

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: New Jersey Department of Human Services DATE:
Docket Nos. 78-54-NJ-HC
 79-14-NJ-HC MAY 8, 1980
Decision No. 98

DECISION

The New Jersey Department of Human Services requested reconsideration pursuant to 45 CFR Part 16, Subpart C (1978), of two disallowances of Federal financial participation (FFP) claimed under Title XIX of the Social Security Act for inpatient psychiatric services to individuals under age 21 provided by Mount Carmel Guild Hospital. The two cases have been considered jointly without objection by the parties. The sole issue presented is whether the FFP in question, totalling \$42,188, was properly disallowed on the ground that, at the time the services were provided, Mount Carmel Guild Hospital was not accredited by the Joint Commission on Accreditation of Hospitals (JCAH). There are no material facts in dispute and it does not appear as though an informal conference would be helpful. Accordingly, we have determined to proceed to decision based on the written record and briefs. For the reasons stated below, we conclude that the disallowances should be upheld.

Background

The Social Security Act Amendments of 1972, Public Law 92-603, Section 299B, authorized FFP in inpatient psychiatric services for individuals under age 21. These amendments redefined "medical assistance" to include payment of part or all of the cost of such services, Section 1905(a)(16) of the Act, and further provided that --

"inpatient psychiatric hospital services for individuals under age 21" includes only-- (A) inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;....
Section 1905(h)(1)

The HEW regulation implementing this statutory provision provided that FFP was available for these psychiatric services only on the condition that "[s]uch services are provided by an institution which is a psychiatric facility accredited by the Joint Commission on Accreditation of Hospitals." 45 CFR 249.10(b)(16)(ii) (1976); 41 FR 2198, January 14, 1976. Although this regulation did not take effect until after the

start of the first quarter in question here, the regulation merely restates the statutory requirement of JCAH accreditation, differing only by a liberal interpretation of the term "hospital" to include other kinds of facilities. This regulation was amended in 1978 to expand the interpretation of the term "hospital" still further by providing that FFP is available for services "provided by a psychiatric facility or by an inpatient program within such a facility, either of which is accredited by the Joint Commission on Accreditation of Hospitals." 43 FR 7986, February 27, 1978. (See, also, recodification at 43 FR 45176, September 29, 1978, 42 CFR 441.151.)

On December 6, 1973, the State entered into an agreement with Mount Carmel Guild Hospital for provision of inpatient and outpatient services. Based on this agreement, the State claimed FFP for inpatient psychiatric services provided by the hospital to individuals under age 21. An initial disallowance of \$10,302 in FFP claimed for calendar year 1976 was made by the Regional Commissioner, Social and Rehabilitation Service (SRS), Region II, reconsidered pursuant to 45 CFR 201.14, and upheld by the Administrator, Health Care Financing Administration (HCFA), on May 10, 1978. The State then elected, as permitted by the transfer of functions of March 6, 1978 (43 FR 9266-67), to have the HCFA disallowance reviewed by the Board under 45 CFR Part 16, Subpart C (1978). (Docket No. 78-54-NJ-HC.) A subsequent disallowance on January 16, 1979, by the Director, Medicaid Bureau, HCFA, of \$31,886 claimed for services provided by the hospital during calendar years 1974, 1975, and 1977, was also appealed to the Board. (Docket No. 79-14-NJ-HC.)

The basis stated for the disallowances was that, during the time period in question, Mount Carmel Guild Hospital did not have JCAH accreditation. The State does not dispute this and has further stated that the particular program providing the services was not accredited. Apparently, in September 1977, the hospital did seek JCAH accreditation as a Community Mental Health Center, and this was delayed since standards had not yet been developed. There has been no showing, however, that the hospital could not have sought accreditation as a psychiatric hospital or for its program for inpatient psychiatric services for individuals under age 21, either in 1977 or at an earlier date.

During reconsideration proceedings prior to the Administrator's decision and in the application for review in Docket No. 78-54-NJ-HC, the State's principal argument was that the disallowance of FFP on the basis that the Mount Carmel Guild Hospital was not JCAH accredited is a "semantic, rigid interpretation" of the statutory requirement, in conflict with the legislative intent. The State asserted that the purpose of the provision was simply to insure the quality of the care provided to eligible individuals and pointed out that the adequacy of the care provided by Mount Carmel had not been questioned and that, in fact, the State did receive FFP for services provided by the hospital to individuals over age 65. An Order to Show Cause issued by the Board Chairman stated that apparently Congress

had chosen a specific method of insuring the quality of care provided to individuals under age 21--JCAH accreditation. The Order further stated that the provision appeared to be unambiguous in this respect and that, in addition, the legislative history of the section supports the Agency's regulatory interpretation in that the Senate Report speaks of "care... provided in an accredited medical institution." S. REP. 92-1230, 92d Cong., 2d Sess. 57 (1972).

Based on these tentative conclusions, the Order directed the State to show cause why the disallowance should not be upheld on the ground that the applicable statute and regulations unambiguously require that FFP is available only for services provided in a JCAH accredited institution. In response to the Order, the State has argued that the FFP claimed here is allowable because delegation of authority to JCAH to approve facilities for Federal funding would be an unconstitutional delegation of authority to a private party and the statute should be read as requiring JCAH accreditation "or the equivalent."

In support of its position that the delegation of authority to JCAH is unconstitutional, the State has submitted an elaborate brief, citing numerous cases and law review articles. The issue appears to be complex, with some support for the position that such delegation is not unconstitutional where the private party is an independent, professional body guided not by self-interest but by extrinsic standards. See, Freedman, Delegation of Power and Institutional Competence, 43 U. CHI. L. REV. 307, 333 (1976). We do not, however, reach this issue, since we have determined that, even if we were convinced as to the merit of the State's argument, it would not afford a proper basis for reversal of the disallowances here.

Discussion

The disallowances appealed arise from the fact that Mount Carmel Guild Hospital did not, during the time period in question, have JCAH accreditation nor had it sought the appropriate JCAH accreditation. Mount Carmel does not claim that it was prejudiced by the accreditation requirement and, to the contrary, a hospital representative has stated a belief that, had the accreditation been sought, it would have been obtained. (Affidavit of Dr. Nancy Monti, Exhibit 12a to State's Response to Order.) Although the relevant provider agreement clearly indicated that the hospital did not have JCAH accreditation, the State has submitted no evidence that it either questioned the accreditation status or other qualifications of the hospital or sought clarification from HEW with respect to interpretation of the statutory requirement before incurring the costs for which FFP is claimed. If the State is injured through denial of FFP under these circumstances, it appears that that injury results from the State's own failures rather than from any prejudice it suffers because JCAH is a private body, and the State's constitutional argument should not be allowed to obscure that fact.

The State contends that, in light of the legislative history of sections of Public Law 92-603 relating to Medicare, the State was reasonable in reading Section 1905(h)(1), the statutory provision with respect to inpatient psychiatric services for individuals under age 21, as requiring "JCAH accreditation or the equivalent." First, we find the legislative history of the Medicare provisions unpersuasive in light of the unambiguous language of Section 1905(h)(1) and its specific history, cited above, which refers to "accredited medical institution." Moreover, the Medicare provision requires JCAH accreditation or that "requirements equivalent to such accreditation requirements as determined by the Secretary" be met. Section 1861(f) of the Act. The Agency, interpreting the Medicaid section more narrowly, has never determined any such "equivalent requirements." Thus, even if we were to agree with the State on the constitutional issue and interpret the statute to read as the Medicare provision does, we would be unable to find that Mount Carmel met applicable requirements. Mount Carmel may have met certification requirements for provision of services to individuals over age 65, but we are not prepared to say that those requirements are equivalent to what the applicable requirements might have been had the Secretary made a determination with respect to services to individuals under age 21.

HCFA has taken the position in this appeal that "a regulation that construed the term 'JCAH accreditation' to mean 'JCAH accreditation or its equivalent' would be inconsistent with Section 1905(h)(1) of the Act." (Respondent's Supplemental Motion to Affirm Determination of the Administrator, p. 2.) Even assuming, however, that HCFA could have adopted a broader reading, of the statute, the fact is that HCFA has not done so, either in its regulation or in response to this appeal. HCFA's interpretation is clearly not in conflict with the statute.

The State makes much of the point that there has been no question raised as to the quality of care provided by Mount Carmel Guild Hospital. FFP can not be provided on this basis, however. Requirements such as JCAH accreditation are a substitute for the administratively unfeasible alternative of an after-the-fact, case-by-case determination that quality care was indeed provided.

Conclusion

For the foregoing reasons, we conclude that these disallowances should be upheld.

/s/ Donald G. Przybylinski

/s/ Robert R. Woodruff

/s/ Frank Dell'Acqua, Panel Chairman