

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON-THE-RECORD
98-D103

PROVIDER -
Medical Center of Garden Grove
Garden Grove, California

DATE OF HEARING-
September 14, 1998

Provider No. 05-0230

Cost Reporting Period Ended -
February 28, 1990

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
Blue Cross of California

CASE NO. 93-0429

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ISSUE:

Was the Intermediary's adjustment offsetting revenue associated with physician and guest meals, while, at the same time, setting up a nonreimbursable cost center for these nonallowable costs, proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Medical Center of Garden Grove ("Provider") is a short-term acute-care hospital located in Garden Grove, California. Blue Cross of California ("Intermediary") issued the Provider's Notice of Program Reimbursement ("NPR") for fiscal year 1990, the year under appeal, on July 15, 1992.

The Provider set up a nonreimbursable cost center on its cost report for guest meals, the cost of which is not covered by Medicare. It offset revenue associated with employee meals but, because of the nonreimbursable cost center for guest meals, calculated the guest meals revenue and removed it from the offset. The Intermediary, during its audit of the Provider's cost report, established a revenue offset associated with the costs of nonallowable meals. First, it calculated the revenue for guest meals, without the mark-up above the cost to employees. Second, the Intermediary calculated the imputed revenue for meals that physicians received free. The Intermediary then offset these amounts against cafeteria costs on Worksheet A-8.¹

On January 7, 1993, the Provider filed an appeal of several issues from its 1990 NPR with the Provider Reimbursement Review Board ("Board"). All issues but one have been resolved or withdrawn. The appeal has met the requirements of 42 C.F.R. §§ 405.1835-.1841. The Medicare reimbursement effect for the remaining issue is approximately \$2,000.

The Provider was represented by Byron J. Gross, Esquire, of Hooper, Lundy & Bookman, Inc., and the Intermediary, by Bernard M. Talbert, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the Intermediary violated manual instructions when it set up both the nonreimbursable cost center and the revenue offset for physician meals. The Provider Reimbursement Manual, Part I ("HCFA Pub. 15-1") § 2328 clearly prohibits the imposition of a revenue offset when a nonallowable cost center is established. This section states:

¹ Provider's Position Paper, page 2 and Exhibits P-1 and P-2/Intermediary's Position Paper, Exhibits I-1 and I-2.

Nonallowable cost centers to which general service costs apply should be entered on the cost allocation worksheets after all General Service Cost Centers. General service costs would then be distributed to the nonallowable cost centers in the routine “step-down” process. Revenue derived from nonallowable activities must not be offset against the nonallowable cost centers prior to or during the cost finding process.

HCFA Pub. 15-1 § 2328. (emphasis added)

The Provider argues that the Board addressed this same issue in Piedmont Medical Center (Rock Hill, S.C.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of South Carolina, PRRB Dec. 96-D22, March 25, 1996, Medicare and Medicaid Guide (“CCH”) ¶ 44,111, decl’d rev. HCFA Admin., May 8, 1996.² In that case, the provider had included an offset of guest meals revenue on its cost report. The intermediary, on the audited cost report, set up a nonreimbursable cost center for guest meals without reversing the revenue offset. The provider, relying on HCFA Pub. 15-1 § 2328, argued that the intermediary could not leave the revenue offset in place while setting up the nonreimbursable cost center. While also arguing that the revenue offset was an appropriate way to remove the costs of guest meals, the provider stated that it would accept the nonreimbursable cost center if the revenue offset were removed. The Board held that guest meals revenue should not be offset against cafeteria costs when a nonreimbursable cost center has been set up. It further held that the nonreimbursable cost center, rather than the revenue offset, was a more appropriate method for determining the cost of guest meals. Moreover, the Board noted that more accurate cost-finding would occur if the guest meals revenues were not offset. Since the Administrator declined to review the Board’s decision, the Provider maintains that this is clearly HCFA’s policy.

The Provider also points out that the Board had previously addressed this issue by deciding that a revenue offset could be used rather than a nonreimbursable cost center. The Board has never, however, taken the position that both the offset and the nonreimbursable cost center were allowed. In Valley Baptist Medical Center (Harlington, Tex.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Texas, Inc., PRRB Dec. No. 90-D60, September 18, 1990, Medicare and Medicaid Guide (“CCH”) ¶ 38,861, rev’d HCFA Administrator, November 16, 1990, Medicare and Medicaid Guide (“CCH”) ¶ 38,945 (“Valley Baptist Medical Center”), the Board discussed the history of HCFA’s treatment of costs attributable to guest meals. Before April 1978, HCFA allowed a total revenue offset for all meals revenue, without distinguishing between guest meals and other meals. Pursuant to HCFA Pub. 15-1 § 2105.2, which was added at this time, and until early 1981, providers could either make a total revenue offset or calculate the cost of guest meals. Based upon

² See also Piedmont Medical Center (Rock Hill, S.C.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of South Carolina, PRRB Dec. 96-D24, April 12, 1996, Medicare and Medicaid Guide (“CCH”) ¶ 44,133 for an identical decision.

instructions issued by HCFA on April 22, 1981, pertaining to the enforcement of section 2105.2, the Board concluded that HCFA intended that nonallowable cost centers rather than revenue offsets should be set up to accumulate the costs of guest meals.

The Board, however, in Valley Baptist Medical Center, held that a revenue offset was more appropriate than the methodology used by both the provider and the intermediary for guest meals cost finding. The Administrator, in reversing the Board, stated that a nonallowable cost center must be used instead of a revenue offset. The Administrator found that:

The revenue offset method ordered by the PRRB is inappropriate in this case. It does not follow Medicare program instructions and the PRRB failed to show that this method determined guest meal costs more accurately than the step-down technique approved by the Intermediary. Both § 2328 of the PRM and § 332 of the PRM, Part II, referred to by the PRRB, deny use of a revenue offset for determining non-reimbursable costs when overhead and general service costs are involved and can be determined. § 2328 states that Worksheet A-8 will be used for “. . . nonallowable costs to which general service costs are not applicable. . .” § 332, which gives instructions for the use of Worksheet A-8, states that the revenue offset should only be entered in the event that “cost” cannot be determined.

Valley Baptist Medical Center at ¶ 38,945. (emphasis added)

The Provider also notes that in another case on this same issue, the Board held that the revenue offset approach was proper. See, University of Minnesota Hospitals and Clinic v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Minnesota, PRRB Dec. No. 91-D29, March 29, 1991, Medicare and Medicaid Guide (“CCH”) ¶ 39,134. The Provider states that the relevance to the instant case is that neither the Board nor the intermediary took the position that both a revenue offset and a nonallowable cost center were appropriate.

INTERMEDIARY’S CONTENTIONS:

The Intermediary contends that costs associated with serving meals to visitors are not appropriate or necessary and proper nor are they related to patient care. See 42 C.F.R. § 413.9 and HCFA Pub. 15-1 §§ 2100, 2102ff, and 2105.2. All related direct and indirect costs in excess of the portion of cafeteria revenue associated with visitor meals should be removed from the cost report. Providers must maintain adequate cost data to determine the cost of these meals, i.e., number of visitor meals served.

The Intermediary also argues that it is required to establish the nonallowable physician and visitor meals cost center in accordance with 42 C.F.R. § 413.24 and HCFA Pub. 15-1 § 2306.1. The reporting requirements of HCFA Pub. 15-1 § 2328 ensure that the direct and

indirect costs applicable to the nonallowable cost center will not be inappropriately allocated to the allowable cost centers.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Regulations - 42 C.F.R.:

- §§ 405.1835 - .1841 - Board Jurisdiction
- § 413.9 - Cost Related to Patient Care
- § 413.24 - Adequate Cost Data and Cost Finding

2. Program Instructions - Provider Reimbursement Manual, Part I ("HCFA Pub. 15-1):

- § 2328 - Distribution of General Service Costs to Nonallowable Cost Areas
- § 2105.2 - Cost of Meals for Other Than Provider Personnel
- § 2100 - Reasonable Costs, Principle
- § 2102ff - Reasonable Costs, Definitions
- § 2306.1 - Step-Down Method

3. Cases:

Piedmont Medical Center (Rock Hill, S.C.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of South Carolina, PRRB Dec. 96-D22, March 25, 1996, Medicare and Medicaid Guide ("CCH") ¶ 44,111, decl'd rev. HCFA Admin., May 8, 1996.

Piedmont Medical Center (Rock Hill, S.C.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of South Carolina, PRRB Dec. 96-D24, April 12, 1996, Medicare and Medicaid Guide ("CCH") ¶ 44,133.

Valley Baptist Medical Center (Harlington, Tex.) v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Texas, Inc., PRRB Dec. No. 90-D60, September 18, 1990, Medicare and Medicaid Guide ("CCH") ¶ 38,861, rev'd HCFA Administrator, November 16, 1990, Medicare and Medicaid Guide ("CCH") ¶ 38,945.

University of Minnesota Hospitals and Clinic v. Blue Cross and Blue Shield Association/ Blue Cross and Blue Shield of Minnesota, PRRB Dec. No. 91-D29, March 29, 1991, Medicare and Medicaid Guide (“CCH”) ¶ 39,134.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the controlling laws, regulations and program instructions, the facts in the case, the parties’ contentions, and the evidence in the record finds and concludes that the Intermediary’s adjustment offsetting revenue associated with physician and guest meals was improper.

The Board notes that the Intermediary made two A-8 adjustments to offset the revenue for guest and physician meals. The Board further notes that the Intermediary established a non-reimbursable cost center for physician and guest costs. The Board agrees with the statistics used by the Intermediary in the establishment of this non-reimbursable cost center. The Board notes that the Intermediary imputed a physician revenue amount but finds that this calculation is not pertinent in this case.

The Board finds that HCFA Pub. 15-1 §§ 2105.2 and 2328 apply in this case.

Nonallowable cost centers to which general service costs apply should be entered on the cost allocation worksheets after all General Service Cost Centers. General service costs would then be distributed to the nonallowable cost centers in the routine “step-down process.” Revenue derived from nonallowable activities must not be offset against the nonallowable cost centers prior to or during the cost finding process.

Id.

The Board further finds that the Piedmont Medical Center case is on point with this case and the Administrator declined review. In summary, the Board finds that the Intermediary’s offset of revenue is improper. The establishment of the non-reimbursable cost center and the use of the step-down statistics was proper.

DECISION AND ORDER:

The Intermediary's adjustment offsetting revenue associated with physician and guest meals is improper. The adjustment is reversed.

Board Members Participating:

Irvin W. Kues
James G. Sleep
Henry C. Wessman, Esq.
Martin W. Hoover, Jr., Esq.
Charles R. Barker

FOR THE BOARD:

Irvin W. Kues
Chairman