DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL

In the case of	**Claim for**
Blue Cross of Idaho (Appellant)	Medicare Advantage (MA) (Part C)
**** (Enrollee)	**** (HIC Number)
Blue Cross of Idaho (MA Organization (MAO))	**** (ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated July 14, 2009. The ALJ decision found that the enrollee required and received Medicare-covered skilled nursing and rehabilitation services at *** Care Center, a skilled nursing facility (SNF), from October 6, 2008 through January 22, 2009. The ALJ found that Blue Cross of Idaho, the Medicare Advantage plan in which the appellant was enrolled (the plan), was required to reimburse the enrollee $22,675.63 for costs the enrollee had paid for services rendered at the SNF during these dates of service. The Medicare Advantage Organization has asked the Medicare Appeals Council (Council) to review this decision.

Before the Council, the appellant has not contested the ALJ's finding that the enrollee received a covered level of skilled nursing and rehabilitation services during the dates of service at issue. Thus, the Council adopts this finding without further discussion. Rather, the appellant contends only the following two matters relating to effectuation of the ALJ decision: (1) that the ALJ erred in finding all dates of service covered, as both Medicare Part A and the plan provide for only 100 dates of covered SNF care but the total period at issue was 109 days; and (2) that the ALJ ordered reimbursement of the full amount paid out-of-pocket for the care, which did not take into considera-tion the Medicare or contractual rate (rather than the private

pay rate), nor did it consider the enrollee's required copayments under the plan.

For the reasons discussed below, the Council modifies the ALJ decision to clarify that only the first 100 days of skilled nursing facility care per benefit period are covered by Medicare and the plan, and that the plan is only obligated to pay *** Care Center the amount it would have paid for a pre-authorized enrollee's inpatient stay at such facility. The enrollee is responsible for a $300 copayment for the first 100 dates of service, all costs billed for the 101st through 109th day of care, and any incidental, non-covered costs billed by the facility.

LEGAL PROVISIONS

The regulation codified at 42 C.F.R. § 422.608 states that "[t]he regulations under part 405 of this chapter regarding MAC review apply to matters addressed by this subpart to the extent that they are appropriate." The regulations "under part 405" include the appeal procedures found at 42 C.F.R. part 405, subpart I. With respect to Medicare "fee-for-service" appeals, the subpart I procedures pertain primarily to claims subject to the Medicare, Medicaid and SCHIP Benefits Act of 2000 (BIPA) and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), 70 Fed. Reg. 11420, 11421-11426 (March 8, 2005. The Council has determined, until there is amendment of 42 C.F.R. part 422 or clarification by the Centers for Medicare & Medicaid Services (CMS), that it is "appropriate" to apply, with certain exceptions, the legal provisions and principles codified in 42 C.F.R. part 405, subpart I to this case.

A managed care organization offering an MA plan must provide enrollees with "basic benefits," which are all items and services covered by Medicare Part A and Part B available to beneficiaries residing in the plan's service area. 42 C.F.R. § 422.101(a). A plan may require that an enrollee receive services from network providers as a condition of coverage. 42 C.F.R. § 422.112. Each MA organization must provide, on an annual basis, and using standard terminology, the information necessary to enable CMS to provide current and potential beneficiaries the information they need to make informed decisions with respect to the available choices for Medicare coverage. 42 C.F.R. § 422.64.

Medicare Part A pays for up to 100 days of SNF care per benefit period. Section 1812(a)(2)(A) of the Social Security Act (Act).

The 2008 Evidence of Coverage (EOC) booklet for Blue Cross of Idaho likewise provides that an enrollee may receive up to 100 days of SNF care per benefit period. The EOC further states that an enrollee pays no co-payment for days 1-7 in the facility, a copayment of $25 per day for days 8-19 (a total of $300), and no copayment for days 20-100. Exh. 18 (EOC), at 28.

DISCUSSION

The Council agrees with Blue Cross of Idaho that coverage for skilled nursing facility services, under both Medicare Part A and the provisions of the plan, is limited to 100 days per benefit period. Thus, the ALJ erred in finding October 6, 2008 through January 22, 2009, a total of 109 dates of service, covered and reimbursable by the plan. The 100th day of coverage ended on January 13, 2009, and thus the plan is only financially obligated to cover the enrollee's SNF stay of October 6, 2008 through January 13, 2009. The enrollee (or her estate) is liable for the full cost of services billed for dates of service of January 14-22, 2009.

Moreover, the Council agrees that the ALJ erred in directing that Blue Cross of Idaho reimburse the enrollee for the exact dollar amount which her representative testified she had paid for the 109 dates of service at issue ($22,675.63). The Council notes that the network provider directory included in the claims file indicates that *** Care Center is a network provider for Blue Cross of Idaho. 2008 Provider Directory (Exh. 18), at 167. Thus, Blue Cross of Idaho and *** Care Center have a contractual relationship and presumably an established method for calculating the amount owed for SNF services furnished to enrollees of the plan. The ALJ may not override that contractual relationship by designating a different dollar amount which must be paid for the services rendered October 6, 2008 through January 13, 2009.

The Council further finds that the enrollee is required to pay a $300 copayment for days 8-19 in a skilled nursing facility. Thus, this is an additional financial obligation of the enrollee. Moreover, there are often charges on bills from skilled nursing facilities (such as beauty shop charges, miscellaneous non-medical items or services, etc.) which are not covered by Medicare or the plan. To the extent that the $22,675.63 includes charges for non-covered items, these also remain the responsibility of the enrollee.

Thus, the Council directs that, upon implementation, Blue Cross of Idaho should pay *** Care Center the contractual amount it would have paid for the enrollee's 100-day SNF stay from October 6, 2008 through January 13, 2009, had such stay been pre-authorized by the plan. *** Care Center should calculate the total amount of covered services billed for dates of service of January 14-22, 2009, add in a $300 copayment for covered inpatient days 8-19, and add in all non-covered incidental charges which were properly billable to the enrollee or her estate. *** Care Center should subtract this amount from the $22,675.63 already billed to and paid by the enrollee, and should refund the difference to the enrollee's estate.

DECISION

The Council adopts the ALJ's decision finding that the enrollee required and received a Medicare-covered level of skilled nursing services from *** Care Center from October 6, 2008 through January 13, 2009; thus, Blue Cross of Idaho is required to cover these dates of service. The enrollee is responsible for a $300 copayment for these covered dates of service and for the full cost of coverage for services rendered by the SNF on dates of service January 14-22, 2009. The enrollee is responsible for all incidental expenses not covered by Medicare throughout the entire 109 day stay. Finally, Blue Cross of Idaho is required to reimburse *** Care Center only the contractual, in-network rate for services provided to the enrollee, and *** Care Center is responsible for refunding the enrollee's estate all amounts paid over the amounts found to be the enrollee's responsibility in this decision.

MEDICARE APPEALS COUNCIL

/s/ Gilde Morrisson
Administrative Appeals Judge

/s/ Clausen J. Krzywicki
Administrative Appeals Judge

Date: November 20, 2009