

# PUBLICATION

---

## Recent PRRB and CMS Administrator Decisions: A Summary for Providers [Ober|Kaler]

February 07, 2013

In recently released decisions, the PRRB and the CMS Administrator addressed a number of issues of interest to many providers. Short summaries of those decisions are provided below. The PRRB and CMS Administrator post their decisions on their websites: [PRRB decisions](#) and [CMS Administrator decisions](#).

### GME and IME FTE Count – New Program, Affiliated Group

The Board affirmed the Intermediary's adjustment, finding that the Provider did not establish a new medical residency training program, but rather was a new site for an existing program. The Board further found the Provider was not part of an affiliated group because there was no agreement in place. The Administrator declined to review.

*Alegent Health – Immanuel Med. Ctr. v. Wisconsin Phys. Serv.*, PRRB Hearing Dec. No. 2012 D16 (June 15, 2012), *declined to review*, CMS Adm'r Dec. (Aug. 1, 2012).

### DSH – Medicaid Fraction, Charity Days

The Board found that the Intermediary properly excluded New Jersey Charity Care Program (NJCCP) days from the Medicaid fraction of the Medicare Disproportionate Share Hospital (DSH) calculation for FYs 2000-2004. The CMS Administrator affirmed the Board's ruling.

*Ober Kaler DSH Charity Care Groups v. BlueCross BlueShield Ass'n/Highmark Medicare Servs. and Cahaba Gov't Benefit Admins.*, PRRB Hearing Dec. No. 2012-D17 (June 20, 2012), *aff'd*, CMS Adm'r Dec. (Aug. 15, 2012).

### Bad Debt – Indigency Documentation

The Board reversed the Intermediary's adjustment and found the Provider's bad debt supportable by adequate documentation. The Administrator reversed, finding the Provider's patient account histories did not constitute adequate documentation capable of verification of the Provider's indigency determinations and that accounts deemed charity accounts are not allowable as bad debts.

*Doctors Hosp. v. BlueCross BlueShield Ass'n/CGS Admins., LLC*, PRRB Hearing Dec. No. 2012-D18 (July 18, 2012), *rev'd*, CMS Adm'r Dec. (Sept. 11, 2012).

### Allocation Statistics – Laundry/Linen, Central Supply

The Board upheld the Intermediary's adjustments to the Providers' statistical bases for allocating Laundry/Linen and Central Supply. The Board held that, although prior approval by the Intermediary is not

necessary to support an alternative statistical basis for allocation, the Provider failed to support that its allocation basis was more accurate. The Administrator declined to review.

*HCR Manor Care 1999 Laundry and Central Supply Statistics Group v. BlueCross BlueShield Ass'n/Highmark Medicare Servs.*, PRRB Hearing Dec. No. 2012-D19 (July 19, 2012), *declined to review*, CMS Adm'r Dec. (Aug. 22, 2012).

## **Board Jurisdiction – Cost Not Claimed on Cost Report**

The Board held it did not have jurisdiction to entertain this appeal. It found the Provider failed to claim the physician malpractice costs on its cost report and that the Intermediary's inclusion of the costs for wage index purposes did not allow the costs to be considered claimed as allowable costs generally. The Board found that since this was the only issue appealed and it did not have jurisdiction under 42 U.S.C. § 1395oo(a), it did not have any discretionary authority under 42 U.S.C. § 1395oo(d) to exercise jurisdiction. The Administrator declined to review.

*John H. Stroger, Jr. Hosp. of Cook Co. v. BlueCross BlueShield Ass'n/Nat'l Gov't Servs., Inc.*, PRRB Hearing Dec. No. 2012-D20 (Aug. 1, 2012), *declined to review*, CMS Adm'r Dec. (Sept. 25, 2012).

## **Skilled Nursing Facility (SNF) Exception Request – Peer Group Data**

The District Court remanded this case for a determination of the effect of CMS's failure to remove misclassified costs from the data used to create the peer group used to process the Provider's exception request. The Board found insufficient evidence presented by the Provider to support that the peer group was improperly constructed. The Administrator declined to review.

*San Joaquin Comm. Hosp.-SNF v. BlueCross BlueShield Ass'n/ First Coast Servs. Options, Inc.*, PRRB Hearing Dec. No. 2012-D21 (Aug. 8, 2012), *declined to review*, CMS Adm'r Dec. (Oct. 2, 2012).

## **Allocation of Physician Costs Between Part A and Part B**

The Board found the Intermediary's allocation of the physician costs between Part A and Part B was improper. The Provider elected as a teaching hospital to be paid on a reasonable cost basis for its physician services in lieu of being paid under the physician fee schedule. Such basis requires that the physician compensation be allocated and that the allocation must be capable of substantiation. The Board held that in the absence of an allocation agreement, an allocation based on other hospitals' allocations may be applied, and that the Intermediary is to apply the average allowable Part B percentage of teaching hospitals in the state for that same cost reporting period. The Administrator declined to review.

*Lemuel Shattuck Hosp. v. BlueCross BlueShield Ass'n/Nat'l Gov't Servs., Inc.*, PRRB Hearing Dec. No. 2012-D22 (Aug. 10, 2012), *declined to review*, CMS Adm'r Dec. (Sept. 25, 2012).

## **DSH – Medicaid Fraction, Charity Days**

The Board found that the Intermediary properly excluded Colorado Indigent Care Program days from the Medicaid fraction of the Medicare Disproportionate Share Hospital (DSH) calculation for FYs 1991-2006. The CMS Administrator affirmed the Board's ruling.

*QRS 1991-2006 Colorado DSH/Gen. Assist. Days Group v. BlueCross BlueShield Ass'n/Trailblazer Health*, PRRB Hearing Dec. No. 2012-D23 (Sept. 6, 2012), *aff'd*, CMS Adm'r Dec. (Nov. 6, 2012).

## **IME and GME FTEs – Base Year Count**

The Board affirmed the Intermediary's adjustments. It found the Provider was not entitled to include the full-time equivalent (FTE) residents of another hospital in its base year count for the following reasons: (1) the Provider was not affiliated with the other hospital via an affiliation agreement; (2) the Provider failed to timely apply for additional FTEs as part of the redistribution process; (3) the Provider was neither a new facility nor located in a rural area, which are requirements for relief as a rural facility servicing a medically underserved population; and (4) the Provider was not entitled to relief under the temporary cap increase exception. The Administrator declined review.

*Swedish American Hosp. v. Wis. Phys. Serv.*, PRRB Hearing Dec. No. 2012-D24 (Sept. 6, 2012), *declined to review*, CMS Adm'r Dec. (Oct. 18, 2012).

## **Board Jurisdiction – Redistribution of Residency Slots**

The Board ruled that it did not have jurisdiction to review the issue appealed and dismissed the appeal. The issue in dispute was the accuracy of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provisions under section 422 related to the redistribution of the 1996 resident cap amount. The statute specifically prohibits appeal of this issue. The Administrator declined review.

*Bergen Reg. Med. Ctr. v. BlueCross BlueShield Ass'n/Novitas Solutions, Inc.*, PRRB Hearing Dec. No. 2012-D25 (Sept. 25, 2012), *declined to review*, CMS Adm'r Dec. (Nov. 20, 2012).