PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D30

PROVIDER –
Horizon Home Care & Hospice

Provider No.: 52-1531

vs.

MEDICARE CONTRACTOR –
National Government Services

HEARING DATE –
April 6, 2016

Fiscal Period – 2016

CASE NO.: 16-0143

INDEX

ISSUE STATEMENT:

Whether the imposition of a two percent reduction in Horizon Home Care & Hospice, Inc.'s ("Horizon" or "Provider") fiscal year ("FY") 2016 Medicare payments was proper.[1]

DECISION:

After considering the Medicare law and regulations, the parties' contentions and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds that Horizon did not submit its hospice quality data in the form, manner, and at the time, specified by the Secretary and therefore is subject to a two percent reduction in the FY 2016 Annual Percentage Update ("APU").[2]

INTRODUCTION:

Horizon is a Medicare-certified hospice provider located in Wisconsin.[3] On June 8, 2015, National Government Services ("Medicare Contractor") notified Horizon that the Centers for Medicare & Medicaid Services ("CMS") reduced Horizon's 2016 APU by two percentage points because Horizon failed to timely submit quality data to CMS as required by federal law.[4] In a letter dated June 10, 2015, Horizon requested that CMS reconsider its decision.[5] On September 4, 2015, CMS upheld its payment reduction and Horizon timely appealed the reconsideration decision to the Board.[6] Horizon has met the jurisdictional requirements for a Board hearing.

The Board held an in-person hearing on April 6, 2016. Diane M. Welsh, Esq., of Cullen Weston Pines & Bach LLP represented Horizon. Joe Bauers, Esq., of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF FACTS:

In section 122 of the Tax Equity and Fiscal Responsibility Act of 1982, Congress amended the Social Security Act ("the Act") 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.[7] Subsequently, Congress further amended the Act to include an annual increase in the daily payment rate for hospice services

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[1] The parties agreed upon and submitted this issue statement for the April 6, 2016 hearing. The Board notes, however, that a provider's failure to meet the hospice quality reporting requirements for a particular payment year is not subject to a two percent reduction in the provider's entire Medicare payment amount for that year but, rather, a two percentage point reduction in that provider's market basket or annual payment update. *See* FY 2014 Hospice Wage Index and Payment Rate Update, 78 Fed Reg. 48234, 48255 (Aug. 7, 2013).

[2] The terms "market basket update," "market basket percentage increase," and "annual payment update" (or "APU") are synonymous and used interchangeably in this decision.

[3] Horizon's Post-Hearing Br. at 1.

[4] Exhibit P-2.

[5] Exhibit P-3.

[6] Exhibit P-5; *see also* Horizon's Request for Hearing ("RFH").

[7] FY 2015 Hospice Wage Index and Payment Rate Update, 79 Fed. Reg. 50452, 50455-50457 (Aug. 22, 2014).

based upon the inpatient market basket percentage increase.[8] Under the Affordable Care Act ("ACA"), Congress tied a hospice provider's annual increase or market basket update to submission of certain quality data based on measures specified by the Secretary of Health and Human Services ("the Secretary").[9] The ACA further mandated that a hospice's market basket update be reduced by two percentage points if that hospice failed to report the required quality data measures for a particular fiscal year. Section 1814(i)(5)(C) of the Act states that hospices must submit their quality data measures in a form, manner and at a time specified by the Secretary.[10] CMS finalized the hospice reporting requirements for the 2016 payment determination within the August 7, 2013 Final Rule.[11]

In order to meet the quality reporting requirements for the FY 2016 payment determination and receive the full market basket percentage increase, CMS required hospices to use CMS' standardized data collection instrument called the Hospice Item Set ("HIS")[12] to electronically submit the hospice's quality data measures for each patient admitted to the hospice on or after July 1, 2014.[13] The quality data collection period for the FY 2016 payment determination ran from July 1, 2014, through December 31, 2014,[14] with the data submission deadline for this quality data being April 1, 2015.[15]

Horizon's June 8, 2015 notification from its Medicare Contractor states that Horizon's 2016 Annual Payment Update ("APU") was being reduced by two percentage points because Horizon "fail[ed] to report quality data via the HIS in 2014."[16]

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Horizon explains that it submitted admission and discharge data files to CMS via the Quality Improvement Evaluation System ("QIES") from July 1 through December 31, 2014.[17] Horizon states that following submission of its HIS data, the QIES ASAP system displayed the declaration "Your submission has been received[,]" along with a submission ID, submission date, file name and the following message:

> Your submission file will be processed for errors within 24 hours. The Final Validation report, which contains detailed information about your

[8] Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239); Section 4441(a) of the Balanced Budget Act of 1997 (Pub. L 105-33).
[9] Section 3004(c) of the Affordable Care Act (2010) (Pub. L. 111-148).
[10] *Id.*
[11] 78 Fed. Reg. 48234, 48257-48258 (Aug. 7, 2013).
[12] CMS initially implemented the HIS 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, 50487 (Aug. 22, 2014).
[13] *Id.* at 50486.
[14] 78 Fed. Reg. 48234, 48261-48262 (Aug. 7, 2013).
[15] *Id.*; *see also* 77 Fed. Reg. 67068, 67134 (Nov. 8, 2012).
[16] Exhibit P-2 at 1.
[17] RFH Tab 3 at unnumbered page 1; Horizon's Final Position Paper at 1; and Exhibit P-3.

> submission, may be accessed in the CASPER Reporting application. It is recommended that you print and retain the Final Validation Reports.[18]

After being notified that its APU would be reduced by 2 percentage points, Horizon conducted an internal investigation and found that its quality data did not transmit to CMS' CASPER[19] system due to a facility identifier error.[20] During the hearing, Horizon's expert witness testified that the only way Horizon would have known whether or not its data had been successfully transmitted over to the CASPER system is to run a final validation report.[21]

Horizon argues that the data submission confirmation it received from the QIES ASAP system serves as proof that it "has met its obligations under the express language of the [Quality Reporting Program ("QRP")] Rule."[22] Horizon also argues that, based upon the guidance, training and materials provided by CMS at that time, the agency's "recommendation that providers affirmatively retrieve the validation reports to confirm acceptance by the CASPER system . . . cannot properly be construed as a requirement that can be applied to 2014 HIS submissions to support imposition of the two-percent penalty."[23] Horizon summarizes its position by stating that "[t]he plain language of the QRP Rule requires that a hospice provider 'submit' the HIS data to CMS; it does not require that the CASPER system receive the data from QIES."[24]

During the hearing, the Medicare Contractor argued that the Federal Register clearly states that quality "data must be submitted in a form and manner, and at a time, as specified by the Secretary[]"and that "the Provider freely admits that its data submissions were rejected by CMS due to [an] incorrect facility ID . . ."[25] The Medicare Contractor states that, with respect to the QRP requirements, "[t]he duty is on the Provider to submit its data accurately, completely and timely[,]"and that "the Provider has not submitted evidence or documentation that error free reports were timely and accurately submitted and received."[26]

The Board agrees that the Provider is not required to review and printout its final validation report. However, the Board asserts it is in the Provider's best interest to run the validation reports in order to confirm that the quality data was input correctly and transmitted from QIES to CASPER. Numerous documents have been admitted into the record that state the importance of

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[18] Horizon's Post-Hearing Br. at 3.
[19] "CASPER" stands for "Certification and Survey Provider Enhanced Reporting." Medicare Contractor's Post-Hearing Br. at 4. The CASPER application enables providers to connect electronically to the National Reporting Database. *See* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Downloads/Hospice-Tech-Training_CASPER-Reports-for-providers-Module-3-of-4.pdf.
[20] Horizon's Post-Hearing Br. at 3-4.
[21] Tr. at 53-54.
[22] Horizon's Post-Hearing Br. at 1.
[23] *Id.*
[24] Horizon's Final Position Paper at 5.
[25] Tr. at 14-15.
[26] Medicare Contractor's Post-Hearing Br. at 6.

running these validation reports.[27] The HIS manual states that the validation reports are to be run to identify errors and if there are "any fatal errors, the record will be rejected and not stored in the QEIS ASAP system."[28] The Hospice Item Set Submission User's Guide contains the following warning with respect to the Hospice File Submission screen "[t]he confirmation message only indicates successful receipt of the file at the National Submissions Database. Errors that exist in the submitted file are identified only after the Hospice system subsequently validates the file."[29] Within the 2014 Guidance Manual, CMS issues the following warning with respect to quality data submission:

> The QIES ASAP system validation edits are designed to monitor the timeliness and ensure that the submitted records conform to the HIS Data Submission Specifications. If submitted HIS records do not meet the edit requirements, the system will provide fatal error and/or warning messages on the Final Validation Report.[30]

The message Horizon received from the QIES ASAP system notified the Provider that its data was received and would be processed for errors within 24 hours. The message went on to say that detailed information about the submission could be accessed in the CASPER Reporting application and that the Provider should print and retain these Final Validation Reports. It is clear that the Provider did not access CASPER or follow the advice contained in the HIS manual, the Hospice Item Set Submission User's Guide, and the 2014 Guidance Manual. As a result Horizon was not aware that the data input into QIES was missing a Facility Identifier[31] and therefore did not transmit to CASPER.

The Board finds that the Provider did not perform the recommended steps prior to the submission deadline to assure that the quality data it entered into QIES was error free and transferred to CASPER.[32] Section 1814(i)(5)(C) of the Act states that a hospice must submit data measures in a form, manner, and at a time specified by the Secretary.[33] Horizon did not input its facility ID and, as a result, did not submit the quality data in the form and manner and at the time required by 1814(i)(5)(C).

DECISION AND ORDER:

After considering the Medicare law and regulations, the parties' contentions and the evidence submitted, the Board finds that Horizon did not submit its hospice quality data in the form,

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[27] In addition to exhibits submitted by the Provider and the Medicare Contractor, the Board introduced Exhibit B-1, "CMS Hospice Quality Reporting Program, HIS Manual: Guidance Manual for Completion of the Hospice Item Data Set (HIS), V 1.01 (effective July 1, 2014)" ("2014 Guidance Manual").

[28] Exhibit I-10 at 3-4.

[29] Horizon's Post-Hearing Br. Ex P-7, at 25.

[30] Exhibit B-1 at 070.

[31] Provider's Post Hearing Brief at 1 and 3-4; Exhibit P-4.

[32] *See* Exhibit P-4 at 15 for the June 12, 2015 letter stating "We have made a correction to our facility ID number and we have resubmitted all our data files. As of June 11, 2015, all admission and discharge data has been accepted by the CASPER system consistent with the QRP requirements."

[33] 42 C.F.R 418.312(a) (2014) ("Data submission requirements under the hospice quality reporting program" referencing section 1814(i)(5)(C) of the Act).

manner, and at the time, specified by the Secretary and therefore is subject to a two percent reduction in the FY 2016 APU.

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: March 29, 2018