PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION

ON THE RECORD
2013-D18

PROVIDER –
Blumberg Ribner 91-99 SNF 112% Peer Mean Group

Provider Nos.: See Appendix A

vs.

INTERMEDIARY –
BlueCross BlueShield Association/ Palmetto GBA c/o First Coast Service Options

DATE OF HEARING –
March 26, 2013

Cost Reporting Periods Ended -
June 30, 1991 – December 31, 1999

CASE NO.: 00-0655G

INDEX

ISSUE:

Whether the methodology of the Centers for Medicare and Medicaid Services for determining the Providers' exception to the hospital-based skilled nursing facility ("HB-SNF") routine cost limit was proper.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due a group of health care providers.

The Medicare program was established under Title XVIII of the Act to provide health insurance to the aged and disabled. Title XVIII of the Act was codified at 42 U.S.C. Chapter 7, Subchapter XVIII. The Centers for Medicare & 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 to organizations known as fiscal intermediaries ("FIs") and Medicare Administrative Contractors ("MACs"). FIs and MACs[1] determine payment amounts due the providers under Medicare law, regulation and interpretative guidelines published by CMS.[2]

Providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. A cost report shows the costs incurred during the relevant fiscal year and the portion of those costs allocated to the Medicare program.[3] Each 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").[4] 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 receipt of the NPR.[5]

42 U.S.C. § 1395i-3(a) defines a skilled nursing facility ("SNF") as an institution engaged in providing skilled nursing and related services for residents who require medical and nursing care or rehabilitative services for injured, disabled or sick persons. 42 U.S.C. 1395x(v)(1)(A) establishes the method of cost reimbursement for SNFs as well as limitations on reimbursable costs. One of these limitations is a routine cost limit ("RCL") and is addressed in 42 U.S.C. §§ 1395x(v)(7)(D) and 1395yy(a). Further, 42 U.S.C. § 1395yy(c) specifies that the Secretary has the discretion to establish exceptions to the RCL:

> The Secretary may make adjustments in the limits set forth in subsection (a) of this section [*i.e.*, 42 U.S.C. § 1395yy(a)] with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data

[1] FIs and MACs are hereinafter referred to as intermediaries.
[2] 42 U.S.C. §§ 1395h and 1395kk-1; 42 C.F.R. §§ 413.20 and 413.24.
[3] 42 C.F.R. § 413.20.
[4] 42 C.F.R. § 405.1803.
[5] 42 U.S.C. § 1395oo(a); 42 C.F.R. §§ 405.1835 – 405.1837.

> and criteria to be used for purposes of this subsection on an annual basis.

The regulation supporting the statute is at 42 C.F.R. § 413.30 and 42 C.F.R. § 413.30(f)(1) provides an exception to these limits for providers in connection with "Atypical Services." During the time at issue, 42 C.F.R. §413.30(f) set forth the regulations governing RCL exceptions and, stated, in pertinent part:

> *Exceptions*. Limits established under this section may be adjusted upward for a provider under the circumstances specified in paragraphs (f)(1) through (f)(5) of this section. An adjustment is made only to the extent the costs are reasonable, attributable to the circumstances specified, separately identified by the provider, and verified by the intermediary.
>
> (1) *Atypical services*. The provider can show that the---
>
> (i) Actual cost of items or services furnished by a provider exceeds the applicable limit because such items or services are atypical in nature and scope, compared to the items or services generally furnished by providers similarly classified; and
>
> (ii) Atypical items or services are furnished because of the special needs of the patients treated and are necessary in the efficient delivery of needed health care.[6]

The issue in dispute in this appeal is whether the Intermediary improperly limited the exception amounts to which the Providers were entitled under 42 C.F.R. § 413.30(f).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The 18 providers involved in this group appeal ("Providers") are HB-SNFs located in Arizona, California, Louisiana, Montana, New Hampshire, and Ohio. This appeal involves cost reporting periods 1992 – 1999 for a total of 40 Medicare cost reports.[7] For each of these cost reports the relevant intermediary ("Intermediary") followed the instructions in Provider Reimbursement Manual, CMS Pub. No. 15-1 ("PRM 15-1"), § 2534 in determining the amount of each Provider's HB-SNF cost limit exception.

Pursuant to 42 C.F.R. §§ 405.1835-405.1841 the Providers timely appealed the methodology used by the Intermediary to determine the amount of their HB-SNF cost limit exceptions and met the jurisdictional requirements of those regulations.

---

[6] 42 C.F.R § 413.30(f) was redesignated as § 413.30(e) effective September 7, 1999. 64 Fed. Reg. 42610 (Aug. 5, 1999).

[7] *See* Appendix A for a list of participating providers and the specific cost reporting periods at issue.

The Providers were represented by Blumberg Ribner, Inc. Each Intermediary was represented by Bernard M Talbert, Esq., Senior Medicare Counsel, of the Blue Cross and Blue Shield Association.

STIPULATION OF FACTS:

The Providers and Intermediary stipulated to the following pertinent facts:

3. Each of the Providers' SNF was reimbursed based upon the reasonable costs it incurred to provide health care services to Medicare beneficiaries as provided by 42 U.S.C. § 1395x(v), was subject to the cost limits placed upon SNF costs as provided by 42 U.S.C. § 1395yy.

4. In accordance with 42 C.F.R. § 413.30(f)(1), each of the Providers requested that its SNF be granted an exception to the cost limits except as noted on Appendix B.

5. The exception request of each of the Providers was approved except as noted on Appendix B.

6. The Providers contend that they should be reimbursed all of their costs in excess of the limit, based on 43 U.S.C. § 1395yy(3), which sets the limit for hospital-based SNFs at the limit established for free-standing SNFs plus 50% of the amount by which 112% of the mean per diem routine service costs for hospital-based SNFs exceeds the limit for freestanding SNFs.

7. The MAC contends that the provisions of Provider Reimbursement Manual, Part I (HCFA Pub. 15-1) § 2534, entitled Request for Exception to SNF cost limits, governs. PRM § 2534 directs the Intermediary to calculate cost limit exceptions for hospital-based SNFs at amounts up to 112% of the mean per diem routine service costs for hospital-based SNFs. The exception was limited accordingly. Cost exceeding 112% of the mean per diem (i.e., 112% limit) were not separately reviewed for reasonableness.

8. Each Provider has appealed the MAC's capping the cost limit exception to the PRM 2534 ceiling.

9. The Board has asserted jurisdiction over the Providers and fiscal years identified on Appendix B. The MAC challenged jurisdiction on those Providers marked with a "J" on the far left of the exhibit. The Board rejected the challenges and assumed jurisdiction for such providers/fiscal years.[8]

[8] *See* Stipulations dated December 12, 2012 for Case No. 00-0655G.

PROVIDERS' CONTENTIONS:

The Providers contend that the adoption of PRM 15-1 § 2534.5 represented a substantial departure from CMS' prior interpretation of 42 C.F.R. § 413.30.[9] The Providers claim that § 2534.5 and the "gap" methodology are invalid because they were not adopted pursuant to the notice and comment rulemaking provisions of the Administrative Procedure Act ("APA").[10] The Providers argue that § 2534.5 is an invalid and unreasonable interpretation of 42 U.S.C. § 1395yy.

The Providers argue that, in *St. Luke's Methodist Hospital v. Thompson* ("*St. Luke's*"),[11] the Eighth Circuit Court of Appeals ("Eight Circuit") explicitly concluded that "PRM § 2534.5 is a 'plainly erroneous' interpretation of the provisions that allow the Secretary to grant an upward adjustment to hospital-based SNFs . . . ."[12]

The Providers also contend that § 2534.5 impermissibly conflicts with the regulation that sets forth the rules governing exceptions to the RCL. Providers maintain that 42 C.F.R. § 413.30(f)(1)(i) allows SNF to be compensated for atypical services when it can show that its "actual cost... *exceeds the applicable limit* because such items or services are atypical in nature and scope . . . ."[13] The "applicable limit" is the RCL for that particular SNF, not 112 percent of the mean per diem cost for HB-SNFs.[14]

The Providers argue that the Manual provision creates a binding interpretation of a "legislative" rule and changed long-established practices under the controlling statutes and regulation 42 C.F.R. § 413.30(f), which did not include any such "gap."

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Providers did not furnish sufficient information and documentation, pursuant to 42 C.F.R.§§ 413.20 and 413.24.[15] The referenced Medicare regulations explicitly require providers to maintain sufficient financial records and statistical data for proper determination of costs payable under the Medicare Program.

The Intermediary processed the Providers' requests for exception to the SNF RCL pursuant to 42 C.F.R. § 413.30 and PRM 15-1 §§ 2531 and 2534. The Providers did not demonstrate with compelling or convincing evidence that the Intermediary failed to make its determinations in accordance with the referenced Medicare regulations and manual instructions.

The Intermediary contends that the Providers' RCL exception requests were properly calculated in accordance with CMS instructions at PRM 15-1 § 2534.5 which prescribes the methodology for making that calculation. The Intermediary relies upon the Administrator's 1997 decision in

---

[9] Provider's Supplemental Position Paper at 5.
[10] 5 U.S.C. Ch. 5.
[11] 315 F.3d 984 (8th Cir. 2003).
[12] 315 F.3d at 988. *See also* Provider's Supplemental Position Paper at 7.
[13] (Emphasis added.)
[14] Provider's Supplemental Position Paper at 10.
[15] MAC Supplemental Position Paper, at 6.

St. Francis Health Care Center v. Community Mutual Insurance Company[16] where the Administrator found that the methodology in PRM 15-1 § 2534.5 is consistent with the Medicare policy set forth in 42 C.F.R. § 413.30(f)(1). The Intermediary argues that the policy interpretation requiring HB-SNF costs to be compared to 112 percent of the group's mean per diem costs is an appropriate method of applying the reasonable cost requirement and is not inequitable.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After consideration of Medicare law and guidelines, parties' contentions, and evidence presented, the Board finds that the methodology applied by CMS in partially denying the Providers' exception requests for per diem costs that exceeded the cost limit was not consistent with the statute and regulation relating to this issue.

The regulation, 42 C.F.R. § 413.30(f)(1), permits the Providers to request from CMS an exception from the SNF cost limits because they provided atypical services. It is undisputed that for 15 years the Secretary interpreted this regulation as permitting a provider to recover all reasonable costs that exceeded the limits if it demonstrated that it met the SNF exception requirements. The Providers' exception requests were processed in accordance with PRM 15-1 Transmittal No. 378, which was issued in July 1994 and decreed that the atypical services exception of every HB-SNF must be measured from 112 percent of the peer group mean for that HB-SNF rather than the SNF's cost limit. CMS incorporated this transmittal into PRM 15-1 at § 2534.5.

In essence, CMS replaced the limit with an entirely new and separate "cost limit" (112 percent of the peer group mean routine services cost). It is also undisputed that 112 percent of the peer group mean of HB-SNFs is significantly higher than the HB-SNF's cost limit. As a result, under PRM 15-1 § 2534.5, a reimbursement "gap" is created between the limit and 112 percent of the peer group mean that represents costs incurred by a HB-SNF that it is not allowed to recover.

In issuing PRM 15-1 § 2534.5, CMS reached a conclusion regarding the intent of Congress toward reimbursing the routine costs of HB-SNFs which provide only *typical* services and illogically applied that same rationale to HB-SNFs that provide *atypical* services. At the outset, the Board recognizes that, in 2000, the Sixth Circuit Court of Appeals ("Sixth Circuit") upheld PRM 15-1 § 2534.5 as an interpretive rule not requiring notice and comment in *St. Francis Health Care Center. v. Shalala*[17] and that some of the Providers in this group appeal are located in the Sixth Circuit. However, pursuant to 42 C.F.R. § 405.1867, the Board is not bound by interpretive rules but rather must "afford great weight" to such rules.

Notwithstanding the great weight afforded to PRM 15-1 § 2534.5, the Board finds that § 2534.5 is inconsistent with the relevant statutory and regulatory provisions and that the Manual provision is arbitrary and capricious. The controlling regulation, 42 C.F.R. § 413.30(f), specifically states that a provider must show only that its cost "exceeds the applicable limit," not

---

[16] Administrator Dec. (May 30, 1997), *rev'g*, PRRB Dec. No. 97-D38 (1997), *aff'd, St. Francis Health Care Ctr. v. Shalala*, 10 F. Supp. 2d 887 (N.D. Ohio 1998), *aff'd*, 205 F.3d 937 (6th Cir. 2000).

[17] *St. Francis Health Care Ctr. v. Shalala*, 205 F.3d 937 (6th Cir. 2000), *aff'g*, 10 F. Supp. 2d 887 (N.D. Ohio 1998), *aff'g*, Administrator Dec. (May 30, 1997), *rev'g*, PRRB Dec. No. 97-D38 (1997).

that its cost exceeds 112 percent of the peer group mean. The comparison to a peer group of "providers similarly classified," required by the regulation, is of the "nature and scope of the *items* and *services* actually furnished,"[18] not of their cost.

Moreover, the controlling regulation specifies that the RCL "[l]imits established under this section *may be adjusted upward* for a provider under the circumstances specified in paragraphs (f)(1) through (f)(5) of this section" (*e.g.*, atypical services).[19] In this regard, CMS explained in the preamble to the final rule issued on June 1, 1979 that "[i]f a provider receives an exception, it is reimbursed on the basis of the cost limit, *plus an incremental sum* for the reasonable costs warranted by the circumstances that justified its exception."[20] However, pursuant to PRM 15-1 § 2534.5, when a HB-SNF's costs exceed the RCL and such excess costs are found to be reasonable under the exception review process, the HB-SNF will receive an additional payment *only* for that fraction (if any) of the excess costs that surpass another specified threshold – 112 percent of the mean per diem costs for a peer group of similarly classified providers. The Board finds that PRM 15-1 § 2534.5 does not comply with the regulation because the Manual provision does not adjust the RCL limit upward, *i.e.*, add "an incremental sum" onto the RCL limit.

Finally, the Board notes that Congress itself specified in 42 U.S.C. § 1395yy(a) the four "peer groups" that are to be considered in determining Medicare reimbursement of SNFs: free-standing urban, free-standing rural, hospital-based urban, and hospital-based rural. Based on this statutory framework, the Board finds that CMS has no statutory or regulatory authority to establish a *new* "peer group" for HB-SNFs (112 percent of the peer group mean routine service cost) and determine atypical service exceptions from an entirely *new* cost limit rather than from the limit intended by Congress.

The Board's decision in this matter is consistent with its prior decisions in similar SNF RCL cases[21] and the Eighth Circuit decision in *St. Luke's*.[22] As noted by the Providers, the Eighth Circuit in *St. Luke's* found that "PRM 15-1 § 2534.5 is a 'plainly erroneous' interpretation of the provisions that allow the Secretary to grant an upward adjustment to hospital-based SNFs and thus, in any event, PRM § 2534.5 is not entitled to our deference."[23] In reaching this conclusion, the Eighth Circuit stated the following:

> We agree with the district court that the Secretary, in his attempt to justify PRM § 2534.5, confuses two distinct concerns: reimbursement of SNFs for their typical costs (addressed in § 1395yy(a)) and reimbursement of an individual SNF for providing service atypical of similarly classified providers

---

[18] (Emphasis added.)
[19] (Emphasis added.)
[20] 44 Fed. Reg. 31802 (June 1, 1979) (emphasis added). This final rule promulgated 42 C.F.R. § 405.460 which was later redesignated as 42 C.F.R § 413.30 effective October 1, 1986. 51 Fed. Reg. 34790 (Aug. 5, 1999).
[21] This decision is also consistent with the Board's decisions in similar SNF RCL cases. *See, e.g., Toyon 85-98 112% Hospital-Based Peer Group v. BlueCross BlueShield Ass'n,* PRRB Dec. No. 2010-D35 (June 10, 2010), rev'd, Administrator Dec. (Aug. 23, 2010); *Canonsburg Gen. Hosp. SNF v. BlueCross BlueShield Ass'n,* PRRB Dec. No. 2009-D37 (Aug. 20, 2009), rev'd, Administrator Dec. (Oct. 14, 2009); *Quality 89-92 Hospital Based SNF v. BlueCross BlueShield Ass'n,* PRRB Dec. No. 2009-D8 (Jan. 26, 2009), rev'd, Administrator Dec. (Mar. 10, 2009).
[22] 315 F.3d 984 (8th Cir. 2003), *aff'g,* 182 F. Supp. 2d 765 (N.D. Iowa 2001).
[23] *Id.* at 988.

> (addressed in § 1395yy(c)). Section 1395yy(a) provides a formula for reimbursing the typical costs of hospital-based SNFs; it does not speak to adjustments based on the "special needs or situations" of "particular providers," *see* 42 C.F.R. § 413.30(a) (1996). Assuming, without deciding, that Congress enacted § 1395yy(a) in 1984 in part because of concerns about the efficiency of hospital-based SNFs as a group, we note that at the same time Congress elected not to restrict upward adjustments "based upon case mix or circumstances" beyond an individual hospital-based SNF's control, *see* 42 U.S.C. § 1395yy(c). Significantly, § 1395yy(c) authorizes upward adjustments to "any skilled nursing facility" without distinguishing between hospital-based SNFs and free-standing SNFs, or using any language that supports the 'gap' created by PRM § 2534.5.
>
> We moreover note that 1395yy(c) states that the Secretary "may make adjustments in the limits set forth in subsection (a)," and we believe that Congress intended by this provision to allow adjustments to be made to the RCL, not to some point above the RCL. Also, the pertinent regulation states that a SNF may be compensated for atypical services if it can show the "[a]ctual cost . . . exceeds *the applicable limit*," *see* 42 C.F.R. § 413.30(f)(1)(i) (1996) (emphasis added), and we believe that the "applicable limit" is the RCL for that particular SNF, not 112% of the mean per diem cost for hospital-based SNFs. We think that these upward adjustments are intended to give SNFs a kind of "safety net" that prevents them from being penalized for providing necessary atypical services to Medicare patients.[24]

In the alternative, with respect to the subset of the Providers that are located outside of the Eighth Circuit, the Board finds that PRM 15-1 § 2534.5 is procedurally invalid based on a lack of notice and comment. It is undisputed that CMS' revised methodology was a marked departure from its earlier method of determining the amount for HB-SNF exception requests and hence the revised methodology requires an explanation. It is a "clear tenet of administrative law that if the agency wishes to depart from its consistent precedent it must provide a principled explanation for its change of direction."[25] 42 U.S.C. § 1395yy only set the formula for determining the cost limit; it did not change the method to be used to determine exceptions to the cost limit nor provide CMS with any legal authorization to adjust its pre-existing policies or regulations. Because PRM 15-1 § 2534.5 defines an exception methodology contrary to that contained in the applicable regulation and in the unwritten policy of CMS for 15 years prior to adoption of this Manual section, it "effected a change in existing law or policy" that is substantive in nature.

PRM 15-1 § 2534.5 constitutes a significant revision of the Secretary's definitive interpretation of 42 C.F.R. § 413.30 and is invalid because it was not issued pursuant to notice and comment

---

[24] *Id.* at 988-89.

rulemaking as required by the APA. "Once an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and rulemaking."

In *Alaska Professional Hunters Ass'n., Inc. v. Federal Aviation Admin.*,[26] the U.S. Court of Appeals for the District of Columbia Circuit held: "[w]hen an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish without notice and comment." Without question, that is precisely what CMS did when it changed its methodology of determining atypical services exceptions for HB-SNFs after having consistently applied it in a much different manner for 15 years prior to making the change.

There is nothing in the statute or regulation that requires the "gap" methodology interpretation at issue here. Congress gave the Secretary broad authority to establish "by regulation" the methods to be used and items to be included in determining reimbursement. Had the "gap" methodology been subjected to the rulemaking process under the APA, 5 U.S.C. § 553, it would have been a legitimate exercise of that power. The Board's alternative rationale is supported by the 2008 decision of U.S. District Court for the District of Columbia in *Montefiore Medical Center v. Leavitt*[27] and the 2001 decision of U.S. District Court for the North District of Iowa in *St. Luke's*.[28]

DECISION AND ORDER:

CMS' methodology for determining the amount of the Providers' exceptions to the HB-SNF routine cost limit was improper. The Providers are entitled to be reimbursed for all of those costs above the cost limit as opposed to being reimbursed for only those costs that exceeded 112 percent of the peer group's mean per diem cost.

Board Members Participating:

Michael W. Harty
Keith E. Braganza
John Gary Bowers, C.P.A.
Clayton J. Nix, Esq.
L. Sue Andersen, Esq.

FOR THE BOARD:

Michael W. Harty
Chairman

DATE MAY 16 2013

[26] 177 F.3d 1030, 1034 (D.C. Cir. 1999).
[27] 578 F. Supp. 2d 129 (D.D.C. 2008). *See also Mercy Skilled Nursing Facility v. Thompson*, No. CA-99-2765-TPJ, 2004 WL 3541332 (D.D.C. May 14, 2004).
[28] 182 F. Supp. 2d 765 (N.D. Iowa 2001), *aff'd*, 315 F.3d 984 (8th Cir. 2003) (note that the 8th Circuit's decision to affirm the lower court never had to reach and review the lower court's APA findings).

Appendix A

Schedule of Participating Providers

Case No. 00-0655G

Group Name: Blumberg Ribner 94-95 112% Peer Group Mean

Group Representative: Blumberg Ribner Inc.

Dated Prepared: January xx, 2010

PRRB Group Appeal Number: 00-0655G

Issue: Whether HCFA's methodology in calculating the amount of the exception from the routine cost limits, as set forth in the Provider Reimbursement Manual, Part I, section 2534.5 (i.e. using the Provider's average per diem costs applied to 112 percent of the peer group mean per diem cost) is a proper interpretation of 42 CFR § 413.30 (f)(1)?

Schedule of Providers

					A1	A2	A3	B1	B2	B3	C	D	E	F	G
	Provider Number	Provider Name	FYE	Fiscal Intermediary	Date of ONPR	Date of SNF Final Determ &/or FI Transmittal	Date of RNPR	Date of Hearing Request	Date of Hearing Request	Date of Hearing Request	Number of Days	Audit Adjustment Number	Amount of Reimbursement	Case Numbers	Date(s) of Add/ Transfer
1	05-0281/55-5294	Alhambra Hospital	9/30/1992	First Coast Service Options, Inc.	5/31/1994	2/28/1995 3/30/1995	n/a	n/a	4/21/1995	n/a	22	n/a	171,300	95-1993	9/15/2000
2	05-0281/55-5294	Alhambra Hospital	9/30/1994	First Coast Service Options, Inc.	9/12/1996	3/31/1997 2/16/1998	n/a	2/5/1997	5/20/1997 2/23/1998	n/a	146 60 5	n/a	285,500	97-1028	A&T - 2/14/2002
3	05-0281/55-5294	Alhambra Hospital	9/30/1995	First Coast Service Options, Inc.	6/11/1997	n/a	n/a	7/21/1997	n/a	n/a	40	n/a	265,400	97-2723	A&T - 2/01/2002
4	05-0281/55-5294	Alhambra Hospital	9/30/1996	First Coast Service Options, Inc.	8/28/1998	n/a	n/a	12/24/1998	n/a	n/a	87	n/a	433,400	99-0867	A&T - 2/01/2002
5	05-0226/55-5372	Anaheim Memorial Medical Center	9/30/1993	First Coast Service Options, Inc.	9/29/1995	3/22/1995 4/18/1995 11/22/1995	n/a	3/14/1996	10/2/1995	n/a	157 157	(O) 46-48, 52	579,100	96-0038	T - 5/12/2000
6	05-0226/55-5372	Anaheim Memorial Medical Center	9/30/1994	First Coast Service Options, Inc.	9/18/1996	4/8/1997 10/31/1997	n/a	3/6/1997	4/16/1997 11/13/1997	n/a	169 8 3	n/a	548,200	97-1487	T - 6/29/2000
7	05-0226/55-5372	Anaheim Memorial Medical Center	9/30/1995	First Coast Service Options, Inc.	1/31/1997	12/23/1997 1/20/1998	n/a	3/28/1997	2/2/1998	n/a	56 13	(O) 54, 59, 61	703,100	97-2094	T - 9/7/2000
8	05-0144/05-5434	Brotman Medical Center	9/31/1993	Wisconsin Physicians Service	11/13/1995	01/19/1996 04/11/1996 10/27/1998	n/a	n/a	5/13/1996	n/a	32	n/a	245,700	96-2122	T - 2/29/2000
9	05-0394/05-5306	Community Memorial Hospital of San Buenaventura	12/31/1994	First Coast Service Options, Inc.	2/28/1997	3/25/1999	n/a	n/a	6/16/1999	n/a	83	n/a	239,500	98-3171	T - 9/28/2000
10	05-0394/05-5306	Community Memorial Hospital of San Buenaventura	12/31/1995	First Coast Service Options, Inc.	10/14/1997	12/17/1998 1/25/1999	n/a	n/a	7/8/1999	n/a	162	n/a	288,600	98-2514	T - 7/20/2000
11	05-0329/55-5390	Corona Regional Medical Center	12/31/1998	First Coast Service Options, Inc.	9/27/2001	7/11/2002	8/15/2002	3/21/2002	2/11/2003	2/11/2003	175 180	(O) 6 (R) 1	97,500	02-1320	T - 3/31/2003
12	36-0096/36-5692	East Liverpool City Hospital	12/31/1996	National Government Services	2/27/1998	n/a	5/15/1998	8/10/1998	n/a	8/10/1998	164 87	(O) 28 (R) 3	396,000	98-3238	T - 5/18/2000
13	27-0044/27-5108	Frances Mahon Deaconess Hospital	6/30/1991	Noridian Administrative Services, LLC	9/30/1993	7/5/1995 7/18/1995	n/a	n/a	9/18/1995	n/a	31	n/a	47,700	95-2299	T-8/24/2000
14	27-0044/27-5108	Frances Mahon Deaconess Hospital	6/30/1992	Noridian Administrative Services, LLC	9/30/1994	11/08/195 11/16/95	n/a	3/23/1995	5/10/1996	n/a	174 175	(O) 1, 4, 26	131,600	95-1967	T - 5/09/2000
15	36-0134/36-5986	Good Samaritan Hospital	6/30/1997	National Government Services	7/2/1999	9/22/2000	9/25/2000	n/a	3/15/2001	3/19/2001	174 175	(R) 10	435,600	01-2055	T - 2/10/2003

Group Name: Blumberg Ribner 94-95 112% Peer Group Mean
Group Representative: Blumberg Ribner Inc.
Dated Prepared: January xx, 2010
PRRB Group Appeal Number: 00-0655G

Issue: Whether HCFA's methodology in calculating the amount of the exception from the routine cost limits, as set forth in the Provider Reimbursement Manual, Part I, section 2534.5 (i.e. using the Provider's average per diem costs applied to 112 percent of the peer group mean per diem cost) is a proper interpretation of 42 CFR § 413.30 (f)(1)?

Schedule of Providers

					A1	A2	A3	B1	B2	B3	C	D	E	F	G
	Provider Number	Provider Name	FYE	Fiscal Intermediary	Date of ONPR	Date of SNF Final Determ &/or FI Transmittal	Date of RNPR	Date of Hearing Request	Date of Hearing Request	Date of Hearing Request	Number of Days	Audit Adjustment Number	Amount of Reimbursement	Case Numbers	Date(s) of Add/ Transfer
16	30-0006/30-5023	Huggins Hospital	9/30/1991	National Government Services	9/23/1993	5/22/1996 7/9/1996	n/a	n/a	12/26/1996	n/a	171	n/a	202,900	97-0427	T - 2/13/2001
17	30-0006/30-5023	Huggins Hospital	9/30/1994	National Government Services	4/8/1996	9/24/1997 10/28/1997	n/a	6/13/1998	11/5/1997	n/a	127 8	(O) 27	102,500	98-0394	T - 5/09/2000
18	30-0006/30-5023	Huggins Hospital	9/30/1997	National Government Services	2/27/1998	5/15/2000	n/a	n/a	10/30/2000	n/a	168	n/a	50,000	01-0298	T - 9/13/2001
19	36-0032/36-5807	Joint Township District Memorial Hospital	12/31/1997	National Government Services	3/17/2000	2/29/2000	n/a	9/7/2000	n/a	n/a	174	(O) 19	487,500	00-3888	T - 6/21/2001
20	05-0468/55-5441	Memorial Hospital of Gardena	6/30/1995	First Coast Service Options, Inc.	9/30/1997	1/13/2000	1/6/1999	3/26/1998	6/16/2000	6/29/1999	177 155 173	(R) 1 - 5	168,700	98-2065	T - 12/07/2000
21	05-0468/55-5441	Memorial Hospital of Gardena	6/30/1996	First Coast Service Options, Inc.	9/25/1998	9/30/1999	n/a	n/a	2/29/2000	n/a	152	n/a	162,000	99-2373	T - 11/28/2000
22	05-0231/55-5502	Pomona Valley Hospital Medical Center	12/31/1996	First Coast Service Options, Inc.	11/20/1998	9/30/1999	n/a	5/14/1999	3/21/2000	n/a	176 173	(O) 19	347,100	99-3243	T-2/23/2001
23	05-0231/55-5502	Pomona Valley Hospital Medical Center	12/31/1997	First Coast Service Options, Inc.	2/4/2000	11/14/2000	n/a	7/28/2000	5/11/2001	n/a	175 176	n/a	296,300	00-3374	T - 7/19/2001
24	05-0231/55-5502	Pomona Valley Hospital Medical Center	12/31/1998	First Coast Service Options, Inc.	9/27/2001	5/20/2002	n/a	2/28/2002	n/a	n/a	154	(O) 23	214,100	02-0956	ABT - 7/29/2002
25	05-0616/55-5223	Saint John Pleasant Valley Hospital	6/30/1993	First Coast Service Options, Inc.	9/29/1995	9/29/1997 10/03/1997	n/a	n/a	10/27/1997	n/a	24	n/a	107,800	96-2066	To APA 3/16/1999 APA to 112% 3/11/2004
26	05-0616/55-5223	Saint John Pleasant Valley Hospital	6/30/1995	First Coast Service Options, Inc.	2/28/1997	2/18/1998 3/24/1998	n/a	n/a	5/8/1998	n/a	45	n/a	676,600	98-2713	T - 8/23/2001
27	05-0502/55-5437	Saint Vincent Medical Center	6/30/1995	First Coast Service Options, Inc.	9/30/1997	9/14/1998	n/a	11/10/1997 12/23/1997	10/2/1998	n/a	41 64 18	n/a	154,700	98-0233	T - 6/27/2002
28	05-0502/55-5437	Saint Vincent Medical Center	6/30/1996	First Coast Service Options, Inc.	9/21/1998	7/12/1999	n/a	3/18/1999	5/3/2000	n/a	178 296	(O) 22	274,100	99-2484	T - 11/21/2000
29	05-0502/55-5437	Saint Vincent Medical Center	6/30/1998	First Coast Service Options, Inc.	9/29/2000	8/29/2001	10/15/2001	12/5/2000	n/a	4/8/2002	71 175	(R) 1, 3	328,500	01-0512	T - 5/29/2002
30	05-0236/55-5293	Simi Valley Hospital	12/31/1992	First Coast Service Options, Inc.	11/30/1994	3/28/1997	n/a	4/14/1995	4/10/1997	n/a	135 13	(O) 47	71,300	95-1962	T - 5/09/2000

Group Name: Blumberg Ribner 94-95 112% Peer Group Mean

Group Representative: Blumberg Ribner Inc.

Dated Prepared: January xx, 2010

PRRB Group Appeal Number: 00-0655G

Issue: Whether HCFA's methodology in calculating the amount of the exception from the routine cost limits, as set forth in the Provider Reimbursement Manual, Part I, section 2534.5 (i.e. using the Provider's average per diem costs applied to 112 percent of the peer group mean per diem cost) is a proper interpretation of 42 CFR § 413.30 (f)(1)?

Schedule of Providers

					A1	A2	A3	B1	B2	B3	C	D	E	F	G
	Provider Number	Provider Name	FYE	Fiscal Intermediary	Date of ONPR	Date of SNF Final Determ &/or FI Transmittal	Date of RMPR	Date of Hearing Request	Date of Hearing Request	Date of Hearing Request	Number of Days	Audit Adjustment Number	Amount of Reimbursement	Case Numbers	Date(s) of Add'l Transfer
31	05-0236/55-5293	Simi Valley Hospital	12/31/1994	First Coast Service Options, Inc.	9/13/1996	4/04/1997 2/27/1998	n/a	2/28/1997	5/13/1997 3/13/1998	n/a	166 39 14	(C) 34	672,100	97-1547	T - 9/22/2000
32	19-0046/19-5205	Touro Infirmary	12/31/1994	Wisconsin Physicians Service	9/26/2001	n/a	n/a	12/10/2001	n/a	n/a	73	n/a	304,500	02-0356	Add - 4/14/2003 T - 4/28/2003
33	03-0006/03-5136	Tucson Medical Center	6/30/1994	Noridian Administrative Services, LLC	9/30/1996	6/15/1997 9/17/1997 2/18/1998 2/27/1998	n/a	2/25/1997 3/13/1997	1/20/1998 4/6/1998	n/a	ONPR Appeals 148 & 169 SNF Determ Appeals 125 & 38	(C) 40, 65 - 69	1,103,700	97-1127	T - 2/18/2000
34	03-0006/03-5136	Tucson Medical Center	12/31/1994	Noridian Administrative Services, LLC	9/25/1997	4/05/1999 6/28/1999	10/5/1999	3/9/1998	12/21/1999	1/13/2000	155 157 100	(C) 5, 10-12, 67 (R) 1, 2	507,500	98-0791	T - 2/18/2000
35	03-0006/03-5136	Tucson Medical Center	12/31/1995	Noridian Administrative Services, LLC	9/25/1998	10/29/1999	n/a	2/9/1999	4/18/2000	n/a	168 179	n/a	997,300	99-1298	T - 7/20/2000
36	03-0006/03-5136	Tucson Medical Center	12/31/1996	Noridian Administrative Services, LLC	9/25/1999	6/10/2000	n/a	3/16/2000 3/16/2000	11/27/2000	n/a	173 170	n/a	359,100	00-2540	T - 10/13/2004
37	03-0006/03-5136	Tucson Medical Center	12/31/1997	Noridian Administrative Services, LLC	9/29/2000	5/3/2001	n/a	1/5/2001	10/29/2001	n/a	96 179	n/a	495,800	01-0719	T - 11/20/2001
38	03-0006/03-5136	Tucson Medical Center	12/31/1998	Noridian Administrative Services, LLC	9/27/2001	10/22/2002	11/20/2002	1/31/2002	2/19/2003	2/19/2003	126 120 91	(R) 3, 4	396,900	02-0753	T - 3/5/2003
39	03-0006/03-5136	Tucson Medical Center	12/31/1999	Noridian Administrative Services, LLC	6/26/2003	n/a	n/a	12/5/2003	n/a	n/a	162	(C) 14,73-77	0	04-0784	T - 2/4/2004 AET - 6/22/2004
40	05-0103/55-5312	White Memorial Medical Center	12/31/1993	First Coast Service Options, Inc.	9/27/1995	12/21/1995	12/29/1998	1/5/1996	n/a	6/10/1997	100 166	(R) 1	334,000	95-1133	Transfer To APA 1/30/1998 APA to 112% 2/11/2004

Appendix - B

Group: SNF 112% Peer Group Mean
Case # 00-0655G

							112% Peer Group Mean Limit							100% Peer Group Mean Limit							
	PROV	PROV #	FYE	MAC	Exr Request #1	Exr Request #2	Labor Portion	Wage Ind Factor	Adjusted Labor	Non-Labor Portion	Adjusted Mean Limit	Year End Factor	(1) Peer Grp Mean Limit	Labor Portion	Wage Ind Factor	Adjusted Labor	Non-Labor Portion	Adjusted Mean Limit	Year End Factor	Peer Grp Mean Limit	(2) ICC
	Alhambra	05-0281	09/30/1992	FCSO	03/30/95	N/A	131.72	1.2412	163.49	28.70	192.19	1.1300	217.18	117.61	1.11	145.58	25.63	171.61	1.1300	193.92	169.66
	Alhambra	05-0281	09/30/1994	FCSO	02/18/1996	N/A	144.88	1.2354	178.98	30.50	209.48	1.0000	209.48	129.36	1.10	159.81	27.23	187.04	1.0000	187.04	164.41
J	Alhambra	05-0281	09/30/1995	FCSO	N/A	N/A	142.37	1.2354	175.88	29.97	205.85	1.0660	219.44	127.12	1.10	157.04	26.76	183.80	1.0660	195.94	164.41
J	Alhambra	05-0281	09/30/1996	FCSO	N/A	N/A	142.37	1.2354	175.88	29.97	205.85	1.0969	225.80	127.12	1.10	157.04	26.76	183.80	1.0969	201.61	177.21
	Anaheim	05-0226	09/30/1993	FCSO	11/22/1995	N/A	142.37	1.2130	172.69	29.97	202.66	1.0000	202.66	127.12	1.08	154.20	26.76	180.96	1.0000	180.96	164.97
	Anaheim	05-0226	09/30/1994	FCSO	04/08/1997	10/31/1997	144.88	1.2130	175.74	30.50	206.24	1.0520	216.96	129.36	1.08	156.91	27.23	184.14	1.0520	193.72	161.89
	Anaheim	05-0226	09/30/1995	FCSO	01/20/1998	N/A	142.37	1.2130	172.69	29.97	202.66	1.0660	216.04	127.12	1.08	154.20	26.76	180.96	1.0660	192.90	161.89
	Brotman	05-0144	08/31/1993	WPS	04/11/1996	10/27/1998	131.72	1.2412	163.49	28.70	192.19	1.1935	229.38	117.61	1.11	145.58	25.63	171.61	1.1935	204.81	169.55
	Buenaventura	05-0394	12/31/1994	FCSO	03/25/1999	N/A	142.37	1.2309	175.24	29.97	205.21	1.0435	214.14	127.12	1.10	156.47	26.76	183.23	1.0435	191.20	166.01
	Buenaventura	05-0394	12/31/1995	FCSO	12/17/1998	01/25/1999	142.37	1.2309	175.24	29.97	205.21	1.0739	220.38	127.12	1.10	156.47	26.76	183.23	1.0739	196.77	166.01
	Corona	05-0329	12/31/1998	FCSO	07/11/2002	N/A	166.13	1.1379	189.04	34.97	224.01	1.0085	225.91	148.33	1.02	168.78	31.22	200.00	1.0085	201.70	177.46
J	Liverpool	36-0096	12/31/1995	NGS	04/28/1998	N/A	122.70	0.8453	103.72	20.20	123.92	1.0737	133.05	109.55	0.75	82.60	18.04	110.64	1.0737	118.80	107.36
	Frances Mahon	27-0044	06/30/1991	NAS	07/18/1995	N/A	121.24	0.8498	103.03	20.48	123.51	1.0507	129.77	108.25	0.76	81.99	18.29	110.28	1.0507	115.87	104.05
	Frances Mahon	27-0044	06/30/1992	NAS	11/16/1995	N/A	121.24	0.8498	103.03	20.48	123.51	1.1164	137.89	108.25	0.76	81.99	18.29	110.28	1.1164	123.12	112.00
	Good Samaritan	36-0134	06/30/1997	NGS	09/22/2000	N/A	142.37	0.9821	139.82	29.97	169.79	1.1223	190.56	127.12	0.88	124.84	26.76	151.60	1.1223	170.15	149.96
	Huggins	30-0006	09/30/1991	NGS	07/08/1996	N/A	121.24	0.8872	107.56	20.45	128.01	1.0488	134.26	108.25	0.79	86.04	18.26	114.30	1.0488	119.88	108.98
	Huggins	30-0006	09/30/1994	NGS	10/28/1997	N/A	124.86	0.9547	119.20	20.56	139.76	1.0520	147.03	111.48	0.85	106.43	18.36	124.79	1.0520	131.28	117.25
	Huggins	30-0006	09/30/1997	NGS	05/15/2000	N/A	138.81	0.9547	132.52	22.86	155.38	1.0000	155.38	123.94	0.85	118.33	20.41	138.74	1.0000	138.74	130.34
	Joint Township	36-0032	12/31/1997	NGS	02/29/2000	N/A	161.08	0.8062	129.86	33.91	163.77	1.0080	165.08	143.82	0.72	115.95	30.28	146.23	1.0080	147.40	130.26
	Gardena	05-0468	06/30/1995	FCSO	01/13/2000	N/A	142.37	1.2354	175.88	29.97	205.85	1.0584	217.88	127.12	1.10	157.04	26.76	183.80	1.0584	194.54	170.76

Appendix B. i

Group: SNF 112% Peer Group Mean
Case # 00-0655G

							112% Peer Group Mean Limit							100% Peer Group Mean Limit						
	Gardena	05-0468	06/30/1996	FCSO	09/30/1999	N/A	142.37	1.2354	175.88	29.97	205.85	1.0890	224.17	127.12	1.10	157.04	26.76	183.80	1.0890	200.16	170.76
	Pomona Valley	05-0231	12/31/1996	FCSO	09/30/1999	N/A	142.37	1.2354	175.88	29.97	205.85	1.1048	227.43	127.12	1.10	157.04	26.76	183.80	1.1048	203.07	173.48
	Pomona Valley	05-0231	12/31/1997	FCSO	11/14/2000	N/A	142.37	1.2354	175.88	29.97	205.85	1.0080	207.50	127.12	1.10	157.04	26.76	183.80	1.0080	185.27	184.23
	Pomona Valley	05-0231	12/31/1998	FCSO	05/20/2002	N/A	142.37	1.2354	175.88	29.97	205.85	1.0080	207.50	127.12	1.10	157.04	26.76	183.80	1.0080	185.27	189.97
	St. John's	05-0616	06/30/1993	FCSO	10/30/1997	N/A	142.37	1.2309	175.24	29.97	205.21	1.0025	205.73	127.12	1.10	156.47	26.76	183.23	1.0025	183.69	164.51
	St. John's	05-0616	06/30/1995	FCSO	03/24/1998	N/A	142.37	1.2309	175.24	29.97	205.21	1.0584	217.20	127.12	1.10	156.47	26.76	183.23	1.0584	193.93	176.23
	St. Vincent	05-0502	06/30/1995	FCSO	09/14/1998	N/A	142.37	1.2354	175.88	29.97	205.85	1.0584	217.88	127.12	1.10	157.04	26.76	183.80	1.0584	194.54	170.76
J	St. Vincent	05-0502	06/30/1996	FCSO	07/12/1999	N/A	142.37	1.2354	175.88	29.97	205.85	1.0890	224.17	127.12	1.10	157.04	26.76	183.80	1.0890	200.16	189.63
	St. Vincent	05-0502	06/30/1998	FCSO	08/29/2001	N/A	161.06	1.2354	198.97	33.91	232.88	1.0248	238.66	143.80	1.10	177.65	30.28	207.93	1.0248	213.09	187.31
	Simi Valley	05-0236	12/31/1992	FCSO	03/28/1997	N/A	131.55	1.3900	182.85	28.66	211.51	1.1004	232.75	117.46	1.24	163.27	25.59	188.86	1.1004	207.82	182.25
	Simi Valley	05-0236	12/31/1994	FCSO	02/27/1998	N/A	144.88	1.2309	178.33	30.50	208.83	1.0435	217.92	129.36	1.10	159.23	27.23	186.46	1.0435	194.57	166.01
J	Tucson	03-0006	06/30/1994	NAS	09/17/1997	02/27/1998	142.37	0.9591	136.55	29.97	166.52	1.0261	170.86	127.12	0.86	121.92	26.76	148.68	1.0261	152.56	137.03
J	Tucson	03-0006	12/31/1984	NAS	06/28/1999	N/A	142.37	0.9591	136.55	29.97	166.52	1.0584	176.24	127.12	0.86	121.92	26.76	148.68	1.0584	157.36	136.86
	Tucson	03-0006	12/31/1985	NAS	10/22/1999	N/A	142.37	0.9591	136.55	29.97	166.52	1.0739	178.82	127.12	0.86	121.92	26.76	148.68	1.0739	159.67	135.12
	Tucson	03-0006	12/31/1996	NAS	08/10/2000	N/A	142.37	0.9591	136.55	29.97	166.52	1.1048	183.97	127.12	0.86	121.92	26.76	148.68	1.1048	164.26	144.82
	Tucson	03-0006	12/31/1997	NAS	05/03/2001	N/A	161.06	0.9591	154.47	33.91	188.38	1.0080	189.89	143.80	0.86	137.92	30.28	168.20	1.0080	169.54	149.49
	Tucson	03-0006	12/31/1998	NAS	10/22/2002	N/A	161.03	0.9068	146.02	33.91	179.93	1.0085	181.46	143.78	0.81	130.38	30.28	160.66	1.0085	162.03	147.48
J	Tucson	03-0006	12/31/1999	NAS	N/A	N/A	161.03	0.9068	146.02	33.91	179.93	1.0085	181.46	143.78	0.81	130.38	30.28	160.66	1.0085	162.03	147.48
	White Mem.	05-0103	12/31/1993	FCSO	12/21/1995	N/A	144.88	1.2354	178.98	30.50	209.48	1.0129	212.19	129.36	1.10	159.81	27.23	187.04	1.0129	189.45	169.68
J	Touro Infirmary	19-0046	12/31/1954	WPS	08/15/1995	N/A	144.88	0.8908	129.06	30.50	159.56	1.0655	170.01			0.00		0.00	1.0655	0.00	127.36

J- Jurisdictionally challenged in MAC Final Position Paper.