PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

ON THE RECORD
2007-D44

PROVIDER -
Tarrant County Hospital District
Fort Worth, TX

Provider No.: 45-0039

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
Trailblazer Health Enterprises, LLC

DATE OF HEARING -
January 26, 2007

Cost Reporting Period Ended -
September 30, 1997

CASE NO.: 01-2519

INDEX

ISSUE:

Whether the Provider timely filed additional information required to entitle it to an exemption from the skilled nursing facility (SNF) routine cost limit under 42 C.F.R. §413.30(e).

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 out to insurance companies 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(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.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Tarrant County Hospital District (Provider) is a general acute care hospital located in Fort Worth, Texas. The following is a chronology of events relevant to the dispute in this case:

(1) On September 11, 2000, the Provider appointed CampbellWilson as its designated representative.[1]

(2) On September 19, 2000, the Provider's representative requested an exemption from the routine cost limits for fiscal years ended September 30, 1997 and September 30, 1998.[2]

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[1] See Intermediary Exhibit I-2.
[2] See Provider Exhibit P-2.

(3) On October 27, 2000, the Intermediary requested additional information regarding the Provider's exemption request. The request was addressed to Mr. Mannie W. Campbell of CampbellWilson.[3]

(4) On November 9, 2000, Mr. Campbell forwarded the requested information to the Intermediary.[4]

(5) On January 25, 2001, the Intermediary forwarded the Provider's request to CMS and recommended that the Provider's request be approved.[5]

(6) On April 24, 2001, CMS notified the Intermediary that it needed the following information:[6]

1. A letter from TCU (Tarrant County Hospital District d/b/a John Peter Smith Transitional Care Unit) authorizing CampbellWilson to submit a request on its behalf for the September 30, 1997 and September 30, 1998 cost reporting periods.

2. An explanation and documentation to support the explanation for the non-reimbursable [cost center] titled McDonalds as found on Worksheet A filed by Tarrant County Hospital District d/b/a John Peter Smith Hospital for the cost reporting period ended September 30, 1995.

7. On May 3, 2001, the Intermediary forwarded CMS' request for additional information directly to the address on record for JPS Health Network and also advised the Provider that its exemption request was being tentatively denied.[7]

8. On June 4, 2001, CampbellWilson called the Intermediary to determine the status of the exemption request. It also faxed the Intermediary a copy of the September 11, 2000 representation letter.[8]

9. On October 9, 2001, CampbellWilson informed the Intermediary that it had recently received a copy of the Intermediary's May 3, 2001 correspondence which had been sent to the provider directly and reminded the Intermediary that on June 4, 2001 they had faxed the Intermediary a copy of the Provider's letter appointing CampbellWilson as the Provider's designated representative for its exemption request and had also requested that they receive a copy of any correspondence relating to the request. However, the Intermediary did not provide CampbellWilson a copy of its notification sent directly to the Provider that its exemption request was being tentatively denied, and that the Provider had 45-days

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[3] See Provider Exhibit P-3.
[4] See Provider Exhibit P-4.
[5] See Provider Exhibit P-5.
[6] See Intermediary Exhibit I-4.
[7] See Provider Exhibit P-6.
[8] See Provider Exhibit P-7.

to resubmit a complete request. The notification letter also requested an explanation of the nonreimbursable "McDonalds" cost center.

As CampbellWilson was not made aware of the deadline for the submission of a response to the Intermdiary's request, the Provider representative asked that its October 9, 2001 response be deemed timely satisfy the June 16, 2001 deadline.

The Provider representative enclosed a copy of the September 11, 2000 letter appointing CampbellWilson as the Provider's designated representative for the exemption request and noted that the original letter was included as the fourth page of the exemption request submitted by CampbellWilson on September 19, 2000. The Provider representative also informed the Intermediary that the nonreimbursable cost center entitled "McDonalds" was for space leased to a McDonald's restaurant, and that overhead cost center.[9]

The Intermediary denied the Provider's routine cost limit exemption request because the Provider did not provide it with the additional information requested by CMS within the 45-day time limit. (June 16, 2001). This denial resulted in a reduction in Medicare reimbursement of approximately $709,000.

The Provider's filing met the jurisdictional requirements of 42 C.F.R. §§405.1835-405.1841. The Provider was represented by Mr. Mannie W. Campbell of CampbellWilson. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and guidelines, the parties' contentions and the evidence submitted, the Board finds and concludes that the Intermediary erred in denying the Provider's exemption request for the untimely submission of information requested by CMS.

The Intermediary argues that the Provider representative's submission of additional information was received by the Intermediary on October 9, 2001; well after the 45-day deadline established in CMS Pub. 15-1 §2531.1.B.3. Two items were requested by CMS for completing its review of the exemption request: (1) an authorization letter from the Provider designating CampbellWilson as its representative, and (2) an explanation and documentation concerning the McDonalds non-reimbursable cost center. The Board finds that regarding the first part of the request, the representation letter was already part of the Provider's original submission of its exemption request. Thus, this additional information requested by CMS was unnecessary. The Intermediary representative was the same person throughout the entire exemption request review process. Thus, on May 3, 2001 the Intermediary should have forwarded CMS' request for additional information directly to CampbellWilson and copied the Provider. CampbellWilson contacted the Intermediary on June 4, 2001 to determine the status of the exemption request and

[9] See Provider Exhibit P-8.

provided via facsimile another copy of the September 11, 2000 representation letter to the Intermediary. This second submission was within the 45-day limit prescribed by the above CMS Program Instruction. Thus, regarding the first portion of CMS' request, the Provider timely provided the Intermediary with the requested information.

Regarding the second part of the request, the McDonalds non-reimbursable cost center, the Board finds nothing incorrect or incomplete in the Provider's original application or how the costs were treated in the Provider's original cost report. CMS may have had a legitimate question about the cost center. However, that should not have disqualified the Provider's application request for an exemption from the Medicare cost limits, and the Board finds that the exemption request was complete.

The Board further finds that the timeliness requirement addressed in the Program Instructions is not addressed in the regulations. In Covenant Shores Health Center v. Blue Cross Blue Shield Association/AdminaStar Federal Illinois, PRRB Dec. No. 2005-D44, June 10, 2005, Medicare & Medicaid Guide ¶81,374. (Covenant Shores), the Board ruled that where an exemption request was complete, the 45-day rule was inapplicable and a request for clarification from CMS does not make the Provider's application incomplete. The current case closely follows the fact pattern in Covenant Shores, and a similar result of acceptance of the submission should result. Finally, the Board notes that the FY 97 application was persuasive in light of the fact that subsequent years' requests were approved by CMS.

DECISION AND ORDER:

The Provider's exemption request was complete, and the relevant additional information requested by CMS was timely received by the Intermediary. The Intermediary's adjustment is reversed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West
Yvette C. Hayes

FOR THE BOARD:

DATE: July 2, 2007

Suzanne Cochran

Chairperson