PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2023-D22

PROVIDER–
University of Arkansas for Medical Sciences Medical Center

RECORD HEARING DATE –
May 16, 2023

Provider No.:
04-0016

Fiscal Year Ending –
June 30, 2011

vs.

MEDICARE CONTRACTOR –
Novitas Solutions, Inc. (J-H)

Case No. –
15-2944

INDEX

ISSUE STATEMENT

Whether the Provider's disproportionate share hospital ("DSH") payment for the fiscal year ending June 30, 2011 ("FY 2011") should be revised to include additional Medicaid patient days that were excluded from the numerator of the Medicaid fraction?[1]

DECISION

After examining Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the FY 2011 DSH calculation for the University of Arkansas for Medical Sciences Medical Center ("UAMS Medical Center" or "Provider") should be revised to include an additional 4,394 Medicaid-eligible days in the numerator of the Medicaid fraction. Accordingly, the Board remands this appeal to the Medicare Contractor to revise the FY 2011 cost report for UAMS Medical Center as follows:

1. Add an additional 4,394 Medicaid-eligible days to the number of Medicaid-eligible days on Worksheet S-2, Part I, Line 24.00, Column 6, thereby increasing the total from 1,827 to 6,221; and

2. Increase UAMS Medical Center's disproportionate share percentage on Worksheet E, Part A, Line 33.00 from 27.29 percent to 29.93 percent.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

UAMS Medical Center is an acute care hospital paid under Medicare's inpatient prospective payment system ("IPPS"). The period at issue in this appeal is FY 2011. UAMS Medical Center's designated Medicare contractor[2] is Novitas Solutions ("Medicare Contractor").[3]

On January 16, 2015, the Medicare Contractor issued a Notice of Program Reimbursement ("NPR") for this cost reporting period.[4] On July 1, 2015, UAMS Medical Center timely filed their appeal with the Board seeking inclusion of additional Medicaid-eligible days in the numerator of the DSH Medicaid fraction calculated by Medicare Contractor.[5]

On May 11, 2023, the Parties to the appeal filed Stipulations and a Consent for Hearing on the Record.[6] The Parties stipulated, in relevant part:

> 4. The Parties have now reached an agreement on the cost report adjustments necessary to resolve this appeal. Attached as Exhibit

---

[1] Stipulations and Consent Request for a Hearing on the Record (hereinafter "Stip."), ¶ 1 (May 11, 2023).
[2] CMS's payment and audit functions under the Medicate program were historically contracted to organizations known as fiscal intermediaries ("FIs") and these functions are now contracted with organizations known as Medicare administrative contractors ("MACs"). The term "Medicare contractor" refers to both FI's and MACs as appropriate and relevant.
[3] UAMS Medical Center's Final Position Paper at 6 (Apr. 14, 2022) (hereinafter "Provider's FPP").
[4] Stip. at ¶ 2.
[5] *Id*. at ¶ 3.
[6] *Id.* at 1.

1 to this Stipulation is a copy of the MAC's audit adjustment report reflecting the parties' agreement. The agreed upon adjustments would add 4,394 Medicaid-eligible days to the Provider's number of Medicaid-eligible days on Worksheet S-2, Part I, Line 24.00, Column 6, increasing the number from 1,827 to 6,221, and would increase the Provider's disproportionate share percentage from 27.29% to 29.93% on Worksheet E, Part A, Line 33.00. These adjustments are worth $1,301,567 in additional DSH payments to the Provider.[7]

5. Notwithstanding the agreement on the necessary adjustments, the MAC believes that it is unable to enter into an administrative resolution at this time due to binding instructions from CMS precluding any MAC adjustment to the Provider's Disproportionate Patient Percentage or DSH payment calculations for periods prior to October 1, 2013.[8]

UAMS Medical Center met the jurisdictional requirements for a hearing[9] and the Board approved the Record Hearing Request. Accordingly, the Board issued a Notice of Hearing on the Record on May 16, 2023.

STATUTORY AND REGULATORY BACKGROUND: MEDICARE DSH PAYMENT

Part A of the Medicare Act covers "inpatient hospital services." Since 1983, the Medicare program has paid most hospitals for the operating costs of inpatient hospital services under IPPS.[10] Under IPPS, Medicare pays predetermined, standardized amounts per discharge, subject to certain payment adjustments.[11]

The IPPS statute contains several provisions that adjust reimbursement based on hospital-specific factors.[12] This case involves the hospital-specific DSH adjustment, which requires the Secretary to provide increased PPS payments to hospitals that serve a significantly disproportionate number of low-income patients.[13]

A hospital may qualify for a DSH adjustment based on its disproportionate patient percentage ("DPP").[14] As a proxy for utilization by low-income patients, the DPP determines a hospital's qualification as a DSH, and it also determines the amount of the DSH payment that should be paid to

[7] *Id.* at ¶ 4.
[8] *Id.* at ¶ 5. The Board understands that, in agreeing to the Stipulations, the Medicare Contractor has withdrawn its Jurisdictional Challenge filed on May 31, 2018.
[9] *See supra* note 8.
[10] *See* 42 U.S.C. § 1395ww(d)(l)-(5); 42 C.F.R. Part 412.
[11] *Id.*
[12] *See e.g.* 42 U.S.C. § 1395ww(d)(5).
[13] *See* 42 U.S.C. § 1395ww(d)(5)(F)(i)(I); 42 C.F.R. § 412.106.
[14] *See* 42 U.S.C. §§ 1395ww(d)(5)(F)(v); 42 C.F.R. § 412.l06(c)(l).

a qualifying hospital.[15] The DPP is defined as the sum of two fractions expressed as percentages.[16] Those two fractions are referred to as the "Medicare/SSI" fraction and the "Medicaid" fraction. Both fractions consider whether a patient was "entitled to benefits under part A."[17]

The fraction at issue in this case is the Medicaid fraction which 42 U.S.C. § 1395ww(d)(5)(F)(vi)(II) defines as:

> [T]he fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX [the Medicaid program], but who were *not entitled to benefits under part A of this subchapter,* and the denominator of which is the total number of the hospital's patient days for such period.[18]

The DSH regulation at 42 C.F.R. § 412.106(b)(4) (2009) specifies that Medicare contractors calculate the Medicaid fraction for a hospital's cost reporting period by "determin[ing] . . . the number of the hospital's patient days of service for which patients were eligible for Medicaid but not entitled to Medicare Part A, and divides that number by the total number of patient days in the same period."

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

As previously mentioned, the issue in this appeal is whether UAMS Medical Center's DSH payment for the FY 2011 should be adjusted to include additional patient days that were excluded from the numerator of the Medicaid fraction. To resolve this issue, the Parties agree to the following cost report adjustments:

> The agreed upon adjustments would add 4,394 Medicaid-eligible days to the Provider's number of Medicaid-eligible days on Worksheet S-2, Part I, Line 24.00, Column 6, increasing the number from 1,827 to 6,221, and would increase the Provider's disproportionate share percentage from 27.29% to 29.93% on Worksheet E, Part A, Line 33.00. These adjustments are worth $1,301,567 in additional DSH payments to the Provider.[19]

However, the Medicare Contractor contends that "it is unable to enter into an administrative resolution at this time due to binding instructions from CMS precluding any MAC adjustment to the Provider's Disproportionate Patient Percentage or DSH payment calculations for periods prior to October 1, 2013."[20]

---

[15] *See* 42 U.S.C. §§ 1395ww(d)(5)(F)(iv), (vii)-(xiii); 42 C.F.R. § 412.106(d).
[16] *See* 42 U.S.C. § 1395ww(d)(5)(F)(vi).
[17] *See, e.g.,* 42 C.F.R. § 412.106(b)(3), (4).
[18] (Emphasis added.)
[19] Stip. at ¶ 4.
[20] *Id.* at ¶ 5.

Consistent with 42 C.F.R. § 412.106(b)(4) *and* based on the Board's finding of jurisdiction, the Parties' stipulations, the Parties' agreement to conduct a hearing on the record, *and* the record before the Board, the Board accepts Stipulation ¶ 4 and finds that the FY 2011 DSH calculation for UAMS Medical Center should be adjusted to include an additional 4,394 Medicaid-eligible days in the numerator of the Medicaid fraction. Accordingly, the Board remands this appeal to the Medicare Contractor with direction to apply the Proposed FY 2011 audit adjustments reflected in and attached to the stipulations agreed to by the Parties, and to make the additional DSH payment for FY 2011 resulting from those adjustments. Specifically, the Board directs the Medicare Contractor to revise the FY 2011 cost report for UAMS Medical Center as follows: (1) add an additional 4,394 Medicaid-eligible days to the number of Medicaid-eligible days on Worksheet S-2, Part I, Line 24.00, Column 6, thus increasing the total from 1,827 to 6,221; and (2) increase UAMS Medical Center's disproportionate share percentage on Worksheet E, Part A, Line 33.00 from 27.29 percent to 29.93 percent. As represented by the Parties, these adjustments will result in an additional $1,301,567 FY 2011 DSH payment to UAMS Medical Center.[21]

DECISION AND ORDER

After examining Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the FY 2011 DSH calculation for UAMS Medical Center should be revised to include an additional 4,394 Medicaid-eligible days in the numerator of the Medicaid fraction. Accordingly, the Board remands this appeal to the Medicare Contractor to revise the FY 2011 cost report for UAMS Medical Center as follows:

1. Add an additional 4,394 Medicaid-eligible days to the number of Medicaid-eligible days on Worksheet S-2, Part I, Line 24.00, Column 6, thereby increasing the total from 1,827 to 6,221; and

2. Increase UAMS Medical Center's disproportionate share percentage on Worksheet E, Part A, Line 33.00 from 27.29 percent to 29.93 percent.

Board Members Participating:

Clayton J. Nix, Esq.
Robert A. Evarts, Esq.
Kevin D. Smith, CPA
Ratina Kelly, CPA

For the Board:

7/31/2023

X Clayton J. Nix

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

[21] *Id.* at ¶ 4.