PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2017-D2

PROVIDER –
The Park Associates, Inc.

Provider Nos.:
See Appendix A

vs.

MEDICARE CONTRACTOR –
National Government Services, Inc.

DATE OF HEARING –
May 1, 2015

Cost Reporting Period Ended –
December 31, 1998

CASE NO.: 03-1599G

INDEX

ISSUE STATEMENT

Whether the Medicare Contractor's methodology allocating Park Associates pooled home office costs improperly denied reimbursement to the Providers?[1]

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds that the Medicare Contractor properly allocated pooled home office costs to the Providers for fiscal year ending December 31, 1998 ("FY 1998").

INTRODUCTION

Located in East Aurora, New York, Park Associates, Inc. ("Park Associates") is a "home office" providing clinical and financial services to 118 nursing facilities (13 New York, 15 Indiana, 32 Illinois and 58 Texas nursing facilities) during portions of its cost reporting period ending December 31, 1998. This appeal involves eleven of these nursing facilities as delineated in the Schedule of Providers at Appendix A (collectively referred to as the "Providers").[2]

On February 6, 1998, Park Associates sold 89 of its nursing facilities including all of the Illinois nursing facilities and all but one Texas nursing facility to an unrelated third party.[3] The Medicare contractor[4] designated for the Indiana, Illinois and Texas nursing facilities was Wisconsin Physicians Service ("WPS").[5] The Medicare contractor designated for the New York nursing facilities was National Government Services ("NGS").[6] The Board will refer to WPS and NGS collectively as the "Medicare Contractor."

Park Associates and the Medicare Contractor disagreed about how to allocate pooled costs of the home office between the sold nursing facilities and those that remained with Park Associates. The Medicare Contractor calculated facility-specific allocations for those nursing facilities that were sold and these allocations were generally lower than those calculated for the "non-sold" nursing facilities. This difference resulted in a reduced reimbursement for the Providers (*i.e.,* eleven nursing facilities participating in this appeal).[7]

The Providers timely appealed their Notices of Program Reimbursement ("NPR") and met the jurisdictional requirements for a hearing. The Board conducted a live hearing on May

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1 Hearing Transcript ("Tr.") at 5-6.
2 Only eleven of Park Associates' nursing facilities remain in the subject appeal after the Board issued jurisdictional decisions. *See* Appendix A for the Schedule of Providers.
3 Tr. at 35, 121. The majority of the testimony suggests that the New York and Indiana nursing facilities only remained part of Park Associates. However, one Texas facility did in fact remain part of Park Associates.
4 The term "Medicare contractor" includes fiscal intermediaries and Medicare administrative contractors.
5 Formerly Mutual of Omaha.
6 Formerly Empire Medical Services.
7 Medicare Contractor's Post Hearing Memorandum at 3.

1, 2015. The Providers were represented by Joseph F. Widmer, of The Park Associates, Inc. The Medicare Contractor was represented by Arthur E. Peabody, Jr., Esq., of the Blue Cross and Blue Shield Association.

STATEMENT OF FACTS

Park Associates filed its Home Office Cost Statement ("HOCS") in a paper format, splitting its pooled administrative costs into two separate six month periods and using a combination of actual and imputed days to allocate the segmented pooled costs when reporting the amounts on Schedule G.[8] Park then used these allocations from the "as-filed" paper HOCS to complete the cost reports filed by all 118 of its sold and remaining nursing facilities for cost reimbursement determinations. Park Associates made the decision not to use the electronic cost statement software because the sold nursing facilities received home office services for only approximately six months of the fiscal year. [9]

Park Associates contends that the Medicare Contractor erred in using the same number of patient days as reported on Schedule G, when entering these patient days into the standard CMS-approved electronic HOCS software which automatically allocated the home office costs based on the proportion of inpatient days for each nursing facility to the total inpatient days of all of the nursing facilities in the chain.[10] Because the inpatient days were not the actual incurred days for each of the affiliated nursing facilities, but a combination of six-months weighted days for the Texas and Illinois nursing facilities and twelve months of actual incurred days for the New York and Indiana nursing facilities,[11] the methodology generally allocated lower home office costs to the "non-sold" nursing facilities which resulted in reimbursement reductions for the remaining nursing facilities participating in this appeal.[12]

Park Associates claims that, by dividing the year into two 6 month periods and using "imputed" days for the sold nursing facilities for the first six month period, patient days for the closed nursing facilities were more accurately and equitably allocated between the sold and the remaining owned nursing facilities.[13] This method, Park Associates argues, results in a more accurate allocation of costs since home office services for the sold nursing facilities did not cease on February 6, 1998, the day of the sale. Park Associates notes that the home office had to finalize general ledgers and close-out cost reports so there was no substantial change in the home office services provided to the sold nursing facilities for the first six months of 1998.[14]

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[8] Tr. at 13-15, 41-50, 91-97; Providers' Post Hearing Brief at 5.
[9] Tr. at 12, 15.
[10] Medicare Contractor's Post Hearing Memorandum at 7-8; Tr. 90. *See also* Medicare Contractor Exhibit I-9.
[11] Providers' Post-Hearing Brief, at 5.
[12] Medicare Contractor's Post Hearing Memorandum at 3.
[13] Providers' Post Hearing Brief at 8.
[14] *Id.* at 5.

The Medicare Contractor defends its methodology, maintaining that it simply used the data that Park Associates reported on Schedule G to determine the allocation of the pooled costs and using the electronic cost statement software as required by federal regulations. The Medicare Contractor argues that, if Park Associates had a more accurate and sophisticated methodology, CMS manual guidance in the Provider Reimbursement Manual, CMS Pub. 15-1 ("PRM 15-1"), § 2150.3(D)(2)(b) would have allowed Park Associates to use its alternate methodology only if it could demonstrate that its methodology would provide: (1) a more precise allocation of pooled home office costs; and (2) it had sought written permission from the Medicare Contractor no later than 120 days after the beginning of the home office accounting period to which the change is to apply.[15] In the alternative, Park Associates could have requested that its cost reports be reopened to recalculate the number of patient days after the fiscal year had ended.[16] However, it did not do so.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

CMS guidance at PRM 15-1 § 2150.3(D)(2)(a) requires that pooled home office costs be allocated on the basis of inpatient days when the entire chain consists solely of comparable inpatient health care facilities. Notwithstanding, § 2150.3(D)(2)(b) permits the use of a more precise allocation method for pooled home office costs if the affected provider(s) seek "the approval of the Medicare Contractor no later than 120 days after the beginning of the home office accounting period."[17]

Park Associates believes that its recommended allocation using split cost and split imputed/weighted days is a more sophisticated, accurate methodology to allocate the pooled costs. However, the Board finds no clear and convincing evidence in the record to adequately support this assertion and no evidence that Park Associates ever sought and was in any manner granted approval to use a non - standard allocation basis.[18]

Although the Board does not dispute that Park Associates faced unusual circumstances with the sale of 89 of its 118 nursing facilities, the burden of proof still falls on Park Associates to submit evidence to indicate that the use of its recommended split allocation method would result in a more sophisticated and precise allocation of pooled home office costs to the chain components.[19] The Board finds that Park Associates failed to present sufficient clear and convincing evidence at the hearing or in the record that its allocation method is more accurate or equitable. In fact, the record is void with respect to how costs were split and, at the hearing, the Medicare Contractor made the uncontroverted assertion that it had yet to obtain "documentation to support the split of costs between the first six months and the second six months of the year."[20]

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[15] Tr. at 100-101.
[16] *Id.* at 102.
[17] *See* Medicare Contractor Exhibit I-17.
[18] Tr. at 89.
[19] PRM 15-1 § 2150.3(D)(2)(b).
[20] Tr. at 68, 101, 108.

The Board notes Park Associates' concern that cost reports for the sold nursing facilities were not adjusted to reflect the increase in their share of the home office costs resulting from the revised HOCS allocations. However, the Board points out that the sold Providers could have requested reopening of their individual cost reports in order to have the home office cost allocation revised, but they failed to do so.[21] Had those nursing facilities requested reopening, the additional costs allocated to those nursing facilities on the finalized HOCS could have been included on their terminating cost reports.

Finally, Park Associates requests that the Board instruct the Medicare Contractor to disregard the reported imputed days and direct the Medicare Contractor to use actually incurred patient days to allocate the pooled costs.[22] During the hearing, the Medicare Contractor discussed the audit of the days reported on the Park Associates' HOCS and noted that Park Associates, itself, had requested that imputed days be used for the Texas and Illinois nursing facilities to more accurately reflect what they considered additional costs to those nursing facilities. The record further shows the Medicare Contractor accepted Park Associates' reported days including the imputed days for the sold nursing facilities in order to reflect additional costs after the sale.[23] Accordingly, the Board cannot find that the Medicare Contractor's decision to accept reported imputed days was an abuse of discretion or that the Medicare Contractor's decision should be reversed.

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board finds that the Medicare Contractor properly allocated pooled home office costs to the Providers in the subject appeal.

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: January 11, 2017

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[21] Tr. at 74-76.
[22] Providers' Post Hearing Brief at 9.
[23] Tr. at 105-106.

APPENDIX A
LIST OF PROVIDERS

ɪup Name: The Park Associates, Inc.
ɔresentative: J ɪh F. Widmer
ɪe Numbe Group Appeal # 03-1599G
ue: HOME OFFICE ADJUSTMENT (FILED SEPTEMBER 5, 2003)

RECEIVED DEC 08 2014 PRRB

'erence umber	Provider Number	Provider Name (City, County, State)	FYE	Fiscal Intermediary	A Date of Final Determination	B Hearing Request Date	C No. of Days	D Audit Adj. No.	*** E Amount in Controversy	F Prior Case No.	G Date(s) Of Add/Transfer
ɪLTHCARE CENTERS OF INDIANA, L.L.C. - d/b/a/ :											
1	15-5443	Chateau Care Center	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03	165	1	4,300	NA - Rev NPR Issued by FI	NA
		Muncie, Delaware, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
2	15-5246	Chesterton HCC	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	7,800	NA - Rev NPR Issued by FI	NA
		Chesterton, Porter, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
~~3~~	~~15-5209~~	~~Clifty Falls HCC~~ *	~~12/31/98~~	Mutual of Omaha Insurance Company	02/04/02	NA	NA	NA	0	NA	10/27/04
		Madison, Jefferson, IN	FI never adjusted the NPR for HO adjustment so there is no issue for this provider.								
~~4~~	~~15-5223~~	~~Covington Manor HCC~~ *	~~12/31/98~~	Mutual of Omaha Insurance Company	09/11/03 R	03/08/04	179	1	12,131	04-0951	06/20/04
		Covington, Fountain, IN	Appeal Filed Before 8/21/2008 - FI Appeal filed First with Mutual of Omaha, then transferred to Group Appeal at a later date.								
5	15-5280	Dillsboro/Ross Manor	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	5,400	NA - Rev NPR Issued by FI	NA
		Dillsboro, Dearborn, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
6	15-5233	Dreyerhaus HCC	12/31/98	Mutual of Omaha Insurance Company	07/31/03 R	09/05/03 (1)	36	1	3,200	NA - Rev NPR Issued by FI	NA
		Batesville, Ripley, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
~~7~~	~~15-5275~~	~~Forest Del Health & Rehab~~ *	~~12/31/98~~	Mutual of Omaha Insurance Company	04/08/03 R	09/05/03 (1)	150	1	8,200	NA - Rev NPR Issued by FI	NA
		Princeton, Gibson, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
8	15-5202	Heritage House - Greencastle	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	2,900	NA - Rev NPR Issued by FI	NA
		Greencastle, Putnam, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
~~9~~	~~15-5183~~	~~Heritage House - Martinsville~~ *	~~12/31/98~~	Mutual of Omaha Insurance Company	03/15/05	NA	NA	1-4	6,100		10/27/04
		Martinsville, Morgan, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
10	15-5217	Huntingburg	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	4,600	NA - Rev NPR Issued by FI	NA
		Huntingburg, Dubois, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
11	15-5304	Oakwood HCC	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	6,900	NA - Rev NPR Issued by FI	NA
		New Castle, Henry, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
12	15-5483	Rising Sun Care Center	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	1,100	NA - Rev NPR Issued by FI	NA
		Rising Sun, Ohio, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
13	15-5409	The Oaks Health & Rehab	12/31/98	Mutual of Omaha Insurance Company	03/24/03 R	09/05/03 (1)	165	1	6,900	NA - Rev NPR Issued by FI	NA
		Indianapolis, Marion, IN	Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for Initial Group Appeal.								
14	15-5238	Yorktown HCC	12/31/98	Mutual of Omaha Insurance Company	09/10/03 R	03/08/04	180	1	4,900	2004-27	10/27/04
		Yorktown,Delaware,IN	Appeal Filed Before 8/21/2008 - FI Appeal filed First with Mutual of Omaha, then transferred to Group Appeal at a later date.								
									74,431		

(1) - Refer to Tab 1B for the Hearing Request for all 10 of these Indiana Providers.

*** Impacts were calculated by entering all audit adjustments into the MCR cost report software so that both Part A and B settlements agree to the latest issued NPR. Worksheets are attached for each facility.

Participants 3, 4, 7, 9, 15-26
* Dismissed by PRRB by letter dated April 7, 2015.

Nama: The Park Associates, Inc.
entative: ph F. Widmer
umbe Group Appeal # 03-1599G
HOME OFFICE ADJUSTMENT (FILED SEPTEMBER 5, 2003)

ice er	Provider Number	Provider Name (City, County, State)	FYE	Fiscal Intermediary	A Date of Final Determination	B Hearing Request Date	C No. of Days	D Audit Adj. No.	*** E Amount in Controversy	F Prior Case No.	G Date(s) Of Add/Transfer	
RK FACILITIES:												
~~15~~	~~33-5281~~	~~Aurora Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/31/00	02/16/01	169	9 & 10	10,700	FI#010282	09/05/03	
		East Aurora, Erie, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~16~~	~~33-5597~~	~~Orchard Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/24/00	02/20/01	180	2	7,100	FI#010344	09/05/03	(2)
		Orchard Park, Erie, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~17~~	~~33-5688~~	~~Westfield HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	09/12/00	02/13/01	154	3 & 4	3,400	FI#010281	09/05/03	(2)
		Westfield, Chautauqua, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~18~~	~~33-5595~~	~~Park Shore HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/09/00	02/02/01	177	9 & 10	1,200	FI#010289	09/05/03	(2)
		Dunkirk, Chautauqua, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~19~~	~~33-5607~~	~~Arbor Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/30/00	02/08/01	162	2	1,200	FI#010288	09/05/03	(2)
		Eden, Erie, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~20~~	~~33-5610~~	~~River Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/14/00	02/06/01	176	16 & 17	1,200	FI#010283	09/05/03	(2)
		Alleghany, Cattaraugus, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~21~~	~~33-5371~~	~~Sullivan Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/25/00	02/05/01	164	1	4,100	PRRB#011429	10/27/04	
		Endicott, Broome, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with PRRB, then transferred to Group Appeal on 10/27/2004.								
~~22~~	~~33-5662~~	~~Three Rivers HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/09/00	N/A	180	9 & 10	500	N/A	10/27/04	
		Painted Post, Steuben, NY		This provider never appealed their adjustment since it was insignificant in amount, although it was added in with the other NY facilities on 10/27/2004.								
~~23~~	~~33-5533~~	~~Village Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	09/09/00	03/08/01	178	2	2,300	FI#010343	09/05/03	(2)
		Gasport, Niagara, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~24~~	~~33-5594~~	~~Woodland Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	09/19/00	02/20/01	154	2	8,000	FI#010345	09/05/03	(2)
		Salamanca, Cattaraugus, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~25~~	~~33-5181~~	~~Hill Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/09/00	02/05/01	180	6 & 7	3,400	FI#010280	09/05/03	(2)
		Syracuse, Onondaga, NY		Appeal Filed Before 8/21/2008 - FI Appeal filed First with Empire Medicare Services, then transferred to Group Appeal on initial appeal letter to PRRB.								
~~26~~	~~33-5641~~	~~College Park HCC INC.~~ *	~~12/31/98~~	Empire Medicare Services, Syracuse New York	08/14/00	N/A	180	6 & 7	46	N/A	09/05/03	(2)
		Houghton, Allegany, NY		This provider never appealed their adjustment since it was insignificant in amount, although it was added in with all other NY facilities that had been issued their original NPRs.								
									43,146			
27	45-5947	Andrews Healthcare Center	07/31/98	Mutual of Omaha Insurance Company	2/5/2004 R	8/4/2004	181	1	5,359	NA - Rev NPR	08/04/04	
		Andrews, Andrews, TX		Appeal Filed Before 8/21/2008 - Cost Report Revised Solely for the Home Office Adjustment, Direct Add for existing Group Appeal.								
								Total	122,938			

(2) - Refer to Tab 1G for the copy of the PRRB Group Transfer Request for all 9 New York previous FI Appeals.

*** Impacts were calculated by entering all audit adjustments into the MCR cost report software so that both Part A and B settlements agree to the latest issued NPR. Worksheets are attached for each facility.