PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2023-D20

PROVIDER –
Comfortbrook Hospice LLC d/b/a Grace Hospice

RECORD HEARING DATE –
October 18, 2022

Provider No. –
36-1703

Fiscal Year –
2020

vs.

MEDICARE CONTRACTOR –
Palmetto GBA c/o National Government Services, Inc.

Case No. –
20-1380

INDEX

ISSUE STATEMENT

Whether the imposition of a two percentage point reduction to the fiscal year ("FY") 2020 Medicare annual percentage update ("APU") for Comfortbrook Hospice d/b/a Grace Hospice (Provider No. 36-1703) ("Grace Hospice" or "Provider") was proper.[1]

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board" or "PRRB") finds that the two percentage point reduction to Grace Hospice's FY 2020 Medicare APU was proper as Grace Hospice did not submit its hospice quality data in the form, manner, and *time* specified by the Secretary of Health and Human Services ("Secretary").

INTRODUCTION

Comfortbrook Hospice is a hospice provider with multiple locations. The hospice location at issue in this appeal is being referred to as Grace Hospice and is located in Middleburg Heights, Ohio.[2] The Medicare contractor[3] assigned to Grace Hospice for this appeal is Palmetto GBA c/o National Government Services, Inc. ("Medicare Contractor").

By letter dated July 5, 2019, the Medicare Contractor notified Grace Hospice that the Centers for Medicare and Medicaid Services ("CMS") had determined that Grace Hospice did not correctly submit its quality data as required by statute.[4] Specifically, the Medicare Contractor stated that Grace was non-compliant with the Hospice Quality Reporting Program ("HQRP") requirements because it failed to timely submit the requisite Hospice Item Set ("HIS") data.[5] The July 5, 2019 letter also stated that Medicare payments to Grace Hospice would be reduced by two (2) percentage points for FY 2020 as a result of this non-compliance.[6]

On or about August 9, 2019, Grace Hospice requested reconsideration of CMS' decision to reduce the FY 2020 APU by 2 percentage points as communicated in the Medicare Contractor's July 5, 2019 notice.[7] By letter dated September 11, 2019, CMS upheld the payment reduction determination, further explaining that CMS' decision was based on non-compliance with the HQRP requirement to submit the required calendar year ("CY") 2018 HIS data to meet the 90 percent timeliness threshold.[8]

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[1] Joint Stipulations of Facts (hereinafter "Stip.") at ¶ 1 (Sept. 15, 2022).
[2] Stip. at ¶¶ 3, 5. *See also* Exhibit ("Ex.") P-13 at 3.
[3] CMS's payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries ("FIs"), but these functions are now contracted with organizations known as Medicare administrative contractors ("MACs"). The term "Medicare contractor" refers to both FIs and MACs as appropriate and relevant.
[4] Ex. P-6 at 1.
[5] Stip. at ¶ 8. *See also* Ex. P-6 at 1.
[6] Stip. at ¶ 8. The Board believes the Medicare Contractor's letter at Ex. P-6 to be poorly worded when it stated that the noncompliance would result in "Medicare payments to your agency will be reduced by 2 percentage points for FY 2020." The relevant penalty for noncompliance is a 2 percentage point reduction in the provider's Medicare APU, not its Medicare payments.
[7] Stip. at ¶ 9; Ex. P-7.
[8] Stip. at ¶ 10; Ex. P-9.

Grace Hospice timely appealed CMS' September 11, 2019 reconsideration determination to the Board and met the jurisdictional requirements for a hearing. Following the parties' submissions of Final Position Papers, the Board approved Grace Hospice's request for a record hearing. Grace Hospice was represented by Jessica Gustafson, Esq. of The Health Law Partners, P.C. The Medicare Contractor was represented by Joseph Bauers, Esq. of Federal Specialized Services.

STATEMENT OF FACTS

A. THE HOSPICE QUALITY REPORTING PROGRAM

In § 122 of the Tax Equity and Fiscal Responsibility Act of 1982, Congress amended 42 U.S.C. § 1395f(i) in order to provide a Medicare Hospice Benefit for Medicare beneficiaries. The Medicare hospice benefit provides a per diem payment in one of four prospectively determined rate categories of hospice care.[9] Subsequently, Congress further amended the Medicare hospice benefit to include an annual increase in the daily Medicare payment rate for hospice services based upon the inpatient market basket percentage increase, also known as the annual payment update, or APU.[10]

Under the Patient Protection and Affordable Care Act ("ACA"), Congress added 42 U.S.C. § 1395f(i)(5) to tie a hospice provider's eligibility for its full Medicare APU increase to submission of certain quality data based upon measures specified by the Secretary.[11] These provisions further mandated that a hospice's Medicare APU be reduced by 2 percentage points if that hospice failed to properly report the required quality data measures for a particular fiscal year.[12] In particular, 42 U.S.C. § 1395f(i)(5)(C) states that hospices must submit their quality data measures "in a form and manner, and at a time, specified by the Secretary."

In order to meet the hospice quality reporting program requirements, CMS implemented two data collection obligations. First, CMS requires hospices to use CMS' standardized data collection instrument, called the HIS, and to electronically submit certain quality data measures for each patient admitted to the hospice on or after July 1, 2014.[13] Second, as of January 1, 2015, CMS also requires the collection of data using the Consumer Assessment of Healthcare Providers and Systems ("CAHPS") Hospice Survey.[14] The CAHPS survey seeks information from the informal caregivers of patients who died while enrolled in hospices.[15] The data from the CAHPS surveys must be submitted on behalf of the hospice by a CMS-approved third party vendor, *although it remains the hospice's responsibility to ensure their contracted vendors timely submit*

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[9] 82 Fed. Reg. 36638, 36641 (Aug. 4, 2017).
[10] Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6005(a), 103 Stat. 2106, 2160 (1989); Balanced Budget Act of 1997, Pub. L. No. 105-33, § 4441(a), 111 Stat. 251, 422 (1997).
[11] ACA, Pub. L. No. 111-148, § 3004(c), 124 Stat. 119, 368 (2010).
[12] 42 U.S.C. § 1395f(i)(5)(A).
[13] CMS initially implemented the HIS submission requirements through instructions and in preamble statements, then subsequently codified the HIS submission requirements at 42 C.F.R. § 418.312 in CMS' August 22, 2014 final rule. *See* 79 Fed. Reg. 50452, 50486-88 (Aug. 22, 2014).
[14] All hospices were required to participate in the CAHPS survey for one month in the first quarter of 2015, with the requirement of ongoing monthly participation beginning April, 2015. 78 Fed. Reg. 48233, 48263 (Aug. 7, 2013).
[15] 79 Fed. Reg. at 50491.

the data.[16] Hospices that received their CMS Certification Number ("CCN") after January 1, 2018 for the FY 2020 Medicare APU will be exempted from the hospice CAHPS requirements due to newness.[17] The exemption is determined by CMS and is for only one (1) year.[18] CMS finalized the hospice reporting requirements for the FY 2018 payment determination in the final rule issued on August 4, 2017.[19] To avoid a 2 percentage point reduction to its Medicare APU for FY 2020, each hospice had to complete regular and ongoing collection and electronic submission of the HIS data for CY 2018 (*i.e.,* for the period January 1, 2018 through December 31, 2018) in accordance with the reporting requirements specified in the FY 2016 Hospice Wage Index final rule.[20] Each hospice has thirty (30) days from patient admission or discharge to submit the appropriate HIS record for that patient through the Quality Improvement and Evaluation System ("QIES") Assessment Submission and Processing ("ASAP") system.[21] "Beginning January 1, 2018 to December 31, 2018 and thereafter, hospices must submit *at least 90 percent* of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2020."[22]

In the preamble to the FY 2016 Hospice Wage Index final rule, CMS clarified and finalized its policy on when ***new*** hospice providers must begin submitting quality data.[23] Under this policy, new hospice providers are required to begin submitting HIS data on the date listed in the letterhead of the CCN Notification letter received from CMS but will only be subject to the APU reduction in the initial reporting year if the CCN notification letter was dated before November 1 of the reporting year involved.[24] In other words, beginning with the FY 2016 payment determination, and for each subsequent payment determination, if the date of the CCN notification letter for a new hospice was after November 1 of the year involved, then that hospice would not be subject to the corresponding APU reduction for the initial year.[25] CMS explained the rationale for this policy as follows:

> CMS proposed that providers begin reporting HIS data on the date they receive their CCN notification letter since hospices cannot register for the relevant QIES ASAP accounts needed to submit HIS data without a valid CCN. Thus, requiring quality data reporting beginning on the date the hospice receives their CCN notification letter *aligns CMS policy for requirements for new providers with the functionality of the HIS data submission system (QIES ASAP)*.
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[16] 80 Fed. Reg. 47142, 47196 (Aug. 6, 2015).
[17] 84 Fed. Reg. 38484, 38487 (Aug. 6, 2019).
[18] *Id.*
[19] 82 Fed. Reg. at 36638.
[20] *Id.* at 36670 (citing 80 Fed. Reg. at 47192).
[21] *Id. See also* Hospice Quality Reporting Program: Requirements for the Fiscal Year 2020 Reporting Year (Last Updated Jan. 2018) (*available at* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Downloads/FY-20-HQRP-Requirements.pdf) ("HQRP Requirements for FY 2020").
[22] *Id.*
[23] 80 Fed. Reg. at 47189-90.
[24] *Id*. at 47189. *See also* 82 Fed Reg. at 36663.
[25] *Id.*

> This proposed policy allows CMS to receive HIS data on all patient admissions on or after the date a hospice receives their CCN notification letter, while at the same time *allowing hospices flexibility and time to establish the necessary accounts for data submission*, ***before they are subject to the potential APU reduction for a given reporting year***. Finally, to address the commenter's concern about providers being subject to payment penalties if they open the CCN notification letter the day after it is received, CMS believes our proposed policy ***grants providers ample time*** *to establish the necessary accounts and operating systems for HIS data collection and submission, since there is often a significant lag time between the Medicare CCN application process and receipt of a provider's CCN Notification letter*.
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> CMS would like to clarify that the "date CCN notification letter is received" would be the *date listed in the letterhead of the CCN Notification Letter*. This date is tracked by the Medicare Administrative Contractors (MACs) and is verifiable in MAC records.[26]

In the preamble to the FY 2018 Hospice Wage Index final Rule, CMS reiterated the basis for this policy:

> This policy allows us to receive HIS data *on all patient admissions* ***on or after the date*** *a hospice receives their CCN notification letter*, while at the same time allowing hospices flexibility and time to establish the necessary accounts for data submission before they are subject to the potential APU reduction for a given reporting year. Currently, new hospices may experience a lag between Medicare certification and receipt of their actual CCN Number. Since *hospices cannot submit data to the QIES ASAP system* ***without a valid CCN Number***, we finalized that new hospices begin collecting HIS quality data beginning on the date noted on the CCN notification letter. We believe this policy provides ***sufficient time*** *for new hospices to establish appropriate collection and reporting mechanisms to submit the required quality data to CMS*. Requiring quality data reporting beginning on the date listed in the letterhead of the CCN notification letter aligns our policy requirements for new providers with the functionality of the HIS data submission system (QIES ASAP).[27]

The implementing regulation for this policy, at 42 C.F.R. § 418.312(c), provides that "[a] hospice that receives notice of its CMS certification number before November 1 of the calendar

[26] 80 Fed. Reg. at 47190 (emphasis added).
[27] 82 Fed. Reg. at 36663 (emphasis added.)

year before the fiscal year for which a payment determination will be made must submit data for the calendar year." While that regulatory provision does not indicate when a hospice must begin submitting its data, the preamble language quoted above makes clear that a new hospice must submit data for admissions *beginning on the date on the CCN notification letter*. In addition to the preamble to the regulation, quoted above, instructions for new providers were included in CMS' online publication titled "Getting Started with the Hospice Quality Reporting Program" which similarly make clear that the reporting requirement begins with admissions beginning on the date of the CCN notification letter:

> **For new hospice providers:** For new providers, there are two considerations: when to begin submitting HIS data and when you may be subject to the Annual Payment Update (APU) reduction for HIS purposes.
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> • When to begin HIS data submission: Providers must submit HIS data (an HIS-Admission and HIS-Discharge record) for all patient admissions ***on or after [] the date in the CMS Certification Number (CCN) notification letter letterhead***.[28]

In the preamble to the FY 2016 Hospice Wage Index final rule, CMS confirmed that a hospice may request an exemption or extension for quality reporting requirements if the hospice experienced extraordinary circumstances beyond its control ***and*** the request is submitted *within 30 days of those circumstances **to** the HRPP mailbox at HRRPReconsiderations@cms.hhs.gov*:

> In the event that a hospice seeks to request an exemptions or extension for quality reporting purposes, the hospice must request an exemption or extension within 30 days of the date that the extraordinary circumstances occurred by submitting the request to CMS via email to the HQRP mailbox at HQRPReconsiderations@cms.hhs.gov. *Exception or extension requests sent to CMS through any other channel would not be considered as a valid request for an exception or extension from the HQRP's reporting requirements for any payment determination*. In order to be considered, a request for an exemption or extension must contain all of the finalized requirements as outlined on our Web site at http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/index.html.

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[28] *See* Ex. C-6 (emphasis added). The Board notes that the version of this publication that was submitted in the Medicare Contractor's exhibit was last updated in November 2018, which is *after* the date Grace Hospice was required to begin submitting data. However, the version of this publication that was last updated on September 29, 2017, includes the same language as quoted here, and that version is available online at https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Downloads/Sept-2017_Getting-Started-with-the-HQRP.pdf. As a result, the citation error is not consequential.

> If a provider is granted an exemption or extension, timeframes for which an exemption or extension is granted will be applied to the new timeliness requirement so providers are not penalized. If a hospice is granted an exemption, we will not require that the hospice submit any quality data for a given period of time. If we grant an extension to a hospice, the hospice will still remain responsible for submitting quality data collected during the timeframe in question, although we will specify a revised deadline by which the hospice must submit this quality data.
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> This process does not preclude us from granting extensions/exemptions to hospices that have not requested them when we determine that an extraordinary circumstance, such as an act of nature, affects an entire region or locale. We may grant an extension/ exemption to a hospice if we determine that a systemic problem with our data collection systems directly affected the ability of the hospice to submit data. If we make the determination to grant an extension/exemption to hospices in a region or locale, we will communicate this decision through routine communication channels to hospices and vendors, including, but not limited to, Open Door Forums, ENews and notices on https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/. We proposed to codify the HQRP Submission Exemption and Extension Requirements at § 418.312.[29]

In the preamble to the FY 2018 Hospice Wage Index final rule, CMS provided the additional clarification on its exemption and extension policy ***and extended the deadline*** *for a hospice to submit a request for an extension or exemption from 30 days* ***to 90 days***:

> In the FY 2015 Hospice Wage Index final rule (79 FR 50488), we finalized our proposal to allow hospices to request, and for CMS to grant, exemptions/extensions for the reporting of required HIS quality data when there are extraordinary circumstances beyond the control of the provider. *Such extraordinary circumstances may include, but are not limited to, acts of nature or other systemic issues with our data systems*. We further finalized that hospices must request such an exemption or extension within 30 days of the date that the extraordinary circumstances occurred. In certain instances, however, it may be difficult for hospices to timely evaluate the impact of extraordinary circumstances within 30 calendar days. For other quality reporting programs such as the Hospital Inpatient Quality Reporting (81 FR 57182), Inpatient Rehabilitation Facility Quality Reporting Program (81 FR 52125) and the Long term Care Hospital Quality Reporting Program (81

[29] 80 Fed. Reg. at 47193 (italics emphasis added).

FR 25205), we have reevaluated our policy and subsequently finalized through rulemaking an extension of that period of time to 90 calendar days. *Therefore, we proposed to* ***extend the deadline*** *for submitting an exemption or extension request* ***to 90 calendar days*** *from the qualifying event which is preventing a hospice from submitting their quality data for the HQRP*. We believe that extending the deadline to 90 calendar days would allow hospices more time to determine whether it is necessary and appropriate to submit an exemption or extension request and to provide a more comprehensive account of the qualifying event in their request form to CMS. For example, if a hospice has suffered damage due to a hurricane on January 1st, it would have until March 31st to submit a request form to CMS via email to the HQRP mailbox at HospiceQRPReconsiderations@cms.hhs.gov.

Further, while we finalized our policy in the past for exception/extension for the submission of the HIS data, we proposed to extend this policy beyond the submission of the HIS date to submission of the CAHPS® Hospice Survey data, given that multiple data submission processes could be impacted by the same qualifying event. Therefore, we proposed for FY 2019 payment determination and subsequent payment determinations to extend the period of time a hospice may have to submit a request for an extension or exception for quality reporting purposes from 30 calendar days to 90 calendar days after the date that the extraordinary circumstances occurred, by submitting a request to CMS via email to the HQRP mailbox at HospiceQRPReconsiderations@cms.hhs.gov. Exemption or extension requests sent to us through any other channel will not be considered valid. The request for an exemption or extension must contain all of the finalized requirements as outlined on our Web site at https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Extensions-and-Exemption-Requests.html. If a hospice is granted an exemption or extension, timeframes for which an exemption or extension is granted will be applied to the new timeliness requirement so such hospices are not penalized. If a hospice is granted an exemption, we will not require that the hospice submit HIS and/or CAHPS® Hospice Survey data for a given period of time. By contrast, if we grant an extension to a hospice, the hospice will still remain responsible for submitting data collected during the timeframe in question, although we will specify a revised deadline by which the hospice must submit these quality data.

This process does not preclude us from granting extensions/exemptions to hospices that have not requested them

> when we determine that an extraordinary circumstance, such as an act of nature, affects an entire region or locale. We may grant an extension/exemption to a hospice if we determine that a systemic problem with our data collection systems directly affected the ability of the hospice to submit data. If we make the determination to grant an extension/exemption to hospices in a region or locale, we will communicate this decision through the various means, including the CMS HQRP Web site, listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums.
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> We agree that the change will be helpful for providers and maximize compliance and participation in the HQRP. Regarding the commenter's request for clarification on our policies for exemption and extension, including mode of submission of these requests, as noted in this rule, we accept requests for exemption and extension via email to the HQRP Reconsiderations mailbox at HospiceQRPReconsiderations@cms.hhs.gov. Procedures for exemptions and extensions are further outlined on the CMS HQRP Web site here: https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Extensions-and-Exemption-Requests.html.
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> …. We are finalizing our proposal to implement the change in deadline from 30 to 90 days for hospices requesting an exemption or extension for the FY 2019 payment determination and subsequent payment determinations.[30]

CMS did not codify the above extension and exemption process into the Code of Federal Regulations until the 2019 as part of the FY 2021 Hospice Wage Index final rule. As a result of this codification, the regulation at 42 C.F.R. § 418.312(i) (Oct. 2020)[31] provides exemptions to data submission requirements under the HQRP, as follows:

> (i) *Exemptions and extensions requirements.* (1) **A hospice may request** and CMS may grant **exemptions or extensions** to the reporting requirements under paragraph (b) of this section for one

[30] 82 Fed. Reg. at 36671 (bold and italics emphasis added).

[31] Subsection (i) was not added to § 418.312 until 2020, in a correction of errors in the regulations text, which stated that "[o]n page 47207 of the FY 2016 final rule, we made technical errors in the regulations text of § 418.312. In this section, we inadvertently omitted language on our extension and exemption requirements policy. Accordingly, we are adding § 418.312(i) to accurately reflect our policy on extension and exemption requirements for the [HQRP]." 85 Fed. Reg. 53679, 53680 (Aug. 31, 2020).

or more quarters, **when there are certain extraordinary circumstances beyond the control of the hospice**.

(2) A hospice requesting an exemption or extension **must do so within 90 days of the date that the extraordinary circumstances occurred** by sending an email to CMS Hospice QRP Reconsiderations at *HospiceQRPReconsiderations@cms.hhs.gov* that contains all of the following information:

(i) Hospice CMS Certification Number (CCN).

(ii) Hospice Business Name.

(iii) Hospice Business Address.

(iv) CEO or CEO-designated personnel contact information including name, title, telephone number, email address, and mailing address (the address must be a physical address, not a post office box).

(v) Hospice's reason for requesting the exemption or extension.

(vi) Evidence of the impact of extraordinary circumstances beyond the hospice's control, including, but not limited to photographs, newspaper, other media articles, or independent sources attesting to the incident that can be reasonably corroborated. Include dates of occurrence and other documentation that may support the rationale for seeking extension or exemption.

(vii) Date when the hospice believes it will be able to again submit data under paragraph (b) of this section and a justification for the proposed date.

(3) **CMS may grant** exemptions or extensions to hospices without a request **if it determines that one or more of the following has occurred**:

(i) An extraordinary circumstance, such as an act of nature including a pandemic, affects an entire region or locale.

(ii) A systemic problem with one of CMS' data collection systems directly affect the ability of a hospice to submit data under paragraph (b) of this section.[32]

[32] (Bold and underline emphasis added and italics emphasis in original.)

B. THE QIES ASAP SYSTEM

For hospice users, the basic functions of the QIES ASAP system include establishing the communication connection with CMSNet, and submitting electronic HIS files.[33] The communications component of the QIES ASAP system supports the transfer of HIS data between a hospice and the National Submissions Database. In order to connect to the National Submissions Database, a hospice must first ensure that it has a CMSNet user ID and that communications software is correctly installed on the computer being used for data entry.[34]

To obtain a CMSNet user ID, a hospice must visit the "Welcome to the CMS QIES Systems for Providers" web page which is accessed through the CMSNet Remote Access Request Portal on the QIES Technical Support Office ("QTSO") web site.[35] This web site includes a link to "Hospice User Registration" which is a "self-service Provider User Registration tool with which users register for a user account and User ID to access the Hospice submissions and CASPER Reporting systems."[36]

The user must enter its CCN ID, state and zip code in the "Access Request Form" tab which is also accessed through the CMSNet Remote Access Request Portal.[37] If this information does not match CMS' records, a message (in red lettering) appears stating: "The information you have entered does not match system. *Please try again*."[38] If the user believes they entered the information correctly, the user is directed to contact the CMSNet Remote User helpdesk, by choosing the "Trouble Accessing CMSNet Form" link.[39] Once the information entered in Step 2 is validated, the user may proceed to the third and final step in the process and complete all required fields on the form.[40]

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Grace Hospice contends that the two percentage point reduction in its FY 2020 Medicare APU is incorrect because it was impossible for Grace Hospice to access CMSNet and the QIES ASAP system to submit its HIS records *prior to May 25, 2018*, notwithstanding the fact that it initially requested access in March 2018 after it received the March 13, 2018 notification of its newly-assigned CCN. Grace Hospice maintains that this delay of over 2 months is entirely due to CMS' failure to update the National Submissions Database.[41] Specifically, Grace Hospice explains that, after CMS issued it a CCN, CMS failed to update the National Submissions Database with its CCN, so when it submitted its CMSNet/QIES Access Request Form, the QTSO was unable to validate its CCN and, as a result, declined to issue it a user ID for CMSNet/QIES.[42]

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[33] Hospice Item Set (HIS) Submission User's Guide, v1.01, Functionality 3-2, at 2 (Feb. 2018).
[34] *Id.*
[35] *Id. See* https://www.qtso.cms.gov/cmsnet.html.
[36] *Id.* at 4.
[37] Ex. P-4 at 4 (copy of the portal's Instructions for Access Request Form).
[38] *Id.* (emphasis added).
[39] *Id.*
[40] *Id.* at 1.
[41] Provider's Final Position Paper (hereinafter "Provider's FPP") at 6, 10.
[42] *Id.* at 10.

Grace Hospice emphasizes the fact that "the QIES ASAP system is the only CMS-approved method to submit HIS data as required by the HQRP."[43] Once CMS updated the Database and it was granted access *on May 25, 2018* to the QIES ASAP system, Grace Hospice asserts that, "as of July 12, 2018," it timely submitted 100 percent of the required HIS data, which is in excess of the 90 percent threshold required by the HQRP in CY 2018.[44] Accordingly, Grace Hospice asserts that it "should not be subject to the two percent payment reduction to the APU because it was CMS' error, which was entirely outside of the control of [Grace Hospice], that led to [its] inability to submit HIS data."[45]

The following is a summary of the events that took place. By letter dated March 13, 2018, "CMS advised Grace Hospice that its request to participate in the Medicare program was accepted, effective February 10, 2018."[46] In that same letter, Grace Hospice was assigned a National Provider Identifier ("NPI") and a CMS Certification Number ("CCN"),[47] and that letter is referred to as the CCN notification letter. Finally, the Board notes that the CCN notification letter gave the telephone number and email address of someone at CMS (Stephany Ysreal) if there were any issues with the CCN.

On Monday, March 19, 2018, Grace Hospice requested corporate access to CMSNet/QIES for its assigned CCN.[48] On March 20, 2018, the help desk at the QTSO notified Grace Hospice of its finding that Grace Hospice's assigned CCN was invalid.[49] On this basis, Grace Hospice was not granted access to the CMSNet/QIES.[50] Over the telephone, on Wednesday, March 21, 2018, *according to her affidavit*, the HIS Director of Grace Hospice was instructed by the Help Desk that "the National Submissions Database was likely not yet updated with [Grace Hospice's] enrollment information, and that [Grace] Hospice should wait *for a period of time* and re-request access to CMSNet/QIES."[51] No further explanation or information is given regarding this guidance and no follow up or additional guidance (or even action such as an extension or exemption) was sought.[52]

64 days later, on May 24, 2018, Grace Hospice submitted a second request for corporate access to the CMSNet/QIES system (*i.e.*, for the Middleburg Heights location under CCN 36-1703).[53] On May 25, 2018, the QIES Technical Support Office notified Grace Hospice that its assigned

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[43] *Id.* at 4.
[44] *Id.* at 9.
[45] *Id.* at 10.
[46] *Id.* at 8; Ex. P-12; Stip. at ¶ 2.
[47] *Id.*
[48] Stip. at ¶ 3; Provider's FPP at 8; Ex. P-13.
[49] Stip. at ¶ 4; Provider's FPP at 8; Ex. P-14.
[50] Provider's FPP at 8.
[51] *Id.* at 8-9, Ex. P-15, Affidavit of Carolyn Hohensee.
[52] In particular, the affidavit is silent on any additional guidance sought (or any actions taken) during the 64-day period between Wednesday, March 21, 2018 and Friday, May 24, 2018. In this regard, the Board notes that the March 13, 2018 CCN letter from CMS stated that "If you have any questions, please contact Stephanie Ysrael at 312-***-**** or via email at [email address]"; however, Grace Hospice did not contact Ms. Ysrael (in contrast to what they did in Case No. 20-1381 for which the Board is concurrently issuing its d-decision). *See* Ex. 12.
[53] Stip. at ¶ 5; Provider's FPP at 9; Ex. P-16.

CCN (36-1703) had been added to Grace Hospice's existing corporate user ID to access CMSNet/QIES.[54]

13 days later, on June 7, 2018, Grace Hospice uploaded fifty-three (53) HIS records through the QIES ASAP system, all of which received the message: "Record Submitted Late."[55] Grace Hospice asserts that those records "encompassed HIS records that had been compiled following the CMS notification that [Grace Hospice's] request to participate in the Medicare program had been approved,"[56] *i.e.,* following the CCN notification letter.

In its Final Position Paper, the Medicare Contractor acknowledges that Grace Hospice was timely in its *first* request to access the QIES ASAP system.[57] However, the Medicare Contractor contends that "once the Provider was instructed that the National Submissions Database was not yet updated and to re-request [access to the QIES ASAP system] after waiting a period of time, *the Provider made the decision* to wait approximately sixty (60) days to re-request access"[58] (from March 21, 2018 to May 24, 2018). The Medicare Contractor notes that "upon the Provider re-submitting a request, access to the QIES ASAP system was granted within one day (May 25, 2018). Thus, it appears the Provider's decision to allow approximately 60 days to lapse prior to re-requesting access was excessive and resulted in not meeting the submission deadline."[59]

The Board acknowledges that CMS should have had Grace Hospice's CCN in the National Submission Database by the time it was required to start submitting data, which began on the date of the CCN notification letter.[60] The preambles to the FYs 2016 and 2017 Hospice Wage index final rules make clear that a hospice may request and extension or exemption if there are extraordinary circumstances beyond the hospice's control and if the request is submitted to CMS within 90 days of those circumstances to a specified email address.[61] Similarly, these preambles make clear that CMS may grant exemptions or extensions to hospices *without a request* if it determines that a systemic problem with one of CMS' data collection systems directly affect the ability of a hospice to submit the requisite data. If a hospice is granted an exemption, the hospice is not required to submit any quality data for a given period of time.[62] Here, there is no record (and Grace Hospice does not claim) that Grace Hospice submitted either an exemption request or an extension and the deadline for submitting such a request would have been 90 days from March 21, 2018 (*i.e*., the date of extraordinary circumstances beyond its control). Similarly, there is no evidence (or allegation) that CMS granted a systemic exemption or extension relevant to Grace Hospice.

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[54] Stip. at ¶ 6; Provider's FPP at 9; Ex. P-17.
[55] Stip. at ¶ 7; Provider's FPP at 9; Ex. P-18.
[56] Provider's FPP at 9.
[57] Medicare Contractor's Final Position Paper at 8.
[58] *Id.*
[59] *Id.* (emphasis added).
[60] *See* 82 Fed. Reg. at 36663.
[61] Information on extension and exemptions was also available on the CMS website for the Hospice QRP. *See* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Downloads/2018-Janurary-Extensions-and-Exemption-Requests-Archive.pdf (last accessed Jul. 27, 2023) (stating: "The Extension and Exemption Requests web page provides information about the processes of requesting an extension or exemption related to submission of the HIS).
[62] 80 Fed. Reg. at 47193.

In addition, the Board has reviewed the CMS Submission Report, Hospice Final Validation Report (the "Validation Report"), which shows the dates that records were submitted and the admission and discharge dates of each record submitted. Based on the Validation Report, it is clear that Grace Hospice did not meet the timeliness threshold of 90 percent.[63] This would be true, even if the Board were to grant Grace Hospice an exemption (which it is not given that Grace Hospice never timely submitted such a request) for all the records submitted on or before June 7, 2018.[64] In this regard, the Board notes that, per Exhibit P-18, there were a total of seventy-seven (77) records submitted after June 7, 2018 and, of those 77 records, there are ten (10) records that were submitted ***late*** on June 21, 2018.[65] As a result, only 87 percent of the records submitted after June 7, 2018 were submitted timely, which does not meet the 90 percent timeliness threshold.

The Board finds that Grace Hospice's decision to wait over sixty (60) days to re-submit the request for access to the QIES ASAP system was *not* reasonable and is not supported in the record. Grace Hospice was, as of the CCN notification letter's date, required to submit data for admissions and the required data for those admissions was due within thirty (30) days of ***each*** admission or discharge date.[66] For example, since the date of Grace Hospice's CCN notification letter was March 13, 2018,[67] then the data for a March 13th admission was due by April 12, 2018 (*i.e.*, 30 days after March 13th) in order to be considered timely.[68] However, Grace Hospice did not submit a second request to gain access to the QIES ASAP system until 64 days later on May 24, 2018, more than a month after its initial submission deadline of April 12, 2018.[69] Grace Hospice's unjustified delay in requesting QIES ASAP system access guaranteed that Grace Hospice would be in a difficult (if not impossible) position to meet the 90 percent timeliness threshold. The Board concludes that, based on the record before it, it was not reasonable for Grace Hospice to wait until May 24, 2023 to re-request access to the QIES ASAP system given the fact that it was required to begin reporting data by April 12th to be timely.

Finally, the Board notes that Grace Hospice also waited approximately two (2) weeks after being granted access to the QIES ASAP system before it even began submitting any records (*i.e.,* it waited from May 25, 2018 to June 7, 2018 before making its first HIS data submission). This decision further delayed its submission of records and decreased the likelihood that it would or could ever successfully submit at least 90 percent of all required HIS records within the required 30-day submission timeframe.

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[63] *See* Ex. P-18.

[64] June 7, 2018 is the date on which Grace Hospice first submitted records after gaining access to the QIES ASAP system, which included records compiled up to that date.

[65] *See id.* at 28-68 (showing that Records 54, 56 to 57, 61, 64 to 65, and 68 to 71 were all submitted on June 21, 2018, but that these Records were ***not*** timely submitted).

[66] 82 Fed. Reg. at 36670. *See also* 82 Fed. Reg. at 36663; Hospice Quality Reporting Program: Requirements for the Fiscal Year 2020 Reporting Year (Last Updated Jan. 2018) (*available at* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Downloads/FY-20-HQRP-Requirements.pdf) ("HQRP Requirements for FY 2020").

[67] Ex. P-12.

[68] As described above, hospices have thirty (30) days from patient admission or discharge to submit the appropriate HIS record for that patient through the QIES ASAP system. 82 Fed. Reg. at 36670.

[69] Ex. P-16.

For these reasons, the Board finds that Grace Hospice did not submit its hospice quality data in the *time* specified by the Secretary and, therefore, the two percentage point reduction in its FY 2020 Medicare APU was proper.

DECISION

After considering the Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that the two percentage point reduction to Grace Hospice's FY 2020 Medicare APU was proper as Grace Hospice did not submit its hospice quality data in the form, manner, and *time* specified by the Secretary.

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7/27/2023

X Clayton J. Nix

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Chair
Signed by: PIV