Of late, several affiliated facilities have felt compelled to place their Emergency Department (ED) Physicians services contract out for bids on an annual or semi-annual basis. We believe that this behavior is premised on a fundamental misunderstanding of a section of the Centers for Medicare and Medicaid Services (CMS) Publication 15-1 § 2109.3, which reads, part, “...evidence that the provider explored alternative methods for obtaining emergency physician coverage before agreeing to physician compensation for availability services”.

That publication includes seven mandatory elements of documentation in submitting ED Physician Availability costs. They are:

1) The written Medicare allocation agreement
2) A signed copy of the contract between the hospital and the physician(s)
3) A permanent record of payments to physicians
4) A record of the amount of time the physician was physically present on hospital premises
5) A permanent record of all patients (Medicare and non-Medicare) treated, copies of the physician's bills, record of imputed charges;
6) Schedule of physician charges, and,
7) Evidence that the provider explored alternative methods for obtaining emergency physician coverage before agreeing to physician compensation for availability services

It is, therefore, the seventh element that has inspired the suggestion that a contract for ED Physician services must be frequently offered for competitive bid to demonstrate compliance with the documentation requirements.

We contend that this is not the case.

In the Provider Reimbursement Review Board (PRRB) Hearing Decision for Bonner General Hospital vs. Intermediary (cited in Appendix C), the finding includes the following: “The Board also notes that for item 7, the policy manual at § 2109.3A states that “[i]t is not necessary for a provider to demonstrate that it explored alternative methods for obtaining emergency physician coverage annually.”

The policy manual language is provided here (emphasis added):

<table>
<thead>
<tr>
<th>2109.3</th>
<th>Allowability of Emergency Department Physician Availability Services Costs.</th>
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<tbody>
<tr>
<td></td>
<td>Emergency department physician availability services costs will be allowable only in special circumstances, as follows:</td>
</tr>
</tbody>
</table>
A. No Feasible Alternative Way to Obtain Physician Coverage is Available. In order for physician availability services costs to be allowable, the provider must demonstrate that it explored alternative methods for obtaining physician coverage but was unable to do so. An alternative might include negotiating a straight fee-for-service arrangement. Evidence of such an effort could consist of advertisements for emergency physicians, to be compensated on a fee-for-service basis, placed in appropriate professional publications. It is not necessary for a provider to demonstrate that it explored alternative methods for obtaining emergency physician coverage annually. The requirement is applicable prior to the renegotiation of expiring arrangements or the initiation of new arrangements for physician coverage of the emergency department.

Source: Centers for Medicare and Medicaid Services Publication 1-1, Section 2109: Costs Related to Patient Care

Summary:

Critical Access Hospitals value their ability to include ED Physician Availability in their Medicare Cost Report and receive equitable reimbursement for that expenditure. Accordingly, administrative and financial leaders at these facilities are meticulous in attending to the requirements associated with this important consideration. One such requirement, exploration of alternative methodology for provision of the aforementioned services, has been interpreted as requiring a periodic competitive bidding process. It is the author’s considered opinion, based on specific language in CMS publications, that it is not a condition of participation in the program to initiate a competitive bidding process when the hospital has established and maintains an appropriate contractual relationship for provision of the services and documents compliance with the other six provisions listed in the Publication.

Of course, validation of this contention is oftentimes specific to the interpretation of the facility’s Medicare intermediary. A prudent administrator would be well advised to seek the counsel of his/her CFO and the intermediary for the facility.
Appendix A

Excerpts from Publication 1-1, Section 2109

The publication explains the rationale for inclusion of physician availability services in the cost report as follows (2109.1):

“Wide variations can occur in the utilization of hospital emergency department services and hospitals cannot always schedule physician staffing at a level commensurate with the actual volume of services rendered. As a result, emergency department physicians may spend a portion of their time in an availability status awaiting the arrival of patients. Alternatively, hospitals may need to arrange for emergency department physician coverage for evenings, weekends or holidays, when staff or community physicians are not available. Since these periods frequently generate inadequate physician revenue through charges for professional services due to lower utilization, hospitals may have to offer physicians supplemental compensation or minimum compensation guarantees to secure coverage of emergency departments.

When emergency department physicians are compensated on an hourly or salary basis or under a minimum guarantee arrangement (§2109.2E) providers may include a reasonable amount in allowable costs for emergency department physician availability services subject to limitation through the application of Reasonable Compensation Equivalents (RCEs). Availability costs will be recognized only in the emergency department of a hospital, and only as described in this section.”

Physician Availability Services is defined as follows (2109.2):

“Physician availability services consist of the physical presence of a physician in a hospital under a formal arrangement with the hospital to render emergency treatment to individual patients as and when needed.”

Appendix B

Excerpt from Publication 13-3, Section 3610

Costs of Emergency Room On-Call Physicians. For cost reporting periods beginning on or after October 1, 2001, the reasonable costs of outpatient CAH services may include the reasonable compensation and related costs for an emergency room physician who is on call but not present at the premises of the CAH, if the physician is not otherwise furnishing physicians’ services and is not on call at any other provider or facility. The costs are allowable only if they are incurred under a written contract which requires the physician to come to the CAH when the physician’s presence is medically required. An emergency room physician must be a doctor of medicine or osteopathy who is immediately available by telephone or radio contact, and available on site, on a 24-hour a day basis, within 30 minutes, or within 60 minutes in areas described in 42 CFR 485.618 (d)(2).

Appendix C

Provider Reimbursement Review Board Hearing Decision
Bonner General Hospital vs. (Medicare Intermediary) Blue Cross and Blue Shield Association / Medicare Northwest