

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2012-D5**

PROVIDER –
Youngstown-Warren 02 MSA Wage Index
Group

Provider Nos.: Various

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
National Government Services, Inc.

DATE OF HEARING -
July 26, 2011

Wage Reporting Periods Ended: 2002

CASE NO.: 02-0531G

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ISSUES:

Did the Intermediary err in refusing to exclude Provider's "bonus" or "call back" hours paid from its Federal Fiscal Year (FFY) 2002 wage index calculations?

Did the Intermediary err in refusing to include salary costs for Provider's Senior Vice President of Medical and Academic Affairs (Medical Director) from its FFY 2002 wage index calculations?

Did the Intermediary err in refusing to include Provider's costs for contracted pathology services in its FFY 2002 wage index calculations?

Did the Intermediary err in refusing to include Provider's costs for contracted perfusionist services in its FFY 2002 wage index calculations?

Did the Intermediary err in refusing to include Provider's costs related to its self-insured workers' compensation fund in its FFY 2002 wage index calculations?

Did the Intermediary err in refusing to include Provider's costs associated with an on-site day care center in its FFY 2002 wage index calculations?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

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

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. § 1395cc *et seq.* The Centers for Medicare & 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 to organizations known as fiscal intermediaries (FIs) and Medicare administrative contractors (MACs)¹. Intermediaries determine payment amounts due the providers under Medicare law, regulation and interpretative guidelines published by CMS. 42 U.S.C. § 1395(h), 42 C.F.R. §§ 413.20 and 413.24.

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 (2009). The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Reimbursement (NPR). 42 C.F.R. § 405.1803 (2009). 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 receipt of the NPR. 42 U.S.C. § 1395oo(a); 42 C.F.R. §§ 405.1835-405.1837 (2009).

The operating costs of inpatient hospital services are reimbursed by Medicare primarily through the Prospective Payment System (PPS). 42 U.S.C. § 1395ww(d) (2009). The Medicare statute

¹ FIs and MACs are hereinafter referred to as intermediaries.

requires as part of the methodology for determining prospective payments to hospitals, the Secretary to adjust the standardized amounts for areas wages based on the geographical location of hospitals compared to the national average hospital wage level. 42 U.S.C. § 1395ww(d)(3)(E) (2009). The Secretary establishes a wage index for each MSA and for each statewide area that is not within an MSA (i.e., rural areas). Beginning October 1, 1993, the statute required HCFA (now CMS) to update the wage index annually. CMS bases the annual update on a survey of wages and wage related costs taken from cost reports filed by each hospital paid under the prospective payment system (PPS).

On August 1, 2001, CMS issued the final rule for the computation of the Federal Fiscal Year (FFY) 2002 wage index update which required the use of wage data reported on the FY 98 Medicare cost reports on the Worksheet S-3, Parts II and III (for a hospital's cost reporting period beginning on or after 10/1/97 and before 10/1/98), effective for hospital discharges occurring on or after 10/1/2001 and before 10/1/2002.²

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The Providers filed a group appeal on January 21, 2002, with the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§ 405.1835-1839, and met the jurisdictional requirements of those regulations. The Providers are challenging the Youngstown-Warren Metropolitan Statistical Area (MSA) Wage Index applicable to the Federal Fiscal Year 2002 as improperly established under the Medicare PPS. The final determination being appealed is the notice of the FFY 2002 hospital wage index published by CMS in the Federal Register.³ The Providers were represented by Keith D. Barber, Esq. of Hall, Render, Killian, Heath and Lyman, PSC. The Intermediary was represented by Bernard M. Talbert, Esq. of the Blue Cross Blue Shield Association.

On May 12, 2011, the parties requested that the Board hold a record hearing in this case. *See* 42 C.F.R. § 405.1845(f)(2). A record hearing was approved and held in this matter on September 1, 2011.

Western Reserve Care System (Provider) is a not-for-profit acute care hospital that is subject to PPS and located in Youngstown, Ohio. The particular costs at issue concern employee "bonus hours", medical director salary, contracted pathologist costs, contracted perfusionist costs, and legal expenses from the operation of a self-insured worker's compensation fund. The Provider did not count the hours associated with payments to employees in "call back" situations and included costs associated with the medical director, contracted pathologist, contracted perfusionist, and legal expenses from its self-insured worker's compensation fund. The Intermediary included the bonus hours and excluded the other costs for purposes of the Provider's FFY 2002 wage index calculation.

² 66 Fed. Reg. 39827, 39858, 39863 (August 1, 2001).

³ In accordance with the Administrator's decision in District of Columbia Hospital Association Wage Index Group Appeal, (HCFA Adm. Dec. January 15, 1993), (reversing PRRB Dec. No. 92-1200G, November 18, 1992), the wage index notice published in the Federal Register is a final determination.

Trumbull Memorial Hospital (Provider) is a not-for-profit acute care hospital that is subject to PPS and located in Warren, Ohio. The Provider included certain operating costs for an on-site day care center for the hospital's employees. The Intermediary excluded these costs for purposes of the Provider's FFY 2002 wage index calculation.

The specifics of the wage cost determinations are as follows:

Issue 1: Bonus/Call Back Hours:

Western Reserve Care System pays employees under a "bonus hour" system for working during critical or undesirable times, or when called back for an emergency or sudden need. Employees are paid a minimum of four hours for any time worked up to four hours and a minimum of eight hours for any time worked over four hours. Therefore, if an employee was called back for an emergency and worked only one hour, the employee would be paid for four hours. The extra three hours would be the bonus hours. The hospital's particular payroll system records these bonus hours as hours worked in order to be able to pay employees for these hours. For bonus/call back hours paid for radiology and lab technicians, the Provider reflected only the call back hours actually worked in its statement of hours submitted. The Intermediary included all of the bonus hours paid to these employees. At issue is whether these bonus hours, i.e., hours paid, versus the hours actually worked, should be included in the wage index calculation.

Issue 2: Medical Director Salary:

Western Reserve Care System included in its salary costs the full salary of its Senior Vice President of Medical and Academic Affairs ("Medical Director"). The Intermediary eliminated these costs on the basis that the hospital did not provide adequate documentation. At issue is whether these salary costs may be properly included in the wage index calculation.

Issue 3: Pathologist Services:

Western Reserve Care System executed an agreement with Consultant Pathology Services (CPA) under which CPA agreed to provide pathology services to the hospital in exchange for an annual fee. The Provider included in its costs the pathologist services procured through this contract with CPA and submitted a copy of the contract and time studies in support of these costs. The Provider had utilized the time studies in order to determine the portion of pathology expenses to allocate to Medicare Part A for inclusion in its costs. The Intermediary eliminated these costs on the basis that the hospital did not provide adequate documentation (i.e., the time studies were inconsistent or did not provide a reliable basis for determining the total time spent on Part A pathology services). At issue is whether these costs may be properly included in the wage index calculation.

Issue 4: Perfusionist Services:

Western Reserve Care System executed an Open Heart Surgery Program Support Services agreement with Allegheny General Hospital (Allegheny), a tertiary care and teaching hospital with an established open-heart surgery program. Under the terms of the contract, Allegheny

agreed to provide cardiovascular perfusionist services to the hospital in exchange for certain fees. The contract required the Provider to pay for the services of the perfusionists on a fixed, per case/service fee. The fee included the perfusionists' time, continuing education, travel and communication expenses.

The Provider included in its wage index data the total costs of the perfusionist services procured through this contract with Allegheny. The Provider submitted a copy of the contract and several invoices from time studies in support of these costs. In reliance on these materials and information contained in a New Jersey workforce publication on occupational specialties, the Intermediary computed an hourly rate of \$225. The Intermediary fully excluded all of these costs for contracted services from the wage index calculation on the basis that the hourly rate was not a reasonable rate for these services based on comparable providers and the fact that the Provider did not submit any documentation or explanation regarding "this unusually high hourly rate for perfusionist services."⁴ At issue is whether these contracted perfusionist services costs may be properly included in the wage index calculation.

Issue 5: Self-Insured Workers' Compensation Fund Legal Expenses:

Western Reserve Care System operates a self-insured workers' compensation fund for its employees. The Provider included legal expenses for the fund as a core benefit cost and submitted a summary of its legal fees as well as associated invoices. The Intermediary eliminated these costs on the basis that these legal expenses were a part of the administrative expenses of the fund. The Intermediary found that while these expenses were reimbursable costs they were not "core benefits" for purposes of the wage index calculation. At issue is whether these costs may be properly included in the wage index calculation.

Issue 6: On-Site Day Care Center Costs:

Trumbull Memorial Hospital (Provider) owns and operates an on-site day care center for employee dependents and included the net unrecovered indirect costs related to operating the day care center as a core benefit cost. The Intermediary eliminated these costs on the basis that they had already been included in the Provider's salaries and benefits submission and would therefore result in a double cost allocation. At issue is whether these costs may be properly included in the wage index calculation.

PARTIES' CONTENTIONS:

Issue 1: Bonus/Call Back Hours:

The Provider contends that the program guidance at Provider Reimbursement Manual (PRM) 15-2, § 3605.2 requires exclusion of these bonus hours. PRM § 3605.2 provides instructions for completion of Form CMS-2252-96 Worksheet S-3, Part II (Hospital Wage Index Information) and states, "[f]or employees who work a regular work schedule, on call hours are not to be included in the total paid hours[,] overtime hours are calculated as one hour when an employee is

⁴ Intermediary Final Position Paper, p. 14.

paid time and a half. No hours are required for bonus pay.” The Provider argues that the call back hours at issue are essentially bonus hours and therefore should be excluded from the wage index calculation. The Provider states that under this program guidance, only actual hours worked should be included, not the equivalent hours necessary to account for the bonus/call back payment. The Provider also contends that this PRM guidance reflects the common sense notion that a person’s true hourly wage is how much they were paid divided by actual hours worked and that the Intermediary’s approach to include bonus hours not actually worked results in an understatement of the true labor cost per hour and is not supported by CMS program guidance.

The Provider further contends that the language relied upon by the Intermediary in 68 Fed. Reg. 45396 (August 1, 2003) for the proposition that the wage index should be calculated using paid hours is inapplicable to the hours at issue because it applies specifically to paid lunch hours and paid military or jury duty hours and not to bonus or call back hours. The Provider also notes that the hospital’s particular payroll system required adding bonus hours to the hours actually worked in order to accurately compute payments to employees. These same kinds of bonus hours would not be counted at other hospitals that use different payroll systems, thus leading to a lack of integrity and uniformity in the wage index system.

The Intermediary contends that PRM § 3605.2 does not apply to this matter because the term “on call hours” used in the program guidance does not have the same meaning as “call back hours” (those hours paid once employees are called back). The Intermediary also argues if only actual call back hours worked were required to be reported, the hourly rate would be abnormally inflated and the wage index would be skewed upward. The Intermediary further contends, citing to the language in 68 Fed. Reg. 45396 (August 1, 2003), that it is the “longstanding policy of CMS to calculate the wage index using paid hours rather than hours worked.”⁵

Issue 2: Medical Director Salary:

The Provider contends that, although not cited by the Intermediary, the standards applied (42 CFR § 415.55 and § 415.60), are designed primarily to apply to cost report audits, not wage index survey data. However, even assuming that applying them as a guide is appropriate, the information submitted by the hospital for its Medical Director hours meets the requirements of 42 C.F.R. § 415.55 and constitutes reasonable support for wage index data. The Provider also points out that the position description shows that all duties performed by the Medical Director are exclusively administrative and not patient-care related. That is also consistent with the duties of a typical Medical Director.

The Provider also argues that under 42 CFR § 415.60(d), a time study is not required if the provider certifies that the compensation is attributable solely to physician services provided to the provider. In this case the hospital made such certification to the Intermediary. Furthermore, the Provider contends that, under the language contained in PRM 15-1, § 2182.3.E.4, the Intermediary may not require time records to support provider services rendered by physicians. Finally, the Provider contends that disallowance of all Part A costs for a Medical Director (and characterizing all amounts as Part B expenses) whose contract (position description) includes no

⁵ Intermediary Final Position Paper, Exhibit I-3, p. 4.

Part B services is plain error; “even accepting the Fiscal Intermediary’s argument as true, some (indeed most) of the Medical Director’s salary should have been included” as Part A costs.⁶

The Intermediary contends that because some duties in the job description pertained to non-patient related activities (e.g., recruitment of staff), it was proper to request a time study supporting a split between non-patient and patient care related activities. The Intermediary argues that it was proper to classify 100% of the salary and benefits as a Part B expense because the Provider failed to submit additional documentation.

Issue 3: Pathologist Services:

The Provider contends that its contracted pathology services costs were supported by adequate documentation (time studies) and these time allocations were consistent with allocations in prior years. The Provider also argues that even if the higher documentation standards contained in PRM 15-1, § 2182.3.E are appropriately applied to its wage index submissions, they do not require providers to use a specific 8-week time study.

The Intermediary contends that pursuant to the program guidance contained at PRM 15-1, § 2182.3, provider allocations must be supported by adequate documentation and must normally be comparable to previous allocations or to similar situations in comparable providers. In this instance, the Intermediary contends the Provider did not have a consistent time study plan nor were studies consistently performed. In addition, when requested, the Provider did not provide additional documentation (i.e., an example or proof that their pathology time studies were comparable to similar situations in comparable providers).

Issue 4: Perfusionist Services:

The Provider contends that the Intermediary used an irrelevant statistical analysis (an inflated per-year assumption of hours worked) to conclude that its contracted perfusionist costs which were paid on a “per case” basis (vs. hourly fee) were too high and also did not take into account additional time spent preparing for the cases and closing down equipment. The Provider further argues that the Intermediary did not take into account that the contracted perfusionist services included the full range of staffing services which, had the hospital hired others to perform, would have been reflected in the wage index as additional hours worked to perform these services.

The Intermediary contends that the \$225 hourly rate it computed based on the information submitted by the Provider is not a reasonable rate for these services based on comparable providers. The Intermediary further argues that the Provider did not submit any documentation or explanation regarding its concerns about the computed hourly rate.

Issue 5: Self-Insured Workers’ Compensation Fund Legal Expenses:

The Provider contends that the Intermediary is penalizing the hospital for reducing costs by self-insuring for its workers’ compensation liability. Had the hospital not self-insured, these expenses would be included in workers’ compensation premiums and allowed as a core benefit.

⁶ Provider Final Position Paper, p. 16.

The Provider further contends that the Intermediary's approach is contrary to guidance contained in 59 Fed. Reg. 45357 (September 1, 1994), encouraging providers "to be cost-conscious and efficient in their administration of health and insurance costs."

The Intermediary contends that attorney fees associated with self-insured worker compensation expenses are administrative expenses of the self-insurance fund. As such, the Intermediary argues these kinds of expenses are reimbursable costs but are not "core benefits" for purposes of the wage index calculation.

Issue 6: On-Site Day Care Center Costs:

The Provider contends that it specifically backed out the unrecovered indirect costs at issue from the employee-paid benefit and reported them appropriately (HCFA Form 339, Line 22). Therefore, the Provider contends, these costs were only counted once.

The Intermediary contends that these costs were already included in the line for salaries and benefits on Worksheet S-3.⁷ Therefore, including these expenses in the wage index calculation as a core benefit would result in an inappropriate double cost allocation.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of Medicare law and guidelines, the parties' contentions and stipulations, and the evidence presented at the hearing, finds and concludes as follows:

Issue 1: Bonus/Call Back Hours:

The call back hours at issue should be excluded when calculating the FFY 2002 Wage Index for the Youngstown-Warren MSA.

The Board finds that the call back hours at issue in this case represent a premium payment to employees. However, the Provider's payroll system could not process multiple wage rates per employee; and so, in order to effectuate the additional payment, employee hours were increased. Those additional hours do not represent hours worked and should not be included when calculating the wage index.

The Board notes that PRM 15-2, § 3605.2 indicates that to calculate the wage index, the appropriate figure is the hours actually worked. PRM 15-2, § 3605.2 states, "[f]or employees who work a regular work schedule, on call hours are not be included in the total paid hours[,] overtime hours are calculated as one hour when an employee is paid time and a half. No hours are required for bonus pay." Based on these instructions, the Board finds that the hours to be included when calculating the wage index should be the hours worked (paid at a higher rate of pay), as opposed to hours paid at a regular hourly rate.

⁷ Form CMS-2252-96 Worksheet S-3, Part II (Hospital Wage Index Information), Column 3, Lines 1 and 13; and Worksheet S-3, Part III, Column 3, Line 13. Intermediary Final Position Paper, pp. 17-18.

The Board specifically rejects the argument made by the Intermediary that the preamble language of 68 Fed. Reg. 45396 (August 1, 2003) applies in this instance. To the extent it provides guidance, this preamble language clearly applies to paid lunch and other kinds of paid hours for periods of time not actually worked (i.e., jury duty and military leave). By contrast, the call back hours at issue in this case represent hours actually worked.

Finally, the Board notes that in many hospitals, similarly paid “bonus hours” would not produce payroll information increasing the hours, but rather would only increase the total pay. The Board agrees with the Provider that these hours should not be treated differently because its particular payroll system must record hours not actually worked in order to pay its employees correctly for call back hours worked. To find differently would create a disparity in how these hours are treated and classified for wage index purposes. The Court in Sarasota Memorial Hospital, et. al. v. Shalala, 60 F.3d. 1507 (11th Cir. 1995) made clear that such a disparity is improper (the uniformity of the wage index is compromised if the Secretary does not classify the same items of costs as wages for all providers).

Issue 2: Medical Director Salary:

All the salary costs associated with Provider’s Medical Director should be included in the wage index used to calculate the FFY 2002 Wage Index for the Youngstown-Warren MSA.

The Board finds that the job description documentation the Provider submitted meets the requirements of 42 C.F.R. § 415.55 and constitutes reasonable support for purposes of the wage index calculation. The Board considers the Provider’s Medical Director job description (the record evidence relied upon by both parties in this matter) the sole basis for reaching a decision on whether to include the salary costs associated with this position in the wage index calculation.⁸ The Board finds it unreasonable for the Intermediary to require further documentation (time studies) solely because certain duties appeared unrelated to patient care (e.g., recruitment of professional staff). Instead, upon review of the position description, the Board finds that it is reasonable on its face to conclude that the duties described are Part A administrative physician provider services, not physician services provided to patients.

Issue 3: Pathologist Services:

The Part A costs submitted by the Provider for pathology services should be included in the wage index used to calculate the FFY 2002 Wage Index for the Youngstown-Warren MSA.

The Part A costs submitted by the Provider for pathology services are supported by adequate documentation as required by PRM 15-1, § 2182.3. CMS program instructions clearly state that the allocations must be “supported by adequate documentation and must normally be comparable to previous allocations or to similar situations in comparable providers.” PRM 15-1, § 2182.3E. While time studies are one method of allocation by a provider, they are not required to support provider services rendered by physicians. See PRM 15-1, § 2182.3.E.4.

⁸ Provider Final Position Paper, Exhibit P-2, pp. 11-13.

The Board also finds that time studies in 7 out of 12 months submitted by the Provider constitute adequate documentation under CMS requirements and complied with CMS guidelines. Furthermore, there is no evidence submitted or argument made by the Intermediary that there were any discrepancies in the time studies submitted or reasons to otherwise suggest that those time studies were in any way questionable such that further documentation or information was required.

Issue 4: Perfusionist Services:

The costs submitted by the Provider for perfusionist services should be included in the wage index used to calculate the FFY 2002 Wage Index for the Youngstown-Warren MSA.

The Board considers the agreement between Allegheny and the Provider the controlling source for determining the services contracted and paid.⁹ Section III.3.1 of the agreement defines its scope and requires Allegheny to “provide the services of qualified cardiovascular Perfusionists to provide services at [Provider] for operation of the cardiopulmonary bypass equipment for open heart surgery procedures.” Section VI provides for payment terms and provides that the Provider “shall pay [Allegheny] compensation based on the rate schedule set forth in Appendix B, attached hereto and incorporated herewith.”¹⁰ Appendix B contains the specific agreed upon terms related to staffing at the hospital, compensation paid to perfusionists and the fee for service amount paid to Allegheny by the Provider.

PRM 15-1, § 2118, recognizes amounts paid for services that are related to patient care and rendered under a fee for service arrangement as allowable costs for Medicare purposes. In addition, PRM 15-2, § 3605.2, Part II, provides instructions for completion of the wage index information, under which only amounts paid for direct patient care services are allowed to be included in the provider’s wage index calculations on line 9 of the worksheet.¹¹ There is no dispute that patient care services were performed under an agreement with Allegheny or that the Provider paid for those services at the fee schedule rate set by the agreement. The central issue for consideration is whether the contracted perfusionist services costs are reasonable and may be properly included in the wage index calculation.

With respect to the issue raised by the Intermediary regarding the reasonableness of the Provider’s perfusionist services costs, CMS regulations provide:

The costs of providers’ services vary from one provider to another and the variations generally reflect differences in scope of services and intensity of care. The provision in Medicare for payment of reasonable cost of services is intended to meet the actual costs, however widely they may vary from one institution to another. This is subject to a limitation if a particular institution’s costs are found to be substantially out of line with

⁹ Intermediary Final Position Paper, Exhibit I-6 (please note that only selected pages of the contract have been provided by the Intermediary; also, the Provider did not provide a copy of the contract in its submissions to the Board).

¹⁰ *Id.*

¹¹ PRM 15-2, §3605.2, Part II - Wage Index Information; Form CMS-2552-96; Instructions for line 9.

other institutions in the same area that are similar in size, scope of services, utilization and other factors.

42 C.F.R. § 413.9(c)(2); *see also*, Memorial Hospital/Adair County Health Center, Inc. v. Bowen, 829 F.2d 111(D.C. Cir. 1987) (intermediary's duty to compare, with common sense and care, the provider's costs and those of other providers whose services were truly comparable).

The Board finds that the Intermediary's position that these perfusionist costs are unusually high and therefore unreasonable is not supported by the evidence in the record. The Intermediary concludes that these costs are substantially out of line based on a statement and citation contained in a publication by the State of New Jersey concerning the average starting wage for perfusionists.¹² As required by 42 C.F.R. § 413.9(e)(2), the Intermediary did not compare the Provider's costs to other institutions in the same area that were similar in size, scope of services, utilization and other factors. The Board therefore reverses the Intermediary's adjustment on the basis that the record does not support its conclusion that the costs were unreasonable.

However, the Board's review of the perfusionist contract language reveals that it specifically includes, as a part of the fee agreement between the Provider and Allegheny, that the contracted perfusionists will be compensated for certain miscellaneous items or indirect costs, including travel expenses, pagers, cell phones, and reimbursement of continuing education expenses. More specifically, the section of Appendix B to the contract entitled "Service Fees" indicates these kinds of expenses are included in the per case fee amounts charged.¹³ The documentation and supporting invoices demonstrate that compensation for perfusionist services included these non-wage related perfusionist costs.

PRM 15-2, § 3605.2, Part II, instructs providers to report "only those personnel costs associated with the contract" and to eliminate any expenses for "equipment, supplies, travel expenses, and other miscellaneous or overhead items (non-labor costs)."¹⁴ Thus, for purposes of calculating the wage index, personnel costs are not to include supplies, travel expenses, and other similar miscellaneous expenses.

The Board finds that although the Provider did not carve out these miscellaneous expenses, the amount of the carve-out is immaterial when compared to the total perfusion expenses. Based on the evidence in the record, the perfusion expense is approximately \$392,000 with the miscellaneous expenses making up less than one percent of the total. While including the miscellaneous expenses in the wage index computation would have no effect on the wage index amount, totally excluding the perfusionist wage data would result in a material distortion of the Youngstown-Warren MSA wage index.

¹² Intermediary Final Position Paper, Exhibit I-8.

¹³ Intermediary Final Position Paper, Exhibit I-6, p. 7

¹⁴ PRM 15-2, §3605.2, Part II (Worksheet S-3; Form CMS-2552-96-06-03; Instructions, line 9).

Issue 5: Self-Insured Workers' Compensation Fund Legal Expenses:

The Provider's self-insured workers' compensation fund legal expenses should be included in the wage index used to calculate the FFY 2002 Wage Index for the Youngstown-Warren MSA.

The Board finds that the legal expense costs submitted by the Provider for its self-insured workers' compensation fund are a "core benefit" as defined by PRM 15-1, § 2162.8. Section 2162.8 provides that legal expenses are considered costs attributable to a self-insurance fund. In turn, Form CMS-339 (Provider Cost Report Reimbursement Questionnaire) requires providers to submit wage related costs to intermediaries, including those core wage related costs contained in Part I (Wage Related Cost – Core List) of Exhibit 6. Exhibit 6 includes health and insurance costs associated with workers' compensation insurance. Based on these CMS program instructions, the Board finds no support for the Intermediary's position that these legal costs are administrative expenses which should be excluded when calculating the wage index.

Issue 6: On-Site Day Care Center Costs:

The indirect costs submitted by the Provider for its on-site day care center should not be included in the wage index used to calculate the FFY 2002 Wage Index for the Youngstown-Warren MSA.

According to CMS instructions, Worksheet A of Form CMS-2252-96 is required to be used by providers to record the trial balance of expense accounts from the provider's records and books, as well as for necessary reclassifications and adjustments to certain accounts. PRM 15-2, § 3610. These instructions specifically require that the expenses listed in columns 1 (salaries), 2 (other than salaries) and 3 (the sum of columns 1 and 2) of Worksheet A are the same as listed in the provider's accounting books and records (before any necessary adjustments are made).

Pursuant to CMS instructions, providers must use Worksheet S-3 (Parts II and III) to submit wage data that is used to compute the wage index. Data for Worksheet S-3, Part II, is derived from Worksheet A. The instructions specifically require providers to record the entry from Worksheet A, column 1, line 101 in Column 1, to Line 1 (salaries) of Worksheet S-3, Part II. PRM 15-2, § 3605.2. Thus, the amount entered for wage index purposes is a gross amount, prior to any adjustments being applied.

The Board finds that the evidence in the record demonstrates that the day care center costs the Provider included in its wage related amounts on Line 13, Column 3 of Form S-3, Part II, were already included in the gross salaries (unadjusted) the Provider submitted on Line 1, Column 3 of Worksheet S-3, Part II. Those salaries were the gross amounts before any adjustments were made to reflect payments by the Provider's employees. Therefore, the wage-related costs at issue are already included in the data used to calculate the wage index. The Intermediary's exclusion was proper.¹⁵

¹⁵ Intermediary Final Position Paper, Exhibit I-10.

DECISION AND ORDER:Issue 1: Bonus/Call Back Hours:

Bonus/call back hours should be excluded when calculating the FFY 2002 Wage Index for the Youngstown-Warren MSA. The Intermediary's adjustment is reversed.

Issue 2: Medical Director Salary:

All of the Medical Director salary costs are properly included in the Provider's wage index calculation. The Intermediary's adjustment is reversed.

Issue 3: Pathologist Services:

The costs for pathologist services are personnel costs of the contract and "wage related" for wage index purposes. The Intermediary's adjustment is reversed.

Issue 4: Perfusionist Services:

The Board finds that the costs resulting from the perfusionist agreement with Alleghany were not unreasonable. Although those costs included certain items that were not appropriate for inclusion, e.g., travel expenses and cell phones, such costs were immaterial when used in the Provider's wage index calculation. Therefore, the total cost of the perfusionist agreement with Alleghany was properly included in the Provider's wage index calculation. The Intermediary's adjustment is reversed.

Issue 5: Self-Insured Workers' Compensation Fund Legal Expenses:

All of the self-insured workers' compensation fund legal expenses are properly included in the Provider's wage index calculation. The Intermediary's adjustment is reversed.

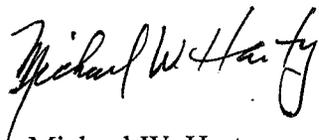
Issue 6: On-Site Day Care Center Costs:

The indirect costs associated with the Provider's on-site day care center have already been included in its salary and expenses; including these costs in the Provider's wage index calculation would be duplicative. The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING:

Yvette C. Hayes
Keith E. Braganza, C.P.A.
John Gary Bowers, C.P.A.
Michael W. Harty

FOR THE BOARD:

A handwritten signature in black ink that reads "Michael W. Harty". The signature is written in a cursive style with a large, stylized initial "M".

Michael W. Harty
Chairman

DATE: **JAN 06 2012**