

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON-THE-RECORD
2001-D15

PROVIDER -
Methodist Hospital
St. Louis Park, Minnesota

Provider No. 24-0053

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
Noridian Government Services

DATE OF HEARING-
January 17, 2001

Cost Reporting Periods Ended -
October 31, 1990; December 31,
1990

INDEX

	Page No.
Issue.....	2
Statement of the Case and Procedural History.....	2
Provider's Contentions.....	3
Intermediary's Contentions.....	3
Citation of Law, Regulations & Program Instructions.....	4
Findings of Fact, Conclusions of Law and Discussion.....	4
Decision and Order.....	7

ISSUE:

Were the Intermediary's adjustments to SNF routine cost limits proper? (As discussed below, the issue in this case arose from adjustments to the Provider's cost reports but later evolved into the matter of whether or not the Provider filed a timely request for exceptions to the SNF cost limits.)

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Methodist Hospital (AProvider@) is a 354 bed, not-for-profit, general acute care facility located in St. Louis Park, Minnesota. The Provider's complex includes a 35 bed skilled nursing facility (ASNF@).¹

The Provider filed its Medicare cost reports for the periods ending October 31, 1990 and December 31, 1990, using SNF routine service cost limits that were greater than the limits published by the Health Care Financing Administration (AHCFA@). Noridian Government Services (AIntermediary@) determined that the Provider had not provided documentation supporting the higher cost limits either with its as filed cost reports or during the Intermediary's audit and cost report settlement processes. In response, the Intermediary adjusted the cost limits used by the Provider down to published amounts.²

On June 22, 1993, the Intermediary issued Notices of Program Reimbursement (ANPRs@) reflecting its adjustments.³ On December 14, 1993, the Provider filed a timely appeal with the Provider Reimbursement Review Board (ABoard@) challenging the propriety of the Intermediary's adjustments to the SNF limits.⁴ In particular, the Provider asserted that the Intermediary's adjustments were a denial of its requests for exceptions to the limits.

¹ Intermediary's Position Paper at 1.

² Intermediary's Response to Provider's Responsive Jurisdictional Brief at 3.

³ Exhibit P-2.

⁴ Exhibit P-1.

On September 20, 1994, the Board advised the Provider that it has a right to an appeal hearing if it is dissatisfied with a determination made by HCFA regarding exceptions to the SNF cost limits. And, if HCFA had not yet made any such determinations, that its appeal would be considered prematurely filed. In response, on October 17, 1994, the Provider submitted a request for exceptions to the SNF cost limits with the Intermediary. The Intermediary, at this point, denied the Provider's request maintaining that it was not received within 180 days from the date of the applicable NPRs as required by program rules.⁵

On May 6, 1999, the Board accepted jurisdiction over the issue of whether or not the Provider's exception request was filed timely. The Board found that the Provider had filed its appeal pursuant to 42 C.F.R. ' ' 405.1835-.1841, and had met the jurisdictional requirements of those regulations. The amount of program reimbursement in controversy is approximately \$399,000.

The Provider was represented by Craig Larson, Revenue Manager, HealthSystem Minnesota. The Intermediary was represented by Bernard M. Talbert, Esq., Associate Counsel, Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the Intermediary improperly denied its request for exceptions to the SNF cost limits with respect to the subject cost reporting periods. Contrary to the Intermediary's arguments, the Provider maintains that its request was filed timely.⁶

The Provider contends that it effectively notified the Intermediary that it was requesting exceptions to the cost limits through its December 14, 1993 letter to the Board requesting an appeal. That request was filed within 180 days of the pertinent NPRs dated June 22, 1993.

The Provider adds that the Intermediary itself agreed that the December 14, 1993 filing was timely, and agreed that the Board properly had jurisdiction over the issue.⁷

The Provider acknowledges that its December 14, 1993 letter to the Board was not a complete exception request. However, the Provider asserts that detailed instructions regarding exception requests were not available until Program Transmittal Nos. 378 and 379 were issued in July 1994. Therefore, the Provider maintains that its subsequent filing with the Intermediary dated October 17, 1994, was effectively a continuation of its initial exception request contained in the December 14, 1993 appeal notification. Notably, the Provider adds that the Intermediary never advised that its initial request was incomplete.

⁵ Exhibits P-10, P-11, and I-2.

⁶ Provider's Position Paper at 4.

⁷ Id.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that it properly denied the Provider's request for exceptions to the SNF cost limits due to timeliness. Pursuant to the Provider Reimbursement Manual, Part I (AHCFA Pub. 15-1) ' 2531.1A, a provider's request for an exception to the cost limits must be made no later than 180 days from the date of the applicable NPR. With respect to the instant case, the Provider's request was dated October 17, 1994, which is more than 180 days from the date of the pertinent NPRs dated June 22, 1993.

The Intermediary rejects the argument that the Provider's December 14, 1993 request for a Board hearing is, in fact, the Provider's initial request for exceptions to the cost limits. The Intermediary explains that the Provider supplied no documentation supporting an exception to the SNF cost limits until October 17, 1994. A statement made by the Provider in its appeal to the Board that it is entitled to an exception to the cost limits, without providing complete documentation supporting that statement, does not, in and of itself, constitute a request for an exception to the cost limits.⁸

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:1. Regulations - 42 C.F.R.:

- | | | |
|---------------------------|---|---|
| ' 405.1801 <u>et seq.</u> | - | Provider Reimbursement Determinations and Appeals |
| ' 413.30 <u>et seq.</u> | - | Limitations on Reimbursable Costs. |

2. Program Instructions-Provider Reimbursement Manual, Part I (HCFA Pub. 15-1) :

- | | | |
|-----------|---|--|
| ' 2531.1A | - | Provider Requests Regarding Applicability of Cost limits- General Requirements-SNF |
|-----------|---|--|

3. Other:

Program Transmittal No. 378.

⁸ Intermediary's Position Paper at 4. Intermediary's Response to Provider's Responsive Jurisdictional Brief at 3.

Program Transmittal No. 379.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions, and evidence presented, finds and concludes as follows:

The Provider is seeking an exception to Medicare's SNF routine service cost limits for its cost reporting periods ended October 31, 1990 and December 31, 1990. The Provider had requested and was granted an exception to the limits for each of its 10 preceding fiscal years ended October 31, 1980 through October 31, 1989.

The rules that apply in this case are found at 42 C.F.R. ' 413.30 et seq., Limitations on reimbursable costs. Program instructions at HCFA Pub. 15-1 ' 2530, which pertain exclusively to SNF cost limits and exceptions, were not issued until July 1994, and are not applicable.

The Provider filed a valid appeal with the Board in accordance with 42 C.F.R. ' 405.1801 et seq. The Provider increased Medicare's routine service cost limits in its as-filed cost reports for the subject periods. Because the Provider failed to provide documentation supporting these increases the Intermediary effected audit adjustments reducing them down to the cost limit amounts published by HCFA. The Intermediary reflected its adjustments in NPR's dated June 22, 1993, and the Provider timely appealed these determinations to the Board on December 14, 1993.

In accordance with Board procedures, the Provider sent copies of its December 14, 1993 appeal letters to the Intermediary. Within those letters the Provider describes the adjustments being challenged as: A[t]he Intermediary denied the request for exception to the SNF cost limit.@ Exhibit P-3 at 3 at Item No. 5.

The Intermediary did not respond to the copies of the appeal letters it received from the Provider; that is, with respect to an exception or a request for an exception to the cost limits. However, on March 15, 1994, subsequent to the Provider's appeals, the Intermediary agreed that the issue in this case is properly stated as: A[w]as the requested exception to the routine SNF cost limit properly reviewed by the Intermediary?@ Exhibit P-4 at 3 at Item No. 5.

Thereafter, on October 17, 1994, the Provider sent a letter to the Intermediary expressly requesting an exception to the SNF limits and provided documentation showing that it continued to provide atypical services in the subject cost reporting periods as it had in its previous 10 cost reporting periods. The Intermediary, however, denied this request because it was received more than 180 days from the date of the applicable NPRs.

The Board concludes that Atimeliness@ is the sole matter to be decided in this case. Essentially, the

Provider argues that the copies of its requests for a Board hearing that were sent to the Intermediary effectively notified the Intermediary that it was requesting exceptions to the SNF limits. Contrary to these arguments, the Intermediary contends that copies of appeal notices addressed to the Board are not requests for cost limit exceptions; therefore, the exception request that was addressed to the Intermediary on October 17, 1994, was properly denied as being filed late.

Respectively, the Board finds that the Provider filed timely requests for exceptions to the subject cost limits through the copies of its appeal letters that were sent to the Intermediary, and that the Intermediary's refusal to review the Provider's documentation in support of those requests based upon timeliness is improper.

As noted above, the governing rules in this case are found at 42 C.F.R. ' 413.30 et seq. In pertinent part they require only that a provider's exception request be made to its intermediary within 180 days of the intermediary's NPR. These rules do not mandate or suggest what form a request should take. Accordingly, the fact that the Provider used copies of appeal letters to request exceptions to the cost limits is not relevant if they effectively make their intent known to the Intermediary, which they have done in the instant case. Clearly, there is no dispute that the Intermediary received the copies of the Provider's appeal letters within 180 days of the applicable NPRs. Moreover, the Intermediary clearly acknowledges that the issue in the appeal letters is the denial of the Provider's exception requests as opposed, for example, to some other type of adjustment such as non-reimbursable costs.

Significantly, the Board finds that the Intermediary's fundamental argument in rejecting the copies of the Provider's appeal letters as proper requests for exceptions to the SNF cost limits is not their form, intent or effectiveness, but rather the fact that the Provider did not submit any other documentation along with them. On page 3 of its jurisdictional brief the Intermediary states:

[i]n the Provider's Appeal Notice of the NPRs for FYE 10/31/90 and 12/31/90, the provider stated that the Intermediary denied the request for exception to the SNF cost limits and that the Provider is entitled to an exception. Again, the Provider did not supply complete documentation supporting an exception to the SNF routine cost limits.

The Provider asserts that it has effectively notified the Intermediary that it was requesting an exception to the SNF routine cost limits on substantially the same basis as its prior years' requests. The Provider supplied no documentation supporting an exception to the SNF routine cost limits until October 17, 1994. . . .

Intermediary's Response to Provider's Responsive Jurisdictional Brief at 3.

With respect to this matter, the Board finds it evident that the Intermediary otherwise accepts the Provider=s appeal letters as timely exception requests except for the absence of supporting documentation. This argument is unfounded since the governing rules, 42 C.F.R. ' 413.30 et seq., do not require supporting documentation to be submitted along with a provider=s exception request or at any other particular time.

In summary, the Board finds that the Intermediary was clearly and timely notified that the Provider was requesting exceptions to the SNF routine service cost limits as it had requested and was granted in its previous 10 fiscal years. The Intermediary should have requested additional documentation from the Provider as it felt necessary in order to make a recommendation to HCFA in accordance with 42 C.F.R. ' 413.30(c).

DECISION AND ORDER:

The Intermediary=s refusal to review the Provider=s requests for exceptions to the SNF routine service cost limits is improper. The Provider=s requests are remanded to the Intermediary for review and to make a recommendation to HCFA. The Intermediary is directed to allow the Provider 45 days to submit whatever additional documentation is required to support its requests.

Board Members Participating:

Irvin W. Kues
Henry C. Wessman, Esq.
Martin W. Hoover, Jr. Esq.
Charles R. Barker
Stanley J. Sokolove

Date of Decision: April 05, 2001

FOR THE BOARD:

Irvin W. Kues
Chairman