

**PROVIDER REIMBURSEMENT REVIEW BOARD  
DECISION  
ON THE RECORD  
2008-D25**

**PROVIDER –**  
University of California,  
Davis Medical Center  
Sacramento, California

Provider No.: 05-0599

**vs.**

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

**DATE OF HEARING –**  
January 9, 2008

Cost Reporting Period Ended -  
June 30, 1992

**CASE NO.:** 05-1788

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ISSUE:

Whether the Intermediary can make an adjustment to the Provider's Medicare cost report more than three years after the original Notice of Program Reimbursement date.

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.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The University of California (UC) Davis Medical Center (Provider) is a general short-term hospital located in Sacramento, California. The following is a chronology of facts relevant to the issue in dispute.

On October 1, 1992, the Provider filed its Medicare cost report for the cost reporting period ended June 30, 1992. The Provider's original NPR was issued on September 9, 1994.<sup>1</sup>

On December 16, 1996, the Intermediary reopened the cost report and issued a revised NPR to revise the Disproportionate Share Hospital (DSH) calculation. The revised NPR was appealed to the Board on June 12, 1997.<sup>2</sup>

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<sup>1</sup> See Provider Exhibit P-2.

<sup>2</sup> See Provider Exhibit P-4.

On March 6, 2001, the Intermediary issued a revised NPR “to revise settlement data based on the updated PSR<sup>3</sup> run of 5/19/00.”<sup>4</sup> The revised NPR indicated that the Notice of Reopening for this revised NPR was issued on January 4, 2001. The Intermediary updated various aspects of Medicare settlement data but did not revise the Medicare Inpatient Part A total interim payment at issue in this case.

The Provider filed an appeal of the March 6, 2001 revised NPR on August 13, 2001,<sup>5</sup> charging that while the Intermediary updated the Medicare settlement data using a recent PS&R report, it had failed to implement an adjustment to the Provider’s DSH and the indirect medical education (IME) calculations that occurred as a result of DRG payment revisions. On August 20, 2001, this appeal was incorporated into case number 97-2438,<sup>6</sup> the appeal from the December 19, 1996 revised NPR.<sup>7</sup>

Case number 97-2438 was administratively resolved on November 3, 2004. The issues that were resolved were: (1) DSH payments; (2) Medicare Settlement Data-IME payments; and (3) the 5.8% Inpatient Part B Reduction Factor.<sup>8</sup>

The Intermediary issued a revised NPR implementing the administrative resolution on January 6, 2005.<sup>9</sup> It contained a notation that “[t]he attached ‘Revised Adjustment Report’ incorporates the appeal decision” for case number 97-2438. However, it included an additional new adjustment that increased Medicare Inpatient Part A interim payments by \$837,600 which was not part of the administrative resolution. The Provider filed an appeal of this NPR challenging the Intermediary’s adjustment to interim payments made more than three years beyond the original NPR date of September 9, 1994 and/or the revised NPR date of March 6, 2001.

The Provider is represented by Glen S. Bunting, Vice President – Appeal Services, of Toyon Associates, Inc. The Intermediary is represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

#### PARTIES’ CONTENTIONS:

The Provider contends that the Intermediary’s adjustment of the Provider’s interim payments violates 42 C.F.R. §405.1885. That regulation allows reopening of an NPR within three years from the date of the original or revised NPR. The reopening of a revised NPR is limited to adjustments in that NPR. The Provider asserts that the Intermediary never issued a notice of intent to reopen the cost report before the September 9, 1997 expiration date for reopening, and the Intermediary failed to issue a revised NPR within the mandatory three year time allowed under 42 C.F.R. §405.1885.

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<sup>3</sup> Provider Statistical and Reimbursement Report.

<sup>4</sup> See Provider Exhibit P-6.

<sup>5</sup> See Provider Exhibit P-7.

<sup>6</sup> See Provider Exhibit P-8.

<sup>7</sup> See Provider Exhibit P-5.

<sup>8</sup> See Provider Exhibit P-9.

<sup>9</sup> See Provider Exhibit P-10.

Finally, the Provider asserts that the Intermediary never made an adjustment to Medicare Inpatient Part A interim payments in any cost report until January 6, 2005.

The Intermediary's only contention is that it rests on its argument that the Board does not have jurisdiction over this issue.

#### FINDINGS OF FACT, CONCLUSION OF LAW AND DISCUSSION:

The Board, after considering the facts, parties' contentions and evidence submitted finds and concludes that the Intermediary improperly adjusted the Provider's FYE June 30, 1992 Medicare cost report. The Intermediary rested its case based on its contention that the Board does not have jurisdiction in this case. On November 7, 2007, the Board notified both parties that it does have jurisdiction over the appeal under the provisions of 42 U.S.C. §1395oo(a) and 42 C.F.R. §405.1835 through §405.1841 and §405.1889. It found that the issue in dispute is not recoupment of an overpayment as the Intermediary asserts. Rather, it is a timely filed appeal of a revised NPR which adjusted the reimbursement in dispute. The Board's rationale for accepting jurisdiction is further supported by the CMS Administrator's decision in Charlotte Memorial Hospital and Medical Center v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of North Carolina, PRRB Dec. No. 99-D29 March 18, 1999, Medicare & Medicaid Guide (CCH) ¶80,164, rev'd. and rem'd. HCFA Admin., May 17, 1999, Medicare & Medicaid Guide (CCH) ¶80,305. In that case, the Board ruled that it did not have jurisdiction because the case involved an overpayment. The Administrator vacated the Board decision and said that overpayment issues are subject to Board review.

The Board finds that the facts in this case do not support the Intermediary's adjustment to recoup Medicare Part A interim payments of \$837,600 as part of its January 6, 2005 NPR issued to incorporate the administrative resolution of PRRB Case No. 97-2438. The adjustment at issue had nothing to do with the items in dispute in that appeal. It is undisputed that the Intermediary's error in recording interim payments was made in the original NPR.<sup>10</sup> The normal reopening procedures apply to this interim payment adjustment which under 42 C.F.R. §405.1885 allows a reopening of an NPR within three years from the date of the NPR. Since the original NPR was issued on September 9, 1994, the Intermediary had until September 9, 1997, to issue a revised NPR or a notice of reopening to correct the interim payment error. The Board finds no evidence that a reopening notice was issued regarding this issue. The evidence shows that a revised NPR was issued on January 6, 2005, well after the three-year reopening period had expired.

CMS Pub. 15-1 §2930 entitled "Finality" introducing the section that contains the three year reopening limit states, "It is in the interest of providers and the program that, at some point, intermediary determinations and the resulting amount of program payment due the provider or the program become no longer open to correction." The only exception to this finality is when "fraud or similar fault" is found. 42 C.F.R. §1885(d). Fraud or similar fault has not been alleged in this case

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<sup>10</sup> Intermediary's Final Position Paper, Page 5, under "Facts."

DECISION AND ORDER:

The Intermediary's adjustment of the Provider's Medicare Inpatient Part A interim payments made as part of the January 6, 2005 revised NPR was improper. The Intermediary's adjustment is reversed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire  
Elaine Crews Powell, C.P.A.  
Yvette C. Hayes  
Michael D. Richards, C.P.A.

FOR THE BOARD:

Suzanne Cochran, Esquire  
Chairperson

DATE: April 17, 2008