

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D24

PROVIDER-
Springs Memorial Hospital

Provider No.: 42-0036

vs.

MEDICARE CONTRACTOR –
Palmetto GBA c/o National Government
Services

HEARING DATE –
April 19-20, 2017

Cost Reporting Period Ended –
November 30, 1997
November 30, 1998
November 30, 2000

CASE NOS.
08-2810
09-0523
08-2100

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ISSUE STATEMENT:

Whether the Medicare Contractor properly disallowed all costs and removed all therapy charges relating to the Provider's use of a Therapy and Management Services subcontractor for its Skilled Nursing Facility ("SNF") and Inpatient Rehabilitation Facility ("IRF") units?¹

DECISION:

After considering the Medicare law and regulations, arguments presented and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds:

1. The Medicare Contractor's adjustments to remove *all* of the costs/charges for RehabCare services from the Provider's fiscal year ("FY") 1997 cost report as it relates to the IRF subprovider unit were proper as the Provider did not submit sufficient documentation to demonstrate these costs were reasonable.
2. The Medicare Contractor's adjustments to remove *all* of the cost/charges for RehabCare services from the Provider's FY 1998 and FY 2000 cost reports as it relates to the IRF subprovider unit were improper as the Provider submitted sufficient documentation to support the reasonableness of a portion of these costs.
3. The Medicare Contractor's adjustments to remove *all* of the cost/charges for RehabCare services from the Provider's FY 1997, FY 1998 and FY 2000 cost reports as it relates to the SNF subprovider unit were improper as the Provider has submitted sufficient documentation to support the reasonableness of a portion of these costs.

The Board Remands the FY 1998 and FY 2000 cost reports to the Medicare Contractor to audit the documentation related to RehabCare's services furnished to the IRF subprovider unit to determine if the costs were reasonable, using the methodology the Medicare Contractor used to audit the FY 1999 RehabCare service costs related to the IRF subprovider unit. Similarly, the Board remands the FY 1997, FY 1998, and FY 2000 cost reports to the Medicare Contractor to audit the documentation related to RehabCare's services furnished to the SNF subprovider unit to determine what portion of the costs for these services were reasonable.

INTRODUCTION:

Springs Memorial Hospital ("Provider" or "Springs"), is an acute care hospital located in Lancaster, South Carolina which operates SNF and IRF subprovider units. Springs' designated Medicare administrative contractor is Palmetto GBA c/o National Government Services ("Medicare Contractor").²

¹ Transcript ("Tr.") at 5-6 (Apr. 19, 2017).

² CMS' payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries ("FIs") and these functions are now contracted with organizations known as Medicare administrative contractors ("MACs"). The term "Medicare contractor" refers to both FIs and MACs as appropriate. Palmetto GBA and National Government Services are both MACs involved with these appeals and will collectively be referred to as the "Medicare Contractor."

For the FYs 1997, 1998 and 2000,³ the Medicare Contractor made adjustments to remove therapy and management fees for the SNF and IRF subprovider units at Springs. Springs timely appealed these audit adjustments to the Board and met the jurisdictional requirements for a hearing.

The Board held a live hearing on April 19 and 20, 2017. Mark D. Polston, Esq., Juliet McBride, Esq. and Elizabeth N. Swayne, Esq. of King & Spalding, LLP represented Springs. Wilson C. Leong, Esq. and Edward Y. Lau, Esq. of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF FACTS:

Springs entered into 2 different contracts with RehabCare to provide management services and direct therapy services—one was for the SNF subprovider unit (also referred to as the transitional care unit⁴) and the other was for the IRF subprovider unit.⁵ Under the IRF subprovider contract, Springs paid RehabCare for these services based on a rate per patient day that included the direct therapy services provided by physical therapists, occupational therapists, and speech-language therapists, as well as management services, supplies, equipment and overhead.⁶ Under the SNF contract, Springs paid RehabCare a rate per patient day for program management services, medical management, and other related services.⁷ Direct therapy services provided by RehabCare to the Springs SNF subprovider unit were paid separately on an hourly rate.⁸ The Medicare Contractor disallowed the fees that Springs paid to RehabCare for its SNF and IRF subprovider units for FYs 1997, 1998 and 2000 because Springs did not provide sufficient documentation to show the costs were reasonable.⁹

CMS' Provider Reimbursement Manual, Pub. No. 15-1 ("PRM 15-1"), § 2135.5 provides guidance for determining the reasonableness of purchased management services and states, in part:

Records must be available which will support the cost of purchased management and administrative support services. Such support could include some or all of the following, depending upon the scope and type of contract:

A. A copy of contract(s) and any amendments;

³ Springs' fiscal year ends November 30th.

⁴ Tr. (Apr. 19, 2017) at 161. *See also* Provider's Post-Hearing Brief, 10.

⁵ *See* Provider's Optional Responsive Brief (1998) Exhibit P-47, 16-42 (Decl. of Janice C. Dabney, Attachment 4 (IRF subprovider agreement)) & 44 -77 (Decl. of Janice C. Dabney, Attachment 5 (SNF subprovider agreement)).

⁶ Provider's Post-Hearing Brief at 11-12. *See also* Provider's Optional Responsive Brief (1998) Exhibit P-47 at 17-22. Overhead costs were not explicitly accounted for in the IRF subprovider agreement, but Springs and RehabCare understood that costs related to salaries and benefits were marked up for overhead, use of equipment, and other ancillary costs. *See, e.g.*, Tr. at 305-306, 316-317.

⁷ Provider's Optional Responsive Brief (1998) Exhibit P-47 at 46, 50-51.

⁸ *Id.* at 66 (Addendum to SNF subprovider Agreement).

⁹ *See, e.g.*, MAC's Final Position Paper (1998) at 6. *See also* Provider's Final Position Paper (1998) at 2.

- B. Periodic progress reports submitted by the management organization;
- C. An analysis showing the efforts of the provider to comply with the prudent buyer principle guidelines in assessing its needs, establishing the goals to be attained, evaluation of the available alternatives, and choosing the terms of the contract (see §2135.2);
- D. Board minutes or other documentation to show continued reassessment of the effectiveness of the services (see §2135.2);
- E. Detailed identification of the services actually received during the period (see §2135.2); and
- F. Any other documentation available such as visit or contract reports, minutes of committee meetings, evaluations, cost/benefit analyses, etc., which would support the receipt of services and substantiate the attainment of the goals and objectives which are desired and the reasonableness of the fees paid.

The regulation at 42 C.F.R. § 413.24(c) (1996) sets the standard by which a provider's documentation will be assessed and states, in part:

Adequate cost information must be obtained from the provider's records to support payments made for services furnished to beneficiaries. The requirement for adequacy of data implies that the data be accurate and in sufficient detail to accomplish the purposes for which it is intended. Adequate data capable of being audited is consistent with good business concepts and effective and efficient management of any organization. . . . It is a reasonable expectation on the part of any agency paying for services on a cost-reimbursement basis.

The parties in these appeals dispute whether Springs provided adequate documentation to support that the payments made to RehabCare were reasonable.¹⁰

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

For all of the fiscal years at issue, the Medicare Contractor disallowed the payments Springs made to RehabCare because Springs failed to sufficiently document the fees for services furnished to the SNF and IRF subprovider units were reasonable. The Medicare Contractor asserts Springs did not obtain competitive bids as suggested by PRM 15-1 § 2135.2 and did not demonstrate that it searched the marketplace for the most appropriate and effective means of obtaining the contracted services. Rather, the documents and evidence supplied by Springs show that it relied on RehabCare's market analysis which is a soliciting tool and does not contain any comparisons of costs for similar vendors of similar services.¹¹

¹⁰ Provider's Final Position Paper (1998) at 2. *See also, e.g.*, MAC's Final Position Paper (1998) at 12.

¹¹ MAC's Final Position Paper (1997) at 8-9, (1998) at 9-10, & (2000) at 11.

Further, the Medicare Contractor points out that Springs did not maintain on a contemporaneous basis the hours that RehabCare provided under the contract as required by 42 C.F.R. § 413.24. The Medicare Contractor maintains that, without the actual hours the management company spent on each job/task, the auditors were not able to review the costs to determine if they were reasonable.¹²

Springs claims that it was a prudent buyer of RehabCare's services and that the costs of those services were not out of line with similarly situated hospitals. Springs supports its position using data in the Healthcare Cost Report Information System ("HCRIS") which it claims shows Springs' costs "were consistent with the entire population of hospital rehab subproviders[.]"¹³ Additionally, Springs' witness testified that Springs' total cost per patient day in FYs 1997, 1998, and 2000 was in line with its FY 1999 costs, which the Medicare Contractor accepted as reasonable.¹⁴

Springs argues that an all-inclusive management services arrangement is not unusual and CMS does not require the all-inclusive fees to be separated into management services and therapy services in order to determine reasonableness.¹⁵ Springs believes that there are other methods that can be used to determine if the management fees are reasonable. Specifically, Springs has produced documentation related to patient satisfaction surveys, monthly program reports, monthly patient summaries, bi-annual report cards, in-service educational activities, RehabCare payroll detail, and RehabCare invoices, *etc.*¹⁶ Springs maintains that this evidence is more than sufficient to support the reasonableness of the RehabCare arrangement for its SNF and IRF subprovider units.¹⁷

Finally, Springs points out that, for FY 1999, it went through a process of separating the fees paid to RehabCare *by its IRF subprovider unit*¹⁸ into therapy and management services and the Medicare Contractor was satisfied that the majority of the fees paid by the IRF subprovider unit in FY 1999 for both types of services were reasonable.¹⁹ Specifically, for FY 1999, RehabCare prepared a Value Quantitative Model ("VQM") that broke down the RehabCare fee charged to the IRF subprovider unit for FY 1999 into two categories - therapy and management. The VQM separately identified the salaries and benefits associated with therapy positions and management/administrative positions. It added overhead to both of these amounts to determine the amount of the RehabCare fees related to therapy services and the amount related to management services.²⁰ Based on the FY 1999 VQM for the IRF subprovider unit, the Medicare Contractor allowed for the IRF subprovider unit the amount RehabCare allocated to therapy

¹² MAC's Final Position Paper (1997) at 10-11, (1998) at 11-12, & (2000) at 13-14.

¹³ Provider's Post Hearing Brief at 18. *See also* Exhibit P-48 (1997, 1998) at 3; Exhibit P-49 (2000) at 3.

¹⁴ Tr. (Apr. 20, 2017) at 278-279.

¹⁵ Provider's Post-Hearing Brief at 30.

¹⁶ *Id.* at 26-27.

¹⁷ *Id.* at 35.

¹⁸ The record is unclear if the SNF subprovider was included in the FY 1999 audit process that reviewed the RehabCare contracted services. *See* Tr. (Apr. 20, 2017) at 193-198.

¹⁹ Provider's Post-Hearing Brief at 30-31.

²⁰ *See* Exhibit P-41(1998) at 12 (providing the salary and fringe benefit calculation for FY 1999). *See also id.* at 2 (providing the split of the FY 1999 fee including overhead costs).

services and the majority of the cost allocated to management services.²¹ Springs asserts that, for its IRF subprovider unit, “this same type of documentation supports the reasonableness of the RehabCare contract in FYs 1997, 1998, and 2000”.²² Additionally, Springs points to PRM 15-1 § 2135.3 to support its position that the Medicare Contractor’s conclusions as to the reasonableness of FY 1999 are dispositive as to the years under appeal.²³

The Board finds no evidence in the record to suggest that Springs solicited competitive bids when contracting for the services provided by RehabCare to the SNF and IRF subprovider units. Additionally, the Board disagrees that Springs’ HCRIS analysis shows that its cost per day was consistent with the entire population of hospital rehab subproviders. Rather, the Board’s review of the HCRIS analysis shows that, for FYs 1997 and 1998, Springs’ costs per day were significantly out of line with the costs per day of other Rehab facilities and that the HCRIS analysis fails to address the SNF subprovider unit.²⁴ Additionally, the Board disagrees that the Medicare Contractor’s determination related to Springs’ FY 1999 payments to RehabCare for fees charged to the IRF subprovider unit is dispositive as to the years under appeal because 42 C.F.R. § 413.24 requires providers supply documentation from their financial records that is capable of verification by a qualified auditor.

Based on Springs’ high costs per day and the lack of a competitive bidding process, the Board finds the Medicare Contractor’s decision to review the reasonableness of Springs’ payment to RehabCare for FYs 1997, 1998, and 2000 for fees charged to the SNF and IRF subprovider units was appropriate. The Board points out that PRM 15-1 § 2135.3 states: “Where supporting evidence does not permit a presumption of reasonableness, the intermediary will consider any factors . . . and request any supporting documentation (see §2135.5) to the extent it believes necessary to satisfy itself of the reasonableness of the costs.” The documentation identified in § 2135.5 includes, among other items, support for the services received and the reasonableness of the fees paid. Accordingly, the Board reviewed the documentation Springs submitted and which the Medicare Contractor relied on when auditing the IRF subprovider unit for FY 1999 and the documentation Springs submitted for the SNF and IRF subprovider units for FYs 1997, 1998, and 2000. As there were separate RehabCare contracts for the SNF and IRF subprovider units, the Board has broken up its discussion based on the subprovider unit.

A. ANALYZING THE REHABCARE COSTS OF THE IRF SUBPROVIDER UNIT.

The Board’s review of the record shows the FY 1999 documentation relating to the IRF subprovider unit included a payroll summary of hours and dollars for therapy, management and administrative positions; payroll register/records to support this summary; therapy visit logs; hours, costs, and documentation for other services supplied by RehabCare to the IRF subprovider

²¹ Exhibit P-40 (1998) at 1-2.

²² Provider’s Final Position Paper (1998) at 25.

²³ Provider’s Post-Hearing Brief at 35.

²⁴ Exhibits P-48 (1997, 1998) and P-49 (2000) at 9-10 show that Springs has the highest cost per day for FYs 1997 and 1998 and was 4 out of 9 for FY 2000. The Board recognizes that, for FYs 1997 and 1998, the ancillary costs were improperly included in the Rehab unit cost center. Removing these amounts would bring FY 1998 more in line with the other facilities. However, for FY 1997, Springs’ cost per day would still be significantly higher than the other facilities because of a large amount of salaries charged to the Rehab unit. *See* Tr. (Apr. 20, 2017) at 290-293.

unit; an estimated fringe benefit percentage; *etc.* Based on this information, the VQM for the IRF subprovider unit calculated a split of the RehabCare fee between therapy services and management/administrative services for FY 1999.²⁵ The Medicare Contractor concedes that it could (and did) rely on the FY 1999 VQM and these 1999 records to confidently establish and corroborate through audit that the majority of the contract costs for FY 1999 *as it relates to the IRF subprovider unit* met Medicare standards.²⁶ However, the Medicare Contractor asserts that Springs did not supply the same type documentation for FYs 1997, 1998, and 2000 as it relates to the IRF subprovider unit including a payroll register, therapy visit logs, invoices and management salaries and, therefore, it could not make a determination related to the contract cost for these years.²⁷ As explained below, the Board disagrees with the Medicare Contractor as it relates to the documentation submitted for the IRF subprovider unit for FYs 1998 and 2000 but agrees with the Medicare Contractor as it relates to the documentation submitted for the IRF subprovider unit for FY 1997.

Springs provided additional documentation for the record as part of the appeal process. The Board reviewed this documentation and finds that, for FYs 1998 and 2000, Springs submitted information and supporting documentation for the IRF subprovider unit similar to what was used by the Medicare Contractor to audit the RehabCare costs claimed by Springs for the IRF subprovider unit for its FY 1999 cost year. In addition, Springs provided a VQM for the IRF subprovider unit for FYs 1998 and 2000 (similar to the VQM for FY 1999) splitting the contract cost between therapy services and management services.²⁸

Specifically, for FY 2000, the record contains a payroll summary related to the IRF subprovider unit of hours and dollars for therapy, management and administrative positions; the payroll register supporting this summary;²⁹ therapy hours for Medicare paid services;³⁰ documentation of medical director time;³¹ hours, costs, and supporting documentation for various other services supplied by RehabCare to the IRF subprovider unit;³² *etc.*

For FY 1998, the record contains slightly less information. However, for FY 1998, the record still includes a “year-to-date” payroll summary related to the IRF subprovider unit containing hours and dollars for therapy, management and administrative positions dated 11/30/1998, the payroll register supporting this summary;³³ therapy hours for Medicare paid services,³⁴ hours, costs, and supporting documentation for various other services supplied by RehabCare to the IFF

²⁵ Exhibit P-46 (1998).

²⁶ Medicare Administrative Contractor’s Post Hearing Brief at 21-22.

²⁷ *Id.* at 11, 21-22.

²⁸ Exhibit P-44 (1998 & 2000).

²⁹ Exhibit P-75 (2000).

³⁰ Exhibit P-54 (2000) at 4 (providing therapy hours paid by Medicare based on the PS&R).

³¹ Exhibit P-82 (2000).

³² Exhibit P-44 (2000).

³³ *See* Exhibit P-47 (1998) at 153. This schedule was used for FY 1999 and includes a column for salaries/hours through 11/30/1998. The exhibit also includes the supporting payroll register for 11/30/1998. *Id.* at 154-163. Although this payroll data is only for 11 months of calendar year 1998 and, thereby, only covers the last 11 months of FY 1998 which ends November 30th, the Board finds this data is sufficient to use to determine the reasonableness of RehabCare’s therapy and management salaries/hours for FY 1998.

³⁴ Exhibit P-53 (1998) at 4 (providing therapy hours paid by Medicare based on the PS&R).

subprovider unit;³⁵ *etc.* The Board finds that these records are sufficient to support a substantial portion of the RehabCare costs incurred by the IRF subprovider unit.³⁶

As the record includes payroll information and other documentation that supports a significant portion of the costs for services supplied by RehabCare to the IRF subprovider unit for FYs 1998 and 2000, the Board concludes that the Medicare Contractor *improperly* disallowed all of the costs of the RehabCare contract with the IRF subprovider unit for FYs 1998 and 2000. Accordingly, the Board remands the FY 1998 and FY 2000 cost reports to the Medicare Contractor to audit the documentation related to the RehabCare contract with the IRF subprovider unit in a manner similar to the process used for FY 1999. Based on this audit, the Medicare Contractor should pay Springs that portion of the RehabCare costs associated with the IRF subprovider unit for FYs 1998 and 2000 that the Medicare Contractor determines are reasonable.

Unlike FYs 1998 and 2000, the record does not contain documentation that supports the reasonableness of Springs' payments to RehabCare for services furnished to the IRF subprovider unit for FY 1997. Specifically, Springs did not have the RehabCare payroll information from the IRF subprovider unit for FY 1997,³⁷ and could only estimate RehabCare's therapy salaries and hours for this year.³⁸ Additionally, Springs did not submit FY 1997 salary and hours documentation for the management positions related to the RehabCare contract with the IRF subprovider unit, including the Program Director, Clinical Coordinator, Community Relations Coordinator, Secretary, Social Worker and Admission Coordinator. Although Springs prepared a VQM for the IRF subprovider unit for FY 1997 similar to the VQM for FY 1999, it was based on *estimated* costs and hours rather than on documentation capable of being audited. As Springs did not provide auditable documentation for the FY 1997 therapy and management services provided by RehabCare to the IRF subprovider unit as required by 42 C.F.R. § 413.24, the Board finds that the Medicare Contractor properly denied the costs of the RehabCare contract with the IRF subprovider unit for FY 1997.

B. ANALYZING THE REHABCARE COSTS OF THE SNF SUBPROVIDER UNIT.

A previously mentioned, Springs entered into a separate contract with RehabCare to provide management services (paid on a rate per day) and direct therapy services (paid on an hourly rate) to its SNF subprovider unit.³⁹ Thus, unlike the RehabCare contract with the IRF subprovider, the RehabCare contract with the SNF subprovider unit specified that management services furnished to the SNF subprovider unit were to be billed *separately* from the therapy services. As a result, the VQM used to split the RehabCare costs for the IRF subprovider unit is not applicable to the SNF subprovider unit.

³⁵ Exhibit P-44 (1998). *See also* Exhibit P-81 (1998) (the Medical Director time log); Exhibit P-75 (1998) ; Exhibit P-77 (1998) (documentation of continuing education/in-service activities); Exhibit P-53 (1998) at 4 (therapy units).

³⁶ Based on testimony at the hearing (*see* Tr. (Apr. 20, 2017) at 301, 307-308) the Medicare Contractor may have additional documentation in its audit file that would also support the reasonableness of the IRF subprovider's payments to RehabCare.

³⁷ Tr. (Apr. 19, 2017) at 349.

³⁸ *Id.* at 340-349.

³⁹ Provider's Optional Responsive Brief (1998) Exhibit P-47 at 50-51, 66-73 (Decl. of Janice C. Dabney, Attachment 5 (SNF subprovider agreement and addendum)).

Initially, the record for these consolidated cases contained invoices but very little other documentation supporting the fees charged under this SNF-related contract. However, following the hearing, Springs supplemented the record with certain hour/payroll records⁴⁰ and other information relating to this SNF-related contract for FYs 1997, 1998 and 1999. This suggests that Springs may have sufficient documentation for the SNF subprovider unit to support some or all of the payments to RehabCare for these fiscal years. Accordingly, the Board finds that the Medicare Contractor's adjustments to remove *all* of the cost/charges for RehabCare services from Springs' FY 1997, FY 1998 and FY 2000 cost reports as it relates to the SNF subprovider unit were improper as Springs has submitted sufficient documentation to support the reasonableness of a portion of these costs. The Board remands the FY 1997, FY 1998, and FY 2000 cost reports to the Medicare Contractor to audit the documentation related to RehabCare's services furnished to the SNF subprovider unit to determine what portion of the costs for these services, if any, were reasonable.

DECISION AND ORDER:

After considering the Medicare law and regulations, arguments presented and the evidence submitted, the Board finds:

1. The Medicare Contractor's adjustments to remove *all* of the costs/charges for RehabCare services from the Provider's FY 1997 cost report as it relates to the IRF subprovider unit were proper as the Provider did not submit sufficient documentation to demonstrate these costs were reasonable.
2. The Medicare Contractor's adjustments to remove *all* of the costs/charges for RehabCare services from the Provider's FY 1998 and FY 2000 cost reports as it relates to the IRF subprovider unit were improper as the Provider submitted sufficient documentation to support the reasonableness of a portion of these costs.
3. The Medicare Contractor's adjustments to remove *all* of the cost/charges for RehabCare services from the Provider's FY 1997, FY 1998 and FY 2000 cost reports as it relates to the SNF subprovider unit were improper as the Provider has submitted sufficient documentation to support the reasonableness of a portion of these costs.

The Board Remands the FY 1998 and FY 2000 cost reports to the Medicare Contractor to audit the documentation related to RehabCare's services furnished to the IRF subprovider unit to determine if the costs were reasonable, using the methodology the Medicare Contractor used to audit the FY 1999 RehabCare service costs related to the IRF subprovider unit. Similarly, the Board remands the FY 1997, FY 1998, and FY 2000 cost reports to the Medicare Contractor to audit the documentation related to RehabCare's services furnished to the SNF subprovider unit to determine what portion of the costs for these services were reasonable.

⁴⁰ See, e.g., Exhibit P-69 & 70 (1997, 1998), P-70 & 71 (2000).

BOARD MEMBERS PARTICIPATING:

Charlotte F. Benson, CPA
Gregory Ziegler, CPA, CPC-A
Robert Evarts, Esq.

FOR THE BOARD:

4/30/2019

X Charlotte F. Benson

Charlotte F. Benson, CPA
Board Member
Signed by: PIV