

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2016-D21

**PROVIDER –**  
Baptist Memorial Hospital – Memphis

**HEARING DATE –**  
March 2, 2015

Provider No.: 44-0048

Cost Reporting Periods Ended –  
September 30, 2007; September 30, 2008;  
September 30, 2009; September 30, 2010

**vs.**

**MEDICARE CONTRACTORS –**  
Cahaba Government Benefits Administrators,  
LLC c/o National Government Services, Inc.

**CASE NOs.:** 13-3307; 14-1004; 14-1760;  
15-1894

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## **ISSUE STATEMENT**

Whether the Medicare Contractor's disallowance of the costs for the Hospital's Allied Health Care Management Program ("AHCMP") was correct.<sup>1</sup>

## **DECISION**

After considering the Medicare law and regulations, the evidence presented, and the parties' contentions, the Provider Reimbursement Review Board ("Board") finds that the Medicare Contractor correctly disallowed the costs for the Hospital's AHCMP for fiscal years ("FYs") 2007 to 2010 as there is no evidence that the program was accredited during FYs 2007 to 2010 by a national approving body for the particular activity or area of study for which the AHCMP degree is granted.

## **INTRODUCTION**

Baptist Memorial Hospital – Memphis ("Hospital" or "Provider") is an acute care hospital located in Memphis, Tennessee. The Medicare contractor<sup>2</sup> assigned to Baptist is Cahaba Government Benefits Administrators, LLC c/o National Government Services, Inc. ("Medicare Contractor").

The Medicare Contractor adjusted Baptist's FY 2007-2010 cost reports, reclassifying the costs for its AHCMP to a non-reimbursable cost center based on the Medicare Contractor's determination that the Program was not properly accredited per 42 C.F.R. § 413.85(e). The Hospital timely appealed those adjustments and has met the jurisdictional requirements required for a hearing before the Board.

The Board conducted a telephonic hearing on March 2, 2015.<sup>3</sup> The Hospital was represented by Kenneth Marcus, Esq. of Honigman Miller Schwartz and Cohn LLP. The Medicare Contractor was represented by Arthur E. Peabody, Jr., Esq. of the Blue Cross and Blue Shield Association.

## **STATEMENT OF FACTS**

The Hospital's AHCMP provides clinical based business experience to students in non-clinical areas (*e.g.*, risk management, accounting, finance, and human resources). Through this training, students assist and shadow health care business professionals and, thereby, gain necessary work experience prior to graduating and entering the field of professional health care management. The AHCMP provides a pool of qualified applicants to fill vacancies at the Hospital, thus

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<sup>1</sup> Transcript ("Tr") at 6.

<sup>2</sup> Fiscal intermediaries ("FIs") and Medicare administrative contractors ("MACs") will be referred to as Medicare contractors.

<sup>3</sup> The hearing was initially limited to PRRB Case No. 13-3307 for FY 2007. However, the same and sole issue existed in the following additional cases for this Hospital: 14-1004 (FY 2008), 14-1760 (FY 2009), and 15-1894 (FY 2010). Subsequent to the hearing, the parties stipulated that the Board can decide these three additional cases based on the record established in Case No. 13-3307.

enabling the Hospital to effectively administer succession planning and enhancing the quality of the professional administrative management workforce.<sup>4</sup>

The Hospital's AHCMP is operated by the Baptist Memorial College of Health Sciences ("College"). The College is a wholly owned subsidiary of the Hospital. The College is accredited under the Southern Association of Colleges and Schools ("SACSC") Commission on Colleges.<sup>5</sup> The Medicare Contractor disallowed the AHCMP costs because it maintained that the AHCMP was not properly accredited. More specifically, the Medicare Contractor maintains that SACSC was a regional, not national, accrediting group that accredits colleges in their entirety and it is not a nationally recognized professional organization for the accreditation for the particular activity, that is, the health management programs as required by federal regulation.

The regulations at 42 C.F.R. § 413.85 set forth the applicable principles for reimbursing the reasonable cost of nursing and allied health educational activities under the Medicare program and explicitly define the types of approved educational activities which are within the scope of these reimbursement principles. Specifically, 42 C.F.R. § 413.85 (2005) states in pertinent part:

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(d) *General payment rules.* (1) Payment for a provider's net cost of nursing and allied health education activities is to be determined on a reasonable cost basis, subject to the following conditions and limitations:

(i) An approved educational activity—

(A) Is recognized by a national approving body or State licensing authority as specified in paragraph (e) of this section;

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(e) *Approved nursing and allied health education programs.*

CMS will consider an activity an approved nursing and allied health education program if the program is a planned program of study that is licensed by State law, or if the licensing is not required, is accredited by the recognized national professional organization **for the particular activity**. Such national accrediting bodies include, but are not limited to, the Commission on Accreditation of Allied Health Education Programs, the National League of Nursing Accrediting Commission, the Association for Clinical Pastoral Education Inc., and the American Dietetic Association.<sup>6</sup>

Reflecting the same language, the Provider Reimbursement Manual, CMS Pub. 15-1 ("PRM 15-1"), § 402.1 requires that an approved educational activity either be licensed by a state organization, or if licensing is not required, be "approved by the recognized professional

<sup>4</sup> See Provider's Final Position Paper at 1.

<sup>5</sup> See Provider's Pre Hearing Filings, Stipulation at 1; Tr. at 13.

<sup>6</sup> (Italics in original and bold emphasis added).

organization for the particular activity.”<sup>7</sup> Further, PRM 15-1 defines the appropriate “approving bodies” as follows:

402.4 Approving Bodies.—Approving bodies are those organizations and associations which recognize the professional stature of medical or paramedical educational programs *at the national level*. (See § 404 for examples of organizations and associations in this category.)<sup>8</sup>

PRM 15-1 § 404 expands on the examples of acceptable national approving bodies that are listed in 42 C.F.R. § 413.85. In particular, § 404 recognizes the Association of University Programs in Hospital Administration (“AUPHA”) as an approving body for “[h]ospital administration residencies.”

### **DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:**

The Hospital contends that the Medicare Contractor denied Medicare payment of the costs related to its AHCMP based on an overly narrow interpretation and application of the accreditation requirements for the AHCMP.<sup>9</sup> Baptist argues that the governing authority does not exclusively prescribe AUPHA certification. The Hospital argues that 42 C.F.R. § 413.85 makes no reference to AUPHA, and indeed, is silent regarding the accreditation of a health management program and only identifies certain accrediting bodies by way of example. The Hospital believes that the regulation does not support the Medicare Contractor’s position that AUPHA accreditation is required.<sup>10</sup>

The Hospital argues that its AHCMP is accredited as part of the College’s accreditation by the SACSC. The Hospital’s witness stated that SACSC accreditation includes a review of the AHCMP, along with all of the other educational programs provided by the College.<sup>11</sup> The witness also testified that SACSC fulfills any requirement for “national” accreditation or certification because it is affiliated with the Council for Higher Education Accreditation (“CHEA”), a national accrediting organization.<sup>12</sup> Finally, the Hospital’s witness provided insight as to why no Health Care Management specific accreditation had been sought, by explaining that licensure was not required: “Our students don’t ever have to sit for licensure, so, in fact, they don’t have a separate accreditation.”<sup>13</sup>

The Board finds that 42 C.F.R. §§ 413.85(d)(1)(i)(A) and 413.85(e), on its face, require that: (1) the specific program be accredited by a national accrediting body; and (2) the accrediting body is qualified to accredit “the particular activity.” The Board finds that, while the Hospital’s

<sup>7</sup> (Emphasis added).

<sup>8</sup> (Underline in original and italics emphasis added.)

<sup>9</sup> Provider’s Post Hearing Brief at 5.

<sup>10</sup> Medicare Contractor’s Final Position Paper at 6.

<sup>11</sup> Tr. at 46-47.

<sup>12</sup> *Id.* at 46.

<sup>13</sup> Tr. at 77.

AHCMP was indeed accredited by the SACSC, SACSC is only a regional<sup>14</sup> accrediting body, not a national accrediting body as required by the regulation. PRM 15-1 § 404.2 reflects the reason for this requirement: “Approving bodies are those organizations and associations which recognize the professional stature of medical or paramedical educational programs at the national level.”<sup>15</sup> Thus, while SACSC may be affiliated with a national organization, it is not an association that recognizes the professional stature of medical education programs at the national level as specified by the Manual.

In a recent decision, the District of Columbia District Court addressed the purpose of the specific requirements of 42 C.F.R. § 413.85(e).<sup>16</sup> In this regard, the Court states that the regulation reflects “...the Secretary's clear intent in using third-party accreditation as a *meaningful* replacement for its own substantive inquiry”<sup>17</sup> and that “the regulation . . . requires that the program in question ‘[e]nhance the quality of health care at the provider.’”<sup>18</sup> Thus, while the Hospital advocates that SACSC’s affiliation with a national organization meets the requirement of the regulation, the Board is not convinced. The Board believes that the regulatory language must be read narrowly precisely because the specific requirements allow the Secretary to substitute the accreditation judgment of a qualified reviewing organization for her own inquiry into the quality of the program and the enhancement of patient care. In effect, if Medicare makes payment for these training costs, it must be satisfied that the program meets some “meaningful” industry standards.

Consistent with this purpose, the regulation requires that CMS “consider an activity an approved nursing and allied health education program if the program is a planned program of study that is licensed by State law, or if the licensing is not required, is accredited by the recognized national professional organization for the *particular activity or area of study* for which the degree is granted.”<sup>19</sup> As explained below, the Board finds no evidence in the record to support a finding that the AHCMP was accredited by a recognized national professional organization “for the particular activity” (in this case, health care management) as required by the regulation.

The Board concurs with the Hospital’s position that neither the manual nor the regulations require accreditation by a *specific* accrediting organization, as both the manual and regulations allow reimbursement if the program is licensed by State law (not relevant here), or is accredited by the recognized national professional organization for that particular activity. While PRM 15-1 § 404 identifies certain programs and recognized approving bodies, the Board does not find this list to be exhaustive. However, the Board rejects the Hospital’s argument that the SACSC’s accreditation of the AHCMP’s operator, the Hospital-owned College, is sufficient. Based on the testimony and evidence in the record, the Board finds that the SACSC accreditation is general in

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<sup>14</sup> The Board acknowledges that SACSC is affiliated with the national accrediting organization Council on Higher Education Accreditation (“CHEA”), however this affiliation does not necessarily transform SACSC into a national organization nor could it supply for the deficiency that accrues because neither accrediting organization is specific to the field of Health Care Management. See Provider’s Post Hearing Brief at 10.

<sup>15</sup> (Emphasis added.)

<sup>16</sup> *Chestnut Hill Benevolent Ass'n v. Burwell*, 142 F. Supp. 3d 91, 102 (D.D.C. 2015) (emphasis added).

<sup>17</sup> *Id.* at 102 (emphasis in original) (citing to 66 Fed. Reg. 3358, 3365 (Jan. 12, 2001)).

<sup>18</sup> *Id.* (quoting 42 C.F.R. § 413.85(d)(1)(i)(C)).

<sup>19</sup> (Emphasis added.)

nature and pertains to the College as a whole, including all areas of study offered.<sup>20</sup> As such, the SACSC does not specifically accredit health care management programs, the area of study at issue in this appeal. While the Board recognizes that there may be other national approving bodies that accredit health management programs other than AUPHA, the Hospital has not demonstrated that it obtained accreditation of its AHCMP from any nationally recognized approving body for “the particular activity,” *i.e.*, health management programs.

**DECISION:**

After considering the Medicare law and regulations, the evidence presented, and the parties’ contentions, the Board finds that the Medicare Contractor correctly disallowed the costs for the Hospital’s AHCMP for FYs 2007 to 2010 as there is no evidence that the program was accredited for FYs 2007 to 2010 by a national approving body for the particular activity or area of study for which the AHCMP degree is granted.

**BOARD MEMBERS PARTICIPATING:**

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

**FOR THE BOARD:**

/s/  
Michael W. Harty  
Chairman

DATE: September 26, 2016

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<sup>20</sup> See Provider Exhibit P-22.