

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 21 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ST. JOSEPH HOSPITAL, 110 West
Stewart Dr., Orange, CA 92868,

Plaintiff - Appellant,

v.

MICHAEL O. LEAVITT, in his official
capacity as Secretary of Health an Human
Services,

Defendant - Appellee.

No. 07-55058

D.C. No. CV-06-01310-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted May 8, 2008
Pasadena, California

Before: WARDLAW and IKUTA, Circuit Judges, and BEISTLINE**, District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Ralph R. Beistline, United States District Judge for the
District of Alaska, sitting by designation.

St. Joseph Hospital (St. Joseph) appeals from the final judgment of the district court denying its petition for judicial review of the Provider Reimbursement Review Board's (PRRB) final decision in favor of the Secretary of the Department of Health and Human Services (Secretary). We affirm the decision of the district court that the Secretary's determination to deny St. Joseph's request for an exception to its prospective reimbursement rate was neither arbitrary nor capricious and was supported by substantial evidence. See 5 U.S.C. § 706(2).

To qualify for an exception to its prospective payment rate on the ground that it provided atypically intense services, see 42 C.F.R. §§ 413.182(a), 413.184(a) (2001), St. Joseph was required, inter alia, to "[s]ubmit documentation on costs of nursing personnel . . . showing . . . [the] [a]mount each employee was paid." Id. § 413.184(b)(2)(i)(A). As St. Joseph conceded at the hearing before the PRRB, and as the PRRB concluded in its final determination, St. Joseph failed to specify in its exception request the amount that each nursing employee was paid in accordance with § 413.184(b)(2)(i)(A). [**SER 17; 30**] The PRRB's decision to deny St. Joseph's exception request on this ground was supported by substantial evidence, and its refusal to infer or derive the required information from other data submitted by St. Joseph was neither arbitrary nor capricious. See § 706(2); 42

C.F.R. §§ 413.180(f)–(g), (l), 413.184(b)(2)(i) (2001) (regulations conditioning eligibility for exception request on submission of specified documentation).

We also reject St. Joseph’s argument that it was deprived of due process because the Secretary failed to provide the necessary notice that St. Joseph’s documentation was faulty. The regulations clearly establish the duty of an applicant for an exception request to provide specific documentary information, including “documentation on costs of nursing personnel . . . showing . . . [the] [a]mount each employee was paid,” § 413.184(b)(2)(i)(A); see also id. § 413.180(f)–(g), (l). Moreover, St. Joseph does not dispute that the fiscal intermediary in this case recommended that St. Joseph’s exception request be denied because it “failed to provide a breakdown of what each employee was paid.” [ER 92] Although St. Joseph argues that the fiscal intermediary’s decision was superceded by the decision of the Centers for Medicare and Medicaid Services (CMS), the statute providing for PRRB review of a decision rejecting an exception request provides that the PRRB shall review the “determination of the fiscal intermediary.” 42 U.S.C. § 1395oo(d). Moreover, the PRRB may also reach issues that were “not considered by the intermediary.” Id.; see also Loma Linda Univ. Med. Ctr. v. Leavitt, 492 F.3d 1065, 1068 & n.4, 1071 (9th Cir. 2007). Thus, St. Joseph was on notice both that the PRRB review related to the decision

of the fiscal intermediary, and that the fiscal intermediary had placed St. Joseph's failure to provide employee cost information at issue.

Because this ground is sufficient to uphold the decision of the PRRB, we need not reach the other bases for rejecting St. Joseph's appeal identified by the district court and the PRRB.

AFFIRMED.