

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2006-D28**

PROVIDER -
 Provena St. Joseph Medical Center
 Joliet, Illinois
 Provena United Samaritans Medical Center
 Danville, Illinois
 Provider Nos: 14-0007 and 14-0093

vs.

INTERMEDIARY -
 BlueCross BlueShield Association/
 AdminaStar Federal Illinois

DATE OF HEARING –
 February 9, 2006

Cost Reporting Period Ended –
 December 31, 2001

CASE NOS.: 04-0783 and 04-0819

INDEX

	Page No.
Issue.....	2
Medicare Statutory and Regulatory Background.....	2
Statement of the Case and Procedural History.....	3
Parties' Contentions.....	3
Findings of Fact, Conclusions of Law and Discussion.....	4
Decision and Order.....	5

ISSUE:

1. Whether the Intermediary's adjustment to school of nursing costs was based upon a proper application of the effective date articulated in Section 6205(a)(2) of the Omnibus Budget Reconciliation Act of 1989.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due 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.

The operating costs of inpatient hospital services are reimbursed by Medicare primarily through the Prospective Payment System (PPS). See 42 U.S.C. §1395ww(d). The regulations governing PPS require a provider of inpatient hospital services to file an annual cost report with a "fiscal intermediary." 42 C.F.R. §413.20(b). The fiscal intermediary -- typically an insurance company that acts as the Secretary's agent -- reviews the cost report and makes a final determination of the total amount of payment owed by Medicare to the provider for that fiscal year. The total amount of reimbursement due the provider is set forth by the intermediary in a Notice of Program Reimbursement ("NPR"). See 42 C.F.R. §405.1803. A provider that is dissatisfied with the amount of total program reimbursement due the provider as set forth in the NPR may timely request a hearing before the Provider Reimbursement Review Board (Board), an administrative body composed of five members appointed by the Secretary. See 42 U.S.C. § 1395oo(a) and (h).

The provider may seek judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or Secretary is received. See [42 U.S.C. § 1395oo\(f\)\(1\)](#).

The Omnibus Budget Reconciliation Act of 1989¹ (OBRA-89) and the Omnibus Budget Reconciliation Act of 1990² revised the nursing and allied health education cost regulations. Section 6205(a) of OBRA-89 created a temporary category of “hospital-based nursing schools” and directed that costs incurred by a hospital in training students of a hospital-based nursing school should be reimbursed as reasonable costs under Title XVIII of the Social Security Act. Section 6205(a)(2) of OBRA-89 made the category effective for cost reporting periods beginning on or after December 19, 1989 and on or before the date the Secretary issues a final rule for the payment of costs of approved nursing and allied health education programs. After that period, costs of the nursing program would be subject to the revised standards for participation articulated at 42 C.F.R. §413.85. The proposed rule was issued on September 22, 1992, and the final rule was issued on January 12, 2001. The effective date of the final rule was May 14, 2001 (after a 60-day delay in implementation). The issue in this appeal involves the interpretation and application of Section 6205(a)(2).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Provena St. Joseph Medical Center and Provena United Samaritans Medical Center (Providers) are academic medical centers located in Joliet and Danville, Illinois, respectively. Both centers have/had long standing relationships with local universities to conduct their respective nursing programs, and both received Medicare reimbursement for the clinical and classroom instruction provided to their students. The Providers claimed reasonable cost reimbursement for the entire cost reporting period beginning on January 1, 2001 and ending on December 31, 2001. AdminaStar Federal (Intermediary) reviewed the cost report and disallowed the costs claimed from the effective date of the revision to the close of the reporting period, i.e., from May 14, 2001 to December 31, 2001. The Providers do not dispute that, for reporting periods beginning on or after May 14, 2001, they do not meet the requirements to continue receiving Medicare reimbursement for the reasonable cost of their respective nursing schools. The issue in this dispute involves the correct interpretation and application of the effective date to cost reporting periods beginning before May 14, 2001.

PARTIES’ CONTENTIONS:

The Providers challenge the Intermediary’s adjustments and contend that the final rule published on January 12, 2001 imposes an effective date for application of the revised standards at 42 C.F.R. §413.85 to cost reporting periods beginning on or after May 14, 2001. The Providers argue that the first rule implementing OBRA-89 Section 6205³

¹ Public Law 101-239

² Public Law 101-508

³ 55 FR 15159, dated April 20, 1990.

states the effective date to be cost reporting periods beginning on or after December 19, 1989, and on or before the issuance of a final rule as required by section 6205(b)(2)(A) of Public Law 101-239. Since the final rule that established the May 14, 2001 effective date completes the full implementation of Section 6205, the effective date must be for cost reporting periods beginning on or after May 14, 2001. The Providers further argue that, since their cost reporting period began before the May 14, 2001 effective date (i.e., January 1, 2001), they should be reimbursed their cost for the entire cost reporting period.

The Intermediary argues that the final rule which published the new regulations did not qualify the terms of the effective dates and argues that CMS would have followed its established disclosure practices and explained in the text if the date was not a stand alone date. The Intermediary further contends that CMS' program guidance⁴ states that the effective date of the rule is May 14, 2001. Specifically, the guidance states that "for portions of cost reporting periods occurring on or after January 1, 2001, a hospital that operates a nursing or allied health education program in accordance with 42 C.F.R. §413.85 . . . may receive an additional payment if it meets the following three conditions." The Intermediary argues that the guidance makes clear that the effective date of the final rule is May 14, 2001, and that it will impact a portion of Providers' cost reporting year in 2001. In addition, the Intermediary argues that case law does not limit the regulation to cost reporting periods beginning on or after May 14, 2001. In a decision addressing the final rule,⁵ the Administrator stated that 42 CFR §413.85 had been modified effective May 14, 2001 and made no mention of cost reporting periods beginning on or after the effective date.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of Medicare law and guidelines, the parties' contentions and the evidence available in the record, finds and concludes that the Intermediary's adjustments were improper.

The question before the Board is the proper application of the effective date for the implementation of the requirements of Section 6205(a) of OBRA-89. To determine those requirements, the Board examined the language of the section in its entirety as well as the implementing rules and regulations promulgated by CMS. The Board's review indicated that Section 6205(a)(2) established the effective date for recognition of reasonable costs incurred by "hospital based nursing schools" as follows:

Paragraph (1)(A) shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A).

⁴ CMS Program Memorandum, Transmittal No. A-03-043, dated May 23, 2003.

⁵ *Baptist Memorial Center v. Blue Cross and Blue Shield of Arkansas*, CMS Administrator Decision, FN.22, June 7, 2001.

The statute clearly requires application of the effective date to cost reporting periods beginning on or before May 14, 2001. The Board concludes that Section 6205(a)(2) applies to cost reporting periods beginning on or after December 19, 1989 (the date of enactment of OBRA-89) and on or before May 14, 2001. The Providers' cost reporting period began before May 14, 2001, and, accordingly, the Board finds that the entire cost reporting period is subject to the reasonable cost reimbursement principles in place prior to the revisions to 42 C.F.R. §413.85 that became effective on May 14, 2001. Given the language of the statute, the regulation must be read in a manner consistent with that language.

DECISION AND ORDER:

The Intermediary's adjustments to hospital-based school of nursing costs was based upon an improper application of the effective date articulated in Section 6205(a)(2) of OBRA-89. The Providers' entire cost reporting period is subject to the reasonable cost reimbursement principles in place prior to the revision to 42 C.F.R. §413.85 that became effective on May 14, 2001.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.
Yvette C. Hayes
Anjali Mulchandani-West

FOR THE BOARD:

DATE: June 5, 2006

Suzanne Cochran, Esquire
Chairperson