

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON THE RECORD
2001-D50

PROVIDER -
Riverside Methodist Hospital
Columbus, Ohio

Provider No. 36-0006

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
AdminaStar Federal, Inc.

DATE OF HEARING-
September 7, 2001

Cost Reporting Period Ended -
June 30, 1996

CASE NO. 98-0787

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ISSUE:

Was the Intermediary's adjustment relating to the determination and calculation of intern and resident FTEs for purposes of the indirect medical education payment proper?

Was the Intermediary's adjustment relating to the determination and calculation of intern and resident FTEs for purposes of the direct medical education payment proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Riverside Methodist Hospital (AProvider@) is a non-profit acute care teaching facility located in Columbus, Ohio. The Hospital has been a participant in the Medicare Program since its inception in 1966.

The Provider operates an organized and planned Graduate Medical Education (AGME@) Program for interns and residents (the AGME Program@). The AGME Program@ is accredited by the Accreditation Council for Graduate Medical Education (ACGME@) to operate residency programs in family practice, general surgery, internal medicine, obstetrics/gynecology, urology, and transitional year; and to participate on a major basis in Ohio State University's residency programs in emergency medicine, neurology, orthopedic surgery, physical medicine and rehabilitation, plastic surgery and psychiatry.¹

AdminaStar Federal Inc. (AIntermediary@) a member of the Blue Cross and Blue Shield Association audited the Provider's cost and statistical records for the Medicare cost reporting period ending June 30, 1996. On July 31, 1997, the Intermediary issued a Notice of Program Reimbursement (ANPR@) for the Provider's June 30, 1996 cost reporting period.²

The Provider's appeal was filed timely with the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§ 405.1835-.1841 and the Provider has met the jurisdictional requirements of those regulations. The Medicare reimbursement effect is approximately \$123,780.³ Dianne M. Signoracci, Esquire of Brickler & Eckler, LLP, represented the Provider. Bernard Talbert, Esquire, of Blue Cross and Blue Shield Association, represented the Intermediary.

¹ See Provider's position paper at 4.

² See Intermediary's position paper at 1.

³ See Provider's position paper at 2.

Based on the Position Papers submitted by both representatives to the Board,⁴ the issues have been narrowed to the following two sub-issues:

1. Were the Intermediary's adjustments relating to time spent by residents in Journal Club, Practice Management and Seminars (Family Practice Residency Program) for the indirect medical education FTE count proper?
2. Did the Provider submit sufficient documentation regarding the Internal Medicine Residency Program for the purposes of calculating the direct and indirect medical education FTE count?

Issue No. 1-Family Practice Residency Program

FACTS

The Intermediary examined the Provider's documentation. Based on its review, the Intermediary determined the following:⁵

- 1) Certain residents in the Family Practice Residency Program spent time at Practice Management Seminars, Psychiatric Seminars, OB/GYN Seminars, and Journal Club. Therefore, the hours accumulated in these areas were excluded from the indirect medical education FTE count as they were deemed not related to patient care.
- 2) 33% of the third year residents in the Family Practice Residency Program spent time in a Radiology/Practice Management rotation. Since the primary function of the Practice Management rotation was to educate physicians on the operation of private practice, the Intermediary excluded these hours from the indirect medical education FTE count as the rotation was deemed not related to patient care.

⁴ Several of the Provider's contentions have already been resolved in the Intermediary's position paper. Therefore, the Board will rule on the remaining unresolved sub-issues.

⁵ See the Intermediary's position paper at 8.

PROVIDER'S CONTENTIONS:

The Provider challenges the Intermediary's FTE reductions to its Family Practice FTEs on the following grounds.

The Provider maintains the Intermediary incorrectly excluded hours from the Provider's Family Practice Residency Program for the following activities as "hours not related to patient care:"

OB/GYN Seminars
Psychiatric Seminars

Practice Management Seminars
Journal Club

The above activities were necessary components of the Provider's GME Program and are allowable costs.⁶

The Provider asserts that neither 42 C.F.R. ' 412.105(g) nor ' 413.86(f) provide for the exclusion of FTE hours based upon the Intermediary's determination that certain "hours are not related to patient care." 42 C.F.R. ' 412.105(g) requires only that the resident be assigned to a PPS or outpatient portion of the hospital, and 42 C.F.R. ' 413.86(f) requires only that the resident be assigned to the hospital or a qualified offsite location.

Under 42 C.F.R. ' 412.105(g) and ' 413.86(f), there is no authority for excluding hours spent in seminars and journal club. All these activities are necessary parts of the Provider's GME Program. All of these activities took place at the Provider's site. The HCFA Questions and Answers pertaining to GME, BPO-F 12⁷ at Question 28 provides that:

[r]esidents in approved programs working in the hospital complex, including those areas whose cost are excluded (*e.g.* nursery, research and other non-reimbursable cost centers) are included in the FTE count. (See beginning of page 40317 of the September 29, 1989 Federal Register.)

Likewise, the Provider Reimbursement Review Board held in University of Iowa Hospitals and Clinics, Iowa City, Iowa, PRRB Decision 95-D69,⁸ September 28, 1995, Medicare and Medicaid Guide (CCH) &43,645, that the Medicare GME reimbursement rules do not require

⁶ See Provider's position paper Exhibit 6.

⁷ See Provider's position paper Exhibit 17.

⁸ See Provider's position paper Exhibit 18.

residents to directly perform services for hospital patients. There is simply no legal authority supporting the Intermediary's reduction of the FTE hours for these activities.

In addition, the Provider asserts the Intermediary improperly excluded thirty-three percent (33%) of the third year residents' time spent in a Radiology/Practice Management rotation at the Provider.⁹ There is no basis in fact or law for this adjustment. It is undisputed that this rotation occurs at the Provider's Hospital Facility. The Intermediary, however, appears to have disallowed the Practice Management portion of this rotation on the ground that it is not related to patient care. There is no requirement under either 42 C.F.R. ' 412.105(g) or 42 C.F.R. ' 413.86(f) that all time of the resident be devoted to patient care activities. The regulation requires only that the residents are engaged in educational activities at the Provider. See University of Iowa Hospitals and Clinics, Iowa City, Iowa, PRRB Decision No. 95-D69, September 28, 1995, Medicare and Medicaid Guide (CCH) & 43,645.

INTERMEDIARY CONTENTIONS

The Intermediary claims the Provider is contesting audit adjustments 101 and 102 which were made to include the correct reimbursement amounts for indirect medical education in the Provider's cost report. The Intermediary adjusted the indirect medical education payments to account for the calculation of interns and residents in accordance with the regulations set forth in 42 C.F.R. ' 412.105.¹⁰

The Intermediary contends that several of the activities performed by the residents in the Family Practice Residency Program constitutes time spent not related to hands-on patient care. These amounts should be excluded from the indirect medical education FTE count in accordance with the provisions set forth in 42 C.F.R. ' 412.105. The hours at issue that should be excluded from the indirect medical education FTE count relate to Journal Club, OB/GYN Seminars, Practice Management Seminars and Psychiatric Seminars. The time related to these activities is not hands-on patient care related and should be excluded for purposes of calculating the indirect medical education FTE count.

The Intermediary maintains that the Provider's contention relating to the calculation of the indirect medical education FTE count for the Family Practice Residency Program concerning the exclusion of approximately thirty-three percent (33%) of the third year residents' time spent in a Radiology/Practice Management rotation was not accurate. The Intermediary's adjustment to the FTE count was proposed to account for time spent on activities that are not related to patient care. For residents in this particular rotation, the time is split fifty percent in radiology and fifty percent in practice management. The Intermediary's disallowance of time is related to the practice management portion of the rotation. In this

⁹ See Provider's position paper Exhibit 1.

¹⁰ See Intermediary's position paper Exhibit I-1.

rotation, the resident is learning how to operate private physician offices. Therefore, the Intermediary concluded that the time spent in this area was not direct hands-on patient care and, should be excluded from the indirect medical education FTE count in accordance with 42 C.F.R. ' 412.105.

Issue No. 2- Internal Medicine Residency Program

FACTS:

The Provider filed their cost report for the fiscal year ended June 30, 1996 claiming costs incurred associated with the provision of direct and indirect graduate medical education. The Intermediary adjusted the amounts submitted by the provider for purposes of calculating reimbursement for indirect and direct graduate medical education.

Due to insufficient documentation, three residents in the Internal Medicine Residency Program were excluded from the FTE count by the Intermediary, resulting in a disallowance of 1.58 FTEs for direct medical education and .92 FTEs for indirect medical education.¹¹

PROVIDER'S CONTENTIONS:

The Provider challenges the Intermediary's adjustment reducing the Internal Medicine Residency Program FTE count by 1.58 FTEs for direct medical education and .92 FTEs for indirect medical education, since the Provider was unable to produce Program Evaluation forms on certain Internal Medicine residents.¹² The Provider contends that the Internal Medicine annual schedule, rotation schedules, and physician attestation, document the Internal Medicine residents' participation in the Provider's GME Program for an additional 1.41 FTEs in direct medical education and .75 FTEs in indirect medical education.¹³

The Provider insists they submitted all documentation required in compliance with 42 C.F.R. ' 412.105(g)(2) and ' 413.86(f). The Provider contends that there is nothing in the regulations that require program evaluations. The Intermediary cannot add documentation requirements to the rule without advance notice to the Provider. Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988). The retroactive application of changes to Medicare rules is unlawful.¹⁴ The Intermediary's reduction of Internal Medicine FTEs is not supported by the facts of the law.

¹¹ See Provider's position paper Exhibit 2.

¹² See Provider's position paper Exhibit 7.

¹³ See Provider's position paper Exhibit 8.

¹⁴ See Provider's position paper Exhibit 19.

INTERMEDIARY CONTENTIONS

The Intermediary's contends that the Provider's dispute relates only to its adjustment to exclude 0.75 FTEs from the intern and resident count for resident Kitson. However, this is not the case. The Provider is challenging the Intermediary's adjustment to disallow 1.58 FTEs for direct medical education and .92 FTEs for indirect medical education, since the Provider was unable to produce Program Evaluation forms on certain Internal Medicine residents.

The Intermediary insists that its adjustment to disallow resident Kitson from the Internal Medicine Program FTE count was due to lack of adequate cost data. The Intermediary maintains that it correctly adjusted the FTE count in accordance with the provisions for cost finding as set forth in 42 C.F.R. ' 413.24.¹⁵ It is the position of the Intermediary that the Provider did not provide sufficient evidence to support its claim for FTE's related to resident Kitson. Subsequent to the audit determination, the Provider did not produce any auditable documentation to support its position (no documentation was included in the preliminary position paper). Lacking the submission of any supporting documentation by the Provider, the Intermediary's adjustment was proper in accordance with 42 C.F.R. ' 413.24.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS

1. Regulations - 42 C.F.R.:

- | | | |
|--------------------------|---|--|
| ' 405.1835-.1841 | - | Board Hearings |
| ' 412.105 <u>et seq.</u> | - | Special Treatment: Hospital that incur indirect costs for Graduate Medical Education |
| ' 413.24 | - | Adequate Cost Data and Cost Finding |
| ' 413.86 <u>et seq.</u> | - | Direct Graduate Medical Education Payments |

¹⁵ See Intermediary's position paper Exhibit I - 7.

2. Case Law:

University of Iowa Hospitals and Clinics v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Iowa, PRRB Decision No. 95-D69, September 28, 1995, Medicare and Medicaid Guide (CCH) & 43,645.

Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988).

3. Other

BPO-F 12 (Questions and Answers Pertaining to Graduate Medical Education--Action)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board after considering the facts, parties= contentions and evidence submitted, finds and concludes as follows:

Issue No. 1-Family Practice Residency Program

The Board finds that the hours spent by the residents in the Family Practice Residency Program attending Seminars, Journal Club and Project Management are related to patient care and allowable in accordance with 42 C.F.R. ' 412.105(g), which states:

[d]etermining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991. (1) For cost reporting periods beginning on or after July 1, 1991, the count of full-time equivalent residents for the purpose of determining the indirect medical education adjustment is determined as follows:

(i) [t]he resident must be enrolled in an approved teaching program.

(ii) [i]n order to be counted the resident must be assigned to one of the following areas:

(A)The portion of the hospital subject to the prospective payment system.

(B) The outpatient department of the hospital.

Id.

Based on the regulation quoted above, the Board believes that the Provider has demonstrated the Family Practice Residency Program is an approved teaching program and is part of the hospital's prospective payment system. The Board finds that Seminars, Journal Club and Project Management are a necessary part of the Provider's educational process for a Family Practice Residency Program as illustrated by the Provider's rotation schedules and attestations.¹⁶

The Board finds there is no authority in support of the Intermediary's contention that the activities performed by the residents be directly related to hands-on patient care.

For direct medical education purposes 42 C.F.R. ' 413.86(f)(iii) states:

[o]n or after July 1, 1987, the time residents spend in nonprovider settings such as freestanding clinics, nursing homes and physicians' offices in connection with approved programs is not excluded in determining the number of FTE residents if the following conditions are met:

- (A) The resident spends his or her time in patient care activities.
- (B) There is a written agreement between the hospital and outside entity.

Id.

The Board notes that the Family Practice Program was conducted on-site and therefore, would not qualify as a nonprovider setting.

Issue No. 2- Internal Medicine Residency Program

The Board finds that the Provider has met the necessary documentation requirements set forth in 42 C.F.R. ' 413.24 and 42 C.F.R. ' 413.86. The Board notes that the Provider submitted rotation schedules and attestations from the Program Director of Internal Medicine to properly document its contention.¹⁷ After examining the Provider's documentation, the Board observed that the residents in question were included on the Internal Medicine rotation schedules.

¹⁶ See Provider's position paper Exhibit 1 and 6.

¹⁷ See Provider's position paper Exhibit 8.

The Board further notes that the support for the adjustments proposed by the Intermediary were not properly documented. The Board was not able to determine whether or not the Intermediary requested program evaluations during the audit process.

DECISION AND ORDER:

Issue No. 1-Family Practice Residency Program

The Intermediary's adjustments relating to time spent by residents in Journal Club, Practice Management and Seminars (Family Practice Residency Program) for the indirect medical education FTE count are reversed.

Issue No. 2- Internal Medicine Residency Program

The Provider submitted sufficient documentation for the Internal Medicine Residency Program for the purposes of calculating the direct and indirect medical education FTE count. Therefore, the Intermediary's adjustment is reversed.

Board Member Participating:

Irvin W. Kues
Henry C. Wessman, Esquire
Stanley J. Sokolove

Date Of Decision: September 26, 2001

FOR THE BOARD

Irvin W. Kues
Chairman