PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

ON THE RECORD
2005-D64

PROVIDER - Alamitos West Convalescent Los Alamitos, California	**DATE OF HEARING -** June 20, 2005
Provider No.: 05-6169	Cost Reporting Period Ended - December 31, 1995
vs.	
INTERMEDIARY - BlueCross BlueShield Association/ United Government Services, LLC--CA	**CASE NO.:** 98-1922

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ISSUE:

Whether the Intermediary's adjustment to allow only a 15% increase in the therapy rate for physical therapy supervisors was proper.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the proper amount of Medicare reimbursement to a provider of medical services.

The Medicare program provides health insurance to aged and disabled persons. 42 U.S.C. §§1395-1395cc. The Secretary of the Department of Health and Human Services (Secretary) is authorized to promulgate regulations prescribing the health care services covered by the program and the methods of determining payments for those services. 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 the program's administration. CMS has entered into contracts with insurance companies known as fiscal intermediaries to maintain the program's payment and audit functions. Intermediaries determine payment amounts due providers of health care services (e.g., hospitals, skilled nursing facilities, and home health agencies) under Medicare law and interpretative guidelines issued by CMS.

At the close of its fiscal year, each provider submits a cost report to its intermediary showing the costs it incurred during the period and the portion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The intermediary reviews the cost report and determines the total amount of Medicare reimbursement due the provider, and notifies the Provider in a Notice of Program Reimbursement (NPR). 42 C.F.R §405.1803. A provider dissatisfied with the intermediary's determination may file an appeal with the Provider Reimbursement Review Board (Board) within 180 days of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Alamitos West Convalescent (Provider) is a freestanding skilled nursing facility located in Los Alamitos, California. During the fiscal year ended December 31, 1995 the Provider utilized an outside supplier to render physical therapy services to its patients. The Provider claimed the cost associated with contracted physical therapist supervisors on its Fiscal Year End (FYE) 1995 cost report. The Provider computed the Adjusted Hourly Salary Equivalency Amount (AHSEA) for physical therapist supervisors by increasing the AHSEA for Physical Therapists by 30%.

Blue Cross of California, the Provider's intermediary for the period at issue, reviewed the cost report for FYE 1995 and proposed an adjustment reducing the reported AHSEA for physical therapy supervisors from a 30% increase over the base AHSEA to 15%. The reduction in the AHSEA for physical therapy supervisors resulted in a reduction of allowable physical therapy cost in the amount of $14,000.

The Provider appealed the adjustment to the Board and met the jurisdictional requirements of 42 C.F.R §§405.1835- 405.1841. The Provider was represented by Kelly Eckstrom de Carvalho of Sage Company. The Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider contends that the Intermediary had no basis for the reduction of the rate from 130% of the AHSEA for physical therapists to 115% as PRM-I §1400 does not include a specific differential a provider must use. The Provider cites PRM-1 §1412.5 for support which states in relevant part:

> It is the intermediary's responsibility to determine the amount of this allowance, which should be based on the intermediary's knowledge of the differential between physical or respiratory therapy supervisors' salaries, as appropriate, and physical or respiratory therapists' salaries in similar provider settings in the area.

This section goes on to state:

> For physical therapy services, the Bureau of Labor Statistics (BLS) September 1978 Industry Wage Survey for Hospital and Nursing Homes (Bulletin 2069) contains data on the salaries of supervisors and staff therapists in major metropolitan areas. The BLS data may be used to determine an appropriate differential for physical therapy supervisors when it is not administratively feasible to base the additional allowance on that actual differential paid by comparable providers in the area.

The Provider cites a prior PRRB case, St. Joseph Medical Center v. Blue Cross of Southern California[1], as support for its position. In St. Joseph, the intermediary reduced the provider's supervisor AHSEA rate increase from 35% to 15% over the therapist AHSEA rate, as was done in this case. The Board found in St. Joseph that the provider's percentage increase of 35% was reasonable based on the BLS survey for the Los Angeles area and an additional wage survey performed by the provider that identified a wage differential for a supervisory therapist of upwards of 44%. In that decision, the Board noted that the preponderance of evidence for a higher rate of increase outweighed the intermediary's lower increase, which was not based on actual wage data. The Provider asserts that its claimed 30% increase remains reasonable when compared to the BLS survey of 1978, and the Intermediary's 15% increase is not based on actual wage data. Accordingly, the Provider's entitled to its requested wage differential.

[1] PRRB Dec. No. 81-D13, February 12, 1981.

The Intermediary defends its adjustment to reduce the supervisor differential to 15% over the base AHSEA from 30% based on the Intermediary's use of the percentage as a long-standing practice in the review of provider cost reports. In addition, the Intermediary claims that it was not administratively feasible to survey actual differentials of local providers.

The Intermediary asserts that the Provider's reliance on St. Joseph is inappropriate because in that case the provider had recent wage surveys to support its increase in the wage differential. The wage surveys cited in that decision were completed prior to August 1980 and the cost reporting period was FY 1978. However, this case does not have recent wage data which supports the increased differential, since the data the Provider is relying on is the same data used in the St. Joseph case. The Intermediary contends that the Provider's reliance on the BLS Survey of 1978 is inappropriate because that wage data is out of date and may not reflect current wage trends.

The Intermediary argues additionally that the BLS wage data would be inappropriate to apply to this provider, as the BLS wage data assumes an extent of supervisory and administrative activities performed by a physical therapist (measured by the number of hours a supervisor spends on administrative duties and the number of employees supervised) that the Provider in this case has not documented for its supervisors. For an increased differential to be allowed, the Intermediary maintains that time studies should have been performed and submitted by the Provider.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after considering the Medicare law and program instructions, evidence and the parties' contentions, finds and concludes that the Intermediary improperly adjusted the Provider's supervisory physical therapy rate from 130% to 115% of the base physical therapy rate. The Board finds the adjustment to be arbitrary as the Intermediary was unable to supply any authoritative references to support it.

The Board finds that although the Intermediary raises the issue in its final position paper that the Provider did not furnish documentation to support that the supervisory hours reported on the cost report were actually supervisory in nature[2], the Intermediary did not question the classification of the hours as "supervisory" during the initial review of the cost report. Since the Intermediary has already allowed 115% of the base physical therapy rate as the supervisory rate without documentation to support the "supervisory" duties associated with those hours, the validity of the "supervisory" classification was not reviewed.

42 C.F.R. §413.106(e)(1) establishes a supervisory allowance to be added to the base salary equivalency guidelines imposed in 42 C.F.R. §413.106(b) for therapies furnished under arrangement, and it identifies the Intermediary's role in developing the allowance:

[2] Intermediary's position paper, pages 5-6

> If a therapist supervises other therapists or has administrative responsibility for operating a provider's therapy department, a reasonable allowance may be added to the adjusted hourly salary equivalency amount by the intermediary based on its knowledge of the differential between therapy supervisors' and therapists' salaries in similar provider settings in the area.

The above regulation and additional instructions provided at PRM-1 §1412.5 place the burden of proof on the Intermediary to establish a reasonable hourly differential for supervisory therapists based on, " . . . the Intermediary's knowledge of the differential between physical or respiratory therapy supervisors' salaries, as appropriate and physical or respiratory therapists' salaries in similar provider settings in the area." The Intermediary failed to complete a survey, compile cost report data or otherwise document a reasonable differential in this case and instead utilized an arbitrary differential with no support for its reasonableness.

Although St. Joseph is distinguishable in that the provider furnished its own data to establish reasonableness, the mere fact that in 1978 the BLS Survey documented a 44% salary differential for supervisors was strongly indicative that in 1995 a 15% differential would be unreasonably low. The Board, in St. Joseph found that an increase of 35% was reasonable. In this case, the Board finds that the increase of 30% for 1995 has not been proven unreasonable.

DECISION AND ORDER:

The Intermediary improperly adjusted the Provider's reported salary differential for supervisory physical therapists. The Intermediary's adjustment is reversed.

BOARD MEMBERS PARTICIPATING

Suzanne Cochran, Esquire
Martin W. Hoover, Jr., Esquire
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West

DATE: September 1, 2005

FOR THE BOARD:

Suzanne Cochran
Chairperson