PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D1

PROVIDER –
Greene County Medical Center

Provider No.: 16-1325

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

DATE OF HEARING -
June 16-17, 2015

Cost Reporting Periods Ended -
June 30, 2012 and June 30, 2013

CASE NOS.: 14-1248 and 15-1445

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ISSUE

Whether the Wisconsin Physician Services ("Medicare Contractor") improperly disallowed certain home office costs claimed by Greene County Medical Center ("Greene" or "Provider") on the grounds that it was not related to the entity that had furnished the services.[1]

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds that Greene is related to Central Iowa Hospital Corporation ("Central Iowa" or "CIHC") within the meaning of Medicare "related organization" principles. Accordingly, the Board remands Greene's cost report for ("FYs") 2012 and 2013 to the Medicare Contractor for audit, to determine if the costs incurred by Central Iowa and included by Greene on these cost reports as home office costs, are reasonable and necessary.

INTRODUCTION

Greene is a 25-bed critical access hospital ("CAH") located in Jefferson, Iowa. During the relevant periods, Central Iowa established a relationship with Greene to assist it in providing services to the community.[2] Greene reported the costs incurred by Central Iowa as allowable home office costs on its as-filed cost reports for FYs 06/30/2012 and 06/30/2013. WPS disallowed Central Iowa's home office costs on the basis that it does not meet the criteria to be considered a home office or related party. WPS allowed Medicare reimbursement for management fees that Greene paid to Central Iowa.[3]

Greene appealed the Medicare Contractor's final determinations to the Board and met the jurisdictional requirements for a hearing. A live hearing was held on June 16 and 17, of 2015. Robert E. Mazer, Esq., of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. represented Greene. Arthur E. Peabody, Jr. Esq., of the BlueCross BlueShield Association represented the Medicare Contractor.[4]

STATEMENT OF THE FACTS

Central Iowa was a "controlled subsidiary" or "senior affiliate" of Iowa Health System ("IHS"), a regional health care system that delivered heath care throughout the State of Iowa. Through its senior affiliates, IHS worked to assist smaller community hospitals, in rural areas, to provide health care services and comply with Medicare requirements for critical access hospitals.[5]

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[1] Transcript, ("Tr.") at 6.
[2] Provider's Final Position Paper at 1.
[3] *Id.* at 8-11.
[4] The BlueCross BlueShield Association was subsequently replaced by Federal Specialized Services.
[5] *See* Provider's Final Position Paper at 1.

Greene is governed by a seven member Board of Trustees ("Trustees") who are elected by the citizens of Greene County.[6] In June 2002 Greene and Central Iowa entered into an Affiliation Agreement that permitted Greene to participate in various programs available to Central Iowa hospitals and to otherwise obtain Central Iowa's assistance on an as needed basis.[7] A similar agreement was entered into on June 1, 2005 and remained in effect until July 1, 2011 when Greene and Central Iowa entered into an enhanced affiliation.[8]

The July 2011 Affiliation Agreement, which was in effect during the fiscal years under appeal, imposed increased responsibilities on Central Iowa.[9] This occurred because Greene's governing board was concerned about recent operating losses, existing leadership, the hospital's long term sustainability and its ability to repay an $18 million grant from the Department of Agriculture.[10]

The 2011 Affiliation Agreement required Central Iowa to employ individuals to serve as Greene's Administrator and Chief Operating Officer ("COO") who made daily operational decisions with the support of Central Iowa. In addition as part of the Agreement, the Administrator and COO were assigned a list of duties and responsibilities.[11] The 2011 Agreement was amended in October 2012 to require Central Iowa to employ a Chief Financial Officer ("CFO") and a Chief Nurse Executive ("CNE") for Greene and eliminated the requirement for Central Iowa to employ Greene's COO.[12] The amended Agreement also required Central Iowa to consult with the Provider's management on a broad range of issues.[13]

Greene and Central Iowa also signed a Critical Access Hospital Network Agreement which permitted Greene to satisfy Medicare's requirements for CAHs and to allow the transfer of the patients who were in need of a higher level of care from Greene to Central Iowa for treatment. Under the terms of the Agreement Central Iowa audited the hospital's credentialing process, and reviewed and recommended changes to its quality assurance plan. [14]

Although Greene had an Affiliation Agreement with Central Iowa since 2002, it did not include Central Iowa's home office costs in its cost report until FY 2012. By this time Greene considered itself to be "related" to Central Iowa because of the influence Central Iowa exerted as a result of the updated Affiliation Agreement. Central Iowa began

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[6] *See* Provider's Final Position Paper at 1.
[7] See Provider's Final Position Paper at 11 and Exhibit P-71.
[8] Exhibit P-52 contains a copy of the June 2005 agreement and Exhibit P-9 contains a copy of the July 2011 agreement.
[9] *Tr*. Day 1at 65-68.
[10] *Id*. and Provider's Final Position Paper at 11-12.
[11] Exhibit P-9 at 1-3and *Tr*. Day 1 at 70-76.
[12] Exhibit P-9 at 14.
[13] Exhibit P-9 at 18.
[14] This agreement was effective July 1, 2002 and amended February 2, 2008. See Exhibit P-17.

allocating home office costs to Greene on its home office cost statement ("HOCS") on July 1, 2011.[15]

Federal regulations at 42 C.F.R. § 413.17 (2008) direct how Medicare handles cost for "related organizations." Section (a) of this regulation states the principle of related organization costs as follows:

> (a) *Principle*. . . . [C]osts applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, such cost[s] must not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

Section (b) of this regulation defines related organizations as follows:

> (1) *Related to the provider.* Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.
>
> (2) *Common ownership*. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.
>
> (3) *Control*. Control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

CMS provides guidance on this regulation in the Provider Reimbursement Manual ("PRM") 15-1. Specifically, Chapter 10, § 1000 reiterates the regulatory criteria of 42 C.F.R. § 413.17(a)—that the costs which related organizations furnish are includable in the provider's allowable costs and that these costs cannot exceed the price of comparable services that could be purchased elsewhere—and adds:

> The purpose of this principle is two-fold: (1) to avoid the payment of a profit factor to the provider through the related organization (whether related by common ownership or control), and (2) to avoid payment of artificially inflated costs which may be generated from less than arm's-length bargaining.

The manual further explains the situation where a contract creates the related organization relationship in § 1011.1 which states:

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[15] *Tr.* Day 2 at 196-199.

> If a provider and a supplying organization are not related before the execution of a contract, but common ownership **or control** is created at the time of execution by any means, the supply contract will be treated as having been made between related organizations (emphasis added).

Finally, § 1004.3 defines the term "control" as follows:

> The term "control" includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise.

The parties dispute whether the above regulatory and manual guidance on related organizations supports the Medicare Contractor's adjustments to remove the amounts claimed by Greene as related organization/home office costs from Central Iowa.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

A. Discussion Relating to Related Party Status

The Medicare Contractor contends that the management agreement between Greene and Central Iowa did not allow Greene to claim Central Iowa's home office costs as a related organization.[16] The Medicare Contractor reasons that with respect to Greene, the Trustees are the governing body and are solely responsible for the policy making and direction of Greene.[17] The Medicare Contractor points out that the Affiliation Agreement states that Central Iowa "will be acting as an independent contractor"[18] and is not granted related party status through such an agreement.

Further the Medicare Contractor maintains that while the CEO and CFO are employed by Central Iowa and may exert some influence over Greene, their influence is primarily related to their job responsibilities in their respective positions and they are solely responsible to carry out the policies as directed by the Trustees.[19] As such, the Medicare Contractor concludes that Central Iowa is not a related party, and it is necessary to limit Central Iowa's costs to the actual amounts incurred by Greene.[20]

According to the Medicare Contractor, 42 C.F.R. § 413.17 and PRM 15-1 Chapter 10 apply two tests, that of control and ownership, when determining whether two parties are

[16] Medicare Contractor's Post Hearing brief at 1.
[17] Medicare Contractor's Revised Final Position Paper at 11-12 of 106.
[18] Exhibit P-9 at 1.
[19] Medicare Contractor's Revised Final Position Paper at 12-14 of 106.
[20] *Id.* at 21.

related. Central Iowa did not own Greene nor exercise control over the day-to-day operations of the hospital and concluded that the two were not related.[21]

The Medicare Contractor relies on PRM 15-1 § 2135 which provides detailed guidance related to purchased management and administrative support services. The Medicare Contractor asserts that Greene has failed to document the costs and services associated with these contracts. Specifically, the Medicare Contractor explains that Greene has not submitted the documentation as required by § 2135.5 "a" through "f", and that, if the Board finds that Greene and Central Iowa are related organizations, the cases must be remanded back to the Medicare Contractor for review to determine the extent to which the claimed home office costs are allowable.[22]

Greene argues that Central Iowa significantly influences Greene's actions and policies and qualifies as a related party under the Medicare rules.[23] In support of its position, Greene points to CMS' related organization regulations which define the term "control" to mean "the power directly or indirectly, significantly influence or direct the actions or policies of an organization."[24] Greene further notes that the PRM 15-1 definition for "control" makes clear that "any kind of control" suffices "whether or not it is legally enforceable and however it is exercisable or exercised."[25] Based on these definitions, Greene asserts the Medicare Contractor is simply wrong in its interpretation of the related organization rules.[26]

Finally Greene points out that the Medicare Contractor accepted Central Iowa's home office cost statement reflecting both the home office costs incurred by Central Iowa and the allocation of such costs to Greene and asserts that it cannot now reverse these determinations through the settlement process of the provider's cost report. Greene also argues that, if the Board finds that these organizations are related parties, 42 CFR § 405.1871(b)(5) does not provide for a remand to the Medicare Contractor to make a second, and different, determination on the claimed home office costs.[27]

The Board finds that the Medicare regulations, specifically 42 C.F.R § 413.17(b)(3) broadly defines the term "control" as "the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution." Similarly, program guidance at PRM 15-1 § 1004.3 defines "control" to include "any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised." It is clear that Central Iowa controlled Greene because Central Iowa had significant influence over the management staff, policies and day-to-day operations of Greene and that this control was beyond that of a typical management contract.

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[21] *Id.* at 13 of 106.
[22] *Id.* at 11 of 106 and 15 -21 of 106.
[23] *See* Provider's Post Hearing Brief at 8-12.
[24] 42 C.F.R. § 413.17(b)(3) (2016).
[25] *See* Provider's Post Hearing Brief at 23 (quoting PRM 15-1 § 1004.3).
[26] *See* Providers' Post Hearing Brief at 23-25.
[27] *See* Provider's Post Hearing Brief at 7 and 27-31.

Central Iowa employs Greene's CEO. This individual is on the Central Iowa payroll and runs the day-to-day operations of Greene and is answerable to Central Iowa. The CEO routinely relies on the advice and direction it receives from Central Iowa in the operation of Greene.[28] At the hearing, Greene's CEO testified that Central Iowa significantly influences his actions as CEO, and that Central Iowa directs key operating decisions.[29] Central Iowa also provides a Chief Nurse Executive to Greene who interacts with Central Iowa's clinical liaison related to medical records and advice for improvements in clinical processes and procedures.[30]

The record also demonstrates that Central Iowa provided policies and procedures that Greene adopted, ensuring whenever possible that the policies of Greene were consistent with Central Iowa. At the hearing Greene's witness testified that various policies, including policies related to clinical care, human resources, social media, and HIPPA, were similar or the same because of the close interaction between Green and Central Iowa.[31] Policy changes were determined by the policy review committee[32] and then presented to the Greene's Trustees to vote on as a group and were routinely approved with little discussion.[33]

Finally, the record shows the Greene is a small CAH and that Greene's Trustees were elected community leaders who had no background or experience in healthcare.[34] In providing direction to the Trustees, Central Iowa supplied the experience and expertise required to manage a healthcare entity. The CEO would put together the agenda for the Trustees meeting and his recommendations were without exception, accepted by the Trustees.[35]

In evaluating this evidence, the Board concludes that Central Iowa has the power, directly or indirectly, to significantly influence or direct the actions or policies of Greene. The Board concludes that Greene is related to Central Iowa within the meaning of Medicare "related organization" principles.

B. Discussion Relating to Reasonable and Necessary Costs

While the Board has determined that Greene is a related party of Central Iowa under Medicare's rules, the Board does not agree that the Medicare Contractor, by simply accepting Central Iowa's home office cost statement, also accepted the reasonableness of the home office costs. The Board agrees with the Medicare Contractor that Medicare's reasonable cost principles apply to home office costs and concludes that a remand is necessary to determine the propriety of these costs.

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[28] Exhibits P-10 and P-13; *Tr.* Day 2 at 5-16.
[29] *See* Provider Post-Hearing Brief at 14-15; *Tr.* Day 2 at 135-138.
[30] *Tr.* Day 1 at 79 and 109-110; *Tr.* Day 2 at 38.
[31] *Tr.* Day 1 at 118-119.
[32] *Tr.* Day 2 at 58-63.
[33] *Tr.* Day 2 at 75-78 and Exhibit P-12 at 69.
[34] *Tr.* Day 2 at 72.
[35] *Tr.* Day 2 at 75-78 and 80-81.

The Medicare Contractor states that because Central Iowa and Greene were determined to be unrelated, the home office cost allocation was removed from each of Greene's cost reports in total. The underlying costs were not reviewed once the determination was made that the entities were not related. [36] The Board finds that the Medicare Contractor's determinations did not accept the home office costs at issue but rather stated that amounts had not been reviewed.

The Board also finds that reasonable cost principles apply to costs from home offices.[37] Specifically, Medicare regulations at 42 C.F.R. § 413.17(a) allow a provider to claim the cost of services provided by organizations related to the provider by common ownership or control, as long as these costs do not exceed the price of comparable services. The intent of this provision is to ensure that Medicare does not pay artificially inflated costs which may be generated from less than arm's length bargaining. Additionally, PRM 15-1, § 1005 specifies that the "principles of reimbursement of provider costs described elsewhere in this manual will generally be followed in determining the reasonableness and allowability of the related organization's costs."

The Board concludes that it has the authority to remand Greene's Medicare cost reports for the fiscal years at issue to the Medicare Contractor for a review of the home office costs. In 2008, CMS amended federal regulations governing Medicare reimbursement determinations and appeals to add 42 C.F.R. § 405.1871(b)(5). This regulations requires the Board to remand a case back to the Medicare contractor "to make a determination on the merits of the provider's claim" when the Board reverses the Medicare contractor's denial and that denial was "*based on* procedural grounds . . . or . . . *a lack of documentation* to support the provider's claim."[38] When CMS adopted this regulation, CMS provided the following guidance on how it would be applied:

> Where an intermediary denies reimbursement for a claimed item without auditing the reimbursement effect of that claim, and the intermediary's denial is reversed by the Board, the Administrator, or a court … we may require the intermediary to determine the reimbursement effect of the claim prior to payment.[39]

Although Greene asserts that these regulations limit the Board's remand authority to situations where the Medicare contractor's adjustments were based on procedural grounds or lack of documentation and that the Medicare Contractor's denial does not fall within either situation,[40] the Board disagrees because the Medicare Contractor's denial was

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[36] *See* Medicare Contractor's Post-Hearing Brief at 13.

[37] As stated in PRM 15-1 § 2150, the Medicare program does not recognize home offices as Medicare providers and, as a result, does not directly reimburse home offices for their costs related to patient care. Rather, to the extent the home office furnishes services related to patient care to a provider, the reasonable costs of such services are includable in the provider's cost report and are reimbursable as part of the provider's costs. PRM 15-1 § 2150 may be found at Provider's Exhibit P-36

[38] (Emphasis added.)

[39] 73 Fed. Reg. 30190, 30234-30236 (May 23, 2008). Copy of the Federal Register section may be found at Provider's Exhibit P-76.

[40] See Provider's Post Hearing Brief at 29-31.

"based on . . . a lack of documentation" to support the condition precedent to auditing home office costs (*i.e.,* based on a finding of insufficient documentation to support a related party determination).[41] In these cases, the Medicare Contractor never reached the home office costs because it made a determination that Greene and Central Iowa were *not* related parties and allowed only Central Iowa's fees. Accordingly, the Medicare Contractor did not audit the home office costs and never reached the merits of Greene's claim. The Board remands these cases back to the Medicare Contractor to audit the home office costs.

DECISION AND ORDER

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board finds that Greene is related to Central Iowa within the meaning of Medicare "related organization" principles. Accordingly, the Board remands Greene's cost reports for FYs 2012 and 2013 to the Medicare Contractor for audit, to determine if the costs incurred by Central Iowa and included by Greene on these cost reports as home office costs, are reasonable and necessary.

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FOR THE BOARD:

/s/
L. Sue Andersen, Esq.
Chairperson

DATE: October 26, 2017

[41] Moreover, the Board notes that 42 C.F.R. § 405.1871(b)(5) only specifies situations (*e.g.*, lack of documentation) when the Board *must* remand and does not prevent the Board from exercising its discretion to issue a remand for other reasons.