

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2010-D16

**PROVIDER -**  
Chestnut Hill Benevolent Association  
Chestnut Hill, Massachusetts

Provider No: 22-1990

**vs.**

**INTERMEDIARY -**  
BlueCross BlueShield Association/  
Riverbend Government Benefits  
Administrator

**DATE OF HEARING -**  
October 28, 2008

Cost Reporting Periods Ended -  
December 31, 2002; December 31, 2003;  
December 31, 2004 and December 31, 2005

**CASE NOS.:** 07-2546; 07-2547; 07-2548  
and 07-2549

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ISSUE:

Whether the Fiscal Intermediary's denial of the Provider's nursing education program costs as pass-through costs was valid when that denial was based on a finding that the Commission for the Accreditation of Christian Science Nursing Organization/Facilities, Inc. (Commission) is not a "recognized national professional organization for the particular activity" under the provisions of 42 C.F.R. §413.85(e) for purposes of accrediting the Provider's nursing education programs.

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 to organizations known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due providers under Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. §1395h, 42 C.F.R. §§413.20 and 413.24.

Cost reports are required from providers on an annual basis with reporting periods based on the provider's accounting year. Those cost reports show the costs 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.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Chestnut Hill Benevolent Association (Provider/CHBA) is a religious, non-medical health care institution (RNHCI) located in Chestnut Hill, Massachusetts. The following facts were among those stipulated by the Provider and Blue Cross Blue Shield Association/ Riverbend Government Benefits Administrator.

1. CHBA reported its costs of operating its Christian Science Nursing Arts Training Program (the "Nursing School") for each of its fiscal years ending December 31, 2002 through December 31, 2005 in a separate Nursing School reimbursable cost center.
2. In the audit workpapers accompanying the adjustments under appeal in this case, the Fiscal Intermediary notified the Provider that the reclassification of their Nursing School costs to a non-reimbursable cost center, for cost reporting years 2002 to 2006 (sic), was necessary because accreditation by

the Commission is not an acceptable “accreditation for the allowance of nursing school costs in a RNHCI.”

3. The Provider filed timely requests for hearings before the Provider Reimbursement Review Board (the “PRRB”) to contest the reclassification of their costs of operating the Nursing School to non-reimbursable cost centers.
4. The Provider was accredited by The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc. (The Commission) for all the cost years at issue in this proceeding.
5. In 1999, the Medicare statute was amended to recategorize Christian Science sanatoria into the new provider category of RNHCIs. Interim final and final regulations, 67 FR 67028 and 68 FR 66710, continued the requirement that these facilities meet Medicare’s Conditions of Participation, but changed the process by which the facilities were certified to require certification by the Medicare program rather than deeming certification based on accreditation by the First Church of Christ, Scientist.
6. Through FY 1997, Aetna was the fiscal intermediary responsible for payment to Christian Science nursing facilities as well as the audit and payment adjustments of Christian Science facility cost reports. Beginning in FY 1998, Riverbend Government Benefits Administrator became the fiscal intermediary with sole responsibility for Medicare payment, audit and payment adjustment for Christian Science facilities across the country, and then for RNHCIs effective 1999.

The Provider was represented by Susan A. Turner, Esquire, of Ober, Kaler, Grimes & Shriver. The Intermediary was represented by L. Sue Andersen, Esquire, and James R. Grimes, Esquire, of Blue Cross Blue Shield Association.

#### PARTIES’ CONTENTIONS:

The Provider contends that a nurse education program that is not required to be licensed under State law is considered an “approved educational activity” for Medicare reimbursement purposes if the program is accredited by the recognized national professional for the particular activity. The Commission specifically reviews and accredits nursing education programs operated by RNHCIs. The Commission is the recognized national professional organization that accredits Christian Science nursing education programs. Accordingly, the Commission meets the regulatory definition of a recognized national professional organization for the particular activity. The Commission’s plain reading of 42 C.F.R. §413.85(e) indicates only one requirement for the approval of the Provider’s nursing education programs accreditation by the recognized national professional organization. The Commission’s accreditation meets the requirements of the Secretary’s regulation.

The Provider also contends that the Intermediary's adjustments constitute an invalid reversal of its established interpretation of 42 C.F.R. §413.85(e) without notice and comment rulemaking. The Intermediary states that provider-based nursing education programs must be accredited by an organization with established standards by which to evaluate and measure the performance of the nurse training program. The Intermediary disagrees that the Commission performs that role. The Intermediary asserts that while the Commission evaluated many aspects of the Christian Science nursing facilities, it was not a recognized national organization to accredit the particular activity of training Christian Science nurses. The Intermediary goes on to state that the Commission does not have standards to evaluate Christian Science nursing education programs. Without those standards, the Commission cannot act as the accrediting organization for the "particular activity;" that is, to accredit the nurse training program.

The Intermediary also states that the Commission's role was to accredit Christian Science facilities primarily to meet the accreditation requirements of the First Church of Christ, Scientist and to meet Medicare's Conditions of Participation. Those Conditions of Participation relate to the staffing of facilities<sup>1</sup> and to meeting the certification criteria as a Christian Science facility – not to evaluate and accredit the nurse education program.

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

After considering the Medicare law and program instructions, the parties contentions and evidence presented, the Board finds and concludes that the Commission is a nationally recognized organization that properly accredited the Provider's nursing education program.

The Medicare statute was amended in 1999 to recategorize Christian Science sanatoria into a new provider category of religious non-medical health care institution (RNHCI). That statutory change required the Medicare program to certify the sanatoria to participate in the Medicare Program. Prior to 1999 certification was based on accreditation by the First Church of Christ, Scientist.

The Board finds that the Commission is a nationally recognized organization within the meaning of 42 C.F.R. §413.85 and is the only accrediting agency existing that can accredit Christian Science sanatoria. It has the capability and did in fact accredit Christian Science Nursing Arts Training Programs. In January 1997,<sup>2</sup> the Medicare certification and accreditation responsibilities for Christian Science sanatoria and their affiliated nursing education programs were voluntarily transferred from The Mother Church to the Commission, an independent, not-for-profit organization. See Tr. 142-144. In this role the Commission was responsible to create standards and to uphold them by conducting accreditation visits of Christian Science Organizations.<sup>3</sup> These standards were created from the existing standards of The First Church of Christ, Scientist as evidence in Provider Exhibit P-40 Appendix A, provides instructions for complying with accreditation standards. In Section H of Exhibit P-40, the standards for nursing training schools are detailed. There are 18 specific requirements.

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<sup>1</sup> See Exhibit 1-10, p.7.

<sup>2</sup> See Provider's Post Hearing Brief at 6.

<sup>3</sup> See public summary prepared by The Commission. Provider Exhibit P-38 submitted with Post –Hearing Brief

The accreditation standards used by the Commission are contained in Provider Exhibit P-18. They were copyrighted in 1996 and revised in June 2002 and April 2005. Although not as extensive as the standards used by the First Church of Christ, Scientist, they provide accrediting standards for nurse training programs. Specifically, on page 9 it states:

8. The organization provides documentation of regular and on-going training or review of the skills and practices necessary to insure proper care is provided to patients.
9. Facilities engaged in training maintain documentation of on-going instruction, evaluation and on the job training/mentoring/side by side nursing.

Documentary evidence of these standards being applied can be found in the Commission's accreditation report to a Provider.<sup>4</sup> Specifically, with regards to the nursing training program, Subsection C of the report states:

8. The organization has thorough documentation of regular and on-going training or review of the skills and practices necessary to ensure proper care is provided to patients. The training program at CHBA [Chestnut Hill Benevolent Association] is outstanding. The thoroughness of instruction in the classroom and the mentoring program reflects the deep care put into curriculum. The Commission recognizes the excellence underlying each aspect of the program and its corresponding effect on the nursing in the facility.
9. There is clear and thorough documentation of on-going instruction, evaluation and mentoring/side by side nursing.

The Commission's Checklist for Inspecting Nursing Organizations/Facilities for Christian Scientists (Provider Exhibit 19) further supports the adequacy of the accreditation process. The Checklist at pages 9 & 10 provides standards for any educational activities. Based on the content of accreditation standards and the Commission's application of these to Providers, the Board concludes that the Provider's nursing education program has met the necessary standards of 42 C.F.R. §413.85.

The Board finds no bar to a single organization accrediting both facilities as well as nursing education programs. There is no requirement for a separate organization for each accreditation. The record indicates that the Commission viewed and certified only four providers. Further, the Board observes that the entity that accredits hospitals, ie., Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) also accredits both facilities and nursing education programs.

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<sup>4</sup> See Provider Exhibit P-17 at page 4. This case was consolidated with CN: 07-2549 (Chestnut Hill Benevolent Association) for hearing purposes. The parties agreed to use the exhibits and position paper for one provider as representative of the others. See Tr. at 7-8.

DECISION AND ORDER:

The Commission is a “recognized national professional organization for particular activity” under the provisions of 42 C.F.R. §413.85(e) for purposes of awaiting the Provider’s nursing education program. The Intermediary’s adjustments are reversed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire  
Yvette C. Hayes  
Michael D. Richards, C.P.A.  
Keith E. Braganza, C.P.A.  
John Gary Bowers, C.P.A.

FOR THE BOARD:

Suzanne Cochran, Esquire  
Chairperson

DATE: March 17, 2010