

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2003-D51

PROVIDER –
Pleasant Care – Group Standby Costs

Provider No. Various

vs.

INTERMEDIARY –
Mutual of Omaha Insurance Company

DATE OF HEARING -
September 25, 2002

Cost Reporting Period Ended
Various

CASE NO. 01-3608G

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ISSUE:

Was the Intermediary's adjustment to standby costs proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Pleasant Care Corporation is the home office of the three Medicare certified Skilled Nursing Facilities ("Providers") involved in this case. Mutual of Omaha Insurance Company ("Intermediary") is the Providers' fiscal Intermediary. During the fiscal year under appeal, the Providers' cost reports indicated occupancy rates where the certified unit was more than 25% less than the occupancy rate of the non-certified units. The Intermediary issued a Notice of Program Reimbursement ("NPR") in which it adjusted the facilities' overhead costs from the Medicare certified unit to the non-certified unit. The Provider disagreed with the Intermediary's adjustments and requested a group hearing before the Provider Reimbursement Review Board ("Board"). The Providers timely appealed the NPRs and have met the jurisdictional requirements in accordance with the regulations at 42 C.F.R. §§ 405.1835-.1841. The amount of Medicare reimbursement in contention is approximately \$101,763.

The Providers were represented at the hearing by Paul Gulbrandson, C.P.A. The Intermediary was represented by Tom Bruce, C.P.A., Mutual of Omaha Insurance Company.

One of the prerequisites for an institution to have a portion of its facility participate as a skilled nursing facility ("SNF") is that it must have the record keeping capability to insure that it can adequately furnish the financial and statistical data required to separately determine costs applicable to the portion of the facility participating as an SNF and to other parts of the facility. The provider must be able to satisfy the intermediary that the system employed for recording and accumulating the number of hours of nursing services is capable of audit and equitably allocates the nursing service costs for Medicare reimbursement purposes.

Under the actual time method, the number of hours of nursing service is the basis for allocation of nursing service costs to the distinct part of the facility participating as a SNF and to other parts of the facility. Various systems may be employed for recording and accumulating the hours of nursing services, e.g., payroll records, assignment schedules, etc. The preferred system is the use of time records which separately indicate the actual time spent in providing nursing care in the part of the facility certified as an SNF and in other parts of the facility. Regardless of the system or method used, the result should be an equitable allocation of the nursing service costs between the distinct part and other parts of the facility based on records or notations made at the time the services were rendered.

PROVIDERS' CONTENTIONS:

The Providers point out that nursing salaries between the two portions of the facility are oftentimes shared, and the Providers are required to maintain records supporting the staff utilization and to distinguish the nursing cost of one portion of the facility from the cost of the other portion. This meets the separate staffing needs for distinct part facilities.

The Providers maintain that the allocation of nursing service cost is set forth in CMS Pub. 15-1 § 2340, which allows the actual time method as a basis for allocation of nursing service cost to the distinct part unit of the facility. It does not require separate staffing. The only requirement is to have adequate documentation to show that the staff is in fact capable of being separated in the cost settlement.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Providers have not established that they have met the requirements for an exception to the Standby Cost provisions of the CMS Pub. 15-1 § 2342.2. In order to qualify for an exception, a Provider must show that it has, in its inpatient area, staffing separate from that of the inpatient areas in the remainder of the institution.

The Intermediary performed a review of an agreed-upon sample of nursing "Daily Sign-In Sheets." The review of the sample revealed that the registered nurses split their time between the SNF (certified distinct part) and the Nursing facility. This split occurred on the same day for the same nurse.

On the November sign-in sheets, the NON-CERTIFIED HOURS column was removed, and the time recorded by the nurses was 6 or fewer hours per day. It is a reasonable assumption that these nurses continued to work a full 8-hour day and that the remainder of their workday (usually 2 hours) was spent in an area other than the distinct-part SNF.

The Intermediary contends that the Providers clearly did not satisfy the first requirement of the exception provided for in CMS Pub. 15-1 §2342.2 which states: "(a) [the facility] has in its inpatient area staffing separate from that of the inpatient areas in the remainder of the institution, . . ." The Intermediary argues that the inpatient staffing was not separate from that of the inpatient areas in the remainder of the institution. Therefore, its adjustment was proper.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and guidelines, parties' contentions and evidence presented finds and concludes that the Intermediary's adjustment to standby costs was proper.

The Board finds that it is undisputed that the same nurses worked in both the certified area and the non-certified area. The Intermediary's review of a portion of the Providers'

nursing sign-in sheets indicated that several nurses were working in both the certified and non-certified areas of the facility.

The Board finds that the Providers were not in compliance with section 2342.1 of CMS Pub. 15-1. That publication provides that a provider must show that it has, in its inpatient area, staffing separate from that of the inpatient areas in the remainder of the institution. The Board finds that the Providers were unable to demonstrate that they had their respective certified inpatient areas' staffing separate from that of their inpatient areas in the remainder of their respective institutions

DECISION:

The Intermediary properly adjusted the Providers' standby costs in conformity with § 2342.1 of CMS Pub. 15-1. The Intermediary's adjustment is affirmed.

Board Members Participating:

Suzanne Cochran, Esq.
Henry C. Wessman, Esq.
Gary B. Blodgett, DDS
Martin W. Hoover, Jr., Esq.

DATE: August 27, 2003

FOR THE BOARD:

Suzanne Cochran
Chairperson