

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2007-D58**

PROVIDER -
MetroWest Medical Center
Framingham and Natick, MA

Provider No.: 22-0089

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
Associated Hospital Services (n/k/a
National Government Services-Maine)

DATE OF HEARING -
February 23, 2007

Cost Reporting Period Ended -
April 30, 1996

CASE NO.: 03-0759

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ISSUE:

Whether the Provider's Notice of Program Reimbursement (NPR) dated September 24, 2002 was an original or a revised NPR.

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. §1395h, 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 portion 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 regulations also provide that the Intermediary's final determination can be reopened within three years of the date of the determination. 42 C.F.R. §405.1885.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

MetroWest Medical Center (Provider) was a multiple – campus healthcare facility located in Framingham and Natick, Massachusetts. The facility consisted of two acute care hospitals, a nursing home, an assisted living facility and a visiting nurse association. On April 30, 1996, the Provider sold its assets to Columbia Hospital Corporation of America. It filed a terminating cost report for the fiscal period ended April 30, 1996. The following is a chronology of dates and actions by the Provider and Associated Hospital Services (Intermediary) relevant to the issuance of the NPR dated September 24, 2002.

- (1) On October 7, 1996, the Provider filed its terminating cost report for fiscal year ended April 30, 1996.¹

¹ See, Intermediary Exhibit I-3.

- (2) On November 6, 1996, the Intermediary issued a Notice of Preliminary Settlement² to the Provider. This notice stated that as a result of its desk review of the Provider's submitted cost report, \$3,828,260 was due to the Provider.
- (3) On June 5, 2001, the Intermediary notified the Provider of its intent to perform a limited review (audit) of its April 30, 1996, cost report.³
- (4) On July 30, 2001, the Intermediary held an entrance conference onsite with the Provider.⁴
- (5) On April 12, 2002, the Intermediary issued its audit adjustment report to the Provider.⁵
- (6) On July 10, 2002, the Intermediary conducted an exit conference to discuss proposed audit adjustments and additional documentation needed.⁶
- (7) On September 24, 2002, the Intermediary issued the final notice of amount of program reimbursement.⁷ This notice stated the basis of the notice to be - - "final settlement with audit." It included audit adjustments and stated that \$3,493,011 of reimbursement was due to the Medicare Program. It also notified the Provider of its appeal rights.
- (8) On November 6, 2002, the Intermediary issued a Notice of Reopening⁸ of the Provider's cost report ended April 30, 1996. The reopening was to: (1) include Part B HHA visits and (2) correct a Part B HHA Interim Payment input error. The Intermediary also issued a Notice of Revised Settlement Determination on the same date.
- (9) On March 7, 2003, the Provider submitted a request for hearing⁹ regarding the NPRs dated September 24, 2002 and November 6, 2002.
- (10) On July 16, 2004, the Provider filed a Motion for Summary Judgment¹⁰ with the Board. The motion asserted that since the Intermediary never issued any notice of reopening regarding the November 6, 1996 Notice of Preliminary Settlement within three years of the 1996 Notice, or at any other time, the Intermediary was barred by Medicare regulations from issuing any further Notices of Program Reimbursement.

² See Intermediary Exhibit I-6.

³ See Intermediary Exhibit I-7.

⁴ See Intermediary Exhibit I-8.

⁵ See Intermediary Exhibit I-9.

⁶ See Intermediary Exhibit I-10.

⁷ See Intermediary Exhibit I-11.

⁸ See Intermediary Exhibit I-12.

⁹ See Intermediary Exhibit I-13.

¹⁰ See Intermediary Exhibit I-1.

(10) On July 26, 2004, the Board issued an order¹¹ denying the Provider's motion for summary judgment and ordered both parties to submit briefs and evidence.

The Provider's appeal met the jurisdictional requirements of 42 C.F.R. §§405.1835-405.1841. The Provider was represented by Carolyn Jacoby Gabbay, Esquire, of Nixon Peabody, LLP. The Intermediary was represented by Arthur E. Peabody, Jr., Esquire, of Blue Cross Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and program instructions, the parties' contentions and the evidence submitted, the Board finds and concludes that the Intermediary properly issued its original final NPR on September 24, 2002. The Board finds no support for the Provider's arguments that the Notice of Preliminary Settlement issued on November 6, 1996 was the de facto NPR.

The Provider argues that if the Intermediary wished to reopen that "NPR," it was required by Medicare regulations to reopen it within three years from November 6, 1996. Thus, it argues that the "final" NPR, which was issued by the Intermediary on September 24, 2002, should have been deemed null and void because it was issued more than three years after the issuance of the "original" NPR. The Intermediary counters that its November 6, 1996 issuance was a tentative settlement, not a final determination, as the Notice of Preliminary Settlement was clearly marked as "preliminary," and it did not include the information required in an NPR as defined in 42 C.F.R. §405.1803 and CMS Pub. 15-1 §2906.

The Board concludes that the November 6, 1996 Notice of Preliminary Settlement was exactly that: preliminary and tentative. The Provider's effort to treat this notice as final and subject to the three-year reopening provisions of 42 C.F.R. §405.1885(a) is baseless. That regulation specifically allows reopenings within three years of the date of the notice of intermediary determination. Clearly, the Intermediary's preliminary notice was not a final notice to which the above regulation applies. 42 C.F.R. §413.64(f)(2) requires that a final liability be determined and a final adjustment be made. The Notice of Preliminary Settlement made by the Intermediary expressly indicates that this "preliminary settlement [was] subject to [a] final determination." Moreover, it did not contain a notice of appeal rights, as required by 42 C.F.R. 405.1803 to be considered an NPR.¹²

The Provider also argues that the September 24, 2002 and November 6, 2002 NPRs were null and void because the Intermediary did not issue a notice of reopening or a final NPR within twelve months of its receipt of the Provider's Medicare cost report. The Board finds that nothing in Medicare law or program instructions precludes the Intermediary

¹¹ See Intermediary Exhibit I-2.

¹² See Provider's Hearing Exhibits. Exhibits P-26 at MW000128, MW000132, MW000139, and MW000142.

from issuing the final NPR over six years from the date the cost report was filed.¹³ The Intermediary gave the Provider “notice” that it had received its Medicare cost report, performed a desk review, and issued a tentative settlement. This tentative settlement was completed by the Intermediary within approximately one month of receipt of the cost report.

The Board observes that there was an inordinate amount of time between the Intermediary’s Preliminary Notice (November 6, 1996) and its notice that a limited scope audit would be performed (June 5, 2001). However, the Board notes that the submitted cost report was a terminating cost report and included costs resulting from a change of ownership. This type of cost report requires a significant amount of information to be analyzed and the related audit can be complex and extensive. Based upon these facts, the Board finds the time gap extraordinary but not contrary to program requirements.

DECISION AND ORDER:

The Intermediary’s NPR dated September 24, 2002 was a final NPR subject to Board appeal and review. The issuance of that NPR was not a reopening of the Intermediary’s preliminary settlement and did not exceed the three-year reopening provision of 42 C.F.R. §405.1885(a).

BOARD MEMBERS PARTICIPATING:

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

DATE: August 8, 2007

FOR THE BOARD:

Suzanne Cochran
Chairperson

¹³ The regulation provides that a provider has a right to a hearing if the Intermediary’s determination is not rendered within 12-months of the Provider’s filing its cost report. However, there is nothing in the regulation to indicate that an intermediary’s tentative settlement within that period will be “deemed” final.