

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2012-D1

PROVIDER –
Hall Render Wage Index

Provider Nos.: See Attachment 1

vs.

INTERMEDIARY
Blue Cross Blue Shield Association/
National Government Services and
Wisconsin Physicians Services

DATE OF HEARING
June 10, 2010

Cost Reporting Periods Ended -
See Attachment 1

CASE NOS.: See Attachment 1

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ISSUES:

1. Whether the Fiscal Intermediary and CMS properly determined the Wage Indexes for St. Elizabeth Medical Center (18-0035); St. Luke Hospital East (18-0001); St. Luke Hospital West (18-0045); Mercy Hospital Anderson (36-0001); University Hospital, Inc. (36-0003); Jewish Hospital (36-0016); Mercy Hospital Fairfield (36-0056); Mercy Franciscan Hospital Western Hills (36-0113); Fort Hamilton Hospital (36-0132); Christ Hospital (36-0163); Mercy Franciscan Hospital – Mt. Airy (36-0234); and Mercy Hospital Clermont (36-0236) and the Cincinnati-Middletown, OH-KY-IN Core Based Statistical Area (CBSA) for Federal Fiscal Year 2009.¹
2. Whether the fiscal intermediary and the Centers for Medicare and Medicaid properly determined the Wage Indexes for St. Elizabeth Medical (18-0035) Center and the Cincinnati-Middletown, Ohio-Kentucky-Indiana Core Based Statistical Area (CBSA).²

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 *et seq.* 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 to organizations known as fiscal intermediaries (FIs) and Medicare administrative contractors (MACs). FIs and MACs³ 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 and 413.24.

The operating costs of inpatient hospital services are reimbursed by Medicare on the basis of prospective rates. *See* 42 U.S.C. § 1395ww(d). The regulations governing this Prospective Payment System (PPS) require a provider of inpatient hospital services to file an annual cost report with a fiscal intermediary. 42 C.F.R. § 413.20(b). The fiscal intermediary reviews the cost report, determines the total amount of Medicare payments due the provider and issues the provider a Notice of Program Reimbursement (NPR). *See* 42 C.F.R. § 405.1803. A provider dissatisfied with the intermediary's final determination of the total payment amount may request a hearing before the Provider Reimbursement Review Board (Board), within 180 days of issuance of the NPR. *See* 42 U.S.C. § 1395oo(a).

PPS provides Medicare payment for hospital inpatient operating and capital related costs at predetermined, specific rates for each hospital discharge. The rates are based on average costs that consist of a labor related portion and a non-labor related portion. The labor related portion is adjusted by the wage index applicable to the geographic area where the hospital is located. The wage index is intended to reflect the relative hospital wage level in that geographic area as

¹ Hereinafter the "Short Term Disability Issue".

² Hereinafter the "Baylor Plan Issue".

³ FIs and MACs are hereinafter referred to as intermediaries.

compared to the national average hospital wage level. It is calculated by dividing the average hourly wage in each hospitals area by the national average hourly hospital wage.

CMS is required to update the wage index annually and bases the annual update on a survey of wages and wage related costs taken from cost reports filed by each hospital paid under PPS. 42 U.S.C. §1395ww(d)(3)(E).

ISSUE 1 : SHORT TERM DISABILITY ISSUE

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

These Medicare Group Appeals involve the Federal Fiscal Year (FFY) 2009 hospital wage index established for twelve hospitals using the Cincinnati-Middleton, OH-KY-IN CBSA wage index. The hospitals compensate their employees who qualify for short term disability by paying them directly via payroll accounting system. This practice differs from the industry practice under which hospitals contract with insurance companies to cover short term disability payments and their premium payments are reflected as wage related costs in the wage index calculations. When the short term disability related expense is incurred through insurance, there are no hours matched with the short term disability premiums. However, where the hospital records short term disability through its payroll, CMS attributes hours to those payments and includes them in wage index calculations. Inclusion of those disability hours lowers the wage index and reduces Medicare payments for the hospitals utilizing the Cincinnati-Middleton, OH-KY-IN CBSA wage index. The hospitals participating in these appeals are either classified within the Cincinnati-Middleton, OH-KY-IN CBSA or utilize the wage data. The parties stipulated to certain facts and issues and agree that the issue in these cases is primarily a question of law and policy.

The common issue affecting the participating providers is whether the Intermediary properly included short term disability hours in the "paid hours" for the wage indexes for St. Elizabeth's and the Cincinnati-Middleton, OH-KY-IN CBSA for Federal Fiscal Year 2009.

The Providers filed timely appeals with the Board pursuant to 42 C.F.R. §§ 405.1835-1841, and met the jurisdictional requirements of those regulations. The Provider was represented by Keith D. Barber, Esq., of Hall, Render, Killian, Heath & Lyman, PC. The Intermediary was represented by James R. Grimes, Esq., of Blue Cross Blue Shield Association.

STIPULATIONS OF THE PARTIES:

Pursuant to section XIV of the Provider Reimbursement Review Board (PRRB) instructions, the Providers and the Intermediary stipulated to the following facts and issues:

1. An effectively identical question of law (designated the "Short Term Disability Hours" issue) is before the Board for two cases involving separate appeals from Cincinnati-Middletown MSA and the Rural Iowa MSA for FFY 2009. The relevant PRRB Case and year numbers for these "Short Term Disability Hours" appeals are as follows:

Rural Iowa FFY 2009 Wage Index (Short Term Disability), PRRB Case No. 09-1248G.

Cincinnati-Middleton, OH-KY-IN-CBSA FFY 2009, PRRB Case No. 09-1426G.

2. The parties agree that the issue in these cases is primarily a question of law and policy.
3. The controversy arises from the wage data gathered from the Providers' costs reports, for application to area wage adjustments for the relevant MSAs or rural areas.
4. These group appeals were properly filed before the PRRB on behalf of the hospitals involved.⁴
5. Because the issue in the above referenced cases all involve common questions of law and fact, counsel for the Providers and the FI/MAC in these cases agree to use the Final Position Papers for Case No. 09-1426G as the reference position papers for the June 10, 2010 hearings for these cases. References to exhibits and examination of the witnesses shall be based off these exhibits. With the Board's permission the parties will be required to submit five copies for only these position papers to the Board prior to the hearing.
6. At issue in the case are the "total paid hours" used by the Fiscal Intermediary to determine the wage index for at least one hospital in each of the appealing wage index MSAs or state rural areas.
7. In particular, at issue are hours recorded by some hospitals for employees who suffered short term disabilities that prevented them from working for a period of time.
8. Rather than contract with an insurance carrier to pay employees for such disabilities, the Hospitals at issue continued paying such employees through standard payroll procedures that recorded hours as "paid hours" but where no work was performed ("disability hours").
9. Had the hospitals at issue paid for an insurance carrier to cover short disability payments to employees the costs of such insurance would have been treated as wage related costs and there would have been no associated "paid hours."

⁴ The parties acknowledge that on May 21, 2010 BlueCross BlueShield Association filed a jurisdictional challenge related to PRRB Case No. 09-1426G. The jurisdictional challenge asserted that five of the hospitals in this appeal did not request adjustment of their wage index data during wage index adjustment period and therefore should be dismissed from the case for failure to exhaust their administrative remedies. Counsel for the Fiscal Intermediary and the Providers have conferred on this matter. They agree that the five hospitals subject to the jurisdictional challenge did not have the above described short term disability issue as an issue for their wage data. They have joined this appeal because of the adverse impact on the wage index to their MSA from the hospitals with this issue that the Fiscal Intermediary acknowledges did request adjustments to their wage index data. Accordingly, the parties agree that these five hospitals had no administrative remedies to exhaust and counsel for the Fiscal Intermediary agrees to withdraw this jurisdictional challenge.

10. The issue in these cases is substantially similar to the issue evaluated by the Board in *Rochester General Hospital v. BCBSA*, PRRB Dec. No. 2007-D67, Case No. 03-0522G, CCH ¶ 81,778 (August 31, 2007) (Exhibit P-10) and *Rochester 2004 MSA Wage Index Group v. BCBSA*, PRRB Dec. No. 2009-D2, Case No. 04-0596G, CCH ¶ 82,202 (November 10, 2008) (Exhibit P-8) and the subsequent federal court decision related to those cases *ViaHealth of Wayne County v. Johnson*, 2009 WL 995611 (W.D.N.Y. 2009) (Exhibit P-9).

PROVIDERS' CONTENTIONS:

The Providers refer to the controlling statute at 42 U.S.C. § 1395ww(d)(3)(E) which requires uniform comparison of wage levels in a geographic area with the national average wage level and argue that the comparisons in this case are not consistent because the Intermediary included non-worked hours in these indices while other areas exclude such hours.⁵ The Providers contend further that consistency requires elimination of short term disability hours and offer established industry practices as evidence of standard national treatment. The Providers state that the Intermediary's inclusion of short term disability hours produces a disparate treatment of employee time that understates the average hourly rate for affected hospitals.

The Providers also argue that, in *Rochester 2004 MSA Wage Index Group v. BCBSA*⁶, the Board addressed precisely the same question for disability hours. There the Board concluded:

The pivotal question is whether the short-term disability expense should be included as "salaries and wages" versus "wage related costs."... The Board finds the inclusion of the disability insurance costs as salaries and wages and the inclusion of hours is not proper treatment for these types of costs. Rather, these types of costs should be treated as wage related costs as required by the cost reporting instructions to ensure consistent treatment by all providers for the sake of uniformity and comparability.

This decision reversed the position that the Board established earlier in *Rochester General Hospital v. BCBSA*⁷. There the Board addressed the same issue and the same Rochester MSA providers for the prior fiscal year. In the *Rochester 2004 MSA Wage Index Group*, the Board unanimously concluded that the rationale of "the Board's earlier decision...creates a disparity in how these costs are treated and classified for wage index purposes" and that "such a distinction is improper" because "the wage index is compromised if the Secretary does not classify the same items of costs as wages for all providers."⁸

⁵ See: *Centra Health, Inc. v. Shalala*, 102 Fed. Supp. 2nd (W.D. VA 2000, CCH ¶ 300, 509 and *Sarasota Memorial Hospital v. Shalala*, 60 Fed. 3rd 1507 (11th Cir. 1995), CCH ¶ 43,525.

⁶ *Rochester 2004 MSA Wage Index Group v. BCBSA*, PRRB Dec. No. 2009-D2, Case No. 04-0596G, CCH ¶ 82,202 (November 10, 2008) (Exhibit P-8)

⁷ *Rochester General Hospital v. BCBSA*, PRRB Dec. No. 2007-D67, Case No. 03-0522G, CCH ¶ 81,778 (August 31, 2007) (Exhibit P-10)

⁸ See Exhibit P-8, p.4.

The federal district court for the Western District of New York also considered the Board's earlier decision in the case *ViaHealth of Wayne County v. Johnson*.⁹ The district court concluded that short term disability hours should *not* be included in the calculation of wage indices. The court further concluded that "the paramount consideration" for the Secretary "when determining the average hourly wage of each hospital" must be to "treat the costs and hours of each hospital in the same manner, so that the average hourly wages of all hospitals may be accurately compared against one another."¹⁰

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the wage index calculation is properly limited to paid hours. The Intermediary argues that CMS's published administrative process for index data accumulation at 58 Fed.Reg. 45393-45399 (Sept. 1, 1993) established paid hours as the required basis for reporting. CMS solicited comments from the public but found none were submitted that supported any change and CMS concluded that consistency required continued use of paid hours. The Intermediary states that CMS's longstanding policy is that paid hours are the proper reporting basis and are most reflective of what the index actually measures. Accordingly, the Intermediary argues that both the wages and the hours are properly included in the calculations.

ISSUE 2 : BAYLOR PLAN ISSUE

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

These Medicare Group Appeals involve the FFY 2009 hospital wage index established for St. Elizabeth Medical Center (St. Elizabeth) and for Cincinnati-Middleton, OH-KY-IN CBSA for Medicare Inpatient Prospective Payment System purposes and the hospitals utilizing this wage index. St. Elizabeth utilizes 12-hour shifts for weekend staffing of nurses. St. Elizabeth refers to these employees as Baylor Plan employees. They typically work two twelve hour shifts on weekends or holidays, for a total of 24 hours. To compensate for working these undesirable shifts, the nurses are paid an additional 8 hours of bonus time for a total of 32 hours. The result is an 8 hour bonus payment to the Baylor Plan employees based upon the employee's hourly rate. St. Elizabeth originally filed its cost report showing 32 hours as worked but, citing the CMS Pub. 15 Part II, §3605.2 ("no hours are required for bonus pay"), the hospital filed a timely request for removal of the additional 8 hours. CMS denied the request and subsequently published the final wage index which included the Baylor Plan bonus hours in the calculation of St. Elizabeth's average hourly rate. Inclusion of St. Elizabeth's Baylor Bonus hours in the wage index reduced the total reimbursement for St. Elizabeth and for the hospitals utilizing the Cincinnati-Middleton, OH-KY-IN CBSA wage index. The hospitals participating in these appeals are either classified within the Cincinnati-Middleton, OH-KY-IN CBSA or utilize the wage data for that area. The parties stipulated to the facts related to the cases and agreed that the issue is primarily a question of law and policy.

⁹ *ViaHealth of Wayne County v. Johnson*, 2009 WL 995611 (W.D.N.Y. 2009) (Exhibit P-9).

¹⁰ *ID* at *4; See also Exhibit P-9, pp.4-5.

The common issue affecting the participating providers is whether the FI properly included Baylor Plan bonus hours in the "paid hours" for the wage indexes for St. Elizabeth and the Cincinnati-Middletown, OH-KY-IN CBSA for Federal Fiscal Year 2009.

The Providers filed timely appeals with the Board pursuant to 42 C.F.R. §§ 405.1835-1841, and met the jurisdictional requirements of those regulations. The Providers were represented by Keith D. Barber, Esq., of Hall, Render, Killian, Heath & Lyman, PC. The Intermediary was represented by James R. Grimes, Esq., of Blue Cross Blue Shield Association.

STIPULATIONS OF THE PARTIES

Pursuant to section XIV of the Provider Reimbursement Review Board (PRRB) instructions, the Providers and the Intermediary stipulate to the following facts and issues:

1. An effectively identical question of law (designated the "Baylor Plan" issue) is before the Board for seven cases involving separate appeals from Cincinnati-Middletown MSA and the Rural Iowa MSA. The relevant PRRB Case and year numbers for these "Baylor Plan" appeals are as follows:
 - Cincinnati-Middletown FFY 05 Wage Index, PRRB Case No. 05-0636G.
 - Cincinnati-Middletown FFY 06 Wage Index, PRRB Case No. 06-0679G
 - Cincinnati-Middletown FFY 09 Wage Index, PRRB Case No. 09-1447G.
 - Rural Iowa FFY 2006 Wage Index, PRRB Case No. 06-0681G.
 - Rural Iowa FFY 2007 Wage Index, PRRB Case No. 07-1375G.
 - Rural Iowa FFY 2008 Wage Index, PRRB Case No. 08-0849G.
 - Rural Iowa FFY 2009 Wage Index, PRRB Case No. 09-1222G.
2. The parties agree that the issue in these cases is primarily a question of law and policy.
3. The controversy arises from the wage data gathered from the Providers' costs reports, for application to area wage adjustments for the relevant MSAs or rural areas.
4. These group appeals were properly filed before the PRRB on behalf of the hospitals currently in the appeals.
5. Because the issue in the above referenced cases all involve common questions of law and fact, counsel for the Providers and the FI/MAC in these cases agree to use the Final Position Papers for Case No. 09-1447G as the reference position papers for the June 10, 2010 hearings for these cases. References to exhibits and examination of the

witnesses shall be based off these exhibits. With the Board's permission the parties will be required to submit five copies for only these position papers to the Board prior to the hearing.

6. At issue in the case are the "total paid hours" used by the Fiscal Intermediary to determine the wage index for hospitals with "Baylor Plan" employees.
7. The "Baylor Plan" issue in the above referenced cases involve circumstances where hospitals indirectly pay a higher per hour worked wage (through a payroll system described in paragraph 8 below) to employees as premium or incentive for working unpopular or undesirable hours such as weekend, holiday or late night shifts.
8. At least one hospital in the appealing MSAs reflected these higher, premium wage payments by increasing the number of hours reflected as paid the employee beyond those the employee actually worked. For example, at St. Elizabeth Hospital in the Cincinnati Middletown MSA paid nurses who worked a two 12 hour shifts (24 hours) on weekends or holidays were paid for 32 hours of work even though they only worked 24 hours. This was done as an incentive to work these undesirable times. Provider's Final Position Paper, pp. 7-8.¹¹
9. The FI/MAC maintains that inclusion of such "Baylor Plan" hours in the calculation of the wage index is appropriate. The Providers in these cases hold the position that inclusion of such hours prevents a true and accurate calculation of the per hour costs associated with additional compensation given employees who work undesirable shifts.
10. While the specific number of hours used to calculate these incentive payments may have varied between hospitals and years in dispute the fundamental nature of the payments as an incentive to work undesirable shifts did not.

PROVIDERS' CONTENTIONS:

The Providers refer to the controlling statute at 42 U.S.C. §1395ww(d)(3)(E) which requires uniform comparison of wage levels in a geographic area to the national average wage level and argue that the comparisons in this case are not consistent because the Intermediary included non-worked hours in these indices while other areas exclude such hours. The Providers contend further that consistency requires elimination of Baylor Plan Bonus Time hours and that the inclusion produces a disparate treatment of employee time that understates the average hourly rate for affected hospitals.

The Providers also state that the Intermediary's approach is inconsistent with the program manual instruction at CMS Pub. 15, Part II, §3605.2 which states: "No hours are required for bonus pay." The Providers argue that the Baylor Plan payments are bonus payments for the employees who work certain undesirable time periods. Accordingly, the Intermediary's

¹¹ Per Stipulation #5 this references the Final Position Paper in Case No. 09-1447G.

approach inflates the hours actually worked to produce an inaccurate calculation of the employee's hourly rate.

The Providers also argue that the court held that to establish a Wage Index “ the statute requires the Secretary to adjust hospitals’ costs to reflect relative hospital wage levels... to create a uniform picture of what wage levels were.”¹² Further, the statutory mandate for “uniformity of the wage index is compromised if the Secretary does not classify the same items of costs as wages for all providers.”¹³

INTERMEDIARY’S CONTENTIONS

The Intermediary states that paid hours is the proper reporting basis required under CMS’s longstanding policy. Accordingly, both the wages and the hours are properly included. The Intermediary further argues that the policy, which dates back to 1993, is most reflective of what the index measures. Further, 68 FR 45393-45399 (August 1, 2003), published the administrative process for index data accumulation. The section established paid hours as the required basis for reporting and solicited comments from the public. CMS received no comments which it believed supported change and the Intermediary contends that consistency requires continued use of paid hours. The Intermediary also argues that requesting input from the provider community is the most reliable method of creating a uniform picture of area wage levels. Such uniformity does not require that the wage index accommodate each provider’s own unique methodology for the accounting of its costs and statistics.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After consideration of Medicare law and guidelines, the parties’ contentions and stipulations, and the evidence presented at the hearing, the Board finds and concludes as follows:

ISSUE 1: SHORT TERM DISABILITY ISSUE

The short term disability issue in the Rochester MSA is not new to the Board. The Board addressed the issue in *Rochester General Hospital v. BCBSA*, PRRB Dec. No. 2007-D67¹⁴, and again in *Rochester 2004 MSA Wage Index Group v. BCBSA*, PRRB Dec. No. 2009-D2¹⁵.

In both cases, the Board examined CMS’ Program Instructions for cost report preparation that require that salary and wages paid to hospital employees be included in the wage index calculation. See, CMS Pub. 15-2 §3605.2. The pivotal question was whether the short term disability expense should be included as “salaries and wages” versus “wage related costs.” The distinction is important since “salaries and wages” are directly associated with hours worked by employees; whereas “wage related costs” are costs for which there are no directly associated

¹² *Centra Health*, CCH¶300,509 at*4.

¹³ *Sarasota*, CCH¶43525 at *5.

¹⁴ *Rochester General Hospital v. BCBSA*, PRRB Dec. No. 2007-D67, Case No. 03-0522G, CCH ¶ 81,778 (August 31, 2007) (Exhibit P-10).

¹⁵ *Rochester 2004 MSA Wage Index Group v. BCBSA*, PRRB Dec. No. 2009-D2, Case No. 04-0596G, CCH ¶ 82,202 (November 10, 2008) (Exhibit P-8).

hours worked. Salaries and wages include direct compensation for employment. In addition, holiday, vacation, and sick pay are standard and customary forms of paid time off that are also typically included as salaries and wages. The salaries and wages are divided by the associated hours so that an average hourly wage rate can be calculated. Typical wage *related* costs are payroll taxes and bonus pay, life and health insurance, workers compensation insurance and other fringe benefits. For such costs, there are no directly related hours worked.

Based upon its analysis in *Rochester 2004*, the Board found the inclusion of short-term disability insurance costs as salaries and wages and the inclusion of the associated hours improper treatment of these types of costs. Rather, these types of costs should be treated as wage related costs as required by the cost reporting instructions to ensure consistent treatment by all providers for the sake of uniformity and comparability.

The Intermediary's current position and the Board's earlier decision¹⁶ distinguish between providers based on how the cost was incurred, i.e., the method of payment or how the payment was processed through the hospital's payroll or general accounting systems. However, under that rationale, how these types of costs are treated and classified for wage index purposes would depend on how providers chose to provide the benefits to their employees. The Court in *Sarasota Memorial Hospital, et. al. v. Shalala*, 60 F.3d. 1507 (11th Cir, 1995) made clear that such a rationale is improper since the uniformity of the wage index is compromised if the Secretary does not classify the same items of costs as wages for all providers. Accordingly, the Board concludes that the fact the Provider opted to pay an employee benefit through its payroll system does not change the nature or type of cost. Moreover, the classification of short-term disability payments as "wage related costs" is required according to CMS program instructions.

ISSUE 2: BAYLOR PLAN ISSUE

The Baylor Plan issue requires consideration of the higher hourly wage rate (through a payroll system) to employees as a premium or incentive for working unpopular or undesirable hours such as weekend, holiday or late night shifts. The Board conducted an extensive examination of the CMS guidance for the accumulation of hospital wage data that is presented at CMS Pub. 15, Part II, §3605.2. The section establishes paid hours as the basis for the accumulation of wage information. The section states: "paid hours include regular hours (including paid lunch hours), overtime hours, paid holiday, vacation and sick leave, paid time off hours and hours associated with severance pay." The section also offers instruction on the calculation of paid hours: "For employees who work a regular work schedule, on call hours are not to be included in the total paid hours; overtime hours are calculated as one hour when an employee is paid time and a half. No hours are required for bonus pay." The Board considers this instruction significant. The language of the section makes clear that paid hours related to bonus and premium pay should be excluded.

The Board recognizes that premium and overtime pay may be calculated using inflated hours. In this case, the Provider's accounting system contained an inherent limitation that artificially increased the number of paid hours to arrive at the hospital's actual time and half outlay. The

¹⁶ See Fn 14.

additional hours were neither worked hours nor were they properly considered paid hours. They were merely a mechanism that allowed the Provider's accounting system to record its full outlay. Given the program instruction that "overtime hours are calculated as one hour when an employee is paid time and a half," the Board believes the inclusion of the inflated hours, for wage index purposes, is both improper and inconsistent with CMS's guidance.

The Board acknowledges that the overstatement of paid hours is the result of a deficiency in the Provider's accounting capability. However, the Provider made appropriate attempts to adjust the hours to reflect those that were actually paid. The Intermediary's continued use of the inflated hours produced a disparate treatment of paid hours within the wage index calculation. The Board notes that "treating the same benefits differently based on how they are administered directly contravenes the Secretary's obligation to treat similar costs and hours similarly so that an accurate and uniform comparison of all hospitals wage costs can be made."¹⁷

The statute requires the Secretary to adjust hospital costs to reflect relative hospital wage levels uniformly. That uniformity is "compromised if the Secretary does not classify the same items of costs as wages for *all* providers (emphasis in original)."¹⁸ Further, program guidance sets paid hours as the standard for the accumulation and comparison of wage data and offers instruction on the calculation and adjustment of actual paid hours. The Intermediary's inclusion of the inflated hours that were used to estimate the actual outlay is inconsistent with CMS' program instructions and compromises the Secretary's statutory mandate.

DECISION AND ORDER:

ISSUE 1: SHORT TERM DISABILITY ISSUE

Short-term disability should be classified as "wage related costs" to calculate the Provider's average hourly wage rate.

ISSUE 2: BAYLOR PLAN ISSUE

Baylor Plan paid hours should be adjusted to remove the inflated hours used to calculate the Provider's average hourly wage rate.

BOARD MEMBERS PARTICIPATING:

Yvette C. Hayes
Keith E. Braganza, C.P.A
John Gary Bowers, C.P.A

¹⁷ *Sarasota Memorial Hospital*, supra, at 1513.

¹⁸ *Sarasota Memorial Hospital*, supra, at 1513.

FOR THE BOARD:

Yvette C. Hayes
Acting Chairperson

DATE: October 6, 2011

Group Name: Cincinnati-Middleton, OH-KY-IN CBSA FFY 2009 Wage Index (Baylor Plan)

PRRB Case No: 09-1447G

Group Representative: Hall, Render, Killian, Heath & Lyman, P.C. (BAKHC-11989)

Schedule of Providers in Group (Schedule A)

Ex. No.	Provider Number	Provider Name (City, County, State)	Fiscal Year End	Fiscal Intrmd	Date of Final Determ	Date of Hearing Request	Number of Days Elapsed	Audit Adjustment Number	Medicare Reimbursemt in Dispute	Original Case No.	Date of Add/Transfer
1	15-0048	Reid Hospital & Health Care Services (Richmond, Wayne County, IN)	12/31/08 10/1/08-12/31/08	NGS-IN	10/3/08	4/1/09	180	N/A	\$14,547		
2	15-0048	Reid Hospital & Health Care Services (Richmond, Wayne County, IN)	12/31/09 1/1/09-9/30/09	NGS-IN	10/3/08	4/1/09	180	N/A	\$43,642		
3	15-0069	King's Daughters' Hospital & Health Svcs (Madison, Jefferson County, IN)	12/31/08 10/1/08-12/31/08	NGS-IN	10/3/08	4/1/09	180	N/A	\$4,654		
4	15-0069	King's Daughters' Hospital & Health Svcs (Madison, Jefferson County, IN)	12/31/09 1/1/09-9/30/09	NGS-IN	10/3/08	4/1/09	180	N/A	\$13,962		
5	15-0086	Dearborn County Hospital (Lawrenceberg, Dearborn County, IN)	12/31/08 10/1/08-12/31/08	NGS-IN	10/3/08	4/1/09	180	N/A	\$4,060		
6	15-0086	Dearborn County Hospital (Lawrenceberg, Dearborn County, IN)	12/31/09 1/1/09-9/30/09	NGS-IN	10/3/08	4/1/09	180	N/A	\$12,181		
7	18-0001	St. Luke Hospital East (Fort Thomas, Cambell, KY)	6/30/09 10/1/08-6/30/09	NGS-KY	10/3/08	4/1/09	180	N/A	\$20,953		
8	18-0001	St. Luke Hospital East (Fort Thomas, Cambell, KY)	6/30/10 7/1/09-9/30/09	NGS-KY	10/3/08	4/1/09	180	N/A	\$6,984		
9	18-0035	St. Elizabeth Medical Center - South (Covington, Kenton, KY)	12/31/08 10/1/08-12/31/08	NGS-KY	10/3/08	4/1/09	180	N/A	\$27,734		
10	18-0035	St. Elizabeth Medical Center - South (Covington, Kenton, KY)	12/31/09 1/1/09-9/30/09	NGS-KY	10/3/08	4/1/09	180	N/A	\$83,201		
11	18-0045	St. Luke Hospital West (Florence, Boone, KY)	6/30/09 10/1/08-6/30/09	NGS-KY	10/3/08	4/1/09	180	N/A	\$15,058		
12	18-0045	St. Luke Hospital West (Florence, Boone, KY)	6/30/10 7/1/09-9/30/09	NGS-KY	10/3/08	4/1/09	180	N/A	\$5,019		
13	36-0001	Mercy Hospital Anderson (Cincinnati, Hamilton, OH)	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$8,789		
14	36-0001	Mercy Hospital Anderson (Cincinnati, Hamilton, OH)	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$26,368		
15	36-	University Hospital	6/30/09	NGS-	10/3/08	4/1/09	180	N/A	\$79,098		

	0003			OH					
		<i>(Cincinnati, Hamilton, OH)</i>	10/1/08-6/30/09						
16	36-0003	University Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/10	NGS-OH	10/3/08	4/1/09	180	N/A	\$26,366
			7/1/09-9/30/09						
17	36-0016	Jewish Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$45,410
			10/1/08-6/30/09						
18	36-0016	Jewish Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/10	NGS-OH	10/3/08	4/1/09	180	N/A	\$15,137
			7/1/09-9/30/09						
19	36-0038	Deaconess Hospital <i>(Cincinnati, Hamilton, OH)</i>	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$4,754
20	36-0038	Deaconess Hospital <i>(Cincinnati, Hamilton, OH)</i>	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$14,261
21	36-0046	McCullough-Hyde Memorial Hospital <i>(Oxford, Butler, OH)</i>	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$2,204
22	36-0046	McCullough-Hyde Memorial Hospital <i>(Oxford, Butler, OH)</i>	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$6,614
23	36-0056	Mercy Hospital Fairfield <i>(Fairfield, Butler, OH)</i>	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$10,648
24	36-0056	Mercy Hospital Fairfield <i>(Fairfield, Butler, OH)</i>	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$31,945
25	36-0076	Atrium Medical Center <i>(Warren, Franklin, OH)</i>	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$10,916
26	36-0076	Atrium Medical Center <i>(Warren, Franklin, OH)</i>	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$32,749
27	36-0113	Mercy Franciscan Hospital-Western Hills <i>(Cincinnati, Hamilton, OH)</i>	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$7,193
28	36-0113	Mercy Franciscan Hospital-Western Hills <i>(Cincinnati, Hamilton, OH)</i>	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$21,580
29	36-0116	Brown County General Hospital <i>(Georgetown, Brown, OH)</i>	12/31/08 10/1/08-12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$1,944
30	36-0116	Brown County General Hospital <i>(Georgetown, Brown, OH)</i>	12/31/09 1/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$5,831
31	36-0132	Fort Hamilton Hospital <i>(Hamilton, Butler, OH)</i>	6/30/09 10/1/08-6/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$23,303
32	36-0132	Fort Hamilton Hospital <i>(Hamilton, Butler, OH)</i>	6/30/10 7/1/09-9/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$7,768
33	36-	Good Samaritan	6/30/09	NGS-	10/3/08	4/1/09	180	N/A	\$54,654

	0134	Hospital <i>(Cincinnati, Hamilton, OH)</i>		OH						
			10/1/08-6/30/09							
34	36-0134	Good Samaritan Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/10	NGS-OH	10/3/08	4/1/09	180	N/A	\$18,218	
			7/1/09-9/30/09							
35	36-0163	Christ Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$77,130	
			10/1/08-6/30/09							
36	36-0163	Christ Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/10	NGS-OH	10/3/08	4/1/09	180	N/A	\$25,710	
			7/1/09-9/30/09							
37	36-0179	Bethesda North Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$63,701	
			10/1/08-6/30/09							
38	36-0179	Bethesda North Hospital <i>(Cincinnati, Hamilton, OH)</i>	6/30/10	NGS-OH	10/3/08	4/1/09	180	N/A	\$21,234	
			7/1/09-9/30/09							
39	36-0234	Mercy Franciscan Hospital-Mount Airy <i>(Cincinnati, Hamilton, OH)</i>	12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$7,916	
			10/1/08-12/31/08							
40	36-0234	Mercy Franciscan Hospital-Mount Airy <i>(Cincinnati, Hamilton, OH)</i>	12/31/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$23,750	
			1/1/09-9/30/09							
41	36-0236	Mercy Hospital Clermont <i>(Batavia, Clermont, OH)</i>	12/31/08	NGS-OH	10/3/08	4/1/09	180	N/A	\$5,295	
			10/1/08-12/31/08							
42	36-0236	Mercy Hospital Clermont <i>(Batavia, Clermont, OH)</i>	12/31/09	NGS-OH	10/3/08	4/1/09	180	N/A	\$15,886	
			1/1/09-9/30/09							
TOTAL									\$948,367	

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