PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2007-D33

PROVIDER -
Bayside Community Hospital
Anahuac, TX

Provider No.: 45-1320

vs.

INTERMEDIARY -
Blue Cross Blue Shield Association/
Trailblazer Health Enterprises, LLC

DATE OF HEARING -
March 8, 2006

Cost Reporting Periods Ended -
September 30, 2002; September 30, 2003
and September 30, 2004

CASE NO.: 04-2009

INDEX

ISSUE:

Whether the Provider is eligible to receive payment on a reasonable cost basis for anesthesia services provided in its critical access hospital (CAH) by certain qualified non-physician anesthetists pursuant to 42 C.F.R. §412.113(c).

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 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.

Certified registered nurse anesthetist (CRNA) services are typically billed as professional services to Medicare Part B and reimbursed on a fee schedule. However, the Family Support Act of 1998 authorized the continuation of pass-through payment status for CRNA services to hospitals "located in a rural area (as defined for purposes of section 1886(d) of the Social Security Act)."[1] 42 C.F.R. §412.113(c) implements the CRNA pass-through payment. 42 C.F.R. §412.113(c)(2)(i) requires a hospital or CAH to demonstrate that it meets four criteria in order to obtain the pass-through payment for CRNA services.[2] In dispute is the requirement of §412.113(c)(2)(i)(A) that requires that "The hospital or CAH is located in a rural area as defined in §412.62(f) and is not deemed to be located in an urban area under the provisions of §412.64(b)(3)."

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[1] Pub. L. No. 100-485 (October 13, 1988).

[2] 42 C.F.R. §412.113(c) was amended effective October 1, 2001 to allow CAH's to be eligible for the CRNA pass-through exception. Prior to October 1, 2001, only hospitals were eligible. The change was based on CMS' analysis that while a CAH was technically not a hospital, a CAH would be affected by the same conditions as a hospital located in a rural area.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Bayside Community Hospital (Provider) is a 14-bed CAH located in Anahuac, Texas. The Provider was certified as a CAH by CMS effective March 1, 2001. Prior to that date, the Provider participated in the Medicare program as an acute care hospital. The Provider submitted a request to Trailblazer Health Enterprises, LLC (Intermediary) to receive reasonable cost reimbursement for the services of CRNAs obtained under arrangement. The Intermediary denied the Provider's request for the CRNA exemption for FY's 2002, 2003 and 2004 in a letter dated April 6, 2004[3] and reiterated its denial in a letter dated May 20, 2004[4]. The Intermediary denied the Provider CRNA pass-through reimbursement based upon its contention that the Provider fails to meet the regulatory requirement that it be "located in a rural area as defined in Sec. 412.62(f)." According to the Intermediary's denial letter, "While the facility may have been allowed to become a CAH, even though it is in fact in an MSA, by being redesignated under State law or regulations (as described in Section 412.103(a)(2)), that has no bearing on whether they are "rural" for purposes of §412.113(c)(A).[5]

The Provider appealed the denial to the Board and met the jurisdictional requirements of 42 C.F.R. §§405.1835 - 405.1841[6]. The Provider was represented by Gregory N. Etzel, Esquire, of Vinson & Elkins, L.L.P.. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The parties have entered into a stipulation of facts as they relate to the issue under appeal. Following are excerpts from the stipulation:[7]

- Provider was treated as a rural hospital by virtue of meeting the statutory requirements set forth in Section 1886(d)(8)(E) of the Social Security Act (42 U.S.C. §1395ww(d)(8)(E)) and was eligible to participate in the Medicare program as a Critical Access Hospital pursuant to Section 1820(c)(2)(B) of the Social Security Act (42 U.S.C. §1395i4(c)(2)(B)).
- Provider was designated a "Critical Access Hospital" ("CAH") by the Centers for Medicare & Medicaid Services ("CMS"), effective March 1, 2001.
- There is no dispute that the Provider was treated as a rural hospital for purposes of qualifying for CAH designation.
- The Provider's request for CRNA pass-through payments was denied by the Intermediary for the sole reason that its treatment as a rural hospital pursuant to Section 1886(d)(8)(E) of the Social Security Act has no bearing on whether the Provider is considered a "rural" facility for purposes of the CRNA pass-through

[3] See Provider's Position Paper, Exhibit 2.
[4] See Provider's Position Paper, Exhibit 3.
[5] See Provider's Position Paper, Exhibit 2.
[6] See Provider's Position Paper, Exhibit 4.
[7] See Stipulation Agreement dated March 2, 2006.

> payment established by Public Law No. 100-485 and 42 C.F.R. §412.113(c)(2)(A).

The Provider contends that a proper analysis of the applicable statutes results in the conclusion that CRNA pass-through reimbursement applies to all CAHs, including the Provider. Section 1820(c)(2)(B) establishes a statutory requirement that a CAH must be "a hospital located in a county . . . in a rural area" (as defined in section 1886(d)(2)(D)) or considered "as being located in a rural area pursuant to 1886(d)(8)(E)." The latter quoted phrase was added by Section 401(b)(2) of the Balanced Budget Refinement Act of 1999 (BBRA) to expand CAH hospital eligibility. CMS acknowledged this expanded ability for certain facilities to be considered rural in the 65 Fed. Reg. 47,041 (Aug 1, 2000):

> Section 401(b)(2) of Public Law 106-113 amended section 1820(c)(2)(B)(i) of the Act to authorize a State to designate a hospital in an urban area as a CAH if, under one of the criteria set forth in Section 1886(d)(8)(E) of the Act, it would be treated as being located in the rural area of the State in which the hospital is located. Section 401(b)(2) only provides authority for a hospital to meet the rural requirement.

The Provider asserts that Congress intended that when a hospital in an urban area is redesignated as rural under Section 1886(d)(8)(E) of the Act, as the Provider was, it "shall be eligible to qualify for **all** categories and designations available to rural hospitals, including sole community, Medicare dependent, critical access, and referral centers."[8] Therefore, the Provider argues it is eligible for CRNA pass-through payments which by law are available to CAHs.

The Intermediary asserts that the plain language of 42 C.F.R. §412.113(c)(2)(iii) extends the CRNA pass-through opportunity to facilities that meet certain criteria, including the criteria of 42 C.F.R §412.113(c)(2)(i)(A):

> The hospital or CAH is located in a rural area as defined in §412.62(f) and is not deemed to be located in an urban area under the provisions of §412.64(b)(3).

The Intermediary argues that because the Provider is located in Anahuac, Texas, which was at all times in a Metropolitan Statistical Area (MSA), the Provider does not meet the location requirement of the regulation and therefore does not qualify for CRNA pass-through payments. The Intermediary asserts that up until October 1, 2004, 42 C.F.R. §412.62(f) followed the §1886(d)(2)(D) definition of an urban area and defined a rural area as "any area outside an urban area." On or after October 1, 2004, 42 C.F.R.

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[8] See Provider Appendix D, House & Senate Conference Agreement on Medicare, Medicaid, and SCHIP Provisions, Pub. L. No. 106-113 Sec. 401(November 29, 1999) (emphasis added).

§412.62(f) was replaced by 42 C.F.R. §412.64(b)(3), but the definition of "rural area" did not change.

The §1886(d)(2)(D) and 42 C.F.R. §412.62(f) definitions of urban/rural areas were law and regulation when Public Law 100-485 was passed in 1989. The Intermediary argues that neither 42 C.F.R. §412.62(f) nor 42 C.F.R. §412.64(b)(3) was amended to expand or contract any definitions under Public Law 106-113. Therefore, facilities that are located in an urban area but treated as rural were not covered under those definitions, and the Provider should be treated as rural for CAH designation purposes but not for CRNA pass-through reimbursement purposes.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and program instructions, evidence presented and the parties' contentions, the Board finds and concludes as follows:

CMS acknowledged in the August 1, 2001 Federal Register that, "The purpose of the pass-through legislation is to provide small rural hospitals with low surgical volumes with relief from the difficulties they might otherwise have in furnishing CRNA services for their patients. CAHs are by definition limited-service facilities located in rural areas and, as such, they serve a population much like those served by hospitals eligible for the pass-through payments . . . Thus, in accordance with section 1861(e) of the Act and in light of the context of the pass-through legislation cited above, we consider CAHs to be "hospitals" for purposes of extending eligibility for the CRNA pass-through payments to them."[9] No distinction was made between CAHs that are located in rural areas and those that are "treated as being located in a rural area."

The Intermediary has argued that the Provider does not qualify for the pass-through payment due to its location in an MSA. The Intermediary asserts that since PL-100-485 was never codified into any section of 1886, the statute never changed. Therefore, the definition of rural never changed, and this Provider cannot be considered rural under the 1886 definition. The Board, however, finds that the term "rural" has the same meaning in the CRNA statute (Public law 100-485) as it does in section 1886(d) of the Act, as the CRNA statute adopts the language in the Act.

As was detailed in the House & Senate Conference Agreement on Medicare, Medicaid, and SCHIP Provisions, Pub. L. No. 106-113 Sec. 401 (November 29, 1999), Congressional intent was that urban hospitals that are redesignated and treated as rural hospitals would receive "all categories and designations available to rural hospitals" which would include pass-through payments for CRNA services. The Board finds that CMS' rationale for the denial of the pass-through payments to CAHs would frustrate the intent of Congress as well as that expressed by CMS in its own regulations.

[9] See Federal Register Vol. 66 No. 143 dated 8/1/2001, page 39922.

DECISION AND ORDER:

The Intermediary improperly denied Bayside's request to receive reasonable cost reimbursement for the services of certified registered nurse anesthetists obtained under arrangement. The Intermediary shall approve the request and reimburse the Provider for CRNA services pursuant to C.F.R. §412.113(c).

BOARD MEMBERS PARTICIPATING

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

DATE: May 10, 2007

FOR THE BOARD:

Suzanne Cochran
Chairperson