PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

99-D20

PROVIDER -
Providence Medical Center

DATE OF HEARING-
December 16, 1998

Provider No. 50-0025

Cost Reporting Period Ended -
December 31, 1987

vs.

INTERMEDIARY -
Blue Cross of Washington and Alaska

CASE NO. 91-1734

INDEX

ISSUE:

Was the Intermediary's adjustment to bad debts proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

On its as-filed cost report, Providence Medical Center ("Provider") claimed $57,712 as Part A bad debts and $17,112 as Part B bad debts. Blue Cross of Washington and Alaska ("Intermediary") first reconciled the bad debts to agree with the Provider's listing. This resulted in $49,694 as Part A and $18,362 as Part B bad debts. The Provider has not appealed these adjustments.[1]

The Intermediary then made further adjustments based on a sampling of the bad debts, from the Provider's listing, projected to the entire population. In support of its adjustment, the Intermediary relied on a hospital audit program as outlined in the program instructions in the Medicare Intermediary Manual (HCFA Pub. 13-4), Exhibit 15, that was in effect at the time of audit.[2] The amounts in question are:

	Part A	Part B
Provider claimed	$57,712	$17,112
Adjustment (undisputed)	(8,018)	1,250
Total per Provider's Listing	$49,694	$18,362
Adjustments per Sampling Projection	$(11,527)	$(4,259)
Total Bad Debts Allowed	$38,167	$14,103
Provider's Proposed Adjustments[3]	$(1,849)	$(1,678)

It is the Provider's position that the Intermediary should not have projected the results of its judgmental sample to the entire bad debt population. The Provider contends that the Intermediary should have only adjusted those errors identified in the judgmental sample deemed unallowable for a lack of supporting documentation.[4] The Provider believes that the Intermediary should have used valid statistical sampling techniques (i.e., random sampling

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1 Intermediary Position Paper at 3; Provider Exhibit P-7 at Tab 1.

2 See Intermediary Exhibit I-2-6.

3 Provider Exhibit P-7, Tab 1.

4 Provider Position Paper at 5.

instead of judgmental sampling) that would have been more efficient in testing the universe of bad debts. The Provider references HCFA-Pub. 60A, Transmittal No. A-92-5, August 1992[5] in support of this position.[6]

The Provider's audit/exit conference was completed on April 14, 1989[7], prior to the revised instructions on sampling that were issued in HCFA-Pub. 13-4, Transmittal No. 29, August 1992.[8] The changes in procedures for Transmittal No. 29 were effective for audits started after October 1, 1989.[9]

On March 25, 1991, the Provider filed an appeal with the Provider Reimbursement Review Board ("Board") and has met the jurisdictional requirements of 42 C.F.R. § 405.1835-.1841. All other issues noted in the original appeal have either been withdrawn or administratively resolved. The amount of Medicare reimbursement in controversy is approximately $12,259.[10]

The Provider was represented by Jack Honsowetz of Medical Reimbursement Advisors. The Intermediary was represented by Bernard Talbert, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider asserts that the Intermediary reduced Medicare bad debts claimed based on a percentage derived from a selected sample which was used to test the bad debt system. It is the Provider's position that the sample selection was judgmental and that the methodology used by the Intermediary to test the Provider's bad debt system was not objective or representative of how the system operates as a whole. The Provider contends that the audit adjustments proposed by the Intermediary should only reflect those errors identified in the judgmental sample.

The basis for the Provider's position is that the explanation on the Intermediary auditor's workpaper, of the methodology used, was stated as follows:

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5 Provider Exhibit P-7, Tab 3, pg. 6

6 Provider Exhibit P-5, pg.1.

7 Intermediary Position Paper at 3.

8 See Intermediary Exhibit 2-3.

9 Id.

10 Intermediary Position Paper at 2.

> "A sample of 29 Medicare bad debts were selected for testing ... and summarized on W/P S2-4"[11]

The Provider contends that there was no mention of the methodology selected, random number tables, confidence level, and error rate in the auditor's workpapers.[12]

In order to determine the appropriateness of the methodology used by the Intermediary, the Provider refers to several documents that address the issue of what is considered an appropriate statistical measurement technique for evaluating a population (i.e. Medicare bad debts claimed as allowable under Provider Reimbursement Manual (HCFA Pub.15-1), § 300ff) as a whole.

The Provider notes that the purpose of HCFA-Pub. 60A, Transmittal No. A-92-5, August 1992[13] is to provide the Intermediary with HCFA's expectation of how the Intermediary will perform audits. The purpose of this transmittal notes that the Intermediary may, "need to change the way [it] conducts audits. . . in order to come into compliance with these expectations."[14]

In particular, the Provider references the section titled "Designing Tests", which is summarized as follows:

1. Design a test that will accomplish your audit objectives.

2. Tests must aid you in reaching your conclusions in order to complete your audit.

3. Document your sampling technique.

4. Document the confidence level of your sampling approach.

5. If test results from your sample indicate probable error in the universe (population) then:

    a Document your decision to expand your sample or project the error rate to the universe.

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[11] Provider Exhibit P-7, Tab 2.

[12] Provider Exhibit P-5, Pg. 1.

[13] See Provider Exhibit P-7, Tab 3.

[14] Id at pg. 1.

b. Under no circumstances, make an adjustment for the amount of error in the sample without considering the possible effect on the universe.

HCFA-Pub. 60A, Transmittal No. A-92-5, Page 6, August 1992 (Provider Exhibit P-7, Tab 3).

The Provider notes that the terms confidence level, universe (population) and error rate are commonly used when discussing Attribute Sampling Methodology.

The Provider also refers to an auditing text book published in 1980 that was used by the University of Washington School of Business entitled "Auditing: An Integrated Approach.".[15] The Provider points out that in Chapter 10 of this book, it discusses various types of sampling techniques such as judgmental sampling and random sampling.

The Provider notes that the text book discusses two common approaches in selecting judgmental samples:

1. Block sampling

2. Haphazard selection

According to the authors, haphazard selection is where an auditor goes through a population and selects items for the sample without regard to their size, source, or other distinguishing characteristics. The auditor is attempting to select without bias. The most serious shortcoming of haphazard sampling is the difficulty of really remaining completely unbiased in selecting sample items.

The Provider contends that due to the auditor's training and "cultural bias," certain population items are more likely to be included in the sample than others. Therefore, the Provider contends that it is improper and a serious breach of due care to use statistical measurement techniques if the sample is selected by the haphazard, block, or any other judgmental approach.

The Provider believes that only the random selection method is acceptable when the auditor intends to evaluate a population statistically. It is the Provider's position that it is preferable to use random selection methods, instead of judgmental (as was done by the Intermediary in this case), for selecting samples whenever it is practical. The Provider contends that a random sample allows every possible combination of elements (i.e., criteria for allowable bad debts) in the population to have an equal chance of constituting the sample. Therefore, it is the Provider's position that the most appropriate method for testing the allowability of bad debts

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[15] Provider Exhibit P-7, Tab 4.

claimed by a hospital is random attribute sampling. The Provider contends that attribute sampling covers the same concepts (confidence level, universe/population, and error rate) as discussed in HCFA's Transmittal No. A-92-5.

In conclusion, it is the Provider's position that the judgmental selection and methodology used by the Intermediary to test the Provider's bad debt system was not objective or representative of how its system operates as a whole. Therefore, the Provider contends that the Intermediary's adjustments should only reflect those errors identified in the sample and deemed unallowable for lack of supporting documentation in accordance with HIM-15-1, § 314 and 42 C.F.R. § 413.24.

INTERMEDIARY'S CONTENTIONS:

It is the Intermediary's position that it properly adjusted the Provider's Medicare bad debts under the provisions of 42 C.F.R. §413.80 and HCFA Pub. 15-1, § 300ff. In addition, the Intermediary also contends that it correctly followed the audit program for bad debts and HCFA instructions published at that time. The Intermediary notes that the audit occurred in November 1988 and the exit conference was held on April 14, 1989.[16]

As part of its audit, the Intermediary relied on HCFA Intermediary Manual, Part 4, (HCFA Pub. 13-4), Rev. 16, Exhibit 15, December 1985, the hospital audit program for bad debts in effect at the time of the audit.[17] Audit step number 15.03 states:

> [f]rom the documentation obtained in step 15.02 select a sample of patient accounts receivable ledger cards. Prepare a worksheet listing the patient's name, health insurance number, date of billing, dates of services, date of write-off and amounts of deductible, and coinsurance claimed for bad debts.

Id. at Audit Step 15.03.

The Intermediary points out that the above audit step, used during the audit, does not mention the use of statistical sampling.

The Intermediary acknowledges that audit procedures were changed under Transmittal No. 29 of HCFA-Pub. 13-4, August 1992, which stated:

> "Section 4112, Standards for Audits Under Medicare, is revised to reflect the requirements of GAS which are applicable to all

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[16] Intermediary Exhibits 2-1 and 2-2.

[17] Intermediary Exhibit 2-6.

> Medicare audits. Specific requirements covered include General Standards, Field Work Standards, and Reporting Standards."

The introduction to the transmittal stated:

> [t]hese instructions were developed as a result of the revised Government Auditing Standards (GAS) also known as the "yellowbook" was created by the General Accounting Office (GAO) and had an effective date of January 1, 1989. It was previously issued to you in May 1989. Since the "yellowbook" was not Medicare specific, we issued draft guidelines to you until such time as these final GAS guidelines were issued. Accordingly, this issuance is effective for audits started on or after October 1, 1989.

Transmittal No. 29 of HCFA-Pub. 13-4, August 1992.

As indicated above, the audit procedures were revised for audits started on or after October 1, 1989. As noted above, the Intermediary's audit occurred in November 1988 and the exit conference was held on April 14, 1989.

The Intermediary points out that in the Provider's [preliminary] position paper, the Provider refers to the Program instructions outlined in HCFA-Pub. 60A Transmittal No. A-92-5.[18] The Provider contends that since the Intermediary did not use statistical sampling techniques to audit the bad debts, its projection of the sample results is invalid. Therefore, the adjustment to bad debts should be limited to the errors found in the sample.

The Intermediary disagrees with the premise that retroactive application of the revised audit guidelines should apply to this case. The Intermediary selected 29 inpatient and outpatient bad debt files for review and found 7 occurrences of missing files or the enclosed remittance advice did not reflect an uncollected amount. As a result of its audit findings, the Intermediary projected the sample results to the population of 326 bad debts.[19] The Intermediary believes its sampling is representative of the population.

In its Position Paper, the Intermediary attempted to demonstrate the retroactive application of the guidelines using the Provider's data.[20] The following example assumes compliance testing to a set of predefined controls as follows:

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[18] See Provider Exhibit 5; Provider Exhibit P-7, Tab3.

[19] Intermediary Exhibit 2-5, Pg. 7.

[20] Intermediary Position Paper at 5.

Total Number of Bad Debts	326
Confidence Level	90%
Tolerable Rate	15%
Expected Population Deviation Rate	4%

Under these parameters, the Intermediary contends that it would have tested 25 accounts. The tolerable rate would allow no more than 1 expected error (Exhibit 2-4). In the actual audit, the Intermediary points out that it found 7 occurrences of non-compliance in a sample of 29 bad debts. According to compliance testing in this example, the Intermediary would not have been able to place any reliance on the Provider's bad debt listing. Therefore, it is the Intermediary's position that all bad debts would have been eliminated except those included in the sample and found in compliance. This would have resulted in a larger disallowance of bad debts than the original adjustments.

The Intermediary contends that its adjustments were reasonable and that it complied with Program instructions that were issued and in existence at the time of audit in November 1988.

The Intermediary concludes that it properly sampled the Provider's bad debts for an audit completed prior to October 1, 1989. The Intermediary requests the Board to affirm its adjustments in accordance with 42 C.F.R. § 413.80 and HCFA Pub. 15-1 § 300ff.

CITATION OF LAW, REGULATIONS, AND PROGRAM INSTRUCTIONS:

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

§405.1835-.1841	-	Board Jurisdiction
§413.24	-	Adequate Cost Data and Cost Finding
§413.80	-	Bad Debts, Charity, and Courtesy Allowances

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

§300 et seq.	-	Bad Debts, Charity, and Courtesy Allowances

3. Medicare Intermediary Manual, Part 4 Audit Procedures, (HCFA Pub. 13-4):

Rev. 16, December 1985	-	Bad Debt Audit Program, Step dawn Method
Transmittal 29, August 1992	-	Guidelines for Performing Provider Audits; Changed Procedures-Effective Date: 10/1/89

4. Other:
HCFA-Pub. 60A, Transmittal No. A-92-5, August 1992 HCFA's Audit and Cost Report Settlement Expectations

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board majority, after consideration of the facts, parties' contentions, and evidence presented, finds and concludes as follows:

The Intermediary reduced Medicare bad debts claimed based on a percentage derived from a selected sample which was used to test the bad debt system. It is the Intermediary's position that it correctly followed the audit program for bad debts and HCFA instructions published at the time of the audit. It is the Provider's position, however, that the Intermediary's sample selection was judgmental and that the methodology used by the Intermediary to test the Provider's bad debt system was not objective or representative of how the system operates as a whole.

The Board majority finds that there were documentation problems associated with the Intermediary's sampling methodology. In particular, the Board majority finds there was no explanation in the record to indicate how the Intermediary selected the sample. The Board majority believes this is a key factor in making its determination. For instance, the Board majority could not determine whether the Intermediary used random number tables, selected every Nth record, or as the Provider suggested, was biased in selecting records that looked like they would be good candidates for not complying with bad debt criteria. In addition, the Board majority finds there was no documentation or evidence in the record to indicate how the Intermediary applied the sample selection to inpatient or outpatient records.

The Board majority concludes that although one could argue for the Intermediary's sampling methodology, there was simply not enough documentation in the record to support the Intermediary's method of projecting the error results of the sample to the entire bad debt population.

Therefore, the Board majority finds that only the dollar amount of bad debts associated with the seven errors found in the Intermediary's sample should be disallowed.

DECISION AND ORDER:

The Intermediary did not provide enough information in the record to support its sampling methodology. Therefore, the Intermediary's adjustment is modified to disallow only those bad debts that were found to be in error.

Board Members Participating:

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

Date of Decision: January 22, 1999

For The Board

Irvin W. Kues
Chairman

I dissent.

If all variables held consistent, the logic of the Provider, and the majority of the PRRB, relevant to suspect sampling technique and documentation, and the resultant purported effect of a tainted and erroneous audit adjustment by the Intermediary, might be compelling. But there are two factors - anachronism and anomaly, which negate the Provider's, and subsequent Board majority's, reasoning. The anachronism lies in the timing of clarification of audit procedures issued by HCFA in 1992, effective October 1, 1989. Transmittal No. 29, HCFA-Pub. 13-4, August 1992. The instant case involved adjustments to the 1987 cost reporting period, such adjustments concluded on April 14, 1989, and thus employed procedures in place at that time, namely 42 C.F.R. § 413.80, HCFA Pub. 15-1 § 300ff, and HCFA Intermediary Manual, Part 4 (HCFA Pub. 13-4) Rev. 16, Exhibit 15, December 1985, Step No. 15.03. In my opinion, the Intermediary rightfully relied upon these instructions, and adequately reviewed the bad debt entries. It is anachronistic for the Provider to suggest that the Intermediary use clarifying audit procedures promulgated by HCFA some four years after the actual audit, even if such procedures were deemed retroactive to a date that was in the closing year (1989), but 5 to 6 months past the exit conference finalizing the adjustments in question.

It is not a chance occurrence, an anomaly, when 29 cohort numbers (roughly a 10% sample) in a universe (numbered 326) reveal 7 deviate cohorts. There is no stats textbook in the world that can explain away such a significant number, irrespective of methodology, random number tables, or confidence level, whether you chose your sample by judgmental, random, block, haphazard, or discovery methodology. As noted by the Intermediary:

Using the Provider's data, the retroactive application of the guidelines can be demonstrated. The following example assumes compliance testing to a set of predefined controls as follows:

Total Number of Bad Debts	326
Confidence Level	90%
Tolerable Rate	15%
Expected Population Deviation Rate	4%

> Under these parameters, the Intermediary would have tested 25 accounts. The tolerable rate would allow no more than 1 expected error. (Intermediary Exhibit 2-4) In the actual audit, the Intermediary found 7 occurrences of non compliance in a sample of 29 bad debts. According to this compliance testing, the Intermediary could not place any reliance on the Provider's bad debt listing. Therefore all bad debts would be eliminated except those included in the sample and found in compliance. This would result in a larger disallowance of bad debts than the original adjustments.

Intermediary Position Paper at 5 (Emphasis Added).

For the above reasons - appropriate use by the Intermediary of procedures in place at the time of audit (with acknowledgment that use of the clarifying procedures promulgated in 1992 would have been even more damaging to the Provider), a review of 29 (more than adequate sampling of nearly 10% of the universe) of 326 bad debt entries, with an extremely high 7/29 (24%) error rate (tolerable would have been 1/25 (4%), leads me to the conclusion that no amount of sensitivity training to counter perceived "cultural bias", no amount of methodological manipulation, nor enhanced documentation of same (as suggested by the Board's majority), could cure an error rate 600% higher than the outside tolerable limit. For these reasons, the adjustment of the Intermediary should be upheld.

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Henry C. Wessman, Esquire