

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2008-D6

PROVIDER –
Queen of the Valley Hospital
West Covina, CA

Provider No.: 05-0369

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
National Government Services, LLC - CA

DATE OF HEARING –
December 13, 2006

Cost Reporting Period Ended -
December 31, 1996

CASE NO.: 99-3140

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ISSUE:

Whether the Intermediary improperly allowed 0.54 intern and resident full time equivalent (FTE) for indirect medical education (IME) purposes on the Provider's fiscal year ended December 31, 1996 Medicare cost report.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This 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 the 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.

Under the Prospective Payment System (PPS), Medicare provides for an additional payment, known as the indirect medical education (IME) adjustment, for those hospitals involved in training residents. 42 C.F.R. §412.105(g)(1)(ii) sets forth the criteria for counting full-time equivalent residents for costs reporting periods beginning on or after July 1, 1991. It states in relevant part:

- (ii) In order to be counted, the resident must be assigned to one of the following areas:
 - (A) The portion of the hospital subject to the prospective payment system.
 - (B) The outpatient department of the hospital.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Queen of The Valley Hospital (Provider) is a 325-bed general service acute care hospital located in West Covina, California. In years prior to FYE December 31, 1996, the Provider had a fully executed affiliation agreement with the University of California at Irvine (UCI) to help train residents in UCI's pediatric residency program.¹ The Agreement at Exhibit I-3 terminated on June 30, 1995, and although an extension was signed by the Provider and Magan Clinic, it was not signed by UCI.² Therefore, the extension was not fully executed, and the Agreement was not renewed.

Through audit adjustment numbers 5 and 36, National Government Services³ (the Intermediary) eliminated all GME reimbursement for a total of 1.00 FTE claimed for direct graduate medical education (DGME) and IME purposes. The Intermediary stated on the adjustment report and in its workpapers that the Provider did not have an approved GME program.⁴ However, the Intermediary, through audit adjustment number 4, allowed 0.54 FTE for IME purposes. The Provider timely added the issue of whether audit adjustment number 4 is proper to this case by letter to the Board dated August 23, 2005.

The Provider met the jurisdictional requirements of 42 C.F.R. §§405.1835-405.1841. The Provider was represented by Jon P. Neustadter, Esquire, of Hooper, Lundy & Bookman, Inc. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that despite one erroneous and confusing rotation schedule and the resident evaluation forms,⁵ it has discovered that it did not train residents during 1996. The Provider contends that the evidence demonstrates overwhelmingly that no residents were on rotation at or assigned to the Provider during FYE 12/31/96. Moreover, even if any UCI Pediatric Program residents were physically located within the Provider during FYE 1996, such residents were not on official rotations or otherwise assigned to any department of the Provider. Finally, even if there were residents assigned to the Provider or on rotation at the Provider, they would not have been a part of an approved residency program given that the Provider was not an approved training site in 1996 for the UCI Pediatric Program.

As support for the notion that the proper IME (and DGME) FTE count is 0.00, the Provider submitted four declarations and related testimony at the hearing.⁶ In Exhibit 1 to Exhibit PS-3, the Provider submitted the declaration of Dr. Michael Whiting, who was on the Provider's Medical Executive Committee during 1996, representing the

¹ See, Exhibit I-2 (FYE 12/31/95 cost report) and Exhibit I-3.

² See, Exhibits I-3; Provider's Supplemental (PS) Exhibit PS-1.

³ Recently, the Intermediary changed its name from United Government Services to National Government Services.

⁴ See, Exhibit I-1; Exhibit I-5.

⁵ See, Exhibit PS-8.

⁶ See, Exhibits PS-3 and PS-4.

Department of Pediatrics. During 1996, Dr. Whiting was also the Director of that part of the UCI pediatric residency program that involved community outreach elective rotations. Dr. Whiting declared that, during FYE 12/31/96, the pediatric residents at issue did not rotate to the Provider, but instead, were on rotations at physician offices or freestanding clinics.⁷

At the hearing, Dr. Whiting reiterated that residents were not rotating to the Provider during 1996 even though they may have been on call at the Provider and providing some limited patient care services at the Provider in prior years.⁸ He also discussed the confusion over the name of the elective notations and the use of the term “Queen of the Valley (QoV),” explaining that the name of the rotation erroneously continued to reference “QoV” even though, by 1996, the rotation only included Magan Clinic.⁹

The Provider also submitted the declaration of Dr. Ira Lott, who was the Chair of UCI’s Pediatrics Department during 1996. Dr. Lott explained that UCI would have considered Magan Clinic and the Provider to be the same entity, and that would explain why a Magan Clinic rotation would be listed as “QoV” on the rotation schedule.¹⁰ Dr. Lott further indicated that these “QoV” references were, in fact, meant to reflect elective rotations to Magan Clinic.¹¹ At the hearing, Dr. Lott testified that although residents might have followed Dr. Whiting on his rounds at the Provider, the rotation at issue was “a Magan clinic rotation.”¹² Several witnesses explained that following Dr. Whiting on his rounds at the Provider is not considered a hospital rotation.¹³

Additionally, the Provider submitted the declaration of Kathleen Van Allen, who was the Assistant Director of Nursing for Pediatrics at the Provider during 1996. Ms. Van Allen declared that the pediatric residents at issue were not on a rotation assignment at the Provider.¹⁴ Instead, these residents were, at most, following Dr. Whiting on his hospital rounds of the patients of a freestanding clinic.¹⁵ According to Ms. Van Allen, these residents were rotating to the freestanding, nonhospital community clinic known as Magan Medical Clinic.¹⁶ At the hearing, she testified, consistent with the other witnesses, that she was not aware of any rotations of UCI pediatric residents to the Provider, but instead, she understood that these residents rotated to Magan Clinic.¹⁷ Ms. Van Allen also testified that she was unaware of any residents who would have had privileges at the Provider in 1996.¹⁸

⁷ See, Whiting Decl. ¶9 (Exhibit 1 to Exhibit PS-3).

⁸ Tr. at 104, 114-115, 119-120, and 123.

⁹ Tr. at 118-120.

¹⁰ Lott Decl. ¶¶6-8 (Exhibit PS-4).

¹¹ Lott Decl. ¶8 (Exhibit PS-4).

¹² Tr. at 32.

¹³ Tr. at 37; Tr. at 105-107; Tr. at 133-134; and Tr. at 146.

¹⁴ See Van Allen Decl. ¶¶ 8, 9 (Exhibit 2 to Exhibit PS-3).

¹⁵ See Van Allen Decl. ¶ 7 (Exhibit 2 to Exhibit PS-3).

¹⁶ See Van Allen Decl. ¶¶ 6 to 8 (Exhibit 2 to Exhibit PS-3).

¹⁷ Tr. at 132.

¹⁸ Tr. at 140.

Cynthia Almaraz, who had been the Medical Staff Coordinator at the Provider from FYE 12/31/91 through at least 2006, declared that the UCI pediatric residents had temporary staff privileges at the Provider in 1994, but that no such privileges were granted in 1996.¹⁹ Both Ms. Almaraz and Ms. Van Allen declared that, in 1996, these UCI residents were not assigned to any inpatient or outpatient department of the Provider, had no authority to practice at the Provider in the capacity of a resident, and thus, were not on a rotation at the Provider.²⁰ At the hearing Ms. Almaraz explained that in 1994, the Provider did credential some UCI residents, but the Provider did not do so in 1996.²¹ She further testified that if such residents were assigned to rotate to the Provider in 1996, she would have expected the residents to be credentialed.²² Finally, Ms. Almaraz explained that the residents would have had no patient care authority at all without having been credentialed by the Provider.²³

INTERMEDIARY'S CONTENTIONS:

The Intermediary argues that the Provider claimed one (1) FTE for IME purposes on its as-filed Medicare cost report and that the Provider's own rotation schedules support the Intermediary's determination that the resident count for FYE 12/31/96 should be 0.54 FTE. Furthermore, these rotation schedules are the type routinely reviewed by intermediaries to identify a resident's training site and to verify the number of FTE residents being claimed.

The Intermediary observes that there was a fully executed, comprehensive written affiliation agreement signed by the Provider, Magan Clinic, and The Regents of the University of California on behalf of the University of California that was in effect through June 30, 1995,²⁴ and that the Renewal of the Affiliation Agreement was signed by both the Provider and Magan Clinic but not the Regents.²⁵ The Intermediary argues that the lack of the Regents' signature does not defeat the legitimacy of the Provider's claim that it was training residents during 1996. Moreover, this conclusion is supported by the fact that the Provider completed the IRIS (Interns and Residents Information System) report for the specific residents that were included in the 0.54 FTE the Intermediary allowed.²⁶ In addition, the Affiliation Agreement identified the Provider, not the Magan Clinic, as the affiliate and imposed staffing and facilities requirements on the hospital. The Intermediary avers that if the Regents had decided not to renew the Affiliation Agreement with the Provider, one would expect a new agreement to have been executed between the Magan Clinic and the Regents.

Given the passage of time, the Intermediary questions the memory of the Provider's witnesses regarding the alleged changes in the resident training program that occurred

¹⁹ See, Almaraz Decl. ¶¶ 8, 9 (Exhibit 3 to Exhibit PS-3).

²⁰ See, Van Allen Decl. ¶ 8 (exhibit 2 to Exhibit PS-3); Almaraz Decl. ¶ 10 (Exhibit 3 to Exhibit PS-3).

²¹ Tr. at 145.

²² Tr. at 145-146.

²³ Tr. at 147, ll. 5-23.

²⁴ See, Intermediary Exhibit 3.

²⁵ See, Intermediary Exhibit 4.

²⁶ Tr. at pgs. 167-168.

sometime during calendar year 1996 such that residents were no longer taking calls at the Provider, and thus concluding, that the Provider had no IME FTEs that could be allowed in 1996. In addition, the Intermediary argues that failing to locate a fully executed renewal of the Affiliation Agreement does not mean that the training program changed such that no residents were actually trained during 1996. In conclusion, the Intermediary states that not pressing the Provider for a fully executed Affiliation Agreement for the FYE at issue was a reasonable use of the auditor's discretion.²⁷

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and program instructions, the evidence and the parties' contentions, the Board finds and concludes as follows. The Board finds the written and oral testimony of the four Provider witnesses credible, and that it rebuts the original error on both the Provider's and Intermediary's part that this Provider was entitled to any IME in FYE 1996. The evidence was convincing that there were no UCI residents on rotation at, or assigned to, the Provider during 1996. The testimony rebuts the references to "QoV" (Queen of the Valley) on rotation schedules and resident evaluations signifying rotations occurring at the Provider. Instead, the evidence clarified that the UCI Pediatric Program residents were engaged in an elective rotation at the Magan Clinic and not at the Provider.

The Board also finds that even if UCI residents rotated to the Provider, such residents would have been operating outside of their approved residency program because Queen of the Valley was not participating in an approved residency program. Since only residents training in an approved residency program may count in the IME FTE count, there were none at the Provider in 1996 that could be included as IME FTEs. The Board also finds that the Intermediary's written agreement argument is not dispositive because Medicare IME regulations do not require an agreement. The Provider had such an agreement in 1995, but not in 1996. This fact supports the Board's decision and substantiates the Provider's testimony that the residency program changed in 1996.

DECISION AND ORDER:

The Intermediary improperly included 0.54 FTEs in the Provider's IME FTE resident count. The Intermediary's adjustment is reversed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West, C.P.A.
Yvette C. Hayes

²⁷ Tr. pg. 176.

FOR THE BOARD:

DATE: November 2, 2007

Suzanne Cochran
Chairperson