

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: West Virginia Department of Welfare  
Docket No. 80-182-WV-HC  
Decision No. 189

DATE: June 17, 1981

DECISION

Background

The West Virginia Department of Welfare (State), by letter dated December 3, 1980, sought review of a November 13, 1980 determination by the Acting Director, Bureau of Program Operations, Health Care Financing Administration (HCFA), to disallow \$156,817 in Federal financial participation (FFP) claimed by the State under Title XIX of the Social Security Act. The notification of disallowance stated that FFP was being denied for intermediate care facility (ICF) services provided by the Riverside Nursing and Convalescent Center (Riverside) between October 1, 1978 and June 30, 1979 because the facility did not have a valid provider agreement in effect during that time. The Board issued an Order to Show Cause on January 9, 1981. The Agency responded on January 22, 1981, and the State responded on January 29, 1981.

State's Arguments

The State admits that there was no valid ICF provider agreement in effect during the relevant period (Application for Review, p.1) but blames HCFA for the fact that the State continued to claim FFP.

According to the State, Riverside was both an ICF and a skilled nursing facility (SNF) providing SNF services under Title XVIII of the Social Security Act (Medicare) as well as Title XIX and:

The Title XIX SNF and ICF addendum agreements issued to this facility must be uniform with the Title XVIII agreement. Responsibility for certification of the facility as an SNF rests with the Secretary of the Department of Health and Human Services, not the State agency. (Application for Review, p.1)

The State asserts that the State survey agency recommended termination of Riverside as an SNF on April 2, 1979 but that HCFA's Regional Office did not act on the recommendation until April 15, 1980, during which time payment by the State to the facility continued and FFP was claimed. The State claims that the facility was subsequently recertified as an SNF and ICF on April 15, 1980 retroactive to December 13, 1979.

At the end of its response to the Order, the State urges that "if the Board affirms the intermediate care facility disallowance, it also require that the Medicare trust fund be charged for payments made to Riverside during the time when its skilled nursing facility status was not recertified."

Discussion

1. October 1, 1978 to April 2, 1979

The State has conceded that there was no ICF provider agreement with the facility for the period in question and has provided no evidence of certification. The ICF Certification and Transmittal form provided by the Agency also indicates that ICF certification expired September 20, 1978 and was renewed no earlier than December 1, 1979. The next action after the expiration of certification mentioned by the State is the survey agency's recommendation on April 2, 1979 that the SNF be terminated.

For this period, therefore, there is no basis whatsoever for the State to claim FFP for ICF services in the facility. The regulations clearly state that FFP is available only if there is a valid provider agreement in effect, based on certification (42 CFR 442.12). Neither of these essential elements was present after the ICF certification expired until the State certified the facility and executed a provider agreement.

2. April 2, 1979 to June 30, 1979

The State seems to be arguing that waiting for HCFA's Regional Office to rule on the appropriateness of terminating the SNF somehow had an impact on its ability to certify the ICF. But the State has not shown that the deficiencies noted as part of its recommendation to decertify the SNF were also considered ICF deficiencies. Conversely, the State has also not shown that standards pertaining only to ICF services were met during this period.

As was discussed in the Board's decision in Maryland Department of Health and Mental Hygiene, Decision No. 113, July 31, 1980, the responsibility for certifying (and decertifying) an ICF for Medicaid participation lies solely with the State (42 CFR 442.12). Two major types of services may be provided by nursing facilities participating in the Medicaid program - ICF and SNF services. Different standards are imposed for ICF and SNF services. The Regional Office of HCFA becomes involved in the Medicaid program through its role in certifying and decertifying facilities providing SNF care in the Medicare program. However, the Regional Office has no responsibility in the process of decertification of a facility for ICF services. The State, therefore, does not have to await any HCFA action before it severs an ICF facility from the Medicaid program.

Furthermore, according to the State, the survey agency recommended decertification of the SNF. Although it appears that certification was eventually restored, there is no evidence in the record to support a finding that the facility was certifiable during the period in question and that but for the Regional Office's presumed lack of action, the facility would have been certified. Therefore, FFP was properly disallowed for this period.

The Board does not have the authority to grant the State's request that we require that the Medicare trust fund be charged for certain payments. This appeal pertains only to a disallowance of FFP for ICF services and does not involve any SNF issues. Furthermore, the Board does not have any jurisdiction over Medicare matters (See 45 CFR 16.90).

Conclusion

For the reasons stated above, the disallowance of \$156,817 pertaining to the Riverside Nursing and Convalescent Center is upheld.

/s/ Donald F. Garrett

/s/ Alexander G. Teitz

/s/ Norval D. (John) Settle, Panel Chair