

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D27

PROVIDER –
Central Iowa Healthcare

Provider No.: 16-0001

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

HEARING DATE –
June 29, 2017

Fiscal Period – 2017

CASE NO.: 17-0564

INDEX

	Page No.
Issue Statement	2
Decision.....	2
Introduction	2
Statement of Facts and Relevant Law	2
Discussion, Findings of Facts, and Conclusions of Law.....	3
Decision and Order	5

ISSUE STATEMENT

Whether the Provider is entitled to the full Market Basket Update for the fiscal year (“FY”) 2017.¹

DECISION

After considering the Medicare law and regulations, the parties’ contentions, and the evidence submitted, the Provider Reimbursement Review Board (“Board”) concludes that the reduction of the Provider’s market basket update for FY 2017 was proper.

INTRODUCTION

Central Iowa Healthcare (“Central Iowa” or “Hospital”) is an acute care hospital located in Marshalltown, IA. On May 23, 2016, the Centers for Medicare and Medicaid Services (“CMS”) notified Central Iowa that it failed to meet Hospital Inpatient Quality Reporting (“IQR”) program requirements which would result in a one-fourth reduction in its FY 2017 market basket update. Specifically, CMS alleged that Central Iowa failed to submit Hospital Consumer Assessment of Healthcare Providers and Systems (“HCAHPS”) Survey data.² On May 24, 2016, Central Iowa requested that CMS reconsider its decision,³ and on July 8, 2016 CMS responded to the request and upheld the payment reduction.⁴

Central Iowa timely appealed that decision to the Board and has met the jurisdictional requirements for a hearing. The Board conducted a live hearing on June 29, 2017. Thomas Reavely and Zachary Hermsen of Whitfield & Eddy Law represented Central Iowa. John Hamada, Esq. of Federal Specialized Services represented Wisconsin Physicians Service (“Medicare Contractor”).

STATEMENT OF FACTS AND RELEVANT LAW

The Medicare program pays acute care hospitals for inpatient services under the inpatient prospective payment system (“IPPS”).⁵ Under IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.⁶ Hospitals receive an annual percentage increase in the standardized amount, known as the “market basket update,” to account for increases in operating costs.⁷

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003⁸ amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the IQR program that requires each hospital to submit

¹ Transcript (“Tr”) at 7-8.

² Provider’s Final Position Paper, Exhibit P-11.

³ Provider’s Final Position Paper, Exhibit P-12.

⁴ Provider’s Final Position Paper, Exhibit P-13.

⁵ See 42 U.S.C. § 1395ww(d); 42 C.F.R. Part 412. IPPS hospitals are often referred to as “subsection (d) hospitals.”

⁶ See 42 C.F.R. Part 412.

⁷ See 42 U.S.C. § 1395ww(b)(3).

⁸ Pub. L. No. 108-173, 117 Stat. 2066 (2003).

quality of care data “in a form and manner, and at a time, specified by CMS.”⁹ For fiscal years 2015 and beyond, CMS reduces the hospital’s annual IPPS market basket percentage increase by one-fourth if a hospital fails to report the required quality data under the IQR program.¹⁰ A hospital that is subject to this penalty during a given year is also ineligible for incentive payments from the value-based purchasing (“VBP”) program.¹¹

For FY 2017 payment determinations, CMS required hospitals participating in the IQR program to submit HCAHPS Survey data beginning January 1, 2015.¹² CMS instructed the hospitals to regularly check the official HCAHPS web site at <http://www.hcahpsonline.org> for new information and program updates regarding the HCAHPS Survey, its administration, oversight and data adjustments. CMS posted IQR program instructions and deadlines for quarterly data submission on the QualityNet Exchange Website.¹³ The four quarterly submission deadlines for HCAHPS Survey data were as follows:

1. Data from the first quarter of CY 2015 was due on July 1, 2015;
2. Data from the second quarter of CY 2015 was due on October 7, 2015;
3. Data from the third quarter of CY 2015 was due on January 8, 2016; and
4. Data from the fourth quarter of CY 2015 was due on April 6, 2016.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Central Iowa explains that to comply with recommendations from CMS regarding electronic health records, it purchased a new computer program called Paragon from McKesson Corporation. Central Iowa began implementing this computer program in June 2014. After training and testing, Central Iowa went live with Paragon on July 27, 2015. Central Iowa uses Press Ganey Associates, Inc. (“Press Ganey”), an outside entity, to administer its HCAHPS surveys and submit its HCAHPS data to CMS. Due to a variety of unforeseeable technology issues associated with the Paragon conversion, Central Iowa was not able to submit patient data to Press Ganey to enable it to administer the HCAHPS survey.¹⁴

Central Iowa contends that its HCAHPS reporting deficiency was due to a CMS-recommended computer conversion that resulted in severe, unforeseeable technology issues.¹⁵ This computer conversion caused widespread problems that were so severe they threatened Central Iowa’s ability to continue functioning as a viable entity. Central Iowa believes these technology issues were beyond its control and therefore, its HCAHPS reporting deficiency must be excused under the exception for extraordinary circumstances beyond the hospital’s control.¹⁶

⁹ 42 C.F.R. § 412.140(c).

¹⁰ See 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

¹¹ See 42 U.S.C. § 1395ww(o)(1)(C)(ii); 79 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).

¹² See 79 Fed. Reg. 49854, 50259 (Aug. 22, 2014).

¹³ See Hospital Inpatient Quality Reporting (IQR) Program Important Dates and Deadlines at Medicare Contractor’s Final Position Paper, Exhibit I-3.

¹⁴ Provider’s Final Position Paper at 1-2.

¹⁵ See Joint Stipulations. The record shows that eligible discharges for August, September, October, November and December were not sent to Press Ganey. As a consequence, Central Iowa did not timely submit its HCAHPS survey data to CMS for the third and fourth quarters of CY 2015.

¹⁶ Provider’s Final Position Paper at 1-2.

In making its argument, Central Iowa states that CMS published the following in the Federal Register:

In our experience, there have been times when hospitals have been unable to submit required quality data due to extraordinary circumstances that are not within their control. It is our goal to not penalize hospitals for such circumstances or unduly increase their burden during these times. Therefore, in the FY 2012 IPPS/LTCH PPS proposed rule (76 FR 25925) we proposed to continue, for the FY 2014 and subsequent years payment determinations, the process we adopted in the FY 2011 IPPS/LTCH PPS final rule (75 FR 50225), for hospitals to request and for CMS to grant waivers with respect to the reporting of required data when there are extraordinary circumstances beyond the control of the hospital. Under the process, in the event of extraordinary circumstances, such as a natural disaster, not within the control of the hospital, for the hospital to receive consideration for an extension or waiver of the requirement to submit quality data for one or more quarters, a hospital would submit to CMS a request form that would be made available on the QualityNet Web site.¹⁷

The regulation at 42 C.F.R. § 412.140(c)(2) reflects the Federal Register stating:

(2) *Exception.* Upon request by a hospital, CMS may grant an extension or exemption of one or more data submission deadlines in the event of extraordinary circumstances beyond the control of the hospital. Specific requirements for submission of a request for an extension or exemption are available on QualityNet.org.

Central Iowa admits that it did not file an Extraordinary Circumstances Extensions/Exemptions Request Form with CMS.¹⁸ However, Central Iowa believes that it should not be punished for its reasonable reliance on the expertise of its HCAHPS Survey vendor, Press Ganey, and for the unfortunate fact that it was not aware of the extraordinary circumstances exemption form.¹⁹

While the Board sympathizes with Central Iowa's plight, the Board finds that Central Iowa had sufficient notice as to the procedures it should have followed in order to request an extension or waiver of the requirement to submit quality data for one or more quarters. The Board points out that CMS regulations at 42 C.F.R. § 412.140(c)(2) are clear that the hospital must request an extension or exemption and that the specific requirements for doing so are available on the QualityNet.org website. Additionally the August 18, 2011 Federal Register clearly stated that an extension or waiver request must explain the reason for the request, be signed by the hospital's CEO, and submitted within 30 days of the date the extraordinary circumstances occurred.²⁰

¹⁷ See 76 Fed. Reg. 51651, 51652 (Aug. 18, 2011).

¹⁸ See Joint Stipulations ¶ 47.

¹⁹ Provider's Post-Hearing Brief at 5.

²⁰ 76 Fed. Reg. 51476, 51652 (Aug. 18, 2011).

These regulations were available well before Central Iowa encountered the July, 2015 technical problems with its Paragon conversion.²¹

Despite the clear requirements, Central Iowa failed to submit an exception request and failed to submit its calendar year 2015 third and fourth quarter HCAPHS Survey data timely. Consequently, the Board concludes that Central Iowa failed to submit its 2015 HCAPHS Survey data in a form and manner, and at a time specified by CMS, and accordingly, is subject to a reduction in its market basket update for FY 2017 pursuant to 42 C.F.R. § 412.64(d)(2)(i).

DECISION AND ORDER:

After considering the Medicare law and regulations, the parties' contentions and the evidence submitted, the Board concludes that the reduction of the Provider's market basket update for FY 2017 was proper.

BOARD MEMBERS:

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

FOR THE BOARD:

/s/
L. Sue Andersen, Esq.
Chairperson

DATE: March 16, 2018

²¹ See 42 C.F.R. § 412.140(c)(2) (2012).