PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION

ON THE RECORD
2005-D51

PROVIDER -
Sun Terrace Health Care Center
Sun City, FL

Provider No.: 10-5319A

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
Empire Medicare Services

DATE OF HEARING -
May 19, 2005

Cost Reporting Period Ended -
December 31, 1995

CASE NO.: 98-2210

INDEX

ISSUE:

Whether the Intermediary properly reclassified the Provider's square footage costs for its common areas from the Administrative and General cost center to the Plant Operations, Maintenance and Repair cost center.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

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

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA), is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' payment and audit functions under the Medicare program are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due 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(b) and 413.24(b).

One of the principles of Medicare law is that the Medicare Program will not bear the costs of non-Medicare patients. Conversely, the costs of non-Medicare patients will not be borne by the Medicare program. 42 U.S.C. §1395(x)(v)(1)(A).

The regulations at 42 C.F.R. §413.24 establish methods of cost finding. Relevant to this dispute is the regulation's directive that "[a]ll costs of nonrevenue-producing centers are allocated to all centers that they serve . . ." 42 C.F.R. §413.24(d)(1).

At the close of its fiscal year, a provider must submit a cost report to the fiscal intermediary showing the costs it incurred during the fiscal year and the proportion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 42 C.F.R. §405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board (Board) within 180 days of the issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Sun Terrace Health Care Center (the Provider) is a skilled nursing facility (SNF) located in Sun City, Florida. On September 30, 1997, Aetna Life Insurance Company, the Provider's intermediary at the time,[1] issued a Notice of Program Reimbursement (NPR)

[1] Aetna Life Insurance Company was replaced by Blue Cross Blue Shield of Connecticut in 1997 and then replaced by Empire Medicare Services in 1999 (the Intermediary).

in which it reclassified the common area square footage costs from Administrative and General (A&G) to the Plant Operations, Maintenance and Repair cost center. The Provider timely appealed from the NPR and has met the jurisdictional requirements of 42 C.F.R. §405.1835-.1841. The amount of Medicare reimbursement at issue is $33,667.

The Provider included the square footage for most of its common areas, such as corridors, stairways and elevators, in the A&G cost center. By placing these costs in the A&G cost center, they were subsequently allocated to other cost centers based on accumulated costs. Using the American Hospital Association (AHA) publication, Cost-Finding and Rate-Setting for Hospitals, the Intermediary reclassified the costs to the Plant Operations cost center.

The parties stipulated that there were no factual disputes. See Intermediary Exhibit 6.

The Provider was represented by Glenn P. Hendrix, Esquire, Jason E. Bring, Esquire, and Tracy M. Field, Esquire, of Arnall Golden Gregory, LLP. The Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider notes the Intermediary's acknowledgement that there are no formal rules or policies on how common area space is to be allocated, and that it based its adjustment upon the AHA publication, Cost-Finding and Rate-Setting for Hospitals.

The Provider notes that the A&G cost center to which it allocated these costs is a "general service" cost center, which is defined as "those organizational units which are operated for the benefit of the institution as a whole." See CMS Pub. 15-1 §2302.9. The Manual directs that general service costs be allocated to other cost centers using the step-down process. CMS Pub. 15-1 §2307. In this manner, general services and overhead costs, which are incurred for the benefit of the institution as a whole, are allocated to all users of these services. Since the common areas in a nursing home, such as hallways, benefit all of the facility's departments, it is appropriate to assign them to the A&G cost center, which spreads the costs on the basis of accumulated costs to a greater number of cost centers. The Plant Operations, Maintenance and Repair cost center, by comparison, allocates costs based on square footage to fewer cost centers than the A&G cost center. The Provider contends that common area costs are analogous to medical library costs, which the Board has previously determined to belong in the A&G cost center. See Los Angeles County Medical Library Group Appeal v. Blue Cross Blue Shield Association/Blue Cross of California, PRRB Dec. No. 88-D13, January 13, 1988, Medicare & Medicaid Guide (CCH) ¶36,814.

The Provider asserts that the Intermediary's reliance upon the AHA publication to determine the appropriate means of allocating common area square footage to other cost centers for SNFs is inappropriate, as that publication related specifically to cost-finding for hospitals. Unlike hospitals, SNFs do not have large areas dedicated to specific types of care. In an SNF, the common areas are used by the entire facility, and square footage

in those areas should be included in the A&G cost center. The Provider refers to the Board's decision in Eagle Healthcare, Inc. d/b/a Hillcrest Manor v. Aetna Life Insurance Company, PRRB Dec. No. 97-D71, June 20, 1997, Medicare & Medicaid Guide (CCH) ¶45,457, in which the Board modified the Intermediary's allocation of square footage to more accurately reflect the use of the space in question.

The Provider does not believe Community Health and Counseling Services v. Blue Cross Blue Shield Association/Associate Hospital Services of Maine, PRRB Dec. No. 99-D48, May 6, 1999, Medicare & Medicaid Guide (CCH) ¶90,188 (Community), relied on by the Intermediary, is applicable because it involved separate buildings, some of which were not certified for Medicare. In this case, there is a single building, a homogeneous population, uniform certification and no attempted blending of certified and non-certified buildings. The Provider further asserts that failure to allocate the common areas to all of the departments would conflict with the prohibition on cost-shifting.

The Intermediary asserts that prohibited cost-shifting occurs when costs are allocated on a basis unrelated to the manner in which the costs were incurred. To ensure that Medicare pays its fair share of cost, overhead or indirect costs on a Medicare cost report are allocated to the departments they serve so that both direct and indirect costs of service are reimbursed. To make this allocation, logical statistical bases have been devised to assure that the allocation fairly represents the actual contribution to the receiving cost center of the services of various overhead cost centers. For example, depreciation of buildings is allocated based on the square feet occupied by the various cost centers in the building.

The Intermediary states that providers must maintain certain statistics for each receiving department, such as the number of square feet in the department, so that allocations do not shift overhead costs from the area served to areas not served. Some square feet, such as corridors and stairways, may not be readily identified with one cost center or another, and there is no specific regulatory or manual reference dealing with the handling of such "common space" square feet on the cost report. However, the Intermediary asserts that two acceptable methods described in the AHA publication have been recognized for Medicare purposes – the gross and net methods. Under the gross method, common space is assigned to the physically adjacent cost centers, where possible, and to the Plant Operations, Maintenance and Repair cost center where more specific identification is not possible. Under the net method, common space is simply eliminated from the cost finding allocation statistics. No costs are eliminated under this method; they are merely distributed based on the remaining square feet in the allocation process.

In this case, the Provider did not use either method but proposes to place common areas in the A&G cost center. The result is that the cost of the common areas is allocated to the other departments based on accumulated costs. The Intermediary asserts that depreciation on each square foot of the building is the same and should not be distributed based on how much cost is generated by an activity. Under the Intermediary's method, costs are more accurately allocated, preventing cost-shifting. The Intermediary contends that the Board has previously ruled on the space allocation questions presented in this

case in Community, wherein the Board held that common space costs such as corridors do not belong in A&G. The Intermediary maintains that inclusion of the common area square feet in the Plant Operations and Maintenance cost center results in a more accurate allocation of Provider's costs than does the Provider's methodology.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and guidelines, the parties' contentions, and evidence presented, finds and concludes as follows:

The Board first notes that the Medicare regulations and guidelines do not specifically provide for the allocation of common space on the Medicare cost report. Under the existing cost-finding rules, the Board views its position as defining the most logical and accurate method of allocation so that Medicare pays its proper share of costs. The Board notes that no allocation method is perfect, and therefore does not view this case as one of cost-shifting as alleged by the Intermediary. The Board finds the facts in this case distinguishable from those in Community, supra, because in that case the provider attempted to put common areas from non-certified sites in the pool of costs to be allocated.

The Intermediary maintains that costs assigned based on square footage, such as depreciation, are the same for each square foot in the building, and thus it is appropriate to allocate these common area costs to the other departments based on square footage rather than the unrelated statistic of accumulated cost. The Board agrees with the Intermediary that the costs associated with common areas are more related to the size of a department as measured by square feet rather than the total cost in each department. The Board finds that either of the two accepted methods (net or gross) is more accurate than the Provider's, because both allocate costs to the departments based on square footage, and more appropriately mirror the manner in which these costs are incurred.

The Board notes that it is not clear from the record whether the Intermediary assigned any of the common area costs to the adjacent departments, as required by the gross method, or merely assigned all of the common area costs to the Plant Operations, Maintenance and Repair cost center. If the Intermediary has not properly carried out the gross method, it should do so, or in the alternative, implement the net method.

DECISION AND ORDER:

The Intermediary's adjustment is affirmed if it properly implemented the gross method by assigning common areas to the adjacent departments prior to assigning the remaining common space to the Plant Operations, Maintenance and Repair cost center. If the Intermediary has not properly implemented the gross method, the Intermediary's adjustment should be modified to properly allocate the common areas under the gross method, or in the alternative, utilize the net method.

Board Members Participating:

Suzanne Cochran, Esquire
Gary Blodgett, D.D.S.
Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, CPA
Anjali Mulchandani-West

FOR THE BOARD:

DATE: August 11, 2005

Suzanne Cochran
Chairperson