

CENTERS FOR MEDICARE AND MEDICAID SERVICES

Decision of the Administrator

In the case of:

**Crozer-Keystone Hospital Specific
2007 Wage Index Rural
Floor Group**

Provider

vs.

**Blue Cross and Blue Shield
Association**

Intermediary

Claim for:

**Medicare Reimbursement
Cost Year Ending: FYEs 2007**

**PRRB Dec. No. 2010-D3
Dated: October 20, 2009**

This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the Provider Reimbursement Review Board (Board) decision. The review is during the 60-day period mandated in §1878(f) (1) of the Social Security Act (Act) [42 USC 1395oo (f) (1)], as amended. The Provider submitted comments requesting that the Administrator reverse the Board's jurisdictional decision. The Administrator notified the parties of his intent to review the jurisdictional issue. The Provider submitted further comments. Accordingly, the Board jurisdictional decision is now before the Administrator for final administrative review.

Issue and Board Decision

The issue is whether the Board properly denied jurisdiction over the issue of whether CMS erred in calculating a budget neutrality adjustment to the Inpatient Prospective Payment System (IPPS) standardized amount to account for the effect of the rural floor on the wage index.

The Providers are challenging the Secretary's calculation and application of the budget neutrality adjustment rates for the operating costs which accounts for the rural floor on the IPPS wage index. The Providers contended that CMS erred in calculating a budget neutrality adjustment to the IPPS standardized amount to account for the effect of the rural floor on the wage index. The CMS calculation at

issue involves the final IPPS rates published in the *Federal Register* for FFY 2007. The Providers' requested the Board grant expedited judicial review (EJR). The Providers contended that the Board had jurisdiction over the appeal because it was filed from the Federal Register notice setting forth the final IPPS rates and the \$50,000 group amount in controversy has been met.

The Board found that it lacked jurisdiction over the appeal because review of the budget neutrality adjustment is precluded by the statute and the regulation under section 1886(d)(7) of the Social Security Act and 42 CFR 405.1804. Since jurisdiction over an appeal is a prerequisite to granting a request for an EJR, the Providers' request for EJR was denied. The Board, for purposes of administrative economy, in the event its jurisdiction determination was reversed, also determined that there were no facts in dispute and that the Board had no authority to decide the legal question of whether the budget neutrality/rural floor issue was valid.

Comments

The Providers requested that the Administrator review the Board's jurisdictional decision in this case. The Providers argued that the Board incorrectly determined that it did not have jurisdiction over the rural floor issue. The Providers requested that the Administrator take review and rule consistent with its prior decisions and noted that the Secretary has conceded this issue in other cases before the courts. The Providers requested that the case be remanded to the Board to be held in abeyance.

Discussion

The record furnished by the Board has been examined, including all correspondence, position papers and exhibits submitted by the parties. The Board's decision has been reviewed by the Administrator. All comments received after entry of the Board's decision have been made a part of the record and have been considered.

Section 1878 of the Social Security Act provides, in part, that the following criteria must be met for a provider of services to be eligible to request a hearing before the Board. In particular, Section 1878 states that:

- (a) Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board ... and (except as provided in subsection (g)(2)) any hospital which receives payments in amounts computed under subsection (b)

or (d) of section 1886 and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(1) such provider—

....

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1886,....

The Providers are challenging the Secretary's calculation and application of the budget neutrality adjustment rates for the operating costs under the inpatient prospective payment system. The budget neutrality adjustment accounts for the rural floor on the IPPS wage index which affects the rural floor on the wage index for the FFY 2007 IPPS rates.

After a review of the controlling statute, the Administrator finds that jurisdiction is properly found for these Providers over this issue. Accordingly, the jurisdictional decision of the Board is reversed. The Administrator also recognizes that the Board had, by letter dated April 4, 2008, originally held 251 appeals in abeyance including the appeal at issue in this case (PRRB Case No. 07-0793G). In light of the Administrator (as the Secretary's delegatee) finding jurisdiction is proper in this case, the Administrator also determines that the case shall be remanded to the Board for a determination of whether the April 4, 2008 ruling should again apply to this case, or whether the granting of expedited judicial review (or EJR) is most appropriate at this time.

Date: 12/21/09

/s/
 Michelle Snyder
 Acting Deputy Administrator
 Centers for Medicare & Medicaid Services