



STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
11 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0011

JOHN ELIAS BALDACCI
GOVERNOR

JOHN R. NICHOLAS
COMMISSIONER

TO: John R. Nicholas, Commissioner
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333

In Re: Penobscot Valley Hospital—Appeal of the Department’s method by which SFY 2005 prospective interim payment (PIP) to Penobscot Valley Hospital was calculated

RECOMMENDED DECISION

An administrative hearing was held on January 5, 2005, at Bangor, Maine in the case of Penobscot Valley Hospital before Michael L. LeBlanc, Administrative Hearing Officer. The Hearing Officer’s jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services. The hearing record was held open until January 14, 2005, to receive closing and rebuttal arguments from each party.

ISSUE PURSUANT TO ORDER OF REFERENCE:

Pursuant to an Order of Reference dated October 26, 2004, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issue:

Was the Department’s method by which SFY 2005 prospective interim payment (PIP) to Penobscot Valley Hospital calculated correct pursuant to promulgated rules and law? See, Exhibit HO-2.

APPEARING ON BEHALF OF APPELLANT:

Michael A. Duddy, Esq.
Laurie Boxer-Macomber, Esq.
David A. Shannon
Ralph A. Pascal, Jr.

APPEARING ON BEHALF OF AGENCY:

Thomas C. Bradley, AAG
Susan MacKenzie
Constance V. Warren

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Notice of Hearing, dated 11/3/04
- HO-2. Order of Reference, dated 10/26/04
- HO-3. Hearing Report, dated 10/20/04
- HO-4. Entry of appearance by Attorney Bradley
- HO-5. Entry of appearance by Attorney Duddy
- HO-6. Request for pre-hearing conference, dated 12/3/04

Department Exhibits:

- DHHS-1. Correspondence dated 5/30/03 from David A. Shannon to John Bouchard and enclosed Medicare Cost Report for Penobscot Valley Hospital dated 12/31/02
- DHHS-2. Correspondence dated 11/20/03 from John Bouchard to Dave Shannon and enclosed Interim Audit Settlement for 1/1/02 through 12/31/02
- DHHS-3. Correspondence dated 6/1/04 from David A. Shannon to John Bouchard and enclosed Medicare Cost Report for Penobscot Valley Hospital dated 12/31/03
- DHHS-4. Correspondence dated 7/2/04 from Robert G. Boschen, Jr. to David A. Shannon and enclosed SFY 2005 PIP Worksheet
- DHHS-5. Notice to Interested Parties dated 12/3/04 from Christine Gianopoulos and adopted Chapter III, Section 45, Principles of Reimbursement, Hospital Services, of MaineCare Benefits Manual
- DHHS-6. Chapter III, Section 45, Principles of Reimbursement, Hospital Services, of MaineCare Benefits Manual
- DHHS-7. Correspondence dated 7/15/04 from David A. Shannon to Robert G. Boschen, Jr. and enclosed calculations
- DHHS-8. Correspondence dated 9/15/04 from Robert G. Boschen, Jr. to David A. Shannon
- DHHS-9. Correspondence dated 9/24/04 from David A. Shannon to Gilbert M. Bilodeau
- DHHS-10. Correspondence dated 10/6/04 from Gilbert M. Bilodeau to David A. Shannon
- DHHS-11. Correspondence dated 10/15/04 from David A. Shannon to Chris Gianopoulos
- DHHS-12. Hearing Report dated 10/20/04
- DHHS-13. Order of Reference dated 10/26/04
- DHHS-14. Closing arguments from Department, dated 1/12/05
- DHHS-15. Rebuttal arguments from Department, dated 1/14/05

Appellant Exhibits:

- PVH-1. Notice to Interested Parties dated 1/26/05 from Christine Zukas-Lessard and adopted Chapter III, Section 45, Principles of Reimbursement, Hospital Services, of MaineCare Benefits Manual
- PVH-2. Notice of Agency Rulemaking effective 8/15/04 and adopted Chapter III, Section 45, Principles of Reimbursement, Hospital Services, of MaineCare Benefits Manual
- PVH-3. State Fiscal Year 2005 PIP Worksheet
- PVH-4. Correspondence dated 8/13/04 from David A. Shannon to Robert Boschen and enclosed worksheets
- PVH-5. Curriculum Vitae of Ralph A. Pascale, Jr.

- PVH-6. Correspondence dated 5/28/03 from Ralph A. Pascale, Jr. to David Shannon and enclosed Medicare Cost Report
- PVH-7. Correspondence dated 5/28/04 from Ralph A. Pascale, Jr. to David Shannon and enclosed Medicare Cost Report
- PVH-8. State Fiscal Year 2005 PIP Worksheet
- PVH-9. Closing arguments of Penobscot Valley Hospital, dated 1/12/05
- PVH-10. Rebuttal arguments of Penobscot Valley Hospital, dated 1/13/05

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given timely and adequately. Penobscot Valley Hospital (“PVH”) made timely appeal.
2. PVH is an Acute Care Critical Access Hospital, within the meaning of MaineCare Benefits Manual, Chapter III, Section 45.04, and is located in Lincoln, ME.
3. The system used by the Department to reimburse provider hospitals for services provided to MaineCare eligible patients consists of three steps:
 - (a) First, the Department estimates the total amount of MaineCare reimbursement that it will ultimately be liable to pay to the hospital for that State Fiscal Year (“SFY”). The Department pays that amount to the provider hospital through fifty-two (52) equal weekly periodic interim payments (“PIP”). The SFY is July 1st through June 30th.
 - (b) Second, after receipt of the provider’s As Filed (but un-audited) Medicare Cost Report, the Department issues an Interim MaineCare Settlement Report based on the Medicare Cost Report and MaineCare claims information accumulated by the Department over that fiscal year. The Medicare Cost report must be filed by the provider hospital five months after the close of its fiscal year. When the Department issues its Interim MaineCare Settlement Report, the difference between the PIP and the interim settlement amount is settled.
 - (c) Third, the Medicare program audits the As Filed Medicare Cost Report submitted by the provider hospital, and issues a Medicare Notice of Program Reimbursement and Audited Cost Report to the provider and to the Department. At this point, the Department issues a Final MaineCare Settlement Report, settling any differences between the final amount due and the interim settlement amount paid.
4. PVH’s fiscal year is January 1st through December 31st. Of the approximately forty-one (41) hospitals in Maine, approximately eight (8) others besides PVH have a fiscal year ending (“FYE”) December 31st.
5. The PIP for each of the forty-one (41) hospitals is determined and paid for the SFY.
6. PVH’s As Filed Medicare Cost Report for its FYE 2002 is dated May 30, 2003, and was received by the Department on June 4, 2003. The Department issued its Interim MaineCare Settlement Report on November 20, 2003.

7. PVH's As Filed Medicare Cost Report for its FYE 2003 is dated June 1, 2004, and was received by the Department on June 3, 2004. As of the hearing date, the Department had not yet issued an Interim MaineCare Cost Settlement Report.
8. The Department's Division of Audit issues the Interim MaineCare Cost Settlement Report. In issuing the interim report, the Department takes information from the As Filed Medicare Cost Report and from the Department's Maine MaineCare Information System ("MMIS").¹ In developing the Interim MaineCare Cost Settlement Report, certain cost not allowed by Medicare, but allowed by MaineCare must be added, such as hospital-based physicians costs.
9. The Department's Bureau of Medical Services determines the PIP. In determining PVH's PIP for FY 2005, the Department used the Interim Cost Settlement Report dated November 23, 2003. The Department began its determination on PVH's SFY 2005 PIP during March 2004, and finished in April 2004. The Department provided PVH with notice of its FY 2005 PIP on or about July 2, 2004.

RECOMMENDED DECISION:

The Department's method by which SFY 2005 prospective interim payment (PIP) to Penobscot Valley Hospital **was calculated correctly** pursuant to promulgated rules and law.

REASON FOR RECOMMENDATION:

There are two major issues to be resolved in this appeal. First, the applicable MaineCare policy must be identified. There is no dispute that the policy governing the calculation of PIP for acute care critical access hospitals is contained in MaineCare Benefits Manual, Chapter III, Section 45.04. However, that section was thrice revised during 2004, with certain relevant portions twice revised retroactive to April 1, 2004. The three promulgation dates at issue are January 26, 2004, August 15, 2004, and December 4, 2004.

The following was promulgated on January 26, 2004, and was the effective policy when the Department determined PVH's PIP for SFY 2005:

45.04-1 Prospective Interim Payment

The Department of Human Services' total annual PIP obligation to the hospitals will be the sum of MaineCare's obligation of the following: inpatient services + outpatient services + days awaiting placement + hospital based physician + graduate medical education costs. Third party liability payments are subtracted from the PIP obligation.

These computed amounts are calculated as described below:

A. Inpatient Services

The total MaineCare inpatient operating costs from the most recent as-filed cost report, inflated forward to the current year.

¹ The Department has since begun using the Maine MaineCare Decision Support System ("MMDSS") to process MaineCare claims. However, during the period at issue here, the MMIS was the system used to process MaineCare claims.

B. Outpatient Services

MaineCare outpatient costs inflated to the current year using the most recent as-filed cost report.

C. MaineCare Member Days Awaiting Placement at a Nursing Facility and NF Services Provided to a Member in a Swing-bed Reimbursement

Reimbursement will be made prospectively at the estimated statewide average rate per member day for NF services. The Department shall adopt the prospective statewide average rates per member day for NF services that are specified in the Principles of Reimbursement for Nursing Facilities, MaineCare Benefits Manual Chapter III, Section 67. The average statewide rate per member day shall be computed based on the simple average of the NF rate per member day for the applicable State fiscal Year(s) and prorated for a hospital's fiscal year.

D. Adjustments

MaineCare's share of hospital based physician + graduate medical education costs are taken from the most recent hospital fiscal year end MaineCare cost report as filed with DHS Division of Audit, inflated to the current year.

45.04-2 Interim Volume Adjustment

The hospital may request in writing, or the Department may initiate, a comparison of MaineCare claims data submitted in the first 150 days of the payment year to the projected number of discharges used in calculating the PIP. If there is a difference of at least 5% between the actual MaineCare inpatient volume and prospectively estimated MaineCare inpatient volume, an adjustment may be made to the PIP using actual discharge data. An adjustment to the MaineCare outpatient component may be made at the same time using current outpatient cost to charge ratios.

45.04-3 Year End Interim Settlement

The Department of Human Services' year end interim settlement with a hospital is calculated using the same methodology as is used when calculating the PIP, except that the data sources used will be the hospital's as-filed cost report and MaineCare paid claims history for the year for which reconciliation is being performed.

45.04-4 Final Settlement

The Department of Human Services' final settlement with a hospital is calculated using the same methodology as is used when calculating the PIP, except that the data sources used will be the hospital's audited cost report from the Medicare fiscal intermediary and MaineCare paid claims history for the year for which settlement is being performed.

The policy promulgated August 15, 2004, changed, in part, Sections 45.04-1(A) & 45.04-1(B) effective April 1, 2004, to 101% of inpatient and outpatient operating costs, retaining the language, “*from the most recent as-filed cost report.*”

The policy promulgated December 4, 2004, maintained effective April 1, 2004, the 101% of inpatient and outpatient costs, but changed the language to, “*from the most recent interim cost-settled report, as issued by DHHS Division of Audit.*”

It is concluded that the policy promulgated January 26, 2004, is the appropriate policy to consider in reaching a decision on the instant appeal. It is the only policy that was in effect at the time the PIP calculations under appeal were performed. It is noted that the subsequent policy revisions referencing 101% of inpatient and outpatient costs are retroactive to April 1, 2004. However, The PIP for all forty-one (41) of the hospitals was already determined by the time the August 15, 2004 policy revisions were promulgated. It is concluded that these revisions were not intended to require the Department to re-calculate the PIP for all forty-one (41) hospitals. The 101% of inpatient and outpatient costs provisions are applicable to the subsequent interim and final cost settlement reports, which must be done using the same methodology as the PIP, but using data sources for the hospital’s fiscal year at issue. The following clarifies this interpretation:

PVH’s FYE 2004 covers the period January 1, 2004 through December 31, 2004. By May 31, 2005, PVH will submit its As-Filed Medicare Cost Report for FYE 2004. Subsequently, the Department will issue an Interim MaineCare Cost Settlement Report for PVH’s FYE 2004. In doing so, policy will (as is currently promulgated) require that 100% of PVH’s inpatient and outpatient costs be reimbursed for the period January 1, 2004 through March 31, 2004, and that 101% of PVH’s inpatient and outpatient costs be reimbursed for the period April 1, 2004 through December 31, 2004. Additionally, the 101% of cost method will need to be utilized in determining PVH’s PIP for SFY 2006.

The second issue is the meaning of the term “*the most recent as-filed cost report.*” The Department argues that it means, and has historically been interpreted to mean, “the most recent interim MaineCare cost settlement report.” PVH argues that “as-filed cost report” has always meant “as-filed Medicare cost report.” The Hearing Officer agrees that the term “as-filed cost report” has always meant, “as-filed Medicare cost report.” However, the Hearing Officer is persuaded that for two reasons the term “the most recent as-filed cost report,” within the meaning of §45.04, means the most recently issued interim MaineCare cost report. First, the Hearing Officer is persuaded by the credible testimony of the Department’s witnesses that the term has always been interpreted so. Second, and more importantly, there is absolutely no dispute that, in order to accurately compute the PIP, the as-filed Medicare cost report must be revised using methodology essentially similar to that used to determine the interim MaineCare cost settlement report. Therefore, there is really no dispute that the work resulting in an interim MaineCare cost settlement report must be done in order to determine the PIP. The dispute is whether the Department should have been required to issue an interim MaineCare cost settlement report for PVH’s FYE 2003, and then used that interim MaineCare cost settlement report to compute PVH’s SFY 2005, all during June 2004.

According to the Department’s witnesses, it takes the Division of Audit two (2) to three (3) months to issue the interim MaineCare cost settlement reports for all nine (9) hospitals that have

a FYE December 31st; and takes the Bureau of Medical Services approximately two (2) months to calculate the PIP after receiving the interim MaineCare cost settlement reports. The Department admits that its representatives also perform other duties during these periods. According to PVH's witnesses, it took at least two (2) people 3 ½ hours to calculate a PIP using PVH's FYE 2003 as-filed Medicare cost report, although it agrees it did not use the Department's MMIS as a data source. PVH argues its own data source with respect to MaineCare claims is similar to the Department's. Without a comparison of the Department's ultimate interim MaineCare cost settlement report to the figures that PVH proposes for the PIP to determine accuracy, the Hearing Officer is unable to reach a solid conclusion on a reasonable amount of time to convert an as-filed Medicare cost report into a PIP. The Hearing Officer does suggest that the approximate twenty (20) working days contained in the month of June does seem to be a tight squeeze to calculate the PIP for the nine (9) hospitals with fiscal years ending December 31st. However, if the Commissioner disagrees, it is recommended that the Commissioner conclude that the Department's method of determining PVH's PIP was incorrect because the Department did not use PVH's As-Filed Medicare Cost Report for FYE 2003. Otherwise, it is recommended that the Commissioner affirm the Department's PIP for PVH as issued on July 2, 2004.

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS WITHIN TWENTY (20) DAYS OF RECEIPT OF THIS RECOMMENDED DECISION. THIS TIME FRAME MAY BE ADJUSTED BY AGREEMENT OF THE PARTIES. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

Dated: March 14, 2005

Signed: _____
Michael L. LeBlanc
Administrative Hearing Officer
Office of Administrative Hearings

cc: David A. Shannon, CFO, Penobscot Valley Hospital, P O Box 738, Lincoln, ME 04457
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