

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2003-D50

**PROVIDER –**  
Pleasant Care Corporation - Restorative  
Nursing Aides Group

Provider No. Various

**vs.**

**INTERMEDIARY –**  
Mutual of Omaha Insurance Company

**DATE OF HEARING -**  
September 25, 2002

Cost Reporting Periods Ended  
Various

**CASE NO.** 00-0961G

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ISSUE:

Was the Intermediary's adjustment to restorative nurses aides proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Pleasant Care Corporation represents 16 Medicare certified nursing facilities ("Providers"). Mutual of Omaha ("Intermediary") was the fiscal intermediary for the Providers during the fiscal years in contention. Each of the Providers' cost reports contained salaries for Restorative Nursing Aides ("RNA") in the Physical Therapy ancillary cost center. The Intermediary adjusted to reclassify the salaries from the Physical Therapy ancillary cost center to the routine cost centers, based upon patient days.

The Providers were dissatisfied with the Intermediary's adjustment and appealed to the Provider Reimbursement Review Board ("Board"). The Providers met the jurisdictional requirements of the regulations at 42 C.F.R. §§ 405.1835-.1841. The amount of Medicare reimbursement in contention is \$699,763.

The Providers were represented by Paul Gulbrandson, C.P.A. The Intermediary was represented by Tom Bruce, C.P.A., and Matt Pleggenkuhle, of the Mutual of Omaha Insurance Company.

PROVIDERS' CONTENTIONS:

The Providers contend that the services of the RNAs were properly included in the Physical Therapy cost center and, therefore, the Intermediary's reclassification was improper. The Providers point out that the RNAs are employed by the Providers and work in the physical therapy departments. The RNAs are trained to continue the treatment of the Physical Therapy plan of rehabilitation as developed by the Registered Physical Therapist and as ordered by a physician, and that is their only function. The services of the RNAs are included in billing for Physical Therapy services that the Providers issue from time to time.

The Providers contend that they have used the RNAs as an overhead function of the Physical Therapy cost center and that not charging patients directly for RNA service is allowable for use in apportioning costs under the Medicare program.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Providers have not established that they met the requirements necessary to directly classify RNA salary expenses as ancillary costs within the Physical Therapy cost center. The criteria to qualify for such treatment are defined at CMS Pub. 15-1 § 2220. The Intermediary contends that the Providers failed to meet the criterion that "[c]harges are equally imposed on all patients." *Id.* The Providers did not bill for the subject services and therefore did not establish an equitable basis for apportionment of the related expenses.

The Intermediary points out that CMS Pub. 15-1 § 2203 states in relevant part:

So that its charges may be allowable for use in apportioning costs under the program, each facility should have an established charge structure which is applied uniformly to each patient as services are furnished to the patient and which is reasonable and consistently related to the cost of providing the services.

The Intermediary points out that the Providers' charge structure does not include a charge to each patient that received the services provided by their RNAs. Nevertheless, the Providers directly assigned RNA costs to the Physical Therapy cost center. The Intermediary challenges the validity of this treatment in light of the requirements of CMS Pub. 15-1 § 2203.2 which reads, in part, as follows:

Ancillary Services in SNFs.—Items and services (other than the types classified as routine services in § 2203.1) may be considered ancillary in a SNF if charges for them the requirements of § 2203 for recognition of ancillary charges and if they are:

- Direct identifiable services to individual patients, and
- Not generally furnished to most patients . . .

The Intermediary maintains that, absent a separately identifiable charge to each patient for each service provided by RNAs, the Provider is prohibited from directly assigning the costs to an ancillary cost center. The principles of Medicare cost finding prohibit such an assignment because, without the proper matching of costs to charges, the allocation of costs between Medicare patients and non-Medicare patients is distorted. This distortion leads to an incorrect apportionment of costs to the Medicare program.

#### FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and guidelines, contentions of the parties and evidence presented, finds and concludes that the Intermediary's adjustment to the cost of the Restorative Aides was proper.

The Board finds that the Providers did not make a separate charge for the services of the Restorative Aides. The Providers did not document that they satisfied the criterion of CMS Pub. 15-1 § 2220, which states that:

[a]lthough considered routine, restorative nursing services can be billed as ancillary services in order to establish an equitable basis for apportioning costs of the physical therapy cost center if charges are equally imposed on all patients.

The Board agrees with the Intermediary's contention that under the Providers' charge structure it was possible for a patient who received physical therapy services but not restorative therapy services to be charged the same amount as a patient who received both

types of therapy. Conversely, patients who did not receive the RNA service could be charged for a service they did not receive.

The Board concludes that the Providers did not document the imposition of a charge for restorative therapy on all patients. Therefore, the Providers have no basis for allocating the cost of the RNAs to the Physical Therapy department.

DECISION AND ORDER:

The Intermediary's adjustment to the cost of the Restorative Aides was proper. The Intermediary's adjustment is affirmed.

Board Members Participating:

Suzanne Cochran, Esquire  
Henry C. Wesman, Esquire  
Gary B. Blodgett, DDS  
Martin W. Hoover, Jr., Esquire

DATE: August 27, 2003

FOR THE BOARD

Suzanne Cochran  
Chairperson