PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2008-D20

PROVIDER –
HealthEast Woodwinds Hospital
Woodbury, Minnesota

Provider No.: 24-0213

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
Noridian Administrative Services

DATE OF HEARING -
August 23, 2007

Cost Reporting Periods Ended -
August 31, 2003 and August 31, 2004

CASE NOs.: 06-0763 and 06-2010

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ISSUE:

Whether the Intermediary's refusal to reimburse the Provider for capital-related costs under the hold harmless methodology was proper.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due a provider of Medicare 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. §1395h, 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 portion 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.

In 1991, in accordance with 42 U.S.C. § 1395ww(g), CMS finalized a prospective payment system for hospital inpatient capital-related costs which had previously been subject to cost-based reimbursement. The Secretary promulgated regulations that established a phase-in period intended to ease the transition of hospitals from cost reimbursement to the inclusion of capital payments under the PPS (Fed. Reg. Vol. 52, No. 96, May 19, 1987). 42 C.F.R. §412.304 established a ten-year transition of the PPS capital payment system with cost reporting periods beginning on or after October 1, 1991. During this period, hospitals were paid based on a blend of their own capital costs and the federal prospective rate. At the end of the period, hospitals would be paid solely on the Federal prospective rate. 42 C.F.R. §412.324 sets out the general rule that during the ten-year transition period hospitals with a hospital-specific capital rate below the Federal rate would be paid based on the fully prospective payment methodology, while hospitals with a hospital-specific capital rate above the Federal rate would be paid under the hold- harmless methodology. The regulation also provides for an exception in the case of a new hospital. Under §412.324(b), a new hospital, as defined under §412.300(b), is paid 85% of its allowable Medicare inpatient hospital capital-related costs

through its cost reporting periods ending at least 2 years after the hospital accepts its first patient. In addition, the hospital is paid for the third year through the remainder of the transition period based on the fully prospective payment methodology or the hold-harmless payment methodology. 42 C.F.R. §412.324(b)(3) states: "if the hospital is paid under the hold-harmless methodology described in section 412.344, the hold-harmless payment for old capital costs . . . is payable for up to and including eight years and may continue beyond the first cost reporting period beginning on or after October 1, 2000."

This case involves the application of the hold-harmless capital payment methodology to a new provider.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

HealthEast Woodwinds Hospital (Provider) is a 70-bed, not-for-profit hospital located in Woodbury, Minnesota. It was certified for Medicare participation on August 3, 2000. The Provider qualified as a new hospital pursuant to 42 C.F.R. §412.300(b) and was paid 85% of its capital costs for its first two cost reporting periods ended August 31, 2001 and August 31, 2002. On its cost reports for FYs 2003 and 2004, the Provider elected to be paid under the hold-harmless payment methodology afforded by 42 C.F.R. §§412.324 and 412.344 to hospitals with hospital-specific rates above the Federal rate. On June 23, 2004, Noridian Administrative Services (Intermediary) notified the Provider that, effective with its cost report period beginning September 1, 2002, the Provider would be paid 100% of the Federal rate for capital costs under PPS, rather than the hold-harmless methodology. There is no dispute that the Provider qualified as a new provider or that the hold-harmless provisions at §412.324 are controlling. At issue is the application of §412.324 to the Provider's operating circumstances.

The Provider appealed the Intermediary's determination to the Board and met the jurisdictional requirements of 42 C.F.R §§405.1835 - 405.1841. The Provider was represented by Gregory N. Etzel, Esq., of Baker Hostetler, LLP. The Intermediary was represented by James R. Grimes, Esq., of Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider contends that it met the requirements for hold-harmless treatment under 42 C.F.R. §412.324. There is no dispute that the Provider: 1) is a new hospital under 42 C.F.R. §412.300(b); 2) began operations within the 10-year transition period; 3) is exempt from the capital PPS payment scheme for the first 2 years (FYs 2001 & 2002) during which the Provider was paid 85% of its actual capital-related costs; and 4) experienced a hospital-specific rate that was higher than the Federal rate for the fiscal year under appeal. The Provider contends that, under the regulation, a new hospital with a hospital-specific rate above the federal rate is entitled to payment for its capital-related costs under the hold-harmless methodology. The Provider also argues that 42 C.F.R. §412.324(b)(3) mandates hold-harmless payment for the Provider's 2003 and 2004 fiscal years. It states: "[if] the hospital is paid under the hold-harmless methodology described in section 412.344, the hold-harmless payment for old capital costs . . . is payable for up

to and including eight years and may continue beyond the first cost reporting period beginning on or after October 1, 2000."

The Intermediary contends that the Provider can not claim hold-harmless treatment after its first two reporting periods because the entire regulatory scheme for transitioning to capital PPS was built around the concept of a ten-year transition period beginning October 1, 1991 and ending October 1, 2000. The Intermediary further argues that the Provider's third cost reporting period began on September 1, 2002, after the close of the ten-year transition period and contends that 42 C.F.R. §412.324(b)(3) requires that a provider must have been paid during the transition period under hold-harmless to continue to receive hold-harmless payments beyond the transition period. The Intermediary concludes that since the Provider was never paid under the hold-harmless methodology during the transition period it does not qualify for hold-harmless payments after the capital PPS transition period.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After consideration of the Medicare law and guidelines, the evidence and the parties' arguments, the Board finds and concludes as follows:

The issue before the Board turns on whether the Provider qualifies for the hold-harmless treatment available under the regulations at 42 C.F.R. §412.324(b). The section states:

> (b) *New Hospitals.* (1) A new hospital, as defined under §412.300(b), is paid 85 percent of its allowable Medicare inpatient hospital capital-related costs through its cost reporting period ending at least 2 years after the hospital accepts its first patient.
>
> (2) For the third year through the remainder of the transition period, the hospital is paid based on the fully prospective payment methodology or the hold-harmless payment methodology using the base period determined under §412.328(a)(2).
>
> (3) If the hospital is paid under the hold-harmless methodology described in §412.344, the hold-harmless payment for old capital costs described in §412.344(a)(1) is payable for up to and including 8 years and may continue beyond the first cost reporting period beginning on or after October 1, 2000.

It is undisputed that the Provider was a new hospital during the ten-year transition period spanning 1991-2001. CMS intended that "[h]ospitals that are defined as 'new' for purposes of capital payments during the transition period . . . will continue to be paid according to the applicable payment methodology outlined in §412.324."[1] Based upon its status as a new provider during the transition period, the Board finds that the Provider is entitled to payment under the hold-harmless methodology outlined at 42 C.F.R.

[1] 66 Fed. Reg. at 39,911 (Aug. 1, 2001).

§412.324(b). It is also undisputed that the Provider's hospital-specific rate for fiscal 2003 and 2004 exceeded the Federal rate. Accordingly, the Board finds that the Provider was entitled to be paid under the hold-harmless methodology pursuant to 42 C.F.R. §412.324(b)(2). The Board could find no support in the statute or regulation for the Intermediary's contention that a provider must be paid under the hold-harmless methodology prior to the end of the 1991-2001 transition period to continue to receive such treatment after 2001. Accordingly the Board finds that, pursuant to 42 C.F.R. §412.324(b)(3), the Provider is to be paid under the hold-harmless methodology for up to eights years even though the hold-harmless payments may extend beyond the end of the transition period.

DECISION AND ORDER:

The Intermediary's refusal to reimburse the Provider for capital-related costs under the hold-harmless methodology was improper. The Provider is eligible for hold-harmless payment for its capital costs under 42 C.F.R. §412.324.

The Board remands this case to the Intermediary for re-calculation of the Provider's hospital-specific rate for the fiscal years at issue. The Intermediary is also instructed to amend, as necessary, the Provider's FYs 2003 and 2004 cost reports to reflect their election of the hold-harmless methodology.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Elaine Crews Powell, C.P.A.
Yvette C. Hayes
Michael D. Richards, C.P.A.

FOR THE BOARD:

Suzanne Cochran, Esquire
Chairperson

DATE: March 4, 2008