

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

On the Record  
2017-D17

**PROVIDER –**

BBL 2006-2007 Direct GME PRA Adj. Grp.  
BBL 2008 Direct GME PRA Adj. Grp.  
BBL 2009 Direct GME PRA Adj. Grp.  
BBL 2011 Direct GME PRA Adj. Grp

**DATE OF HEARING -**

March 2, 2017

Provider Nos.: Various

Cost Reporting Periods Ended -  
2006, 2007, 2008, 2009 and 2011

**vs.**

**MEDICARE CONTRACTOR –**

Noridian Healthcare Solutions, LLC

**CASE NOS.:** 13-0196G, 13-3892G,  
14-1723G and 15-1946G

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## ISSUE STATEMENT

Was the use of Centers for Medicare and Medicaid Services' ("CMS") sequential geography methodology ("SGM") for setting the Providers' base year per resident amounts ("PRAs") for Medicare reimbursement of certain graduate medical education ("GME") costs, which flow through and affect subsequent year cost determinations, valid and consistent with 42 U.S.C. § 1395ww(h)(2)(F) and 42 C.F.R. § 413.86(e)(4)(i)(1989)?

## DECISION AND ORDER

After consideration of Medicare law and guidelines, the parties' contentions, and the evidence of record, the Provider Reimbursement Review Board ("Board") finds that, for the years at issue in these consolidated group appeals, the base year PRA issue is a predicate fact under 42 C.F.R. § 405.1885(a) and that this predicate fact for each of the Providers is currently being reviewed and resolved in the pending appeal of the Rural Family DGME Group Appeals v. Blue Cross & Blue Shield Ass'n, PRRB Decision 2015-D3 (Feb. 6, 2015) (hereinafter "Rural Family DGME Case"). Accordingly, the Board remands these consolidated group appeals to the Medicare Contractor to apply the same base year PRA that is ultimately determined for each of the Providers upon the full completion and final resolution of the Rural Family DGME Case.

## INTRODUCTION

The providers in these four group appeals include Billings Clinic, located in Billings, Montana; St. Vincent Hospital and Health Center, located in Billings, Montana; Sky Lakes Medical Center, located in Klamath Falls, Oregon; and Yakima Valley Memorial Hospital, located in Yakima, Washington (hereinafter "Providers"). These cases address various cost reporting years subsequent to the base year that sets each Providers' PRA.<sup>1</sup> The Providers have met the jurisdictional requirements for a hearing.<sup>2</sup>

Noridian Administrative Services (hereinafter "Medicare Contractor") serves as the lead Medicare contractor for the appeals. The Providers were represented by Michael Madden, Esq., of Bennett Bigelow & Leedom, P.S. The Medicare Contractor was represented by Wilson C. Leong, Esq., CPA, of Federal Specialized Services. The Board conducted a hearing on the record.

## STATEMENT OF FACTS

The Providers receive Medicare direct graduate medical education ("DGME") payments for approved residency programs in family medicine. Each of the Providers runs a rural family

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<sup>1</sup> See Appendix I for a complete list of Providers and cost reporting years in these four group appeals.

<sup>2</sup> The Board found in separate jurisdictional decisions that it does not have jurisdiction over Yakima Valley Memorial Hospital, Provider No. 50-0036, for fiscal year ending 10/31/2006, finding that the Provider's appeal rights were limited to the specific issue revised on reopening which pertained to correcting the duplicate application of the CMS update factor for the SGM method. Similarly for fiscal year ending 10/31/2009 the Board found that it lacked jurisdiction for the same Provider finding that the reported base year PRA was neither protested nor adjusted. The Board's decisions on these fiscal year ends were issued in separate jurisdictional decisions on December 19, 2016. The corresponding Provider/fiscal year ends are crossed off the relevant attached Schedules of Providers.

medicine residency program which focuses exclusively on training physicians to practice in rural areas, and these programs began operating between 1993 and 1997.<sup>3</sup>

The Medicare program pays hospitals for DGME on the basis of per resident costs established using a 1984 base year. If a hospital did not have residents or did not participate in the Medicare program during the 1984 base period, 42 U.S.C. § 1395ww(h)(2)(F) specifies that the Secretary shall determine the hospital's approved full time equivalent ("FTE") resident amount based on approved FTE resident amounts for comparable programs. In the final rule published on September 29, 1989, CMS specified that intermediaries<sup>4</sup> calculate a per resident amount ("PRA") based on the lower of the hospital's actual costs for its residency program during its first cost reporting period or a weighted average of all the hospitals in the same geographic wage area unless the hospital falls into an exception.<sup>5</sup> If there are fewer than three hospitals in the same geographic wage area, the exception applies and the intermediary "must contact [CMS] central office for a determination of the appropriate [weighted average] amount to use."<sup>6</sup>

Each of these Providers in this appeal qualified for an exception, subsequently received an average per resident amount ("APRA" or "PRA"), and was dissatisfied with the methodology used by CMS to develop the APRA. Each Provider had previously appealed the calculation of its respective base year DGME average PRA to the Board which issued a decision in the Rural Family DGME Case. The Board found the use of CMS's sequential geography methodology for setting the Providers' base year PRAs was valid and consistent with law, and the Board affirmed the Medicare Contractor's adjustments in PRRB Decision 2015-D03 (Feb. 6, 2015). The Providers subsequently appealed the Board's decision to the U.S. District Court for the Eastern District of Washington where the Court upheld the Board's decision.<sup>7</sup> Currently, the Providers have appealed the District Court's decision to the U.S. Court of Appeals for the Ninth Circuit,<sup>8</sup> and that case is pending resolution.

In the current consolidated group appeals before the Board, the Providers are challenging "the flow-through effect of the inaccurate base year PRAs utilized by the Medicare Contractor in settling reimbursement for fiscal years 2006, 2007, 2008, 2009 and 2011."<sup>9</sup>

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<sup>3</sup> Providers' Final Position Paper at 1.

<sup>4</sup> Formerly known as Fiscal Intermediaries, CMS' payment and audit function under the Medicare program are now contracted to organizations known as Medicare Administrative Contractors. However, the term "intermediary" is still used in various statutes and regulations, and is interchangeable with the terms "Medicare Administrative Contractor" or "Medicare Contractor".

<sup>5</sup> See 42 C.F.R. § 413.86(e)(4) (2003) (redesignated as 42 C.F.R. § 413.77(d) pursuant to 69 Fed. Reg. 48916, 49234, 49255-49256 (Aug. 11, 2004)). The term "same geographic area" refers to an urban area (*i.e.*, "a metropolitan statistical area" ("MSA") as defined by the Office of Management and Budget or certain urban areas specified by the Social Security Amendments) or a rural area (*i.e.*, any area outside of the designated urban areas) as used by the Secretary to calculate the hospital-specific wage index. See 42 C.F.R. §§ 412.62(f), 412.63, 412.64.

<sup>6</sup> *Id.*

<sup>7</sup> *Yakima Valley Cmty. Found. v. Burwell*, No. 1:15-cv-003052-SAB (E.D. Wash. Apr. 28, 2016).

<sup>8</sup> *Yakima Valley Cmty. Found. v. Burwell*, No. 16-35477 (9th Cir. filed June 8, 2016).

<sup>9</sup> Providers' Final Position Paper at 2.

### BOARD FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DISCUSSION

It is undisputed that each of the Providers in these four consolidated group appeals challenge the same base year DGME average PRA which they challenged in the Rural Family DGME Case. The Board finds that the base year PRA issue in these four consolidated group appeals is a predicate fact as defined in 42 C.F.R. § 405.1885(a)(1)(iii). This regulation explains that a predicate fact is “a finding of fact based on a factual matter that first arose in or was first determined for a cost reporting period that predates the period at issue (in an appeal filed . . . under this subpart), and once determined, was used to determine an aspect of the provider’s reimbursement for one or more later cost reporting periods.” Further, § 405.1885(a)(iv) prevents the Board from reviewing a predicate fact for a cost reporting period, if the determination on the predicate fact was first made for an earlier cost reporting period in which the predicate fact first arose.<sup>10</sup> Accordingly, the Board agrees with the Providers that the decision in the current appeals is dependent upon the outcome of the Rural Family DGME Case currently pending before the Ninth Circuit Court of Appeals.<sup>11</sup> The Board concludes that the outcome of the Rural Family DGME Case and, hence the determination of the validity and consistency of the base year PRAs, is a predicate fact in these “flow-through” appeals. Accordingly, the Board must remand these consolidated group appeals to the Medicare Contractor to apply the same base year PRA that is ultimately determined for each of the Providers upon completion and resolution of the Rural Family DGME Case.

### DECISION

After consideration of Medicare law and guidelines, the parties’ contentions, and the evidence of record, the Board finds that, for the years at issue in these consolidated group appeals, the base year PRA issue is a predicate fact under 42 C.F.R. § 405.1885(a) and that this predicate fact for each of the Providers is currently being reviewed and resolved in the pending appeal of the Rural Family DGME Case. Accordingly, the Board remands these consolidated group appeals to the Medicare Contractor to apply the same base year PRA that is ultimately determined for each of the Providers upon completion and resolution of the Rural Family DGME Case.

### BOARD MEMBERS PARTICIPATING:

L. Sue Andersen, Esq.  
Clayton J. Nix, Esq.  
Charlotte F. Benson C.P.A.  
Jack Ahern, M.B.A., CHFP  
Gregory H. Ziegler

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<sup>10</sup> See 78 Fed. Reg. 74826, 75162-75169, 75195-75196 (Dec. 10, 2013) (revising 42 C.F.R. § 405.1885(a)(1) to clarify CMS’ policy on the reopening of predicate facts).

<sup>11</sup> Providers’ Final Position Paper at 3, 7.

FOR THE BOARD:

/s/  
L. Sue Andersen, Esq.  
Chairperson

DATE: May 19, 2017

## APPENDIX I

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BBL FYE 2006-07 DIRECT GME PRA ADJUSTMENT GROUP APPEAL

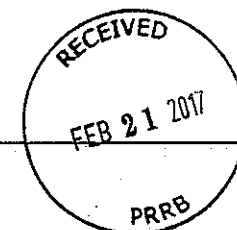
PRRB CASE NO. 13-0196G

SCHEDULE OF PROVIDERS ON APPEAL - Schedule A

Prepared: 11/26/12

Provider Number	Provider Name	Cost Report Period	Fiscal Intermediary	Date of NPR	Date of Hearing Request	Number of Days	D Audit Adj. No.	E Estimated Amount of Reim.	F Orig. Case No.	G Date of Add/Transfer
1. 38-0050	Sky Lakes Medical Center Klamath County Klamath Falls, Oregon	9/30/07	Noridian Administrative Services	10/16/12	11/29/12	44	30	\$233,831	Direct appeal to CIRP group	11/29/12
2. <del>50-0036</del>	<del>Yakima Valley Memorial Hospital</del> Yakima County Yakima, Washington	<del>10/31/06</del>	Noridian Administrative Services	<del>8/22/11</del>	<del>2/2/12</del>	<del>164</del>	<del>3</del>	<del>\$202,222</del>	<del>12-0176</del>	<del>11/29/12</del>
3. 50-0036	Yakima Valley Memorial Hospital Yakima County Yakima, Washington	10/31/07	Noridian Administrative Services	3/8/13	8/29/13	174	46	\$175,083	13-3177	9/18/13

NO  
JURIS.

**BBL FYE 2008 DIRECT GME PRA ADJUSTMENT GROUP APPEAL****PRRB CASE NO. 13-3892G****SCHEDULE OF PROVIDERS ON APPEAL – Schedule A***Prepared 3/22/2015*

Provider Number	Provider Name	Cost Report Period	Fiscal Intermediary	A Date of NDR	B Date of Hearing Request	C Number of Days	D Appl. Adj. No.	E Estimated Amount of Reim.	F Orig. Case No.	G Date of Add/transfer
1. 27-0004	Billings Clinic <i>Yellowstone County Billings Montana</i>	6/30/08	Noridian Administrative Services	11/28/12	2/7/13	101	34	\$235,904	13-0967	9/18/13
2. 50-0036	Yakima Valley Memorial Hospital <i>Yakima County Yakima, Washington</i>	10/31/08	Noridian Administrative Services	3/8/13	8/29/13	86	42	\$155,919	13-3178	9/18/13



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## BBL FYE 2009 DIRECT GME PRA ADJUSTMENT GROUP APPEAL

PRRB CASE NO. 14-1723G

SCHEDULE OF PROVIDERS ON APPEAL – Schedule A

Prepared: 3/22/2015

Provider Number	Provider Name	Cost Report Period	Fiscal Intermediary	A Date of NER	B Date of Hearing Request	C Number of Days	D Audit Adj. No.	E Estimated Amount of Reim.	F Orig. Case No.	G Date of Add/Transfer
1. 27-0004	Billings Clinic Yellowstone County Billings Montana	6/30/09	Noridian Administrative Services	4/24/13	10/9/13	168	40	\$218,211	14-0083	12/9/13 / 12/13/13
2. 27-0049	St. Vincent Healthcare Yellowstone County Billings, Montana	12/31/09	Noridian Administrative Services	9/6/13	1/10/14	125	35	\$218,655	N/A	1/10/14
3. <del>50-0036</del>	<del>Yakima Valley Memorial Hospital</del> <del>Yakima County</del> <del>Yakima, Washington</del>	<del>10/31/09</del>	<del>Noridian Administrative Services</del>	<del>9/5/13</del>	<del>1/10/14</del>	<del>126</del>	<del>Protested on as- filed cost report</del>	<del>\$94,540</del>	<del>N/A</del>	<del>1/10/14</del>

{\*277E.00000/M0936750.DCCX; 1}

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## BBE FYE 2011 DIRECT GME PRA ADJUSTMENT GROUP APPEAL

PRRB CASE NO. 15-1946G

## SCHEDULE OF PROVIDERS ON APPEAL - Schedule A

Prepared 4/8/2015

Provider Number	Provider Name	Cost Report Period	Fiscal Intermediary	A Date of NPR	B Date of Hearing Request	C Number of Days	D Audit Adj. No.	E Estimated Amount of Reim.	F Orig. Case No.	G Date of Add/Transfer
1. 27-0004	Billings Clinic Yellowstone County Billings Montana	6/30/11	Noridian Administrative Services	9/30/13	3/19/14	170	20	\$184,000	14-3052	3/24/15
2. 50-0036	Yakima Valley Memorial Hospital Yakima County Yakima, Washington	10/31/11	Noridian Administrative Services	10/31/14	3/24/15	144	43	\$143,815	N/A	3/24/15