

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2008-D27

PROVIDER –
Oswego Medical Center
Oswego, Kansas

Provider No.: 17-1302

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
Wheatlands Administrative Services

DATE OF HEARING –
July 18, 2007

Cost Reporting Period Ended -
December 31, 2002

CASE NO.: 05-1219

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ISSUE:

Was the Intermediary's adjustment to the Provider's claimed owner's compensation proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the proper 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 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:

Oswego Medical Center (Provider) is a 12-bed Critical Access Hospital located in Oswego, Kansas. Hospital Management Consulting, LLC (HMC) purchased the facility on June 1, 2002, accordingly, the Provider filed a cost report for the seven-month period from June 1, 2002 through December 31, 2002. During the period the Provider was licensed for 12 beds and incurred very low utilization (60 Medicare acute care patient days and 90 Medicare skilled swing bed days).¹

HMC consisted of seven partners providing healthcare financial management services to both the Provider and other nursing facilities and hospitals. During the seven-month cost reporting period, the Provider reported that it paid HMC \$90,000 in management fees, and it claimed an additional \$11,812 for other administrative and general costs for three of the

¹ Provider Exhibit P-22 at 1 and 2.

partners who shared in the administration of the hospital.² Wheatlands Administrative Services (Intermediary) utilized a compensation survey from 1988 to adjust the salary to \$28,649. This amount was based upon the survey's 1988 low range of hospitals with less than 25 beds plus an inflation index to update such figure to 2002.³ The Intermediary also made an associated adjustment to pooled costs and benefits utilizing the \$28,649 figure.⁴

The Provider appealed the Intermediary's disallowance to the Board and met the jurisdictional requirements of 42 C.F.R. §§405.1835-405.1841.

The Provider was represented by Dennis L. Davis, Esq. of Stinson, Morrison and Hecker, LLP. The Intermediary was represented by Bernard M. Talbert, Esquire, Associate Counsel, Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

At the hearing, the Intermediary explained that it reevaluated its original position and it now believes that the higher end of the 1988 survey should be used to compute allowable owner's compensation. The Intermediary also noted that when the adjustment was originally made, it did not account for the fact that the Provider was only operational for seven out of twelve months during the year. The Intermediary contends that prorating the survey results from a twelve to a seven-month period results in a net outcome close to the original adjustment.⁵

The Provider presented a 2002 Kansas Hospital Association Executive Salary Survey (KHA salary survey)⁶ as its basis for compensation. The Provider contended that the 1988 CMS survey was outdated and has no relationship to current fair market value of the services provided by its owners. Additionally, the Provider contended that because these owners/partners were highly qualified (in areas such as nursing, productivity, policy, quality assurance and computers) the higher end of the KHA salary survey should be utilized to support a figure of \$65,379, as opposed to the \$28,649 figure that the Intermediary used. The Provider noted that under the Intermediary's original adjustment, the Provider's average hourly pay rate for an owner/administrator was lower than the rate for entry-level registered nurses, the Business Office Manager and the Radiology Technician. The Provider referenced Bureau of Labor Statistics (BLS) to further validate its claim.⁷ The Provider also contended that the Intermediary's attempt to change its position at the hearing without any prior notice to the Board or to the Provider violated due process, and the Board should exclude evidence relating to the new position.

² See, Transcript (Tr.) 19.

³ Intermediary Exhibit I-7 at 2 and 3

⁴ Intermediary Exhibit I-5 at 1 and 5.

⁵ See, Tr. 10-15.

⁶ Provider Exhibit P-10.

⁷ See, Provider's Post Hearing Brief, pg. 2 where the Provider states that the BLS' median annual earnings of medical and health services managers were \$61,370 in 2002. The middle 50 percent earned between \$47,910 and \$80,150.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After consideration of Medicare law and guidelines, the parties' arguments and the evidence, the Board finds and concludes as follows:

The regulation at [42 C.F.R. §413.102](#) entitled Compensation of owners, states in relevant part:

(a) Principle

A reasonable allowance of compensation of owners is an allowable cost provided that the services are actually performed in a necessary function.

(b) (2) Reasonableness

Reasonableness requires that the compensation allowance –

- (i) Be such an amount as would ordinarily be paid for comparable services by comparable institutions; and
- (ii) Depend upon the facts and circumstances of each case.

Program instructions at CMS Pub. 15-1 §904, entitled Criteria for Determining Reasonable Compensation provides criteria in determining reasonable compensation amounts. Specifically, subsection 904.1 indicates that the factors to be considered in determining reasonable compensation include, but are not limited to: the size of the institution, its classification by type and range of services provided, number and types of personnel employed, and geographical location.

Likewise, subsection 904.2 provides that factors used in determining the reasonableness of an owner's compensation within the range established for a class institution include: the qualifications of the owner including his/her educational attainment and experience in similar responsible positions; the number and types of professional and other personnel supervised by the owner; the duties and responsibilities of the owner and the actual services rendered; and whether the owner performs services for any other institutions or is engaged in any other occupation.

Program instructions at CMS Pub. 15-1 §905, entitled Procedures for Determining Reasonable Compensation, provide for the use of adequate surveys in determining reasonable compensation. Likewise, CMS Pub. 13-2 §2120.1, entitled Compensation of Owners: Procedures for Establishing ranges, addresses procedures that intermediaries should follow when using such surveys.

The Board finds that the KHA salary survey which the Provider principally relies upon is better evidence of the current fair market value of employees' services than the Intermediary's survey. First, the KHA salary survey is from 2002, the cost year at issue, while the base year of the Intermediary's inflation adjusted survey is 1988. The Board notes that CMS Pub. 13-2 § 2120.1 which addresses the evaluation of reasonable expenses paid to owners, recognizes the importance of utilizing current surveys and accordingly dictates that surveys be conducted at 3-year intervals. Second, as opposed to the Provider's survey, the actual source of the data comprising the 1988 survey results is unknown.⁸ Third, the Provider's witness testified that it actually used and relied upon the KHA salary survey to set salary ranges for hospital employees.⁹

The Board considered the following data in determining how to apply the KHA salary survey results to this provider. The hospital had 12 beds¹⁰ and operating expenses of about \$1,400,400 (annualized).¹¹ The survey indicates that for hospitals with total operating expenses less than \$2.5 million, the total compensation for the 25th to 75th percentiles ranged from \$47,278 to \$68,699 with a median of \$52,000. For hospitals with less than 25 beds, the total compensation for the 25th to 75th percentiles ranged from \$52,500 to \$77,500 with a median of \$67,500. Additionally, for hospitals with less than 75 employees, such percentiles ranged from \$50,000 to \$73,550 with a median of \$57,000.¹²

In evaluating reasonable compensation for the Hospital Administrator, the Board finds that utilizing the median compensation figure (\$52,000 annually), for hospitals with total operating expenses less than \$2.5 million, is appropriate for several reasons. First, the Board concurs with the Provider's witness¹³ that operating expenses is a more accurate measure than bed size for evaluating reasonable compensation. Second, this \$52,000 median figure is close to the 25th percentile of the bed size survey for providers with up to twenty-five beds (the Provider had 12 beds) of \$52,500 and the 25th percentile for hospitals with less than 75 employees of \$50,000.

As noted by the Intermediary, a seven-month cost reporting period¹⁴ is at issue, while the survey is based upon a 12-month period. Accordingly, the Board finds that \$30,333 (\$52,000 multiplied by 7/12) is the reasonable annual compensation for the Administrator for the period.

The Board also notes that adding together the claimed hours worked by Bruce Bird, Joe Lammers, and Jo Pierce equated to 1.1 full-time equivalents.¹⁵ Additionally, one of these

⁸ Provider Exhibit P-10 at 3, Tr. 93-94.

⁹ Tr. 49-50.

¹⁰ Provider Exhibit 22 at 1

¹¹ Tr. 53-54; Provider Exhibit P-22 at 5 [\$811,015/ 7mos x 12 mos = \$1,390,311]

¹² Provider Exhibit P-10 at 6.

¹³ Tr. 54-55.

¹⁴ Tr. 32-33.

¹⁵ Tr. 56-57, Intermediary Exhibit I-5.

employees acted as interim Director of Nursing (DON) until the position was filled and continued to provide guidance through the new hire's orientation.¹⁶ Using the KHA salary survey for Chief Nursing Officers for the .1 FTE (for the employee who oversaw the nursing and DON function),¹⁷ utilizing the median figure for hospitals with total operating expenses less than \$2.5 million, the Board finds that \$49,953 is the reasonable annual compensation for such position. The average hourly rate equates to \$24.02 (\$49,953/ 2080 hours). In this case this employee worked 121 hours in this position (2080 hours multiplied by 7/12 months multiplied by 10 percent). Accordingly, reasonable compensation for the DON position is \$2,906 (\$24.02 per hour multiplied by 121 hours).

Finally, the Board finds that the Intermediary's methodology of computing benefits and pooled costs is reasonable. Accordingly, using this same methodology, the Intermediary should modify the benefits and pooled cost allocation utilizing the \$30,333 as the Administrator's compensation and \$2,906 as the DON's compensation.

At the hearing, the Provider objected to new arguments made by the Intermediary in defense of its adjustments because the arguments differ from the Intermediary's final position paper. The Provider proffered that new arguments and testimony regarding those arguments are outside the scope of the position paper and should be prohibited.¹⁸ The Board, however, concludes that its findings are based upon the compensation survey submitted by the Provider. In determining the amount of reimbursement due a Medicare provider, the Board is not strictly limited to making its findings based only on the arguments put forth by the parties in their position papers.

DECISION AND ORDER:

The Intermediary's adjustment is modified. The Provider incurred reasonable compensation costs of \$30,333 for the Administrator and \$2,906 for the DON position. The Intermediary's methodology in determining the benefits and pooled cost allocation was reasonable. The Intermediary should apply the \$30,333 and \$2,906 amounts using this methodology.

BOARD MEMBERS PARTICIPATING:

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

¹⁶ Tr. 32, See, Provider's Post-Hearing Brief.

¹⁷ Provider Exhibit P-10 at 12.

¹⁸ Tr. 68-72, 84-86. See, Provider's Post-Hearing Brief at 3.

FOR THE BOARD:

Suzanne Cochran, Esquire
Chairperson

DATE: May 15, 2008