

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION**

2016-D12

PROVIDER –
William Beaumont – Royal Oak

PROVIDER NO.: 23-0130

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

DATE OF HEARING -
March 19, 2014

Cost Reporting Periods Ended –
2005, 2006

CASE NOs.: 10-1377; 10-1375

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ISSUE:

Whether the William Beaumont Hospital, Royal Oak (“Beaumont”) submitted sufficient documentation for its non-Provider-operated nurse clinical training program costs to support pass-through reimbursement for fiscal years (“FYs”) 2005 and the 2006.¹

DECISION:

After considering the Medicare law and program instructions, the evidence presented, the stipulations of the parties, and the parties' contentions, the Board finds as follows:

1. The Medicare Contractor improperly disallowed all of Beaumont's pass through reimbursement for the incremental clinical nurses training costs and directs the Contractor to allow \$361,001 and \$496,835 for these costs for FYs 2005 and 2006 respectively.
2. The Medicare Contractor improperly disallowed \$50,000 claimed in both FY 2005 and 2006 as pass through reimbursement for the incremental costs for administrative and clerical support staff furnished in connection with non-provider operated nurses training program. For each fiscal year at issue, the Board directs the Medicare Contractor to apportion the salaries of these two employees based on the breakout of the job responsibilities furnished by Beaumont at Provider Exhibit A and B, and to allow the amount apportioned to functions associated with the non-provider operated nurses training program up to a cap of \$50,000.

INTRODUCTION:

William Beaumont Hospital, Royal Oak is a 1,070-bed acute care hospital located in Royal Oak, Michigan and is the site of clinical nurse training programs for various nursing schools in the area and are not operated by Beaumont. Beaumont's designated Medicare Contractor is Wisconsin Physicians Service (“Medicare Contractor”²).

Federal regulations³ allow certain providers like Beaumont to claim pass-through reimbursement for their nurse training costs incurred for training programs that they do not operate or sponsor. Beaumont claimed pass-through reimbursement on its cost reports for nurse training costs

¹ See Transcript (“Tr.”) at 7:13-23 (Mar. 19, 2014). At the hearing, the Medicare Contractor pursued two separate audit issues to support the adjustments at issue in this appeal. However, one of these issues involved predicate facts from FY 1988 and, consistent with the recent clarification from CMS limiting review of predicate facts, the Medicare Contractor withdrew the FY 1988 issue, namely “[w]hether the Medicare [] Contractor . . . properly disallowed pass-through reimbursement for William Beaumont – Royal Oak's FY 2005 and 2006 costs of training RN students in a non-provider operated nurses training program, based upon Provider's inability to produce the underlying documentation supporting its nurse clinical training costs from its 1988 cost report.” Medicare Contractor's Post-Hearing Brief at Exhibit A (Medicare Contractor letter to the Board dated March 31, 2014). See also 78 Fed. Reg. 74826, 75162-75169, 75195-75196 (Dec. 10, 2013) (clarification of reopening predicate facts).

² Wisconsin Physicians Service succeeded National Government Services, Inc. See Provider's Final Position Paper at 7.

³ 42 C.F.R. § 413.85(g).

incurred for FYs 2005 and 2006. The Medicare Contractor disallowed these pass-through costs due to a lack of documentation to support the costs. Beaumont appealed these adjustments to the Board.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Beaumont provides both cohort and preceptor clinical training to more than a thousand nursing students per year in southeastern Michigan.⁴ Since 1988 it has employed part-time and full-time clinical and administrative staff and provided facilities to help nursing students obtain clinical nursing experience.⁵

Federal law authorizes limited payment for non-provider operated nurses training programs provided that the hospital claimed and was reimbursed for these costs “during the most recent cost reporting period that ended on or before October 1, 1989” and that the percentage of the hospital’s total allowable costs attributable to the clinical training costs does not exceed the percentage that existed during that most recent cost reporting period.⁶ CMS defined “clinical training costs” as only those “incremental costs” to the hospital for clinical instructors, administrative and clerical support staff who schedule clinical rotations for each student as well as overhead costs that are directly related to the costs of the students. Payroll, related salary costs and overhead for supervising nurses who would otherwise be employed by the hospital to provide care for patients would not be reimbursed.⁷

During a FY2005 audit, the Medicare Contractor asked Beaumont to provide documentation regarding its FY1988 cost report to determine whether it met the statutory and regulatory grandfathering provisions. In addition, the Contractor requested additional documentation regarding Beaumont’s nurses training program costs for FY2005. The Contractor disallowed the costs as pass-through costs and reclassified them as operating costs.⁸ Similarly, in FY 2006, the Medicare Contractor disallowed the Provider’s pass through reimbursement and reclassified them as operating costs because these “costs could not be adequately supported.”⁹

Beaumont timely appealed the disallowance of the pass-through costs and the challenge to its grandfathered status. The Medicare Contractor withdrew its challenge to Beaumont’s

⁴ See Tr. at 193:9-196:23. Testimony at the hearing described “cohort” clinical training as junior level clinical training where the nursing school has an instructor on site and in the nursing unit to assist with the clinical teaching process. In contrast, “preceptor” clinical training was described as senior level clinical training which pairs individual nursing students with nursing staff for one-on-one training while the nurse is performing rounds on the unit.

⁵ Provider’s Final Position Paper at 1-2.

⁶ Section 4004(b) of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508. See also:42 C.F.R. 413.85(g)(2).

⁷ 66 FR 3368-3370 (January 12, 2001).

⁸ Medicare Contractor’s Final Position Paper at 1. See also Medicare Contractor Exhibit I-7 at 1 (Case No. 10-1375) (stating: “The provider had submitted calculations in the prior year that estimated the Nursing School costs. The work sheet calculated # of students, approximated # of RNs and estimated RN salaries. The provider was asked to provide documentation to support the calculations related to FY 2005 Since none of the amounts in question could be supported with actual documentation the costs cannot be allowed as pass-thru costs.”)

⁹ Medicare Contractor Exhibit I-8 at 2 (Case No. 10-1375).

grandfather status.¹⁰ The only issue remaining in this appeal is the disallowance of its pass through costs due to the lack of documentation in support of the Provider's actual clinical training costs for FYs 2005 and 2006. Beaumont has satisfied the jurisdictional requirements for a hearing before the Board.

At the Board hearing on March 19, 2014 Beaumont was represented by Mary Elizabeth Derwin, Esq., Beaumont's Senior Corporate Counsel and by Thomas M. Schehr, Esq., of Dykema Gossett, PLLC. The Medicare Contractor was represented by Robin M. Sanders, Esq., of the Blue Cross and Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Medicare Contractor argues that Beaumont has not satisfied the following documentation requirement specified in 42 C.F.R. § 413.24(c):

Adequate cost information must be obtained from the provider's records to support payments made for services furnished to beneficiaries. The requirement for adequacy of data implies that the data be accurate and in sufficient detail to accomplish the purpose for which it is intended. Adequate data capable of being audited is consistent with good business concepts and effective and efficient management of any organization. . . . It is a reasonable expectation on the part of any agency paying for services on a cost-reimbursement basis.

The Medicare Contractor contends that Beaumont did not complete time studies that were contemporaneous with the period under appeal nor do they have records to support the number of students that participated in the program each year. Without documentation that is auditable and verifiable, Beaumont has failed to satisfy the regulatory requirement.¹¹ The Board disagrees.

As recognized by the Medicare Contractor's witness,¹² there is no requirement that a provider document allowable clinical training costs through time studies.¹³ Further, the first time the Medicare Contractor requested time studies from Beaumont was in 2010, well after the close of the fiscal years at issue.¹⁴ Accordingly, it is unreasonable for the Medicare Contractor to require Beaumont to have time studies for 2005 and 2006 and not accept alternate documentation in support of its clinical training costs.

Based on the testimony and other evidence in the record, the Board finds that Beaumont has submitted adequate documentation that is auditable to support the incremental clinical training

¹⁰ Medicare Contractor's Post-Hearing Brief at 8.

¹¹ See Medicare Contractor Post-Hearing Brief at 10.

¹² See Tr. at 399-402, 465-466, 478-479, 490. Further, neither CMS nor the Medicare Contractor instructed William Beaumont to keep time studies prior to 2010. See Tr. at 135-136, 140, 268-269.

¹³ See 42 C.F.R. § 413.85(g); Provider Reimbursement Manual, CMS Pub. No. 15-1 ("PRM 15-1"), § 404.2; PRM 15-2 § 3610 (instructions for Lines 21 and 24 for Worksheet A of the cost report form address clinical training costs); 66 Fed. Reg. at 3368-3370.

¹⁴ See Tr. at 135-136, 140, 268-269.

costs that it incurred for FYs 2005 and 2006. First, through business documents and testimony, Beaumont established the number of 8-hour days that students spent at Beaumont for cohort and preceptor clinical training during FYs 2005 and 2006.¹⁵ Second, through business documents and testimony, Beaumont established the average salary of the nurse providing cohort clinical training and the average salary of the nurse providing preceptor clinical training to the nursing students during FYs 2005 and 2006.¹⁶ Finally, Beaumont established through testimony and affidavits that 1.5 hours was the average time per 8-hour day that the nurse instructor spent providing clinical training to each nursing student during FYs 2005 and 2006.¹⁷ Further, the record reflects that each of these figures is conservative.¹⁸ Accordingly, the Board finds that these figures can be used to calculate Beaumont's incremental clinical training costs during FYs 2005 and 2006.

Based on these findings, the Board has calculated the incremental pass through clinical training costs due Beaumont as:

FY 2005

Nursing Clinical Salary Expense	\$ 335,347
FICA	\$ 25,654 (7.65 percent)
Total Direct Cost	\$ 361,001

FY 2006

Nursing Clinical Salary Expense	\$ 461,528
FICA	\$ 35,307 (7.65 percent)
Total Direct Cost	\$ 496,835

Finally, the Board finds that Beaumont has demonstrated that the percentage of its total allowable costs attributable to the clinical training costs is less than the percentage of these costs in the most recent cost reporting period and provided sufficient evidence to support at least some,

¹⁵ Specifically, Beaumont presented student roster schedules to establish the students during FYs 2005 and 2006 and the hours spent at Beaumont for clinical training during these fiscal years. *See* Provider Addendums 2, 3 (containing for each fiscal year both the "Original Schedule of Nursing School Placements" and a summary of that schedule). Beaumont presented testimony of the employee responsible for maintaining the student roster schedules during FYs 2005 and 2006 to confirm that: (1) they were a routine business record contemporaneously created and maintained by Beaumont during the ordinary course of business; and (2) Beaumont established the practice of maintaining these business records prior to FY 2005. *See*: Tr. at 163-171, 184, 245-246. *See also* Tr. at 192-201 (testimony on the creating the summaries of the student roster schedules).

¹⁶ Specifically, Beaumont established through testimony and pay scales from its Human Resources Department that: (1) nurses with 3 to 5 years of experience train cohorts and the pay grade for these nurse instructors is the midpoint of pay grade level 5 for nurses; and (2) nurses with 10 or more years of experience train preceptors and the pay grade for these nurse instructors is the maximum hour pay scale for nurses. *See*: Provider Addendum at Tab 3 (contains "2005 and 2006 Nursing Payroll Structure"); Tr. at 80-82.

¹⁷ *See*: Provider Addendum at Tab 1 (affidavits); Tr. at 304-307; 310-343, 367, 372-373.

¹⁸ The number of student days is conservative because students may work more than an 8 hour day because the shift of the nurse instructors varied between 8 to 12 hours depending on the shift. *See* Tr. at 176, 179, 275-277. The average nurse salary for cohorts and preceptors is conservative as no overtime was factored in and some of the 10 year plus nurses were paid more than the maximum rate. *See*: Tr. at 122-125, 143, 145-146, 343-344. The 1.5 hours of clinical training by nurses during a student day for FYs 2005 and 2006 is conservative as supported by the testimony of Barbara Juliano and demonstrated by the fact that 1.5 hours of the 8 hour day (19%) is below the percentage of time (22 to 25 percent) reported based on time studies for 2010, 2011 and 2012. *See* Tr. at 302-307; Provider Exhibit I (showing 22 to 25 percent of a clinical nurse instructor's time is spent in clinical training).

if not all, of the \$50,000 it included for the Nursing Education Department Cost for both FY 2005 and FY 2006.¹⁹ Specifically, the \$50,000 represents incremental costs for two employees whose function was, in part, to coordinate placement and orientation of students, rotations with the nursing school, scheduling clinical rotations, and evaluations for each nurse.²⁰ Beaumont provided a job description for each of these employees that detailed the percentage of time spent on these activities.²¹ While witness' testimony suggests that this apportionment actually would be greater than the \$50,000 at issue,²² the Board is unable to confirm this apportionment as Beaumont did not enter the salaries of these two employees into the record.

Accordingly, for each fiscal year at issue, the Board directs the Medicare Contractor to apportion the salaries of these two employees based on the breakout of the job responsibilities furnished by Beaumont and to allow the amount apportioned to functions associated with the non-provider operated nurses training program up to a cap of \$50,000 (*i.e.*, the amount claimed). The record reflects that the resulting allowable amount will be conservative.²³

DECISION AND ORDER:

After considering the Medicare law and program instructions, the evidence presented, the stipulations of the parties, and the parties' contentions, the Board makes the following findings:

1. The Medicare Contractor improperly disallowed all of Beaumont's pass through reimbursement for the incremental clinical nurses training costs and directs the Contractor to allow \$361,001 and \$496,835 for these costs for FYs 2005 and 2006 respectively.
2. The Medicare Contractor improperly disallowed \$50,000 claimed in both FY 2005 and 2006 as pass through reimbursement for the incremental costs for administrative and clerical support staff furnished in connection with non-provider operated nurses training program. For each fiscal year at issue, the Board directs the Medicare Contractor to apportion the salaries of these two employees based on the breakout of the job responsibilities furnished by Beaumont at Provider Exhibit A and B, and to allow the amount apportioned to functions associated with the non-provider operated nurses training program up to a cap of \$50,000.

¹⁹ See: Provider Addendum at Tabs 2, 3.

²⁰ Tr. at 201-202, 207.

²¹ See Provider Exhibits A, B. See also Tr. at 201-239; 244-245; 253-257; 265-266.√

²² See Tr. at 284-290.

²³ See, e.g., Tr. at 201-202, 284-290 (indicating that the breakout of job responsibilities was conservative, particularly given the then paper intensive student process and that there are a significant number of employees in other departments that have some responsibilities associated with the Nursing Education Department, including IT, security, and library); Tr. at 352-353 (describing the time spent by other employees conducting student evaluations).

BOARD MEMBERS PARTICIPATING:

Michael W. Harty, Chairman
Clayton J. Nix, Esq.
L. Sue Andersen, Esq.
Charlotte F. Benson, C.P.A.
Jack Ahern, M.B.A.

FOR THE BOARD:

/s/
Michael W. Harty
Chairman

DATE: June 3, 2016