

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2005-D15

PROVIDER –
Topanga Terrace
Canoga Park, California

Provider No.: 05-6092

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
United Government Services, LLC - CA

DATE OF HEARING –
November 5, 2004

Cost Reporting Period Ended -
December 31, 1998

CASE NO.: 02-0020

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ISSUE:

Whether the Intermediary's denial of the Provider's Routine Cost Limit (RCL) exception request was proper.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

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 under interpretive guidelines published by CMS. See, 42 U.S.C. §1395(h), 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 proportion 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.

Section 1861(v)(1)(A) of the Social Security Act permits the Secretary to establish limits on provider costs recognized as reasonable under the Medicare program. These limits on cost are referred to as RCLs. The Medicare regulations at 42 C.F.R. §413.30 implement the RCLs. The Medicare regulations at 42 C.F.R. §413.30(c) permit providers to request relief from the cost limits by requesting reclassification, exception or exemption. Provider requests for relief must be made to its fiscal intermediary within 180 days of the date on the intermediary's NPR. Id.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Topanga Terrace (Provider) is a 112-bed skilled nursing facility (SNF) and subacute care facility located in Canoga Park, California. The Provider filed an exception request to its RCL for the fiscal year ended (FYE) 12/31/98 on April 24, 2001. United Government Services (Intermediary, formerly Blue Cross of California) denied the Provider's request because it was not filed within 180 days of the September 25, 2000 Notice of Program Reimbursement (NPR). The Provider appealed the Intermediary's denial to the Board pursuant to 42 C.F.R. §§405.1835-405.1841 and met the jurisdictional requirements of those regulations. The amount of program funds in controversy is approximately \$80,000.

Chronology of Events

On its FYE 1996 cost report, the Provider exceeded the RCL and submitted and received an exception to its RCL for that year.

On its FYE 1997 cost report, the Provider's costs were below the RCL because the Intermediary imposed a nursing labor audit (NLA) adjustment. The Intermediary later determined that the NLA adjustment should be reversed, and on February 22, 2001, the FYE 1997 cost report was revised causing the Provider to exceed the RCL for FYE 1997. On April 24, 2001, the Provider filed an exception request for FYE 1997. On June 13, 2001, the Intermediary approved the Provider's 1997 RCL exception request, finding that it was filed timely, i.e., within 180 days of the revised NPR for FYE 1997 cost report in which the RCL was exceeded.

On September 25, 2000, prior to the Intermediary's revisions to the 1997 cost report, the Intermediary issued an NPR pertaining to the Provider's FYE 12/31/98 cost report. On its FYE 1998 cost report, the Provider's costs exceeded the RCL, but the NPR did not contain an adjustment related to the NLA. On the same day the Intermediary issued the NPR, it also issued a notice of reopening for the FYE 1998 cost report. Subsequently, as noted above, the Intermediary determined that the NLA adjustment should be reversed for FYE 1997 and decided not to apply the NLA adjustment to FYE 1998. Therefore, the reopening was closed without any additional adjustments. On April 24, 2001, the Provider filed an exception request for FYE 1998. On June 13, 2001, the Intermediary rejected the Provider's RCL exception request because it was not filed within 180 days of the original NPR in which the RCL was exceeded.

The Provider was represented by Michael E. Lesnick, of Kellogg & Andelson. The Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider emphasizes that on the same day that the Intermediary issued its NPR for FYE 1998, it issued a notice of reopening. The Provider asserts that, even though it was subject to the RCL in the NPR, it believed that the Intermediary was going to issue a revised NPR with the NLA adjustments, consistent with its treatment of the 1997 fiscal year. That adjustment would have lowered the Provider's costs below the RCL for 1998 and eliminated the need to pursue an exception request. Subsequently, the Intermediary determined that it would reverse the NLA for the FYE 1997 and issued a revised NPR for FYE 1997. The Intermediary did not make the NLA adjustments to the FYE 1998 cost report as the Provider had expected. Instead, it closed the reopening notice without issuing a revised NPR. The Provider asserts that because the Intermediary immediately reopened the cost report for FYE 1998, the NPR was not a true closing, and the date on the NPR should not be used as the start of the 180-day deadline period. Instead, the start date for the deadline should be the date of "the closure of the reopening," which was

January 12, 2001. This would make the deadline July 11, 2001 and the Provider's April 24, 2001 exception request timely.

In the alternative, the Provider requests that the Board recognize that there was massive confusion and broken commitments by the Intermediary to issue a revised NPR with the NLA adjustment, which would mitigate the "missed deadline."

The Intermediary asserts that unlike the FYE 1997 NPR, in the FYE 1998 NPR, reimbursement of the Provider's routine cost was limited to the RCL. Because the Provider already exceeded the RCL, there was no need for the Provider to wait for a revised NPR before filing an RCL exception request, and it should have filed it within 180 days of the NPR.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law, parties' contentions and evidence presented, finds and concludes as follows.

The regulation on provider requests regarding cost limits provides as follows:.

The provider's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement.

42 C.F.R. §413.30(c).

It is undisputed that the date of the NPR was September 25, 2000. 180 days from the date of the NPR would mean that the last date for the Provider to request an exception to the RCL was March 24, 2001. The Provider did not submit an RCL exception request until April 24, 2001. The Provider's request was not filed within the 180 days of the date of the NPR; therefore, the Intermediary's denial of the Provider's request was proper.

The regulation is clear that the request must be filed within 180 days of the NPR and does not provide any exception for good cause or other extenuating circumstance. Nor does the regulation afford the Board any authority to extend the time to file or provide for a filing from any other determination, such as a closing of a reopening, as an alternative to start the 180-day period to file the RCL exception request.

DECISION AND ORDER:

The Board finds the Provider's request for an exception to the RCL was not filed within 180 days after the date of the NPR. The Intermediary's determination is affirmed.

Board Members Participating:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.

Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, CPA
Anjali Mulchandani-West

FOR THE BOARD:

DATE: December 17, 2004

Suzanne Cochran, Esquire
Chairman