30. PRRB Decision No. 2002-D40, Northwood Nursing & Convalescent Home and PRRB Decision 2003-D7, Westview Manor.

¹² The Intermediary contends that the reason the Board did not accept the time studies in these cases was because they did not meet the requirements set forth in HCFA Pub 15-1§ 2313.2E. See Intermediary's supplemental position paper page 2.

by the same person even though they pertained to different people.¹³ In addition, the time sheets do not validate the time allocated to the ancillary departments, nor does the existence of job descriptions ensure that the job functions listed were actually carried out. The Intermediary's analysis of the time sheets revealed that there is a significant variance between the claimed as having been worked in the ancillary areas compared to the amount of time allocated to the ancillary costs center on the as-filed cost reports.¹⁴ The Board agrees with the Intermediary's findings regarding the allocation of 780 hours of nursing service to the medical supplies cost center for the fiscal year ended December 31, 1998. The time sheets did not indicate any amount of time was spent in that area. Therefore, the Board finds that the time sheets are unreliable and that they failed to substantiate the allocation of nursing administration costs to the ancillary areas.

In an attempt to justify time spent in the ancillary departments, the Provider submitted position descriptions for two individuals who held the DON position during the cost reporting periods at issue, as well as a DON report and an organizational chart.¹⁵ The Board finds no support for the Provider's contentions that the documentation submitted justifies the allocation of nursing administration costs to the ancillary cost centers. The position descriptions do not justify the split of hours claimed by the Provider on the cost reports, the organizational chart indicates no direct reports to the ancillary departments and the DON report fails to show any time spent in the ancillary areas.

In summary, the Board finds that the documentation contained in the record is inadequate to support the Provider's claim for the allocation of nursing administration hours to the ancillary departments. Consequently, it is unnecessary for the Board to address any additional contentions that the Provider has raised in this case.

DECISION AND ORDER:

The Intermediary's adjustments to remove the nursing administration costs allocated to the ancillary departments were proper. The Intermediary's adjustments are affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Dr. Gary Blodgett

¹³ The Board notes that the time sheets reflect one individual for the 1997 fiscal year while the time sheets for the 1998 FYE reflect more than one.

¹⁴ See Intermediary's supplemental position paper Exhibit I-24.

¹⁵ See Provider's final position paper Exhibit P-4.

Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, CPA

Date: August 1, 2003

FOR THE BOARD

Suzanne Cochran, Esquire
Chairman