

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2007-D52

**PROVIDERS -**

Allentown-Bethlehem MSA Wage Index  
Group

Provider Nos.: Various

**vs.**

**INTERMEDIARY -**

BlueCross BlueShield Association/  
Highmark Medicare Services (f/k/a  
Veritus Medicare Services)

**DATE OF HEARING -**

September 26, 2006

Cost Reporting Periods Ended -  
Various

**CASE NO.:** 02-0530G

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ISSUE:

Whether St. Luke's Hospital's letter of March 8, 2001 requesting corrections to its hospital wage data for its fiscal year ended 6/30/1999 (including documentation contained in Exhibit 1-7) satisfied the requirements established by CMS (then HCFA) set forth in 66 Fed. Reg. 39828 -39871 (Aug 1, 2001) for a timely request to the hospital's intermediary to correct any incorrectly reported wage data on its cost report for purposes of the wage data correction process.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

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

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 providers under Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. §1395h, 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 portion 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.

The Medicare statute, 42 U.S.C. § 1395ww(d)(3)(E), requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts for area wages based on the geographical location of the hospital compared to the national average hospital wage level. Beginning October 1, 1993, the statute required 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).

It is the provider's responsibility to submit correct wage index data on the Medicare cost report, but providers are given an opportunity over several months to correct the wage index data if it is discovered that inappropriate information has been reported. To ensure the accuracy of the wage data, CMS instructs intermediaries to perform a desk review of

a provider's wage index data reported on Worksheet S-3 of the Medicare cost report. CMS provides intermediaries with a desk review program with specific instructions on how the review is to be completed and a specific timeline for the completion of the review.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

This case involves six<sup>1</sup> PPS hospitals (Providers) located in the Allentown-Bethlehem-Easton, Pennsylvania MSA. An appeal was filed on their behalf due to the final wage data reported for St. Luke's Hospital which they claim adversely affected the Medicare PPS reimbursement for the entire Allentown-Bethlehem-Easton, Pennsylvania MSA.

St. Luke's Hospital filed its Medicare cost report for the fiscal year ended June 30, 1999 in November of 1999. The wage index review for this cost report began in November of 2000. The following pertinent facts regarding the case were stipulated to by the parties:<sup>2</sup>

- The controversy arises from the wage data gathered from the Providers' 1999 costs, for application to the area wage adjustment for the Allentown-Bethlehem MSA for Federal Fiscal Year (FFY) 2002.
- At issue is the Intermediary's disallowance of the wage-related cost allocation methodology proposed by St. Luke's Hospital for its fiscal year 6/30/1999 wage data.
- An understatement to St. Luke's Hospital's average hourly wage for its 6/30/1999 cost report data would result in an understatement to the Allentown-Bethlehem MSA's average hourly wage, and consequently its hospital wage index and federal payments under the Medicare PPS, for FFY 2002.
- By letter dated September 28, 2000, the Intermediary informed St. Luke's Hospital of the result of its desk review of the Hospital's S-3 and revisions made to the wage data (Exhibit I-6).
- CMS issued a Wage Index Development timetable for the 2002 wage index update, with specified

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<sup>1</sup> The Intermediary's and the Provider's position papers reference seven providers in this appeal. However, on May 27, 2005 the Board determined that it did not have jurisdiction over one Provider, W.A.Foote.

<sup>2</sup> See stipulations at Exhibit P-10.

due dates for the various steps in compiling the wage index data (Intermediary Exhibit I-5).

- Pursuant to the timetable in I-5, the “deadline for a hospital to request revisions to preliminary data or corrections to final data” was March 9, 2001.
- On March 8, 2001, St. Luke’s Hospital filed a timely request for corrections and revisions to the Worksheet S-3 wage data along with supporting workpapers. A copy of the request and supporting workpapers is found at Exhibit I-7.
- By correspondence dated March 23, 2001, the Intermediary responded to the Hospital’s request, accepting some revisions and denying others (Exhibit I-14).
- In its March 23, 2001 correspondence, the Intermediary addressed the proposed revisions to allocate wage-related costs “using different allocation methods” and concluded that such a method was “unacceptable and therefore denied.” The Intermediary based its decision on the rules for allocation of overhead costs via Worksheet B-1, and stated that “the provider needs to convince the intermediary that a separate cost center, to be allocated on a different basis, would result in a more precise allocation of costs.”
- The wage-related costs St. Luke’s Hospital sought to allocate in its 3/8/2001 request are directly reported on Worksheet S-3 and are not related to employee benefits overhead costs that are allocated via the Worksheet B-1 statistics.
- On April 5, 2001, St. Luke’s Hospital responded to the Intermediary’s denial by stating “that the revised allocation bases requested [in St. Luke’s 3/8/2001 letter] clearly result in a much more accurate allocation of wage related costs to highly-paid physicians” (Exhibit I-17 and P-3), and more specifically addressing the Hospital’s disagreement with the Intermediary’s denial.

- In its April 5, 2001 letter, St. Luke's Hospital provided no additional data but reiterated that certain wage-related costs, such as Social Security tax and health insurance premiums should not be allocated on the basis of total salaries, but on the basis of actual cost in the case of Social Security tax, or total hours for health insurance.
- Wage-related costs may not be uniformly incurred for every dollar of salary expended by a hospital (e.g., social security taxes are not incurred beyond the cap on withholding; pension costs are not incurred on behalf of individuals who are not vested in the pension plan; health insurance expenditures are related to the number of individuals insured rather than the compensation paid such individuals), so allocation of wage-related costs as described in ¶17 (of the stipulations) is more precise than allocation based exclusively on salaries.
- St. Luke's Hospital's 4/5/2001 letter included explanations, but included no additional documentation beyond that submitted in connection with its 3/8/2001 request for correction of its wage data.
- On April 24, 2001, the Intermediary responded to the Hospital's April 5, 2001 correspondence and denied the request to revise the wage data. The denial was based solely on timeliness, and not on the merits of the request (Exhibit P-4).
- The Intermediary subsequently accepted virtually the same methodology proposed by St. Luke's Hospital for allocation of its 6/30/1999 wage-related costs, in reviewing the Hospital's 6/30/2000 Worksheet S-3 for compilation of the 2003 wage index data (Exhibit I-16).

The Intermediary's denial resulted in a cumulative reduction of Medicare reimbursement of approximately \$147,000 for the Providers in this appeal. The Providers appealed the Intermediary's denial to the Board and met the jurisdictional requirements of 42 C.F.R. §§405.1835 - 405.1841. The Providers were represented by Neil A. Cooper, Esquire, of Hall, Render, Killian, Heath & Lyman P.C. The Intermediary was represented by James R. Grimes, Esquire, of Blue Cross Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After consideration of Medicare law and program instructions, the evidence presented and the parties' arguments, the Board finds and concludes as follows:

The controversy in this case centers around the adequacy of the documentation provided to the Intermediary with the Provider's March 8, 2001 request for wage data correction. The Intermediary no longer contends that its original basis for its adjustment was correct and agrees that the basis the Provider used in its March 8<sup>th</sup> correspondence would produce more accurate wage data and result in a higher wage index. However, the issue presented to the Board is whether the March 8<sup>th</sup> submission was incomplete without the April 5<sup>th</sup> explanation.

Hospital Notice 01-05 was issued by the Intermediary on February 12, 2001.<sup>3</sup> This notification informed providers that the final wage data public use file was available and provided the following instructions: "Hospitals have the right to request revisions to this wage data. However, a hospital that wishes to revise its data must submit its request, along with the appropriate detailed documentation to our office **no later than March 9, 2001.**" The Providers have argued that St. Luke's submitted its request and all the appropriate detailed documentation by the March 9, 2001 deadline, and the parties stipulated that the April 5, 2001 submission did not contain additional data. However, the April 5<sup>th</sup> submission did include explanations of the rationale for St. Luke's methodology, including a consultant's analysis that the Provider's argument supported its position that the Part B Physician wage-related costs have been allocated using a different methodology.

The Board finds that the wage index review process, which contains established deadlines, provides opportunities for a provider to perfect its request. The process is designed to allow providers to flush out questions that may arise, and it is unrealistic to expect either party to anticipate all such questions. St. Luke's March 8, 2001 correspondence lacked the detailed explanation that was included in the April 5, 2001 submission, but it did contain all the necessary documentation and a short summary explanation as to how St. Luke's rationale would result in a more accurate wage index. St. Luke's submission read:<sup>4</sup>

Reallocation of Exhibit 7 Core Benefits were made in order to more accurately assign benefits to the proper wage index lines. The allocation basis for some lines on Exhibit 7 remained the same, since the original spread based on salaries was the most accurate method of allocation. Exhibit 7 lines shown above, changed to a more appropriate method. The most accurate methodology for spreading the core benefits above was hours/FTE's or direct calculation per employee (FICA). In addition to the reallocation of

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<sup>3</sup> See Exhibit I-8.

<sup>4</sup> See Exhibit P-9, P. 39

core benefits, adjustments were made for additional COBRA health insurance, Directors and Officers insurance, and Pension Credit to Exhibit 7 (Bethlehem).<sup>5</sup> These amounts were incorporated into the allocation based on type of benefit. . . .

The Board finds that while St. Luke's explanation of its request to change its allocation methodology in its March 8, 2001 submission may have been somewhat lacking, it did contain the necessary documentation to support the request. In addition, in its April 5, 2001 response to the Intermediary's March 23, 2001 denial letter, St. Luke's submitted a more detailed explanation of why its proposed reallocation of wage-related costs was justified.

DECISION AND ORDER:

St. Luke's Hospital's wage data was improperly stated by CMS in the calculation of the Allentown-Bethlehem-Easton, Pennsylvania MSA wage index for FFY 2002. This case is remanded to the Intermediary for the recalculation of the FFY 2002 wage index for the Allentown-Bethlehem-Easton, Pennsylvania MSA to reflect the corrections requested by St. Luke's in its letter of March 8, 2001 and for revision of the Providers' program payments affected by the recalculation.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire  
Gary B. Blodgett, D.D.S.  
Elaine Crews Powell, C.P.A.  
Anjali Mulchandani-West  
Yvette C. Hayes

DATE: July 25, 2007

FOR THE BOARD:

Suzanne Cochran  
Chairperson

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<sup>5</sup> The reference to "Bethlehem" refers to the St. Luke's campus located in Bethlehem, PA. Its other campus is in Allentown, PA. (Tr. pg. 79).