

**COUNTY OF MILWAUKEE**  
INTEROFFICE COMMUNICATION

DATE : June 2, 2011

TO : Supervisor Lee Holloway, Chairman, County Board of Supervisors

FROM : Scott B. Manske, Controller

SUBJECT : Update on Matters Relating to John L. Doyne Hospital and The Cost Reimbursement From Medicare for Post Retirement Health Costs of the Hospital

**Summary**

Milwaukee County had filed for Medicare cost reimbursement for the post-retirement health care expenses of former John L. Doyne Hospital employees. The claim was originally made in 1996, after the closing of Doyne Hospital. The County has made various attempts to recoup the cost reimbursement, including filings with the U.S. District Court in Washington, D.C. Staff is of the current position that any further attempts to receive cost reimbursement from Medicare will not be successful.

The County received a decision from the Department of Health and Human Services Provider Reimbursement Review Board (PRRB) on April 13, 2011. The PRRB acts as the intermediary, on behalf of Medicare, on cases such as these. The U.S. District Court had sent the case back to the PRRB, to answer issues that the County had raised in previous filings with the PRRB. The PRRB decision has now answered all questions of reimbursement by the County and the U.S. District Court. The decision finds that under Medicare policy the County cannot make a claim for post-retirement health care expenses of former hospital employees as an administrative cost of the terminating provider.

All opportunities for appeal within DHHS, including the PRRB are now exhausted. The County could take the appeal back to the U.S. District Court. However, the decision by the US District Court, on the County's first appeal to that court found the PRRB arguments to be successful in all points, except for the inclusion of costs as a administrative cost of closing, which had not been answered by the PRRB. The unanswered question was referred back to the PRRB and was argued before them on April 1, 2010. The PRRB has now answered the US District Court open question. If appealed, the Court is likely to rule in favor of the PRRB administrative ruling that the post-retirement health care costs are not includable as a closing cost. In other words, our appeal to US District Court is not likely to be successful. For that reason, I have not requested and am not recommending any further appeal of this issue.

It is the recommendation of staff that the County close its case regarding Medicare reimbursement of post-retirement health costs of former Doyne Hospital employees.

**Background**

Milwaukee County contracted with Foley & Lardner, Weissburg & Aronson in June 1997 to assist in pursuing the claim for reimbursement regarding the 1995 Final Medicare Cost Report for John L. Doyne Hospital (JLDH). In January 2000, the Health Care Financing Administration (HCFA) issued a Notice of Program Reimbursement (NPR) to Milwaukee County in the amount of \$12.5 million for settlement of the final Medicare Cost Report.



This notice represented a successful resolution to the Milwaukee County claim for reimbursement from the Medicare program for the final cost of operations of JLDH; and, the County's claim to the Medicare Program for loss on sale of the building and assets to Froedtert Memorial Lutheran Hospital. However, one major matter remains to be resolved, which was the post-retirement health care claim for former Doyne Hospital employees.

In July 1998 Milwaukee County submitted an amendment to the 1995 Cost Report for reimbursement of Medicare's share of the healthcare costs associated with retirees from Doyne Hospital. The amount of the County's claim was \$8.1 million based on two years of actual expense (1996 and 1997) and a projection for the balance of a 40-year period. The HCFA notice ignored reimbursement for these costs.

The HCFA chose not to recognize the County's claim for reimbursement due to the fact that Doyne Hospital was no longer a provider of service after December 21, 1995. However, it is the County's position that Doyne Hospital appropriately followed Medicare regulations and claimed only those employee and retiree health care costs incurred on an annual basis through 1995. As of the closure of Doyne Hospital, the annual cost of providing retiree healthcare was a valid cost incurred as a hospital provider under the Medicare Program. Subsequent to the closure of Doyne Hospital, Medicare is not providing a method of reimbursement for Doyne Hospital retiree health care costs to Milwaukee County.

Foley & Lardner reviewed the matter and recommended that Milwaukee County proceed with an appeal to the PRRB on this matter. Three issues were to have been argued before the PRRB: 1) Milwaukee County's right to appeal this issue; 2) the County's position as to this being an included cost for Medicare reimbursement; and 3) an updated cost estimate and how the cost was derived. The PRRB, on December 3, 2003, granted Milwaukee County the right to appeal this issue before them, thus resolving in the County's favor the first argument. The second and third issues were to have been argued before the PRRB in May 2004 but the meeting was cancelled due to PRRB member scheduling conflicts.

In preparation for the May 2004 meeting, the County updated its claim for retiree health costs by obtaining actual costs for retirees for the period of 1996 through 2002. These costs totaled \$2,340,255. Estimated retiree health costs after year 2002 were projected at \$9,766,934 for a total cost estimate of \$12.1 million.

In an attempt to resolve this issue, prior to the PRRB hearing, the County contacted the Medicare intermediary on the Doyne Hospital claim, United Government Services (UGS). UGS was the agency that had reviewed Doyne Hospital's final Medicare claim. They had approved the settlement for the loss on the sale, but had denied the claim for reimbursement of retiree health cost claims. Several conference calls were held with UGS, but they were not willing to recommend a settlement to Medicare or the PRRB.

Subsequent to this date, discussions were held with the Federal Department of Health and Human Services, the lead agency over Medicare, regarding the claim. These discussions did not result in any settlement or change to the process.



On March 8, 2006, the County was provided a hearing before the PRRB in Baltimore, Maryland. The hearing provided an opportunity for the County to go on record with its arguments regarding its cost report claim request. The County was represented by Foley & Lardner, the controller, a consultant (who had done the revised calculations for the claim) and an actuary (to certify as to the reasonableness of the claim).

On May 10, 2007, the County was notified that the claim had been denied. The claim was denied based on the PRRB's interpretation of a July 27, 1995 Medicare regulation regarding Deferred Compensation, which includes post-retirement health care costs.

We held a discussion with the Judiciary Committee during the June 2007 County Board cycle to discuss the status of the case and to look for a recommendation of whether the County should pursue the appeal of this claim. The cost to appeal the claim would be at least \$100,000. Estimates have risen since this date and are currently expected to be \$160,000. Funds were reserved at the closure of Doyne Hospital to appeal any claims against Medicare for reimbursement.

While the County determined that it did not want to file an appeal to the Administrator, in a letter dated June 5, 2007, the Administrator for DHHS indicated he would take on the appeal without a request from the County. The Administrator for DHHS, who deals with hospital claim issues, ruled that he did not take exception to the decision of the PRRB.

The County requested a judicial review of this case by filing a civil action in Federal district court for the District of Columbia. The filing occurred in August 2007. In May of 2008, the County filed its motion for summary judgment on this matter. In July 2008 the Department of Health and Human Services filed their motion for summary judgment and response to our filing.

The Federal Court denied the motion for summary judgment by the County on March 30, 2009. The Court accepted, in part, the Federal DHHS claim that the costs incurred for a terminated provider, which was Doyne Hospital, must be filed and liquidated within a reasonable period after the termination of the hospital. Since the County is on a pay as you go basis for post retirement health care costs, the costs of the Doyne Hospital retiree health care would be incurred over future years, and not at the closure of the hospital. Since the County did not pay for all future post-retirement health care costs by a specific date, the DHHS denial was valid as a closure cost.

However, the Court found that DHHS, does allow claims for salaries and fringe benefits after the termination of a hospital under section §2176 of the Provider Reimbursement Manual. Since the post-retirement health care claims would be considered a fringe benefit, the Federal Court requests that the Federal DHHS consider the costs to be termination costs. If the costs are considered to be termination costs then the costs are possibly reimbursable by the Federal DHHS.



The Federal DHHS Provider Reimbursement Review Board (PRRB) held a hearing on April 1, 2010 to hear arguments from the County regarding the Courts judgment. Specifically, the Federal DHHS Provider Reimbursement Board considered if CMS Pub. 15-1 §2176 (2176) is applicable to the County's Post-Retirement Health Care Costs. If these costs were considered termination costs, then the County could potentially be reimbursed for the Medicare costs incurred.

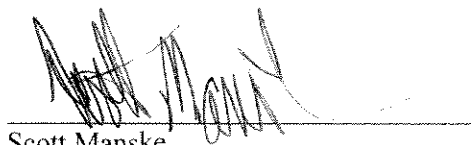
Foley & Lardner told the County that the case before the PRRB would be limited to Section §2176. In a decision from the PRRB on April 13, 2011 the PRRB made the following statement.

"The costs referred to in CMS Pub. 15-1 §2176 relate to the settlement of reimbursement which arises when a provider terminates participation in the Medicare program. In this case, Milwaukee County had an obligation to pay post-retirement health care benefits. That obligation was totally independent of whether or not the provider continued to participate in the Medicare program. The cost referred to in the language of 2176 do not include those that are totally independent of a provider's termination. The Board therefore concludes that the amounts claimed for future health benefits are not reimbursable under CMS Pub. 15-1 §2176."

As a result of this decision, the staff does not recommend further appeal of this issue.

#### **Recommended Action**

Receive and place on file.

A handwritten signature in dark ink, appearing to read 'Scott Manske', is written over a horizontal line.

Scott Manske  
Controller

cc: Chris Abele, County Executive  
John Jorgensen, Acting Corporation Counsel  
Jerome J. Heer, County Auditor  
Stephen Cady, Director of Research-County Board