

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D2

PROVIDER – Desert Star Home Health

Provider No.: 74-7761

vs.

MEDICARE CONTRACTOR –
Palmetto GBA c/o National Government
Services

DATE OF HEARING -
August 18, 2017

Cost Reporting Period Ended -
December 31, 2017

CASE NO.: 17-0865

INDEX

	Page No.
Issue Statement	2
Decision	2
Introduction	2
Statement of Facts	2
Discussion, Findings of Facts, and Conclusions of Law	4
Decision and Order	5

ISSUE STATEMENT:

Whether Canine Friendly Coalition, Inc. d/b/a Desert Star Home Health (“Desert Star” or “Provider”) should be subject to a two percent reduction to its calendar year (“CY”) 2017 home health market basket percentage increase¹ for failure to meet Home Health Quality Reporting Program requirements in accordance with 42 C.F.R. § 484.225(i).

DECISION:

After considering the Medicare law and regulations, the parties’ contentions and the evidence submitted, the Provider Reimbursement Review Board (“Board”) finds that the Centers for Medicare & Medicaid Services (“CMS”) properly imposed a two percent reduction to Desert Star’s CY 2017 home health market basket percentage increase.

INTRODUCTION:

Desert Star is a small home health agency located in El Paso, Texas. Its Medicare contractor, Palmetto GBA, notified Desert Star that CMS reduced its 2017 Medicare payment update by 2% because it failed to timely submit quality data as required by federal law. In a letter dated October 10, 2016, Desert Star requested that CMS reconsider its decision. On December 20, 2016, CMS upheld its payment reduction. Desert Star timely appealed this decision to the Board.² The Board held a telephonic hearing on August 18, 2017. Sandra Solano, Alternate Administrator represented Desert Star. Ed Lau, Esq., of Federal Specialized Services represented Palmetto GBA.

STATEMENT OF FACTS:

In the Balanced Budget Act of 1997, Congress mandated that the Secretary of Health and Human Services (“Secretary”) establish a prospective payment system for home health services covered by Medicare.³ Along with the establishment of this prospective payment system, Congress also directed the Secretary to increase the prospective payments made to Home Health agencies (“HHAs”) each calendar year by a percentage, estimated by the Secretary, otherwise known as the “home health market basket percentage increase”⁴ or Annual Payment Update (“APU”).⁵ Subsequently, in the Deficit Reduction Act of 2005 (“DRA”), Congress added a data reporting

¹ Desert Star did not provide a formal issue statement in its request for hearing or final position paper but the Medicare contractor’s final position paper describes the following issue: “Whether the Provider should be subject to a 2% reduction to its FY 2017 HH PPS payments for failure to meet Home Health (HH) Quality Reporting (QRP) Program requirements in accordance with 42 CFR §484.225(i).” The Board notes that Desert Star is not subject to a 2% reduction in its total home health prospective payment for 2017 but, rather, a 2% reduction in its home health market basket percentage increase for 2017. 42 U.S.C. § 1395fff(b)(3)(B)(v)(I) (2012); 42 C.F.R. § 484.225(c) (2014). The Board has corrected the issue statement to reflect the proper payment reduction in question for the instant appeal.

² See Desert Star Final Position Paper, Ex. 7-10.

³ Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

⁴ 42 USC § 1395fff(b)(3)(b)(i)-(iii) (2014).

⁵ Home Health Quality Reporting Requirements, 79 Fed. Reg. 66032, 66074 (Nov. 6, 2014).

requirement.⁶ In order to qualify for the full market basket percentage increase, the DRA requires HHAs to submit data that the Secretary determines are appropriate for the measurement of health care quality. Further, if an HHA fails to submit data in the time, form and manner determined by the Secretary, it is subject to a two percentage point reduction in its APU for a particular year.⁷

Beginning in calendar year 2013, to measure and publicly report patient experiences with [home health] care, CMS required HHAs to submit the Consumer Assessment of Healthcare Providers and Systems survey (“HCAHPS,”) for four calendar quarters from 4/1/2011 to 3/31/2012.⁸ CMS requires Medicare-participating HHAs to contract with approved HCAHPS vendors who survey the HHA’s patients and submit survey data to CMS.

For the CY 2017 APU, HHAs with less than 60 HCAHPS-eligible patients from April 1, 2014 through March 31, 2015, could request an exemption from the HCAHPS data collection and submission requirements by completing the CY 2017 HCAHPS Participation Exemption Request form which was posted on <https://homehealthcahps.org>. The completed form was to be submitted between April 1, 2015 and March 31, 2016.⁹

During the hearing, Desert Star’s former alternate administrator and part-owner, Kristin Finley, testified that, as Desert Star’s patient census had always been below 60,¹⁰ Desert Star had successfully submitted Participation Exemption Requests to CMS for CY 2015 and CY 2016.¹¹

However, for CY 2017, Desert Star thought that its patient census would exceed 60, so it contracted with an outside vendor, DEYTA, sometime in August of 2015 to begin the survey reporting in September of that same year.¹² Ms. Finley states that DEYTA warned Desert Star that it was “late” as far as its start date for the survey, but that DEYTA went ahead and began submitting survey data for Desert Star in September of 2015.¹³ Although Desert Star sent its HCAHPS data for prior months to DEYTA, DEYTA did not submit any data that predated its contract with Desert Star.¹⁴ Desert Star admits that it misinterpreted “dates on emails between DEYTA and [Desert Star]” resulting in the incorrect assumption that “[HCAHPS] would start in September.”¹⁵

Ms. Finley testifies that although DEYTA notified Desert Star that it was submitting its survey information late, DEYTA did not advise Desert Star to submit a Participation Exemption Request form for CY 2017.¹⁶

⁶ Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

⁷ 42 C.F.R. § 484.225(c) (2014).

⁸ Home Health Prospective Payment Rate Update for Calendar Year 2011, 75 Fed. Reg. 70372, 70404 -70406 (Nov. 17, 2010).

⁹ 79 Fed. Reg. at 66083.

¹⁰ Tr. at 22; *See also* Desert Star Final Position Paper, at p.4.

¹¹ Tr. at 23-24.

¹² *Id.* at 24-25.

¹³ *Id.* at 33-34.

¹⁴ Desert Star Final Position Paper, Letter, dated January 17, 2017 at p. 39.

¹⁵ Tr. at 20; *See also* Desert Star Final Position Paper, at 1.

¹⁶ Tr. at 35-36.

Desert Star states that “this 2% reduction would cause an extraordinary financial hardship for us.”¹⁷ Desert Star requests that the Board grant “leniency for the short lapse in time in getting the survey process started[,]” and ultimately asks that the Board takes into consideration Desert Star’s “financial hardship” and grant a “waiver” of the 2 percent penalty due to the agency’s low patient census.¹⁸

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Board observes that in order to be compliant with the Secretary’s quality reporting requirements, HHAs must submit HHCAHPS data for four quarters in predetermined time periods in “a form and manner, and at a time”¹⁹ prescribed by the Secretary. HHCAHPS data was to be *collected* for the second quarter of 2015 through the first quarter of 2016 and *submitted* at regular, prescribed intervals following its collection period.²⁰ Relevant to this appeal, the HHCAHPS data for the second quarter of 2015 (i.e., beginning April 1, 2015, and ending June 30, 2015) was to be submitted to the HHCAHPS Data Center “by 11:59 p.m., e.d.t. on October 15, 2015 . . .”²¹

The facts reveal that CMS imposed a 2 percent reduction in Desert Star’s 2017 APU because Desert Star submitted only three quarters of HHCAHPS data. More specifically, Desert Star failed to submit HHCAHPS data for the entire second quarter of 2015— April 1, 2015, through June 30, 2015.²²

Desert Star admits it was at fault with respect to the submission of its incomplete HHCAHPS survey data for the second quarter of 2015. Desert Star recognizes that DEYTA did warn Desert Star that it was “late” submitting its HHCAHPS survey data but faults DEYTA for not prompting Desert Star to submit a Participation Exemption Request form for CY 2017.²³

The Board is cognizant of the small size of Desert Star and the fact that this agency may have qualified for an exemption during the reporting period involved. Nonetheless, CMS clearly warns HHAs to “monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time”²⁴ and requires all home health agencies to be vigilant in the submission of data. The Board does not have the authority to consider factors outside those specifically recognized under the statute and regulations. The statute, regulations and relevant final rules mandate application of the 2 percent penalty if a provider fails to submit home health quality data as specified by the Secretary.

The Board finds that Desert Star was aware of the existence of CMS’ Participation Exception Request form for applicable HHCAHPS reporting periods in which an HHA’s qualifying patient census is below 60 because it had successfully submitted exemption requests for the CY 2015

¹⁷ Desert Star Final Position Paper, at 2.

¹⁸ *Id.* at 1-2.

¹⁹ 79 Fed. Reg. at 66073.

²⁰ *Id.* at 66082.

²¹ *Id.*

²² Tr. at 33-34.

²³ *Id.*

²⁴ 79 Fed. Reg. at 66083.

and CY 2016 reporting periods. Desert Star had until March 31, 2016, to submit its Participation Exemption Request form for the CY 2017 but failed to do so.²⁵

DECISION AND ORDER:

After considering the Medicare law and regulations, the parties' contentions and evidence submitted, the Board finds that Desert Star did not submit four complete quarters of HHCAHPS data for the CY 2017 APU reporting period, nor did it submit a Participation Exemption Request form for the time period at issue, as required under 42 U.S.C. § 1395fff, the regulations implementing the statute at 42 C.F.R. § 484.225(i) and the relevant final rules. As the Board finds that Desert Star did not submit the statutorily mandated quality data in the form, manner, and time specified by the Secretary, the statute, regulations, and relevant final rules mandate application of a 2 percent reduction in Desert Star's home health market basket percentage increase for the CY 2017.

BOARD MEMBERS PARTICIPATING:

L. Sue Andersen, Esq.
Charlotte F. Benson, C.P.A.
Gregory H. Ziegler, C.P.A., CPC-A

FOR THE BOARD:

/s/
L. Sue Andersen, Esq.
Chairperson

DATE: November 6, 2017

²⁵ *Id.*