

**PROVIDER REIMBURSEMENT REVIEW BOARD  
DECISION**

ON THE RECORD  
2018-D25

**PROVIDER**– The Mary Imogene Bassett  
Hospital

Provider No.: 33-0136

**vs.**

**MEDICARE CONTRACTOR** –  
National Government Services, Inc.

**DATE OF HEARING** -  
November 3, 2016

Fiscal Year Ends - 2007-2012

**CASE NOS.** 13-2696; 14-0033; 14-0031;  
15-0072; 15-0827; 15-3347

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## **ISSUE**

Whether Mary Imogene Bassett Hospital (“Mary Imogene” or “Hospital”), as a Sole Community Hospital (“SCH”), was properly reimbursed for Indirect Medical Education (“IME”) costs for services provided to Medicare Advantage (“MA” or “Part C”)<sup>1</sup> patients for the cost reporting years at issue. In particular, should the interim IME payments received for MA patients, as reported on the Provider Statistical & Reimbursement (“PS&R”) Report 118, be included in the total interim payments on Worksheet E-1 when determining the final settlement amounts owed to the Hospital?<sup>2</sup>

## **DECISION**

After considering the Medicare law and regulations, the parties’ contentions, and the evidence submitted, the Provider Reimbursement Review Board (“PRRB” or “Board”) concludes that the Medicare Contractor, National Government Services, Inc., failed to pay the Hospital for IME related to services provided to Part C patients. The Board remands this matter back to the Medicare Contractor to pay the Hospital for IME related to its Part C services, by either removing the Part C IME payments reported on the PS&R Report 118 from interim payments on Worksheet E-1, or by adding the Part C IME payments to the hospital-specific rate (“HSR”) calculation.

## **INTRODUCTION**

Mary Imogene is located in Cooperstown, New York. The Hospital is one of a small number of hospitals that is both a SCH<sup>3</sup> and a teaching hospital.<sup>4</sup> As a SCH, Mary Imogene was entitled to be paid by Medicare for inpatient services provided to its Medicare Part A patients, the higher of the amount calculated based on its HSR, or the amount calculated based on the inpatient prospective payment system (“IPPS”).<sup>5</sup> When the Medicare Contractor issued Notices of Program Reimbursement (“NPRs”) for fiscal years ending 2007 through 2012, it paid the Hospital based on the HSR,<sup>6</sup> removing the interim payments related to IME for the Hospital’s Part C patients.<sup>7</sup>

Mary Imogene timely appealed the Medicare Contractor’s determinations to the Board and met the jurisdictional requirements of 42 C.F.R. §§ 405.1835-405.1840. The PRRB conducted a hearing on the record. The Hospital was represented by Leo T. Crowley, Esq., of Pillsbury Winthrop Shaw Pittman LLP. The Medicare Contractor was represented by Edward Lau, Esq., of Federal Specialized Services.

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<sup>1</sup> Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066, Medicare Advantage was called “Medicare+Choice.” This program is located in Part C of Title XVIII of the Social Security Act and are also referred to as Part C plans. See 42 U.S.C. § 1395w-21.

<sup>2</sup> See Medicare Contractor’s Final Position Paper at 4.

<sup>3</sup> 42 U.S.C. § 1395ww(d)(5)(D)(iii).

<sup>4</sup> 42 U.S.C. § 1395ww(d)(5)(B).

<sup>5</sup> 42 U.S.C. § 1395ww(d)(5)(D)(i); 42 C.F.R. §§ 412.92(d) and 412.73.

<sup>6</sup> Medicare Contractor’s Final Position Paper at 5.

<sup>7</sup> *Id.* at 6.

## **STATEMENT OF FACTS**

SCHs are reimbursed the greater of the IPPS Federal Rate or the HSR. The IPPS Federal Rate is a fixed amount per diagnosis-related group, subject to regional and other adjustments. In contrast, the HSR is based on the hospital's own operating costs for Medicare Part A patients, calculated with reference to a base year trended forward.<sup>8</sup>

Federal statute pays an additional amount for each applicable patient discharge from any subsection (d) hospital that has an approved medical residency training program, including those patients who are enrolled in Medicare Advantage plans.<sup>9</sup> The amount of additional payment "shall be equal to the applicable percentage ... that would otherwise have been paid ... if the individuals had not been enrolled in [Medicare Advantage plans]."<sup>10</sup>

During the years in dispute, Mary Imogene received interim payments for IME for services provided to its Medicare Part A and Medicare Part C patients, which were recorded on Line 28 of Cost Report Worksheet E-A of the Hospital's cost reports.<sup>11</sup> When the Medicare Contractor finalized the Medicare cost report for each year under appeal, it determined the Hospital should be paid based on the HSR, *i.e.*, the "higher" rate, not the IPPS Federal Rate. However, the HSR was not paid for the Part C patients because their services were paid by the applicable Medicare Advantage plan.<sup>12</sup> When the Medicare Contractor finalized the cost reports using the cost report instruction, it recouped the interim payments related to IME for the Hospital's Part C patients.<sup>13</sup> The Hospital believes it should have received IME payments for its Medicare Part C patients and appealed the issue for its fiscal year 2007 –fiscal year 2012 cost reports.

## **DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

The Medicare Contractor asserts that it properly relied on cost report instructions, CMS Pub. 15-2 § 3630.1 or CMS Pub. 15-2 § 4030 (as applicable)<sup>14</sup> to determine Mary Imogene's reimbursement. Based on Worksheet E Part A of the Medicare cost report, it was required to use the "higher of" either the Federal Rate or the Hospital Specific Rate. As required, Worksheet E-1 included **all** payments to the Provider as reported on the PS&R report, which included the Part C IME payments reported on the PS&R Report Type 118. However, as the Hospital was reimbursed solely on the HSR, any payments made during the year to the Hospital for Part C IME costs were "recouped" at final settlement.<sup>15</sup> The Medicare Contractor acknowledges that

<sup>8</sup> 42 U.S.C. § 1395ww(b)(3)(C)(i)(I) states "[i]n the case of a hospital that is a sole community hospital ... the term 'target amount' means ... the allowable operating costs of inpatient hospital services ...."

<sup>9</sup> 42 U.S.C. § 1395ww(d)(11)(B).

<sup>10</sup> 42 U.S.C. § 1395ww(d)(11)(C).

<sup>11</sup> See Statement of Stipulated Facts ("Stipulations") at ¶ 8.

<sup>12</sup> Provider's Consolidated Final Position Paper at 6.

<sup>13</sup> Stipulations at ¶¶ 12, 14, 15, and 16. To determine the amount due the Hospital, the Medicare Contractor calculated the total Medicare reimbursement amount based on the HSR (this was for Part A only and did not include an amount for IME for Part C). The Medicare Contractor then subtracted the Hospital's interim payments (the interim payments included an amount for IME for Part C) from the total reimbursement based on the HSR to determine how much the Hospital would be paid for the cost report. This result did not include any reimbursement for IME for Part C patients.

<sup>14</sup> Medicare Contractor's Final Position Paper at 5. See also Exhibits I-17 and I-19.

<sup>15</sup> Medicare Contractor's Final Position Paper at 5-6.

CMS later changed the methodology for calculating IME reimbursement for SCHs, but this change was not effective until October 1, 2014 so it could not be applied in this case.<sup>16</sup>

Mary Imogene contends that the explicit language of the statute entitles it to IME reimbursement for Medicare Part C patients. The Hospital points out that while this unambiguous statutory entitlement was in place for all of the fiscal years at issue, CMS ratified this entitlement through additional rulemaking in 2014.<sup>17</sup>

The Board agrees with Mary Imogene regarding the clarity of Congress' intention in this matter. In Section 4622 of the Balanced Budget Act of 1997, Congress explicitly provided IME add-on payments for Medicare Part C patients, to "any subsection (d) hospital that has an approved medical residency training program."<sup>18</sup> This additional payment is for portions of cost reporting periods occurring on or after January 1, 1998.<sup>19</sup> In addition, CMS regulations at 42 C.F.R. § 412.105(g) (2007) state:

For portions of cost reporting periods occurring on or after January 1, 1998, a payment is made to a hospital for indirect medical education costs, as determined under paragraph (e) of this section, for discharges associated with individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act or with a Medicare+Choice organization under title XVIII, Part C of the Act during the period, according to the applicable payment percentages described in §§ 413.76(c)(1) through (c)(5) of this subchapter.

The Board's review of the cost report instructions finds that these instructions did not specify how to make an IME payment for a SCH's Part C patients when the SCH was paid under the HSR. The Board finds that these cost report instructions had the effect of eliminating the Part C IME payment and is contrary to the applicable statute and regulation.<sup>20</sup>

The Board finds the statute and regulation in effect during the cost report years under appeal are very clear that any subsection (d) hospital, including Mary Imogene as a SCH, is to be paid IME for its Part C patients.<sup>21</sup> The Board finds the August 22, 2014 Final Rule simply established the methodology to calculate IME for Part C services for SCHs paid by the HSR,<sup>22</sup> in order to correct the previous erroneous cost report instructions which did not comport with the statute. The Board finds nothing in the statute or regulation that would alter the 1998 requirement to pay IME related to Medicare Part C patients to any subsection (d) hospital that has an approved medical residency training program.

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<sup>16</sup> Medicare Contractor's Final Position Paper at 9. *See also* 79 Fed. Reg. 49853, 50004 (Aug. 22, 2014).

<sup>17</sup> *See* 79 Fed. Reg. 27978, 28092 (May 15, 2014); 79 Fed. Reg. at 50004.

<sup>18</sup> Section 4622 of the Balanced Budget Act of 1997; 42 C.F.R. § 1395ww(d)(11)(A).

<sup>19</sup> Section 4622 of the Balanced Budget Act of 1997. *See also* 42 C.F.R. § 412.105(g).

<sup>20</sup> Exhibits I-17 at 7-8 and I-19 at 6.

<sup>21</sup> Section 4622 of the Balanced Budget Act of 1997. *See also* 42 C.F.R. § 412.105(g).

<sup>22</sup> CMS did not have a payment mechanism for SCHs to be paid IME when receiving payment based on their HSR prior to October 1, 2014. *See* 79 Fed. Reg. at 50004.

The Board concludes Mary Imogene should be paid IME for its Part C services and therefore remands these cost reports back to the Medicare Contractor to determine the amount of IME for Part C patients that should be paid to Mary Imogene for its 2007 through 2012 cost reports.

### **DECISION**

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board concludes that the Medicare Contractor failed to pay Mary Imogene for IME related to services provided to Part C patients. The Board remands this matter back to the Medicare Contractor to pay the Hospital for IME related to its Part C services, by either removing the Part C IME payments reported on the PS&R Report 118 from interim payments on Worksheet E-1, or by adding the Part C IME payments to the hospital-specific rate calculation.

### **BOARD MEMBERS PARTICIPATING**

L. Sue Andersen, Esq.  
Charlotte F. Benson, CPA  
Gregory H. Ziegler, CPA, CPC-A

### **FOR THE BOARD**

/s/  
L. Sue Andersen, Esq.  
Chairperson

**DATE:** February 27, 2018