

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2005-D17**

PROVIDER –
Hamburg Health Clinic

Provider No.: 04-3816

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
TrailBlazer Health Enterprises, LLC

DATE OF HEARING -
October 18, 2004

Cost Reporting Periods Ended -
December 31, 1998 and December 31, 1999

CASE NOs.: 02-0013 and 02-0319

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ISSUE:

Was the Intermediary's adjustment to physician/owners compensation proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the proper amount of Medicare reimbursement to a provider of medical services.

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration (HCFA)) is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' 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 Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. § 1395(h), 42 C.F.R. §§ 413.20(b) and 413.24(b).

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 the proportion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 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 issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Hamburg Health Clinic (Provider) is a rural health clinic in Arkansas that provides physician and nurse practitioner services. The clinic is owned by the physician who provides professional services to the clinic's patients. On its cost reports for FYE 12/31/98 and 12/31/99, the Provider adjusted its physician compensation upward by \$70,079 and \$63,256 respectively. The adjusted amount falls within the average compensation for similarly situated physician/owners in rural Arkansas.

TrailBlazer Health Services (Intermediary) audited the cost reports for both fiscal periods. The Intermediary was unable to obtain documentation that evidenced that the provider actually paid the additional amounts to the physician/owner and disallowed the adjustments in total.

The effect of the Intermediary's adjustments is to deny reimbursement for the additional owner's compensation claimed by the Provider that relates to Medicare activity. Those reimbursement amounts are \$18,000 for FY-98 and \$19,000 for FY-99.

PARTIES' CONTENTIONS:

The Provider contends that 42 C.F.R.§413.5 and §413.102 allow reimbursement based upon a reasonable allowance of compensation for the services of the physician /owner. The Provider contends further that the regulations require only that the allowance be reasonable and do not require payment of that amount or even that the amount be recorded on the books of the reporting entity.

The regulations at 42 C.F.R.§413.102 state that reasonableness may be tested and determined by reference to, or in comparison with, physician compensation of comparable institutions. The Provider asserts that the amounts claimed on the cost report satisfy the test of reasonableness contained in the regulation and, in support, offers an analysis of owner's compensation that it performed on twenty similarly situated facilities in Arkansas. The study included cost reports filed by these facilities for periods that ended from August, 1998, through June, 2000, and indicated that the average compensation for physician/owners in rural Arkansas was approximately \$180,000 in FY-98 and FY-99. The adjusted amounts claimed by the Provider fall below that mean and, accordingly, the Provider claims compliance with the regulation's comparison based test of reasonableness.

The Intermediary does not dispute the existence or validity of the comparison-based test of reasonableness. However, the Intermediary argues that 42 C.F.R.§413.24 and Provider Reimbursement Manual (PRM) 15-1, Section 2921.5 require providers to maintain adequate documentation to support claims for reimbursement. During the audit, the Provider produced no evidence to support that any additional compensation was paid to the physician/owner. Absent such support, there is no basis upon which to identify the costs actually incurred by the Provider and any test of reasonableness is premature.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board disagrees with the Provider's contention that the regulations do not require that allowances for owner's compensation must be paid. 42 C.F.R.§413.102 defines compensation that may be claimed as allowable costs as follows:

Compensation means the total benefit received by the owner for the services he furnishes to the institution.

The section includes an itemized listing of those compensation elements, which, if paid by the institution, are includable in allowable cost. To be allowable, the amount claimed must have been paid by the provider. Further, 42 C.F.R.§413.24 requires providers to maintain adequate documentation to support claims for reimbursement. In this case, the Provider produced no documentation to support that the adjustments to compensation claimed on the cost reports were ever paid to the owner as required by 42 C.F.R.§413.102. Consequently, the Board finds that the collective requirements of 42 C.F.R.§413.24 and 42 C.F.R.§413.102 prohibit the recognition of

adjustments to owner's compensation as allowable cost if those adjustments are unsupported by documentation that demonstrates an actual transfer of funds to the owner.

DECISION AND ORDER:

The adjustments to owner's compensation claimed by the Provider are not supported by documentation that demonstrates the amounts claimed were ever paid. The Intermediary properly disallowed those adjustments.

The Intermediary's adjustments are affirmed.

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

DATE: January 6, 2005

Suzanne Cochran, Esq.