PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

ON THE RECORD
2006-D8

PROVIDER – Preferred Management Corporation Group	**DATE OF HEARING –** September 12, 2005
Provider Nos.: Various	Cost Reporting Periods Ended - Various
vs.	
INTERMEDIARY BlueCross BlueShield Association/ Cahaba Government Benefit Administrators	**CASE NO.:** 03-0009G

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ISSUE:

Whether the Intermediary's adjustments reallocating key employee and owners' bonuses were proper.

STATEMENT OF THE CASE AND 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).

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.

This case involves three Medicare certified home health agencies (Providers) owned and operated by Preferred Management Corporation, the parent corporation. The Medicare certified home health agencies are: Pacific Home Care Association, located in North Bend, Oregon; Doctors Park Home Health, Inc., located in Norman, Oklahoma; and Allied Home Health Services, Inc., located in Wagoner, Oklahoma. The Providers claimed salaries and bonuses for owners and key employees on their Medicare cost reports. Cahaba Government Benefit Administrators (Intermediary) reviewed the home office cost statement related to the parent corporation and adjusted the allocation of bonuses paid to two Provider owners and a key employee. The Intermediary then adjusted each Provider's cost report to include allowable home office cost. The reduction of allowable home office costs to the Providers resulted in a reduction of Medicare reimbursement to the group of $54,984.

The Providers appealed the audit adjustments to the Board and met the jurisdictional requirements of 42 C.F.R §§405.1835- 405.1841. The Providers were represented by

Charles F. MacKelvie, Esquire, of MacKelvie & Associates, P.C. The Intermediary was represented by Bernard M. Talbert, Esquire, Associate Counsel, Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Providers contend that the Intermediary arbitrarily adjusted the bonuses of two owners and one key employee. The Providers claim that direct bonuses were given to three individuals based on specific accomplishments at specific facilities. The cost of the bonuses was included on the home office cost statement and directly allocated to specific facilities. The Providers claim that the bonuses were directly linked to duties performed at specific providers; therefore, the direct allocation of the bonuses should be allowed and not allocated to all facilities managed by Preferred Management, both Medicare and non-Medicare. Per the Providers, the bonus allocation was based on the following:

- Ms. Karla Betterton, Vice President of Finance for Preferred Management, received a $10,000 bonus which was directly allocated to Pacific Home Care. The bonus was directly related to additional responsibilities Ms. Betterton assumed for this facility due to Medicare audits and inquiries of that facility during the year.
- Mr. Freeman, an owner of Preferred Health who was also the Administrator of Pacific Home, received a $37,500 bonus which was directly allocated to Pacific Home Care. The bonus was due to outstanding job performance as measured by objective criteria, i.e., the performance of Pacific Home.
- Mr. Hulin, an owner of Preferred Health and also Doctor's Park Administrator and Preferred Health CFO, received a $37,500 bonus which was allocated among the three Medicare providers. $7,000 was directly allocated to Allied, $20,000 was directly allocated to Doctor's Park, and the remaining $10,000 was directly allocated to Pacific Home. Three separate bonus requests were submitted to management for Mr. Hulin, one for each Provider, and each indicated that "outstanding performance of the agency" was the basis for the bonus.

The Provider additionally argues that when comparing the salaries of the three individuals who received bonuses to a 2004 study of reasonable compensation,[1] the employees' claimed compensation was considerably lower than what they were entitled to. The Provider contends that based on the amounts the employees could have made and the amount of the total compensation that could have been allocated to each Medicare facility based on time studies, each employee's total compensation, including the direct allocation of the bonuses, was reasonable.

Alternatively, the Provider proposed another methodology for determining the allocation of the bonuses utilizing the claimed compensation for each of the employees and a computed compensation amount based on time sheets and each employee's total salary[2]. This alternative methodology proposes that the adjustment to the direct allocation be

[1] Providers' Position Paper, Page 53.
[2] Providers' Position Paper, Page 7

limited to the difference between the amount that was claimed by each provider for the employee's compensation and a lessor amount which conservatively reports what compensation for each employee could have been allocated to each provider.

The Intermediary contends that its adjustments to allocate the bonuses based on the employees' total hours are proper. The Intermediary claims that the salary for each of the above stated individuals is allocated based on a time study of total hours worked, as each of the individuals provides services to the many chain components of the parent corporation, including numerous non-Medicare facilities. The Intermediary asserts that the bonuses should be allocated in the same manner that the salaries were allocated.

The Intermediary argues that any future bonuses should emanate from a well-defined incentive plan with clear standards. The Intermediary asserts that a bonus policy was requested from the Providers to document the rationale for distributing bonuses to employees. The Intermediary claims that the Providers indicated that they had no such policy, and that bonuses were distributed at the discretion of the board of directors. The Intermediary has identified both Mr. Hulin and Mr. Freeman as board members and claims that Mr. Freeman authorized all three bonuses, including his own. The Intermediary asserts that since no formal bonus procedures were in place, and the individuals receiving the bonuses performed functions for all chain components, there is no supportable basis in directly allocating those bonuses only to the Medicare certified home health agencies. Since the work the employees performed benefited the organization as a whole, direct assignment would not be appropriate.

In addition, the Intermediary argues that the amount of the direct allocation of each of the bonuses was in direct proportion to the amount that each of the Medicare home health agencies was under its cost per-visit limit. The Intermediary asserts that the bonuses directly assigned to Pacific Home Care were much larger than those assigned to the other two home health agencies, because Pacific Home was the furthest under its cost limits and therefore would receive the greater reimbursement benefit by having additional costs assigned to it. The Intermediary also states that this allocation methodology could be viewed as a distribution of profits.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and program instructions, evidence presented and the arguments of the parties, the Board finds as follows:

The Providers completed a time study to support the hours worked by each employee, and that time study was accepted by the Intermediary with little revision. The time study was used as the allocation basis for the salaries of the key employees of the parent organization. The parent organization paid two owners and one key employee bonuses and sought to directly allocate those bonuses only to the organization's Medicare certified home health agencies.

The Providers claim the bonuses in question relate to specific accomplishments at specific providers; however, there was no evidence in the record to support that claim. There was no evidence of why the hours spent on the Medicare certified home health agencies deserved compensation at a greater rate than the hours spent on the other entities. In effect, any extra services that had to be devoted to the Medicare Providers would have been taken into account by allocating the bonuses based on hours worked.

The direct allocation of the bonuses paid by the Providers[3] appeared to be directly correlated to the amount each Medicare Provider was under its cost per-visit limit, i.e., the majority of the bonuses went to the facility furthest under the cost limits.[4] This allocation of the bonuses could therefore be construed as a distribution of profits, as was noted by the Intermediary.

The Providers' compensation study[5] justifies higher compensation for the work performed by the three employees for the Medicare home health agencies. The Providers' analysis, however, ignores the fact that the compensation studies are based on full-time work, whereas the employees in this case have duties spread between numerous entities, a large portion of which are non-reimbursable. All hours must be accounted for when utilizing the compensation studies as a justification for higher compensation. However, since the issue before the Board is not the reasonableness of the owners' compensation but the allocation methodology of the bonuses, the Providers' alternative method of determining the amount and allocation of the bonuses was not considered.

The Board concludes that an allocation based on hours worked is the most accurate of allocation methodologies proffered.

DECISION AND ORDER:

The Intermediary's adjustments reallocating key employee and owners' bonuses were proper. The Intermediary's adjustments are affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esq.
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West

FOR THE BOARD:
DATE: December 22, 2005

Suzanne Cochran
Chairman

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[3] Intermediary's Position Paper, Page 14
[4] Intermediary's Position Paper, Exhibit I-1, page 4
[5] Providers' Position Paper, Exhibit P-53