

**PROVIDER REIMBURSEMENT REVIEW BOARD  
HEARING DECISION**

ON-THE-RECORD  
2000-D25

**PROVIDER -**  
Tri-State Memorial Hospital  
Clarkston, Washington

**DATE OF HEARING-**  
December 21, 1999

Provider No. 50-0057

Exception Request Period -  
November 29, 1993 - April 29, 1994

**vs.**

**INTERMEDIARY -**  
Blue Cross and Blue Shield Association/  
Blue Cross of Washington and Alaska

**CASE NO.** 95-0326

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ISSUE:

Were HCFA's determinations of the Provider's ESRD exception requests proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Tri-State Memorial Hospital, Inc. ("Provider") is a voluntary non-profit short-term acute care hospital located in Clarkston, Washington. The Provider is appealing the Health Care Financing Administration's ("HCFA") denial of its requests for an exception to the end stage renal dialysis ("ESRD") composite rate as an isolated essential facility ("IEF"). The requested exception rate was to be effective November 1, 1993.<sup>1</sup> The Provider is the only provider of ESRD services within approximately 110 miles of Clarkston, Washington. The Provider estimated that the reimbursement effect is \$125,000 annually.<sup>2</sup> The issue pertains to HCFA's actions, determinations or decisions regarding the Provider's requests for exception to the ESRD composite rate for Window 7, November 1, 1993 to April 29, 1994.<sup>3</sup>

Until November 1, 1993, the Provider was granted an IEF exception to the ESRD composite rate by HCFA and its Medicare intermediary, Blue Cross of Washington and Alaska ("Intermediary"). That exception rate was \$150.50. On October 15, 1993, the Provider was notified by the Intermediary of its new composite rate of \$124.75.<sup>4</sup> In this letter, the Provider was also reminded of the Intermediary's letter of October 5, 1993 which notified the Provider that it was required to reapply for its IEF exception to the ESRD composite rate during the window of November 1, 1993 to April 29, 1994.<sup>5</sup> A complete exception request was due by the close of business on April 29, 1994.<sup>6</sup>

On March 3, 1994, the Provider requested an exception rate of \$167.57 for outpatient maintenance, \$71.82 for home dialysis (per day) and \$187.57 for home training, based on the IEF criteria.<sup>7</sup> On March 14, 1994, the Intermediary recommended to HCFA that the ESRD exception rate of \$134.82

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<sup>1</sup> Provider Position Paper at 1.

<sup>2</sup> Id.

<sup>3</sup> Intermediary Position Paper at 4.

<sup>4</sup> Intermediary Exhibit I-1.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Intermediary Exhibit 1-2, Intermediary Exhibit I-5, pg. 14.

be approved.<sup>8</sup> On March 29, 1994, HCFA denied the Provider's ESRD exception request stating that the Provider "failed to include its (FY) 1994 budgeted projected costs on an appropriate cost reporting schedules [sic] as required by section 2721.F of the Provider Reimbursement Manual."<sup>9</sup>

The Provider contends that although the 1994 budgeted projected costs were provided in the original application in a format very similar to the cost reporting schedules noted above, it transferred the information onto cost reporting schedules and resubmitted its request for reconsideration on April 7, 1994.<sup>10</sup> On April 20, 1994, the Intermediary resubmitted the Provider's ESRD exception request to HCFA without changing its original recommendation.<sup>11</sup>

On Aug. 17, 1994, the Provider requested the Intermediary for an automatic approval of its ESRD exception request in accordance with Provider Reimbursement Manual, Part 1 (HCFA Pub. 15-1) § 2720.2, because a determination had not been made within the 60 working day requirement. The Provider asserts that between April 29, 1994 and August 17, 1994, it contacted the Intermediary on several occasions to determine the status of its request. As a result of a follow-up with HCFA, the Intermediary received an unsigned copy of HCFA's June 6, 1994 determination, which the Intermediary then sent via facsimile to the Provider on Sept. 17, 1994.<sup>12</sup> The Intermediary asserts that HCFA's June 6, 1994 determination, in which it denied the Provider's request for an IEF exception, was apparently lost in transit.<sup>13</sup> The Provider asserts that the Intermediary indicated that it did not receive a copy of the HCFA determination until September 8, 1994.<sup>14</sup>

HCFA's June 6, 1994 letter, in which it denied the Provider's request for IEF and training exceptions, was based on the following findings:

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- <sup>8</sup> Intermediary Exhibit 1-3, The record indicates that the Intermediary's recommended rate of \$134.82 was for maintenance dialysis and home program dialysis, but it made no recommendation on the Provider's home training request. See also Intermediary Exhibit I-7, pg. 1.
- <sup>9</sup> Intermediary Exhibit I-4.
- <sup>10</sup> Intermediary Exhibit I-5.
- <sup>11</sup> Intermediary Exhibit 1-6.
- <sup>12</sup> Intermediary Exhibit I-7, Provider Position Paper at 2.
- <sup>13</sup> Intermediary Position Paper at 6.
- <sup>14</sup> Provider Position Paper at 2.

- The cost data and narrative documentation furnished by the Provider were not mutually supportive of each other,
- Other than the general statements in the narrative documentation, the Provider did not discuss the incremental costs and how these costs relate to the IEF criterion, and
- The cost report and supporting documentation furnished by the Provider also did not reflect any home program's continuous ambulatory peritoneal dialysis (CAPD) costs.
- HCFA also informed the Intermediary that the Provider actually requested a composite reimbursement rate of \$167.57 for maintenance dialysis and home program dialysis under the IEF exception criterion and \$187.57 for home training. HCFA indicated, however, that it has not approved the Provider to perform any type of ESRD training.

#### Intermediary Exhibit I-7.

The Provider appealed HCFA's determination to the Provider Reimbursement Review Board ("Board") on November 18, 1994 and has met the jurisdictional requirements of 42 C.F.R. §§ 405.1835-.1841. The amount of Medicare reimbursement in controversy is approximately \$125,000 annually.<sup>15</sup> The Provider is represented by Michael R. Bell, CPA, of Michael R. Bell & Company. The Intermediary is represented by Bernard M. Talbert, Esquire, of the Blue Cross and Blue Shield Association,

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<sup>15</sup> Provider Position Paper at 1.

PROVIDER'S CONTENTIONS:

The Provider contends that its exception request should be approved for the following three reasons:

- 1) HCFA's review of its request for an exception to the ESRD composite rate request as an IEF was inadequate to make a proper determination, therefore the request should be approved.

The Provider points out that in HCFA's second denial (June 6, 1994, Intermediary Exhibit I-7), HCFA indicated that the Provider's request for an exception rate was denied because "the cost data and the narrative documentation are inconsistent, therefore, a cost analysis and a cost per treatment (CPT) analysis was not completed by this office." Also in its denial, HCFA notes that the Provider's narrative request discusses CAPD services provided in addition to the routine maintenance hemodialysis services. However, HCFA stated that the Provider's "cost reports reflect costs for maintenance hemodialysis services and home program hemodialysis. These cost reports did not reflect any home program CAPD costs."<sup>16</sup>

The Provider contends that HCFA made no effort to clarify with it that the home dialysis costs reflected on the cost reports were actually CAPD costs. The Provider asserts that since narratives are required to describe in depth all of the dialysis services provided by it, it should have been obvious to anyone at HCFA that the CAPD costs had been mislabeled on the cost reports as home dialysis services. The Provider believes this second denial supports a continued pattern that either HCFA did not adequately review the request to determine that the "inconsistency" was easily clarified, or that HCFA used this issue as an excuse to deny the Provider's application rather than perform a proper review.

Also in the second denial, HCFA indicated that the Provider's request for a maintenance hemodialysis exception rate was denied because the CAPD information was inconsistent, and insufficient information related to the CAPD and home dialysis programs was presented in its request. The Provider acknowledges that CAPD, home dialysis, and routine maintenance hemodialysis services are very distinct and separate programs. The Provider contends that its request did not ask for a CAPD or home dialysis exception rate; it requested only a routine maintenance hemodialysis exception rate.<sup>17</sup> Therefore, since it did not request an exception for CAPD or home dialysis, the Provider concedes that information concerning the CAPD and home dialysis programs would in fact be inadequate. In fact, the Provider points out that the information presented in the request was minimal with respect to any other program except the routine maintenance hemodialysis program. Almost all of the information presented in the request related to the routine maintenance hemodialysis program.

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<sup>16</sup> Intermediary Exhibit I-7, pg.3.

<sup>17</sup> Provider Position Paper at 3.

The Provider questions whether HCFA performed an adequate analysis of the maintenance hemodialysis information presented in the request. The Provider believes that there was absolutely no information in the HCFA letter dated June 6, 1994 to indicate that an analysis of the maintenance hemodialysis information was ever performed by HCFA. The Provider asserts that there is almost no reference to the maintenance hemodialysis in the letter. Therefore, based on the above reasons, the Provider requests that HCFA's determination be declared improper and inadequate and that the Board grant its request for a maintenance hemodialysis exception rate of \$167.57.<sup>18</sup>

- 2) HCFA's determination was actually made after the 60 day time limit had expired, therefore the request should be approved in accordance with HCFA Pub. 15-1, § 2720.2.

The Provider asserts that it had requested the status of its request several times between April 29, 1994 and August 17, 1994. On August 17, 1994, it sent a formal letter to the Intermediary requesting automatic approval of its request, in accordance with HCFA Pub.15-1 § 2720.2, because a determination had not been made within the 60 working day requirement. On September 17, 1994, the Provider contends that it received a fax copy of a letter from the Intermediary, dated September 15, 1994, which included an unsigned letter from HCFA dated June 6, 1994 denying the Provider's request. The Provider further contends that the Intermediary implied in the letter, and later verified verbally, that the letter from HCFA had not been received by it prior to September 8, 1994.

The Provider argues that based on years of working with the Intermediary, it is not aware of any other correspondence from HCFA that had been lost by the Intermediary. The Provider believes that the HCFA determination letter, dated June 6, 1994, was not sent to the Intermediary until September 8, 1994. The Provider also believes that communication of a HCFA decision is a necessary part of a proper determination. Therefore, the Provider asserts that the effective date of HCFA's determination was September 8, 1994, which was clearly beyond the 60 working day requirement. Therefore, the Provider requests that the HCFA determination be declared improper and the Provider's request for a maintenance hemodialysis exception rate of \$167.57 be granted.

In addition to the above arguments concerning the effective date of the HCFA determination, the Provider contends that HCFA should be required to provide additional documentation concerning the actual date that its determination was made. The Provider contends that it requested the status of its request several times through August 17, 1994, without any success. The Provider also contends that the Intermediary indicated that it was unable to reach the necessary personnel at HCFA to determine the status of the request. Finally, the Provider points out that even after sending a letter on August 17, 1994 requesting automatic approval of the request under the 60 working day rule, it took HCFA until September 8, 1994 to respond to that inquiry. The Provider also points out that the HCFA letter documenting its timely determination of Tri- State's request was unsigned. The Provider does not

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<sup>18</sup>

Provider's Position Paper at 3.

believe that an unsigned letter provided three months after its alleged date of issue constitutes sufficient documentation to support that an actual determination was made within the statutory requirements.

- 3) The Provider has provided sufficient information in its request to justify the approval of its request for an exception to the ESRD composite rate as an IEF.

The Provider believes that HCFA was overwhelmed by exception requests from various renal dialyses facilities throughout the country and was unable to properly review each and every request for an exception to the ESRD composite rate. In addition, the Provider believes that almost all of the requests for an exception to the ESRD composite rate as an IEF were denied by HCFA during the 1993-1994 consideration period without sufficient reason.

The Provider contends that HCFA's determination to deny requests for exceptions to the ESRD composite rate as isolated essential facilities was made prior to any analysis or review of a facility's application. The Provider believes that it is clear that HCFA's analysis consisted of a search for a reason or excuse to deny the request rather than an analysis to provide adequate consideration.

If it is determined that HCFA's determination was made on a timely basis, the Provider requests that an analysis of its request be performed by the Board to determine if adequate consideration of the information provided was made.

The Provider concludes its three arguments by asserting that it has provided sufficient documentation in its original request for an exception to the ESRD composite rate as an isolated essential facility to support the \$167.57. This exception rate should be effective on November 1, 1993. The Provider contends that HCFA's review of its request for an exception to the ESRD composite rate request as an isolated essential facility was inadequate to make a proper determination. Further, the Provider contends that HCFA's determination was actually made after the 60-day time limit had expired. The Provider believes that it has provided sufficient information in its request to justify the approval of its request for an exception to the ESRD composite rate as an isolated essential facility.

#### INTERMEDIARY'S CONTENTIONS:

The Intermediary asserts that since HCFA has the ultimate responsibility for making a decision regarding the Provider's ESRD exception request, pursuant to 42 U.S.C. § 1395rr, 42 C.F.R. § 413.170 and HCFA Pub. 15-1, § 2724, it defers to HCFA's decision which denied the Provider's request. The Intermediary realizes that it failed to make a thorough review of the Provider's ESRD requests during the short 15-working day review period pursuant to HCFA Pub. 15-1, § 2723, and as a result, should not have accepted the Provider's original and revised ESRD exception requests or recommended any amount for HCFA's approval.<sup>19</sup> The Intermediary contends that HCFA properly

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<sup>19</sup> Intermediary Position Paper at 8.

denied the Provider's ESRD requests for the reasons as shown in Intermediary Exhibits I-4 and I-7. The Intermediary acknowledges that the Provider may have demonstrated that, pursuant to 42 C.F.R. § 413.170(g)(3), it qualified to request an exception under the IEF criteria, however, the Intermediary contends that it did not substantiate its requests by demonstrating with compelling or convincing evidence that:

- the related costs were reasonable and allowable under 42 C.F.R. § 413.174, and,
- its costs in excess of its composite payment rate were directly attributable to the IEF criteria and self-dialysis training criteria, pursuant to 42 C.F.R. § 413.170(g) (2) and (5) and HCFA Pub. 15-1, §§ 2725.3 and 2725.5.

As HCFA stated in its June 6, 1994 denial letter (Intermediary Exhibit I-7), [t]hese cost reports reflected costs for maintenance hemodialysis and home program hemodialysis. These cost reports did not reflect any program hemodialysis costs. The cost data and the narrative documentation are inconsistent, therefore, a cost analysis and a cost per treatment (CPT) analysis was not completed by this office. When a provider files an exception request, the cost data and the narrative documentation must be mutually supportive of each other. Further, other than general statements in the narrative documentation, there was no discussion about incremental costs and how they relate to the IEF criterion [See 42 C.F.R. § 413.170 (f)(6)]. As a result, we are unable to grant an exception amount under the (IEF) exception criterion.

HCFA Denial Letter of June 6, 1994 (Intermediary Exhibit I-7).

The Intermediary contends that the Provider did not meet the burden of proof that it met the IEF and training criteria, and that the excessive costs are justifiable under the related reasonable cost principles. The Intermediary further contends that the burden of proof is not on HCFA to show that the criteria are met and that the facility's costs are not allowable. The Provider simply did not meet its responsibility for requesting an exception to the payment rates, pursuant to 42 C.F.R. § 413.170 (f) and HCFA Pub. 15-1 § 2720. 1.

The Intermediary refers to 42 C.F.R. § 413.170(f) which states in part as follows:

- (f) Procedures for requesting payment rates.
- (5) The facility is responsible for demonstrating to HCFA's satisfaction that the requirements of this section, including the criteria in paragraph (g) are met in full. That is, the burden of proof is on the facility to show that one or more of the criteria are met, and that the excessive costs are justifiable under the reasonable cost principles set forth in this part. The burden of proof is not on HCFA to show that the criteria are met, and that the facility's costs are not allowable.



(6) If requesting for an exception to its payment rate, a facility must submit to HCFA its most recently completed cost report as required under §413.174, and whatever statistics, data, and budgetary projections are determined by HCFA to be needed to determine if the exception is approvable .... The materials submitted to HCFA must--

(i) Separately identify elements of cost contributing to costs per treatment in excess of the facility's rate;

(ii) Show that all of the facility's costs, including those costs that are not directly attributable to the exception criteria, are allowable and reasonable under the reasonable cost principles set forth in this part;

(iii) Show that the elements of excessive cost are specifically attributable to one or more conditions specified by the criteria set forth in paragraph (g) of this section; and

(iv) Specify the amount of additional reimbursement per treatment the facility believes is required in order to recover its justifiable excess cost.

(7) HCFA would accept an exception request on the date that HCFA concludes that it has received all materials necessary to determine if exception is approvable ....

42 C.F.R. § 413.170(f)

The Intermediary also refers to HCFA Pub. 15-1 § 2720. 1, which states in part as follows:

HCFA may approve an exception to an ESRD composite rate payment if the facility demonstrates with convincing evidence ... that its total estimated per treatments costs are reasonable and allowable in accordance with Medicare reasonable cost principles and §2717, and that its per treatment costs in excess of its composite payment rates are directly attributable to any of the following criteria:

(B) Isolated essential facility....

(D) Self-dialysis training costs....

HCFA Pub. 15-1 § 2720.1

The Intermediary contends that the Provider simply did not furnish all applicable documents that the Program requires for adjudicating an ESRD exception request under the IEF criteria and self-dialysis training costs, as shown in HCFA Pub. 15-1, § 2725. 3 and 2725.5, respectively.

The Intermediary also points to HCFA Pub. 15-1, § 2725.3, which states in part as follows:

E. Documentation.

An ESRD must document that its cost per treatment is reasonable and related to the IEF exception criteria.

Id.

HCFA Pub. 15-1 § 2725.5 states in part as follows:

- A. General... A facility that has training costs greater than its component rate may apply for an exception to its training rate. However, the ESRD facility is responsible for demonstrating that its per treatment costs are reasonable and allowable. The burden of proof is on the facility to establish this fact.

Id.

The Intermediary maintains that the information or documentation that the Provider furnished did not adequately support and substantiate the requested amounts. The Intermediary contends that HCFA's determination regarding the furnished document as being insufficient, inaccurate, and unverifiable was also in accordance with 42 C.F.R. § 413.20 and 42 C.F.R. § 413.24, and HCFA Pub 15-1, §§ 2300, 2304ff and 2404.2. The Intermediary believes that it is evident under 42 C.F.R. § 413.174 that general Medicare recordkeeping requirements under the referenced Program regulations and instructions are applicable to the furnished documents. The plain language of 42 C.F.R. § 413.24, as incorporated in 42 C.F.R. § 413.174, states that the Provider's statistical records must be capable of verification. Under existing cost reimbursement principles that are equally applicable to the ESRD recordkeeping criteria, both statistics and cost data must be capable of verification. Thus, all documents submitted with the Provider's ESRD exception request must be auditable and verifiable.

The Intermediary points out that Intermediary Exhibits 1-4, 1-7 and 1-9 show that HCFA has never considered the Provider's ESRD exception requests fully documented. Therefore, technically, there is no basis for counting the "60 working days" as described in HCFA Pub 15-1, § 2723, as follows:

The 60 working days start when the renal facility files an exception request with all required documentation with the intermediary during the intermediary's regular business hours, subject to the 180 day time period for requesting an exception ....

Id.

The Intermediary points out that the Provider had ample time to submit an ESRD exception request with all required documentation from the time it received the notice of prospective payment rate. Yet, it opted to wait until almost the April 29, 1994 deadline date to submit what it thought as an acceptable

request.<sup>20</sup> Under the circumstances, the Intermediary contends that the Provider failed to allow itself sufficient time to submit an acceptable ESRD exception request, pursuant to 42 C.F.R. § 413.170, HCFA Pub. 15-1 § 2720.2, and Program Memorandum A-93-3.

The Intermediary refers to 42 C.F.R. §413.170 which states in part as follows:

- (4) A facility must request an exception to its payment rate within 180 days after--
  - (i) It is notified of its prospective payment rate; or
  - (ii) An extraordinary event with substantial cost effects, as described in paragraph (g)(4) of this section ....

Id.

The Intermediary also refers to HCFA Pub. 15-1, §2720.2, which states in part as follows:

A facility may request an exception within 180 days of:

- The effective date of new prospective payment rates (the intermediary sends a notice per §2720.1;
- The effective date that HCFA opens the exception process; or
- An extraordinary cost-increasing event.

Id.

Program Memorandum A-93-3 states as follows:

All facilities, including those that currently have an approved exception, have until April 29, 1994, to file an exception request with all the required documentation during your regular business hours. Delivery of the request must be accomplished through a method which documents the date of receipt. A postmark or other similar date does not serve as documentation of the date of receipt. HCFA will deny any request for exception which is not submitted by your close of business of April 29, 1994. Neither HCFA nor you may extend the filing deadline of April 29, 1994 ....

The Intermediary argues that even if the Intermediary's April 11, 1994, receipt of the Provider's revised ESRD request dated April 7, 1994, is considered as the starting stage of the "60 working day" review

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<sup>20</sup> HCFA's 1st review of the Provider's exception request (Intermediary Exhibit I-4) was received by the Intermediary on April 5, 1994. The Provider re-submitted its exception request on April 7, 1994.

process period, the Provider's untimely receipt of HCFA's June 6, 1994, letter would still be a moot point. The Intermediary contends that the Provider would still not have had the opportunity to perfect its request because by the time the Intermediary completed its review within 15 working days from the receipt date, there would have been no time left for the Provider to submit all the required documentation by the filing deadline of April 29, 1994.

Furthermore, the Intermediary contends that the fact that the Provider did not receive the June 6, 1994 HCFA letter until September, 1994, or that the letter was unsigned, does not signify HCFA's failure to timely process the Provider's revised ESRD exception requests. It is the Intermediary's position that the date that is stamped on that letter signifies the date that HCFA actually mailed the letter. The Intermediary explains that as with other outgoing letters, such as the letter in Intermediary Exhibit I-9, HCFA stamps the date and signs the original copy of the letter only. The existence of a signed copy of HCFA's March 29, 1994 letter in Intermediary Exhibit I-4 indicates that the Intermediary has received the original copy. The Intermediary believes that HCFA's June 6, 1994 letter was lost in transit. Nevertheless, the Intermediary contends that the Provider could or should have filed an early request and made an early follow-up of its request had it intended to obtain HCFA's approval.

Furthermore, the Intermediary asserts that the Provider did not prepare its position paper in accordance with 42 C.F.R. § 405.1853 and HCFA Pub. 15-1, § 2921.5. The Intermediary contends that the Provider did not state facts, cite appropriate controlling authorities, and serve adequate evidence to support its argument. As an example, the Intermediary refers to the Provider's argument that it did not request a home training exception rate. This argument is inconsistent with information shown in Intermediary Exhibit I-5.

The Intermediary maintains that HCFA's actions, determinations or decisions regarding the exception requests were not capricious or arbitrary as they were not based on erroneous conclusions and judgements that are against logic. The Intermediary contends that they were based upon HCFA's consideration of underlying facts and circumstances and observance of the related Program regulations and instructions.

The Intermediary asserts that the Board should limit its review to the documentation shown in Intermediary Exhibits I-2 and I-5 and not accept additional or new information at the hearing, pursuant to 42 C.F.R. § 413.170(h)(3)(ii) and HCFA Pub. 15-1 § 2726.1. The Intermediary refers to 42 C.F.R. § 413.170(h)(3)(ii) which states in part:

- (ii) The facility may not submit to the intermediary or PRRB any additional information or cost data that were not submitted to HCFA at the time the facility requested an exception to its prospective payment rate ....

Id.

In addition, the Intermediary refers to HCFA Pub. 15-1, § 2726.1, which states in part as follows:

The facility may not submit to the intermediary or the PRRB any additional information or cost data that were not submitted to HCFA at the time the facility requested an exception to its prospective payment rate ....

Id.

In conclusion, the Intermediary asserts that the Board should uphold the Program law, regulations, and instructions that supported HCFA's actions, determinations, or decisions, and the Intermediary's argument, pursuant to 42 U.S.C. Section 1395oo, 42 C.F.R. §405.1867 and HCFA Pub. 15-1 § 2924.6.

CITATION OF LAW, REGULATIONS, AND PROGRAM INSTRUCTIONS:

1. Laws- 42 U.S. C.:

- |         |   |   |
|---------|---|---|
| §1395oo | - | Provider Reimbursement Review Board.                    |
| §1395rr | - | Medicare Coverage for End Stage Renal Disease Patients. |

2. Regulations-42 C.F.R:

- |                          |   |  |
|--------------------------|---|--|
| §§ 405.1835-.1853        | - | Board Jurisdiction   |
| § 405.1867               | - | Sources of Board's Authority   |
| § 413.20                 | - | Financial Data and Reports   |
| § 413.24                 | - | Adequate Cost Data and Cost Finding  |
| § 413.170 <u>et seq.</u> | - | Payments for Covered Outpatient Maintenance Dialysis Treatments                    |
| § 413.174                | - | Recordkeeping and Cost Reporting Requirements for Outpatient Maintenance Dialysis. |

3. Provider Reimbursement Manual-Part 1 ("HCFA Pub. 15-1"):

- |        |   |   |
|--------|---|---|
| § 2300 | - | Adequate Cost Data and Cost Finding Principle |
|--------|---|---|

- § 2304 ff - Adequacy of Cost Information
- § 2404.2 - Examination of Pertinent Data and Information
- § 2717 - Recordkeeping and Reporting Requirements Under the Composite Rate System
- § 2720 et seq. - General Instructions for Processing Exceptions Under the ESRD Composite Rate Reimbursement System
- § 2721F - Exception Requests-All Facilities, Reporting Actual Cost
- § 2721H - Additional Information
- § 2723 et seq. - Responsibility of Intermediaries.
- § 2724 - HCFA Central Office Responsibilities.
- § 2725 et seq - Specific Instructions for Adjudicating an ESRD Exception Request.
- § 2726.1 - Appeals: Special Instructions.
- § 2921.5 - Position Paper.
- § 2924.6 - Scope of Board's Authority.

4. Other

{Program Memorandum A-93-3}

Dated October 1, 1993            Exception Process Reopened for ESRD Composite Rate System.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions and evidence presented, finds and concludes that HCFA improperly denied the Provider's request for an exception to its ESRD composite rate. In making this determination, the Board placed considerable weight on the Provider's argument that an inadequate review of its exception request was performed by HCFA and the Provider's belief that had HCFA reviewed their documentation, it would have substantiated their request. The Board finds that HCFA's sole reason for denying the Provider's request was "the

cost data and the narrative documentation are inconsistent, therefore, a cost analysis and a cost per treatment (CPT) analysis was not completed by this office.”<sup>21</sup>

The Board notes that the Provider was granted an ESRD exception rate per treatment of \$150.50 in 1990, 1991, and 1992<sup>22</sup>. In addition, the Board also notes that HCFA acknowledges that the Provider meets the geographic criteria of an IEF, and that there had been no change in the Provider’s operations from the previous exception period.<sup>23</sup>

The Board finds that the Intermediary reviewed the Provider’s initial exception request dated March, 3, 1994 (Intermediary Exhibit I-2) and recommended to HCFA, based on this review, the Provider, “has adequately documented that they meet the criteria for Isolated Essential status,” and that an exception rate be approved for \$134.82.<sup>24</sup> The Board also finds that HCFA rejected the Intermediary’s recommendation because the Provider, “failed to include its fiscal year (FY) 1994 budgeted projected costs on the appropriate cost reporting schedules as required by section 2721.F of the Provider Reimbursement Manual (PRM)”.<sup>25</sup> The Board notes that this HCFA denial was received by the Intermediary on April 5, 1994 and resubmitted in a timely manner by the Provider, with the appropriate cost report schedules, to the Intermediary on April 7, 1994.

The Board finds that the Intermediary then performed a second review of the Provider’s exception request (which included the appropriate cost report schedules) and again, in a letter dated April 20, 1994, recommended to HCFA that its original recommendation for an exception rate of \$134.82 be approved. The Board notes that in this April 20 letter the Intermediary again indicated that the Provider adequately explained that it met the criteria for Isolated Essential status. The Board also notes that in its second review, the Intermediary did not note any documentation deficiencies in the Provider’s exception package.

Next, the Board performed a detailed review of the Provider’s exception package (narrative and Attachment G to package) and made the following findings:

- Currently, and throughout the projected budget period, the (Provider’s) renal dialysis unit is expected to provide only outpatient services. (Provider exception request narrative pg.1).

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<sup>21</sup> HCFA 2nd Denial letter of June 6, 1994, Intermediary Exhibit I-7.

<sup>22</sup> Intermediary Exhibit I-7.

<sup>23</sup> Id.

<sup>24</sup> Intermediary Exhibit I-3.

<sup>25</sup> Intermediary Exhibit I-4.

- The dialysis center is located in an isolated rural area, and as a result, trained replacement staff are difficult to obtain. Consequently, many of the dialysis center's staff have little or no training related to renal dialysis. During many of the shifts, an additional employee is present to receive dialysis training. (Provider exception request narrative pg.4).
- Due to its isolated nature, it is hard [for the Provider] to maintain qualified nephrology staff. (Provider exception request narrative pg.5).
- Even though it appears that the Provider is requesting additional exception rates for Home Dialysis (per day) and training, it is clear to the Board that the narrative addresses maintenance only, and reflects a schedule of costs to justify an outpatient maintenance rate of \$167.57. In addition, the narrative portion refers to Attachment G to the package, which also attempts to justify an outpatient maintenance rate. (Provider exception request narrative pg.10).
- On page 1 of Attachment G to the package, the Provider discusses its high staff turnover rate and therefore, a premium wage must be paid in order to obtain and retain qualified personnel.
- Also on page 1 of Attachment G, the Provider provides details for excessive supply costs including its reasons for the inability to acquire purchase discounts or reuse dialyzers.

The Board also finds that HCFA's 2nd denial letter, dated June 6, 1994, was not received by the Provider until September 17, 1994, several months after the April 29 deadline. The Board notes that the Intermediary acknowledges that when it received the Provider's letter of August 17, 1994 inquiring about the status of its exception request, it followed up with HCFA.<sup>26</sup> The Intermediary believes the June 6 letter from HCFA was lost.<sup>27</sup> After the Intermediary's inquiry, HCFA sent the Intermediary a copy of its June 6 denial, and the Intermediary then forwarded it to the Provider on September 17. The Board finds that even though the letter was dated June 6, 1994, both the Intermediary and the Provider did not receive it until after the 60 working days, referred to in HCFA Pub. 15-1 §2720, had expired.

The Board agrees with the Provider's argument that the exception request did in fact adequately document and provide sufficient documentation to justify its request. Therefore, based on its extensive

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<sup>26</sup> Intermediary Position Paper at 6.

<sup>27</sup> Id.



review of the Provider's exception request package, the Board concludes that there is enough evidence in the request to substantiate the Provider's request for a composite rate of \$167.56.

In this case, the Board concludes that HCFA did not notify the Provider, in a timely manner, of its perceived deficiency, i.e. "The cost data and the narrative documentation are inconsistent, therefore, a cost analysis and a cost per treatment (CPT) analysis was not completed by this office." (HCFA 2nd denial letter of June 6, 1994). The Board notes that the Provider had previously demonstrated responsiveness to HCFA's request for additional information regarding projected costs on appropriate cost reporting schedules. The Board realizes that the burden of proof is on the Provider to adequately document its exception request. However, since HCFA did not perform an analysis of the request because it deemed that the narrative and cost data were inconsistent, the Board believes that it is HCFA's responsibility to adequately inform the Provider in a timely manner so that the Provider could "fix or explain" the perceived inconsistency. The Board strongly believes that timely notice to the Provider, to have an opportunity to explain or "tweak" its request, is a hallmark of administrative fairness. By the Provider not receiving HCFA's denial letter until September 1994, the Provider was not given the opportunity to respond to HCFA's concerns.

#### DECISION AND ORDER:

The Board finds that HCFA's denial of the Provider's request for an exception to the ESRD composite rate because the "cost data and narrative data are inconsistent," was improper. Therefore, HCFA's determination is reversed and the Intermediary is ordered to approve an ESRD composite rate exception of \$167.57 based on an isolated essential facility.

#### Board Members Participating:

Irvin W. Kues  
Henry C. Wessman, Esquire  
Martin W. Hoover, Jr., Esquire  
Charles R. Barker

**Date of Decision:** March 6, 2000

#### FOR THE BOARD:

Irvin W. Kues  
Chairman