

**PROVIDER REIMBURSEMENT REVIEW BOARD
 DECISION
 ON THE RECORD
 2005-D7**

PROVIDER –
 Capeside Cove Good Samaritan Center
 Siren, WI

Provider No.: 52-5478

vs.

INTERMEDIARY –
 BlueCross BlueShield Association/
 Cahaba Government Benefit Administrators

DATE OF HEARING –
 September 27, 2004

Cost Reporting Period Ended -
 December 31, 1996

CASE NO.: 00-0374

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ISSUE:

Was the Intermediary correct in determining that Provider's request for an exception to the Skilled Nursing Facility (SNF) Routine Cost Limit was untimely filed?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Capeside Cove Good Samaritan Center (Provider) is a freestanding skilled nursing facility (SNF) located in Siren, WI.

The facts in this case are not in dispute. The Provider was issued a Notice of Program Reimbursement (NPR) for its December 31, 1996 fiscal year ended Medicare cost report on September 28, 1998. On Monday, March 29, 1999, the Provider mailed its request for an exception to the Routine Cost Limit (RCL) to Cahaba Government Benefit Administrators (Intermediary).

In a letter dated May 18, 1999, the Intermediary denied the Provider's request. The only reason cited by the Intermediary for its denial was that the request was mailed too late. The letter stated that "[y]our request was mailed on March 29, 1999, and the deadline was March 27, 1999." March 27, 1999 was a Saturday.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

The Secretary of Health and Human Services is authorized to establish limits on provider costs. 42 U.S.C. §1395x(v)(1)(A). Under this authority, limits have been established on routine costs for SNFs. The routine cost limits are determined on a per diem basis and apply to all routine costs except capital-related costs. CMS Pub. 15-1 §2530.2. Under the regulations, a SNF is entitled to request an exception to the RCL if its costs exceed or are expected to exceed the limit. 42 C.F.R. §413.30(c). The RCL applicable to a particular SNF may be increased if the provider can show that it incurred higher costs for one of the reasons set forth in the regulations, including the provision of atypical services to its residents. 42 C.F.R. §413.30(f)(1).

The regulations state that "[t]he provider's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement." 42 C.F.R. §413.30(c). CMS Pub. 15-1 §2531.1 states that:

[t]he request may be filed prior to the beginning of, during, or after the close of the affected cost reporting period. However, the request must be filed with the intermediary no later than 180 days from the date of the intermediary's notice of program reimbursement (NPR).

(emphasis in original).

The Provider was represented by Jeffery R. Bates, Esquire, and Martha E. Stulman, Esquire, of

Foley & Lardner. The Intermediary was represented by Brook F. McClurg, CPA, of the Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider contends that the 180th day in this case was a Saturday. The Provider's RCL exception request was postmarked on the next business day following the 180th day. The Medicare statute specifically provides that where a time period ends on a Saturday, Sunday or legal holiday, the time period is extended to the next business day. 42 U.S.C. §§416(j) and 1395ii. The CMS Administrator has recognized the applicability of this rule to Medicare filing deadlines in a number of reported decisions. Accordingly, the Intermediary's denial of the RCL exception request is erroneous and should be reversed.

The Intermediary contends that the request had to be postmarked to the Intermediary no later than March 27, 1999 in order to be timely. The fact that this date happened to fall on a Saturday does not automatically provide an extension to the next working day. The U.S. Post Office is open on Saturdays and the request could have been mailed on that date. The Provider was allowed adequate time to file its request prior to the due date, and the Intermediary is already allowing leniency by accepting SNF exception requests based on the postmark dates rather than requiring actual receipt by the Intermediary on the due date. Further leniency would not be appropriate.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and guidelines, the parties' contentions, and evidence presented, finds and concludes as follows:

The Board notes that the facts in this case are not in dispute. The NPR was issued on September 28, 1998, and under the regulations for exception requests, the Provider was obligated to file its request with the Intermediary no later than 180 days of the date on the NPR. See 42 C.F.R. §413.30(c). The 180th day following the issuance of the NPR was March 27, 1999, a Saturday. The Provider mailed its request on Monday, March 29, 1999, the next business day. The only issue in this case is whether the filing deadline was extended because the 180th day was a Saturday.

Section 1395ii of the Medicare statute provides that the provisions of Section 216(j) of Title II of the Social Security Act "shall also apply with respect to this title to the same extent as they are applicable to Title II." 42 U.S.C. §1395ii. Section 216(j) of the Social Security Act specifically provides that:

"[w]here this title, any provision of another law of the United States . . . relating to or changing the effect of this title or any regulation . . . pursuant thereto provides for a period within which an act is required to be done which affects . . . the amount of any benefit or payment under this title or is necessary

to establish or protect any rights under this title, and such period ends on a Saturday, Sunday, or legal holiday, . . . then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday.”

42 U.S.C. §416(j).

Thus, under the Medicare statute, the deadline for postmarking of the Provider’s RCL exception request was automatically extended until March 29, 1999, the first business day after the 180th day which fell on a Saturday. In light of these statutory provisions, the Board finds that the Intermediary’s denial of the Provider’s RCL exception request because it was not timely filed was improper.

DECISION AND ORDER:

The Intermediary’s denial of the Provider’s RCL exception request because it was not timely filed was improper. The Provider’s RCL exception request is remanded to the Intermediary to be considered on its merits.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary Blodgett, D.D.S.
Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, CPA
Anjali Mulchandani-West

FOR THE BOARD:

DATE: November 23, 2004

Suzanne Cochran, Esquire
Chairman