PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2023-D21

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

RECORD HEARING DATE –
October 18, 2022

Provider No. –
36-1702

Fiscal Year –
2020

vs.

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

Case No. –
20-1381

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 ("Grace Hospice" or "Provider") (Provider No. 36-1702) 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 in 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 Cincinnati, 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 alleged 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 Medicare 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 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. 19, 2022).
[2] *See* Stip. at ¶¶ 2-3; *see also* 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 ¶ 14. *See also* Ex. P-6 at 1.
[6] Stip. at ¶ 14; Ex. P-6 at 1. 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 APU, not its Medicare payments.
[7] Stip. at ¶ 15; Ex. P-7.
[8] Stip. at ¶ 16; 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 percent reduction in its FY 2020 Medicare APU is incorrect because it was impossible for the Provider to access CMSNet and the QIES ASAP system to submit its HIS records *prior to June 19, 2018*, notwithstanding the fact that there is no evidence that Grace Hospice had even requested such access *until May 24 2018*, more than two months after it received its participation letter dated March 19, 2018. Grace Hospice maintains that this delay 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 11.
[42] *Id.* at 8-10.

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 June 19, 2018* to the QIES ASAP system ***and*** *had made its initial HIS data submission on June 21, 2018*, Grace Hospice asserts that it timely submitted 100 percent of the required data, which is in excess of the 90 percent threshold required by the HQRP in calendar year 2018.[44] Grace Hospice further 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 Monday, March 19, 2018, "CMS advised Grace Hospice that its request to participate in the Medicare program was accepted, effective January 8, 2018."[46] In that same letter, Grace Hospice was assigned a National Provider Identifier ("NPI") and a CMS Certification Number ("CCN"),[47] and this letter is referred to as the CCN notification letter. Finally, 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.

66 days later, on Thursday, May 24, 2018, Grace Hospice submitted its ***first*** request for corporate access to the CMSNet/QIES system.[48] On May 25, 2018, the QTSO help desk notified Grace Hospice that its CCN was not added to its existing corporate user ID to access CMSNet/QIES because "CCN# 361702 . . . could not be found in our system."[49]

17 days later, on Monday, June 11, 2018, Grace Hospice again requested corporate access to the CMSNet/QIES system (the second request).[50] By email that *same day*, the Help Desk replied that they were unable to process the account request because "[t]here was no CCN entered here or it does not match our records."[51] On June 13, 2018, Grace Hospice responded to the Help Desk's email by attaching CMS' March 19, 2018 letter that assigned Grace Hospice's CCN and asking how this CCN was not recognized by the system because "it states right on the letter that the CCN is 361702."[52] The Help Desk responded that same day, stating:

> Actually it's an issue on their end with the certification kit. Something has not uploaded to the national Database. As the letter says if you have issues contact Stephany Ysreal at 312-***-**** or [email address]. If she has questions, she can contact us. 800-***-****.[53]

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[43] *Id.* at 4.
[44] *Id.* at 10.
[45] *Id.* at 11.
[46] Ex. P-12 at 1.
[47] *Id.*
[48] Stip. at ¶ 3; Ex. P-13.
[49] Stip. at ¶ 4; Ex. P-14.
[50] Stip. at ¶ 5; Ex. P-15.
[51] Stip. at ¶ 6; Ex. P-16.
[52] Stip. at ¶ 7; Ex. P-17.
[53] Stip. at ¶ 8; Ex. P-18.

Accordingly, on June 13, 2018, Grace Hospice emailed Stephany Ysreal summarizing the issue and requesting assistance. Ms. Ysreal referred Grace Hospice to Justin Pak at CMS.[54]

On June 14, 2018, following a telephone conversation, Grace Hospice emailed Mr. Pak "to clarify that Grace Hospice does not provide homemaker services or employ homemakers."[55] On June 18, 2018, Grace Hospice submitted a third request to access the CMSNet/QIES system, and stated that the contact person at CMS corrected the problem and Grace Hospice should now be showing up in the system.[56] On Tuesday, June 19, 2018, the Help Desk emailed Grace Hospice indicating a user account ID had been created for it and provided instructions on how it could log into the QIES ASAP system.[57]

On Thursday, June 21, 2018, Grace Hospice uploaded 127 HIS records through the QIES ASAP system, all of which received the message: "Record Submitted Late."[58] Grace Hospice asserts that "the CMS Submission Report, Hospice Final Validation Report does not include any references to late submissions after June 21, 2018, Record Number 127."[59]

In its Final Position Paper, the Medicare Contractor asserts that there was a lapse of time from when Grace Hospice was notified from CMS of its CCN, which was by letter dated March 19, 2018, and the time that Grace Hospice first requested corporate access to the QIES ASAP system, which was on May 24, 2018.[60] The Medicare Contractor contends that "[d]ue to the approximate 60-day delay in the Provider requesting access to QIES, it is unlikely the Provider would have met the 30-day submission deadline to submit at least 90% of their records, regardless of CMS' alleged delay in granting access."[61]

The Board acknowledges that CMS should have had Grace Hospice's CCN in the National Submission Database by the time Grace Hospice was required to start submitting data, which begins on the date on the CCN notification letter.[62] However, considering the regulatory requirement that the hospice data was to be submitted within thirty (30) days of the admission or discharge date,[63] together with the requirement that Grace Hospice start submitting data for admissions on or after the date on the CCN notification letter,[64] the Board finds Grace Hospice's decision to wait ***more than sixty (60) days*** after the date on the CCN notification letter to submit its *first* request for access to the QIES ASAP system was not reasonable. The date of Grace

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[54] Stip. at ¶¶ 9-10; Ex. P-19.
[55] Stip. at ¶ 10; Ex. P-20.
[56] Stip. at ¶ 11; Exs. P-21, P-22.
[57] Stip. at ¶ 12; Ex. P-23.
[58] Stip. at ¶ 13.
[59] Provider's FPP at 10 n.38.
[60] Medicare Contractor's Final Position Paper at 8.
[61] *Id.*
[62] *See* 82 Fed. Reg. at 36663.
[63] 82 Fed. Reg. at 36670; s*ee 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").
[64] 82 Fed. Reg. at 36663.

Hospice's CCN notification letter was March 19, 2018,[65] and as a result, Grace Hospice was required to start making data submissions 30 days from each admission or discharge from that date forward (*e.g.*, a March 19, 2018 discharge meant that Grace Hospice had 30 days until April 18th to timely submit HIS data on that discharge).[66] However, Grace did not submit its *initial* request to be granted access to the QIES ASAP system until more than 60 days later on May 24, 2018, which was more than one month after the due date of April 18 for timely submission of HIS data.[67] Thus, Grace Hospice chose to wait more than one month after April 18th to submit its first request to even access the QIES ASAP system, which was guaranteed to put it in a difficult position to meet the 90 percent timeliness threshold, even without the delay in its gaining access to the QIES ASAP system that was caused by the CCN issue. The Board concludes that it was not reasonable to wait more than 60 days until May 24 to *initially* request access to the QIES ASAP system when Grace Hospice knew or should have known it was required to begin reporting data on discharges by April 18th to be timely. Had Grace Hospice done so, it could have met the 90 percent threshold for HIS data submissions given the fact that, once Grace Hospice initiated the process to access the QIES ASAP system, it only took Grace Hospice 26 days (from May 24, 2018 to June 19, 2018) to obtain that access.

For these reasons, the Board finds that Grace Hospice was not diligent in trying to meet the timeliness requirement under the circumstances of this case. The Board acknowledges that, once Grace Hospice gained access to the QIES ASAP system, Grace Hospice submitted all HIS records compiled up to that point within two (2) days of gaining access and submitted 100 percent of the records after Record Number 127 of that initial submission in a timely manner. However, the Board concludes that Grace Hospice's initial lack of diligence in seeking (and ultimately gaining) access to the QIES ASAP system was the immediate primary reason why it successfully submitted only 69 percent of its HIS records on time, which is far from meeting the 90 percent timeliness threshold.[68] Consequently, 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 APU was proper.

Finally, the Board acknowledges that the preambles to the FYs 2016 and 2017 Hospice Wage index final rules provide 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.[69] 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

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[65] Ex. P-12.
[66] 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.
[67] Ex. P-13.
[68] *See* Exs. P-24, P-25.
[69] 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).

is not required to submit any quality data for a given period of time.[70] However, there is no record (and Grace Hospice does not claim) that Grace Hospice submitted either an exemption request or an extension within in the specified 90-day time frame (or otherwise). Similarly, there is no evidence (or allegation) that CMS granted a systemic exemption or extension relevant to Grace Hospice.

DECISION

After considering the Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that the two percentage point reduction in 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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FOR THE BOARD:

7/27/2023

X Clayton J. Nix

Clayton J. Nix, Esq.
Chair
Signed by: PIV

[70] 80 Fed. Reg. at 47193.