

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2020-D16

**PROVIDER –**  
St. Vincent Charity Medical Center

**LIVE HEARING HELD –**  
January 23, 2019

**PROVIDER NO. –**  
36-0037

**FISCAL YEARS –** 2010, 2011, 2012

**vs.**

**MEDICARE CONTRACTOR –**  
CGS Administrators

**CASE NOS. –** 15-2435, 15-2436,  
15-2437

## INDEX

|  | <b>Page No.</b> |
|--|-----------------|
| <b>Issue Statement .....</b>                                     | <b>2</b>        |
| <b>Decision.....</b>   | <b>2</b>        |
| <b>Introduction .....</b>  | <b>2</b>        |
| <b>Statement of Facts .....</b>                                  | <b>3</b>        |
| <b>Discussion, Findings of Facts and Conclusions of Law.....</b> | <b>5</b>        |
| <b>Decision .....</b>  | <b>9</b>        |

**ISSUE STATEMENT:**

1. Whether the Medicare Contractor's adjustments for disallowing pass-through costs and managed care payments associated with the Provider's operation of its pastoral care allied health education program were proper?
2. Whether the Medicare Contractor's proposed adjustment entries related to the Provider's operation of its pastoral care allied health education program were proper?<sup>1</sup>

**DECISION:**

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the Medicare Contractor properly disallowed the pass-through costs and managed care payments associated with the Provider's operation of its allied health education program on clinical pastoral care for fiscal years ("FYs") 2010, 2011, and 2012. As agreed to by the parties, the Board remands the second issue to the Medicare Contractor to proceed in a manner not inconsistent with the Board's ruling on the first issue.<sup>2</sup>

**INTRODUCTION:**

St. Vincent Charity Medical Center ("St. Vincent" or "Provider") is an acute care hospital located in Cleveland, Ohio.<sup>3</sup> The Medicare administrative contractor<sup>4</sup> assigned to the Provider is CGS Administrators ("Medicare Contractor"). The Medicare Contractor adjusted the Provider's cost reports for FYs 2010, 2011, and 2012 to disallow the allied health education costs associated with the Provider's clinical pastoral care education program ("CPE Program"). St. Vincent timely appealed those adjustments and has met the jurisdictional requirements for a hearing before the Board.

The Board conducted a consolidated live hearing on January 23, 2019. St. Vincent was represented by David Johnston, Esq. of Bricker & Eckler, LLP. The Medicare Contractor was represented by Joe Bauers, Esq. of Federal Specialized Services.

---

<sup>1</sup> Transcript ("Tr.") at 5. As noted at the hearing (*see* Tr. at 5-6), "It is the Board's understanding that the resolution of the first issue will dictate the outcome of the second issue and accordingly today's hearing will focus on the first issue. The Board will remand with respect to the second issue for the MAC to act consistent with the ruling on the first issue." *See also* Medicare Contractor's Consolidated Post Hearing Brief at 2 n.1 (Mar. 2, 2019) (stating "Because the parties stipulated that the resolution of the first issue will dictate the outcome of the second issue, the hearing focused solely on the first issue.").

<sup>2</sup> *See id.*

<sup>3</sup> Tr. at 8.

<sup>4</sup> Fiscal intermediaries ("FIs") and Medicare contractors ("MACs") will be referred to as Medicare contractors.

**STATEMENT OF FACTS:**

St. Vincent trains the residents of the CPE Program for board certification as chaplains<sup>5</sup> and states that it has done so since acquiring the hospital in 1996.<sup>6</sup> Beginning with FY 2010, the Medicare Contractor disallowed payments to St. Vincent for the CPE Program costs, finding that St. Vincent is not “the operator” of the CPE Program, as that term is used in 42 C.F.R. §§ 413.85(d) and (f) for purposes of Medicare payment on a reasonable cost basis.<sup>7</sup>

In this regard, the regulation at 42 C.F.R. § 413.85 sets forth the applicable standards for reimbursing the reasonable cost of “*approved* nursing and allied health educational activities” under the Medicare program.<sup>8</sup> Pursuant to § 413.85(c), the term “approved educational activities” is limited, in pertinent part, to programs “operated by providers” as defined in § 413.85(f):

*Approved education activities* means formally organized or planned programs of study of the type that:

- (1) Are **operated** by providers as specified in paragraph (f) of this section;
- (2) Enhance the quality of health care at the provider; and
- (3) Meet the requirements of paragraph (e) of this section for State licensure or accreditation.<sup>9</sup>

Section 413.85(f) sets forth the criteria for a provider to qualify as “the operator” of an allied health education program, stating:

(f) *Criteria for identifying programs operated by a provider.*

- (1) Except as provided in paragraph (f)(2) of this section, for cost reporting periods beginning on or after October 1, 1983, in order to be considered the **operator** of an approved nursing or allied health educational program, a provider must meet all of the following requirements:
  - (i) Directly incur the training costs.

---

<sup>5</sup> Tr. at 8.

<sup>6</sup> Provider’s Final Position Paper at 4 (Oct. 1, 2018). *Note:* For each of the three cases, the parties filed separate final position papers and the parties used FY 2012 under Case No. 15-2437 as the lead case. Accordingly, unless otherwise indicated, all citations the parties’ final position papers and exhibits refers to those filed in Case No. 15-2437.

<sup>7</sup> Medicare Contractor’s Consolidated Post Hearing Brief (Mar. 22, 2019) at 2-3.

<sup>8</sup> (Emphasis added.)

<sup>9</sup> 42 C.F.R. § 413.85(c) (bold emphasis added).

(ii) Have direct control of the program curriculum. (A provider may enter into an agreement with an educational institution to furnish basic academic courses required for completion of the program, but the provider must provide all of the courses relating to the theory and practice of the nursing or allied health profession involved that are required for the degree, diploma, or certificate awarded at the completion of the program.)

(iii) Control the administration of the program, including collection of tuition (where applicable), control the maintenance of payroll records of teaching staff or students, or both (where applicable), and be responsible for day-to-day program operation. (A provider may contract with another entity to perform some administrative functions, but the provider must maintain control over all aspects of the contracted functions.)

(iv) Employ the teaching staff.

(v) Provide and control both classroom instruction and clinical training (where classroom instruction is a requirement for program completion), subject to the parenthetical sentence in paragraph (f)(1)(ii) of this section.

(2) Absent evidence to the contrary, the provider that issues the degree, diploma, or other certificate upon successful completion of an approved education program is assumed to meet all of the criteria set forth in paragraph (f)(1) and to be the *operator* of the program.<sup>10</sup>

Section 413.85(e) explains that “CMS will consider an activity an *approved nursing and allied health education program* if the program is a planned program of study that is licensed by State law, or if licensing is not required, is accredited by the recognized national professional organization for the particular activity. Such national accrediting bodies include . . . the Association for Clinical Pastoral Education Inc. . . .”<sup>11</sup>

Finally, § 413.85(d) (2009) sets forth the general payment rules for “approved nursing and allied health education activities” and, in pertinent part, conditions payment to a provider on that provider being “the operator” the program for such activities:

(d) *General payment rules.* (1) Payment for a provider’s net cost of nursing and allied health education activities is determined on a reasonable cost basis, subject to the following conditions and limitations:

---

<sup>10</sup> (Emphasis added).

<sup>11</sup> (Emphasis added).

(i) An approved educational activity—

(A) Is recognized by a national approving body or State licensing authority as specified in paragraph (e) of this section;

(B) Meets the criteria specified in paragraph (f) of this section for identification as an **operator** of an approved education program.

(C) Enhances the quality of inpatient<sup>12</sup> care at the provider.

(ii) The cost for certain nonprovider-operated programs are reimbursable on a reasonable cost basis if the programs meet the criteria specified in paragraph (g)(2) of this section.

(iii) The costs of certain nonprovider-operated programs at wholly owned subsidiary educational institutions are reimbursable on a reasonable cost basis if the provisions of paragraph (g)(3) of this section are met.<sup>13</sup>

### **DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The dispute in these three cases centers on whether St. Vincent was the “operator” of the CPE Program during fiscal years 2010, 2011, and 2012 as that term is used in 42 C.F.R. § 413.85(f).

St. Vincent’s position is that it met all applicable criteria under 42 C.F.R. § 413.85 regarding its CPE Program (including, in particular, the requirement that it be the “operator” of the CPE Program) and that, therefore, it is entitled to receive Medicare reimbursement for the costs of the CPE Program.<sup>14</sup> St. Vincent asserts that the CPE Program meets the definition of “approved education activities” under § 413.85(b) for FYs 2010 through 2012 because this Program “enhanced the quality of healthcare at the provider” location and was “accredited” by the Association for Clinical Pastoral Education (“ACPE”) in compliance with § 413.85(e).<sup>15</sup> In making this assertion, St. Vincent recognizes that the ACPE accreditation of the CPE Program is in the name of and, as such, belongs to its home office organization, the Sisters of Charity Health System (“SCHS”), and that St. Vincent is one of three component sites for the CPE Program.<sup>16</sup> Notwithstanding, St. Vincent argues that it complied with § 413.85(f)(1) and met all of the criteria to be the “operator” of the CPE Program. In this regard, St. Vincent claims it possesses direct control and ultimate authority over all aspects of the CPE Program at St. Vincent, including direct control of the curriculum, collection of tuition, employment of the teaching staff, control of classroom instruction and clinical training, and responsibility for the day-to-day

<sup>12</sup> The regulation was amended in 2010 to read “Enhance [*sic* Enhances] the quality of *health* care at the provider.” 75 Fed. Reg. 50041, 50299, 50418 (Aug. 16, 2010) (emphasis added). The distinction is not material to the Board’s decision.

<sup>13</sup> (Bold emphasis added.)

<sup>14</sup> Provider’s Final Position Paper at 5.

<sup>15</sup> *Id.* at 8-9; Tr. at 9.

<sup>16</sup> See Provider’s Final Position Paper at 12. See also Tr. at 10-11. See also *id.* at 79 (confirming SCHS was home office organization for St. Vincent).

program operations.<sup>17</sup> In support of its position St. Vincent points to the fact that Dr. Rev. McGeeney, the ACPE supervisor,<sup>18</sup> is employed by St. Vincent<sup>19</sup> and spends 50 percent of his time on site at the St. Vincent facilities providing teaching, curriculum, and administrative services for the CPE Program.<sup>20</sup> Finally, St. Vincent alleges that, when the ACPE reviewed the accreditation for the CPE Program, ACPE contacted St. Vincent (not SCHS) and sent all findings related to the review to Dr. Rev. McGeeney.<sup>21</sup>

Finally, St. Vincent asserts that, even if the Board were to find that it does not meet the § 413.85(f)(1) criteria to be the “operator” of the CPE program, it met the requirements under § 413.85(f)(2) to be “assumed to meet all of the criteria set forth in paragraph (f)(1) and to be the *operator* of the program.” Specifically, St. Vincent asserts that it issues the certifications of completion for the CPE Program and that, therefore, pursuant to § 413.85(f)(2), it “is assumed to meet all of the criteria set forth in paragraph (f)(1) and to be the *operator* of the program.”<sup>22</sup>

The Medicare Contractor disagrees that St. Vincent is the operator of the CPE Program for FYs 2010 through 2012 because SCHS held the ACPE accreditation for the CPE Program and St. Vincent’s was simply one of three component sites for that Program.<sup>23</sup> In support of its position, the Medicare Contractor points out that St Vincent’s witness testified that a component site could not operate a CPE program independently of the system sponsored center.<sup>24</sup>

Additionally, the Medicare Contractor claims that St Vincent cannot be considered the operator of the CPE Program because it did not meet the each of the five criteria in 42 C.F.R. § 413.85(f)(1). Specifically, the Medicare Contractor points out 1) St. Vincent did not directly incur the training costs of the program because part of the payroll expenses of Dr. Rev. McGeeney were transferred to St. John’s Medical Center, another component site of the Program;<sup>25</sup> 2) some of the CPE Program expenses were approved by the Senior Vice President of Ministry and Mission at SCHS indicating that the CPE Program was operated by SCHS;<sup>26</sup> 3) St. Vincent did not have control of the program curriculum as the curriculum was shared by all the component sites;<sup>27</sup> and 4) St. Vincent did not control the administration of the Program as the Senior Vice President of Ministry and Mission at SCHS had the ultimate leadership position.<sup>28</sup>

At the outset, the Board notes that it is undisputed that ACPE accredited the CPE Program for FYs 2010, 2011, and 2012, as required by 42 C.F.R. § 413.85(e). However, the record is also clear that SCHS (not St. Vincent), held the ACPE accreditation<sup>29</sup> where SCHS was the “system

---

<sup>17</sup> Provider’s Final Position Paper at 11.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 12-13.

<sup>21</sup> Tr. at 68-71.

<sup>22</sup> Provider’s Final Position Paper at 7-8; Exhibit P-7.

<sup>23</sup> Medicare Contractor’s Consolidated Post Hearing Brief at 5-6.

<sup>24</sup> *Id.* at 6; Tr. at 37-38.

<sup>25</sup> Medicare Contractor’s Consolidated Post Hearing Brief at 6-7.

<sup>26</sup> *Id.* at 7-8.

<sup>27</sup> *Id.* at 8-9.

<sup>28</sup> *Id.* at 10-11.

<sup>29</sup> Exhibit C-5 at 9.

center”<sup>30</sup> for the CPE Program that was offered at the following three component sites: St. Vincent, St. John Medical Center, and Providence Hospitals.<sup>31</sup> The Provider’s witness defined a component site stating it “would be part of what we would call a system center in which there is a parent company that has several institutions and some of those institutions would like to get involved in conducting CPE programs and so one particular site is designated as the site that is responsible for accreditation and all other component sites report to that center . . . .”<sup>32</sup> Additionally the witness acknowledged that a component site could not operate a program independent of the system center.<sup>33</sup> Because SCHS was designated by the ACPE as the “system center” and St. Vincent was just one of several component sites of that “system center,” the Board finds that the CPE Program was not St. Vincent’s program but rather SCHS’ program. To this end, the ACPE accreditation certificate confirms that St. Vincent was accredited as a “component site” of the SCHS’s CPE Program.<sup>34</sup>

The Board also reviewed 42 C.F.R. § 413.85(f)(1) and finds that St. Vincent does not meet the criteria to be considered the “operator” of the CPE Program. Specifically, 42 C.F.R. § 413.85(f)(1)(ii) requires that a program “operator” have direct control of program curriculum. While St. Vincent alleges that it controlled and set the curriculum for the CPE Program, the record demonstrates that St. Vincent did not have final say with regards to curriculum modifications. Rather, as the Medicare Contractor pointed out, it is: (1) SCHS that approved any proposed modifications to the program curriculum; and (2) the Professional Advisory Group (“PAG”) that had final review and approval of program curriculum.<sup>35</sup> This is confirmed by the following written response that St. Vincent gave to the Medicare Contractor’s inquiry about who controls the curriculum for the CPE Program: “Review and control of the curriculum begins with the ACPE Supervisor who provides copies of any revisions to the curriculum to the Vice Presidents of Missions and Ministry *for approval and finally is approved* by the PAG representatives of both Medical Centers.”<sup>36</sup> The Board notes that the PAG is composed of members from the component sites, the community, the system center and other stakeholders. St. Vincent’s representation on the PAG was significantly less than half of its members. As such the Board concludes that St. Vincent did not have direct control of program curriculum as it did not control changes made to the curriculum.

Sections 413.85(f)(1)(i), (iii), (iv) and (v) also specify that, in order to be the program “operator,” the provider must directly incur the training costs, employ the teaching staff, and control the

---

<sup>30</sup> Tr. at 36-37.

<sup>31</sup> Exhibit C-5 at 6-7.

<sup>32</sup> Tr. at 36-37.

<sup>33</sup> *Id.* at 38.

<sup>34</sup> See Exhibit P-8 (copy of the accreditation certificate that reads, in pertinent part: “This is to certify that **Sisters of Charity Health System** St. Vincent Charity Hospital-Cleveland, OH (component site).” (the bolded text is roughly double the font size of the other quoted text in the original)).

<sup>35</sup> Tr. at 201-205; 221-222. See also Exhibit C-11 at 9. The Medicare Contractor points out that System centers are required to have a PAG in order to meet ACPE standards. See Medicare Contractor’s Final Position Paper at 12.

<sup>36</sup> Exhibit C-11 at 9 (emphasis added). See also Tr. at 222-24; Exhibit C-6 at 12 (stating: “The ACPE educational program is under the Senior Vice President for Ministry and Mission, Sr. Rosemarie Carfagna, OSU. Sr. Rosemarie [Carfagna] and Rev. Dr. Robert McGeeney plan the departmental budget and oversee the long-term viability of the ACPE program within SCHS.”); Exhibit C-6 at 14 (listing members of the PAG and stating “[t]he PAG evaluates *curriculum*, student success and all other aspects of the program for the administrations of St. Vincent Charity Medical Center and St. John Medical Center.” (emphasis added)).

administration, classroom instruction, clinical training, and day-to-day operations of the program. For the fiscal years under appeal, Dr. Rev. McGeeney, was both the *SCHS* ACPE System Supervisor as well as the St. Vincent ACPE Supervisor<sup>37</sup> and was responsible for activities such as recruiting students, preparing curriculum, classroom training, and ensuring ACPE standards were met. Dr. Rev. McGeeney also reported to the *SCHS* Vice President of Mission and Ministry, Sr. Rosemarie Carfagna, indicating control was with the *SCHS*.<sup>38</sup> The CPE Program Handbook represents the written policy for the CPE Program and supports this finding as it states “[t]he ACPE educational program is under the Senior Vice President for Ministry and Missions, Sr. Rosemarie Carfagna, OSU. Sr. Rosemarie [Carfagna] and Rev. Dr. Robert McGeeney plan the departmental budget and oversee the long-term viability of the ACPE program within *SCHS*.”<sup>39</sup> Additionally, while St. Vincent recorded all the CPE Program tuition revenue and expenses (*e.g.*, Dr. Rev. McGeeney’s salary, resident stipends, travel, membership fees, etc.) on its books, it did allocate a portion of the net expenses to St. John Medical Center, through intercompany allocations,<sup>40</sup> resulting in both St. Vincent and St. John incurring the training cost and it is unclear if the home office also claimed a portion of Rev. McGeeney’s salary for his role as *SCHS* ACPE System Supervisor.<sup>41</sup> While St. Vincent asserts this structure meets the requirements of 42 C.F.R. § 413.85(f)(1)(i), (iii), (iv) and (v) the Board disagrees because: (1) the handbook and organization structure clearly show *SCHS* is ultimately responsible for the CPE Program; and (2) St. Vincent and St. John Medical Center share the training costs of the CPE Program.

Finally, the Board disagrees with St. Vincent’s assertion that, based on 42 C.F.R. § 413.85(f)(2), St. Vincent is “assumed” to operate the CPE Program because it issues the certificates of completion. This regulation states “[*absent evidence to the contrary*, the provider that issues the degree, diploma, or other certificate upon successful completion of an approved education program is assumed to meet all of the criteria set forth in paragraph (f)(1) of this section and to be the operator of the program.” In this case, the certificate does not clearly state that St. Vincent was the issuer of the certification. In this regard, the Board notes that the sample certificate reads in pertinent part:

[Name of Graduate]  
Has Successfully Completed an ACP Residency (Four Units)  
Of  
CLINICAL PASTORAL EDUCATION  
At  
St. Vincent Charity Medical Center  
August 11, 2011<sup>42</sup>

It was signed by “Rev. Robert J. McGeeney, Jr., D. Min., ACPE Supervisor” without identifying the organization for whom Rev. McGeeney was signing and contained the footer “Program

---

<sup>37</sup> See *infra* note 43.

<sup>38</sup> Exhibit C-6 at 18.

<sup>39</sup> *Id.* at 12.

<sup>40</sup> Tr. at 162-165.

<sup>41</sup> See *infra* note 43.

<sup>42</sup> Exhibit P-7.

Accredited by The [ACPE].”<sup>43</sup> Further, there is “evidence to the contrary” because, as discussed *supra*, the evidence demonstrates that SCHS is the operator of the CPE Program since SCHS both holds the accreditation for the CPE Program and has overall control of the CPE Program. Notwithstanding the Board reviewed the samples of evaluations issued to CPE Program residents that St. Vincent submitted post-hearing at the request of the Board.<sup>44</sup> An evaluation was issued to each resident upon completion of a unit in the CPE Program at the St. Vincent component site. These evaluations were signed by “Robert J. McGeeney, Jr., ACPE Supervisor” and each contained a “Description of the Program” with the most recently issued (dated August 14, 2012) reading:

[Insert Graduate’s Name] participated in a full-time unit of accredited ACPE *conducted at the Sisters of Charity Health System (SCHS)* – Cleveland Component. Students were placed at St. Vincent Charity Medical Center (SVCMC), Mercy Medical Center (MMC) and St. John Medical Center (SJMC). This unit of ACPE was supervised by Rev. Robert J. McGeeney, Jr. D.Min, a certified ACPE Supervisor.”<sup>45</sup>

The language in the evaluations submitted post-hearing supports the Board’s finding that the CPE Program is operated by SCHS and that St. Vincent is a component site of that SCHS program.

In summary, while there is no question St. Vincent played a significant (if not dominant) role in the CPE Program during FYs 2010, 2011 and 2012, the evidence is clear that St. Vincent did not hold the accreditation for the CPE Program and did not meet all of the requirements as outlined in 42 C.F.R § 413.85(f)(1) to be considered the “operator” of the CPE Program. Accordingly, the Board finds that the Medicare Contractor properly disallowed the costs associated with the CPE Program for FYs 2010, 2011, and 2012.

### **DECISION AND ORDER:**

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the Medicare Contractor properly disallowed the pass-through costs and managed care payments associated with the St. Vincent’s allied health education program on clinical pastoral care for FYs 2010, 2011, and 2012. As agreed to by the parties, the Board remands the second issue to the Medicare Contractor to proceed in a manner not inconsistent with the Board’s ruling on the first issue.<sup>46</sup>

---

<sup>43</sup> *Id.* Rev. McGeeney essentially embodied the core of the CPE Program and operated at both the SCHS level and at the component level at both St. Vincent and St. John. As a result, it is unclear in what capacity Rev. McGeeney was signing as “ACPE Supervisor” as the organization chart for SCHS listed Rev. McGeeney as the “ACPE System Supervisor” and “ACPE Supervisor” and Rev. McGeeney is listed as the “ACPE Supervisor” at St Vincent. Exhibit C-6 at 2, 11, 18-19. *See also* Tr. at 50-51, 71, 215-216. Further, it is unclear if any portion of Rev. McGeeney’s salary was posted at SCHS. *See* Tr. at 119.

<sup>44</sup> Provider’s Consolidated Post Hearing Submission, Exhibits B, C, D (Mar. 8, 2019).

<sup>45</sup> *Id.* (emphasis added). The Board notes that on many of the evaluations Mercy Medical Center was not included as a site where students were placed.

<sup>46</sup> *See supra* note 1.

**BOARD MEMBERS PARTICIPATING:**

Clayton J. Nix, Esq.  
Charlotte F. Benson, C.P.A.  
Gregory H. Ziegler, C.P.A.  
Robert A. Evarts, Esq.  
Susan A. Turner, Esq.

**FOR THE BOARD:**

8/14/2020

**X** Clayton J. Nix

---

Clayton J. Nix, Esq.

Chair

Signed by: Clayton J. Nix -A