

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D31

PROVIDER –
Mary Free Bed Hospital & Rehab Center

Provider No.: 23-3026

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

HEARING DATE –
October 11, 2017

Cost Reporting Period Ended –
September 30, 2017

CASE NO.: 17-1253

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	4

ISSUE STATEMENT

Whether the Provider is entitled to the full market basket update for 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 Mary Free Bed Hospital & Rehab Center is not entitled to the full market basket update for FY 2017.

INTRODUCTION

Mary Free Bed Hospital & Rehab Center (“Provider”) is an inpatient rehabilitation facility (“IRF”) located in Grand Rapids, MI. On July 7, 2016, the Centers for Medicare and Medicaid Services (“CMS”) notified Mary Free Bed that it failed to meet IRF Quality Reporting Program (“QRP”) requirements for FY 2017,² and as a result the Provider would be subject to a two percentage point payment reduction in the FY 2017 annual increase factor. Specifically, CMS alleged that the Provider failed to report complete *Methicillin Resistant Staphylococcus aureus* (“MRSA”) and *Clostridium difficile* (“CDI”) data for all required months.³ Following the Provider’s request for reconsideration, CMS upheld its decision.⁴

Mary Free Bed timely appealed CMS’ reconsideration decision and met the jurisdictional requirements for a hearing before the Board. A hearing was held on October 11, 2017. Christina Hughes of Powers, Pyles, Sutter & Verville, P.C. represented Mary Free Bed. Wisconsin Physicians Service (“Medicare Contractor”) was represented by John Hamada, Esq., of Federal Specialized Services.

STATEMENT OF FACTS AND RELEVANT LAW

The Medicare program pays IRFs⁵ for services under the IRF prospective payment system (“IRF PPS”).⁶ Under IRF PPS, the Medicare program pays predetermined, standardized amounts per discharge, subject to certain payment adjustments.⁷ The standardized amounts are increased each year by a “market basket update” to account for increases in operating costs.⁸

¹ Transcript (“Tr”) at 6.

² In the FY 2016 IRF PPS Final Rule, 80 FR 47085 through 47086, CMS finalized the IRF QRP requirements for the FY 2017 payment determination. Of the six requirements, two are the subject of this appeal: NQF #1716 NHSN Facility-Wide Inpatient Hospital-Onset Methicillin Resistant *Staphylococcus aureus* (MRSA) Bacteremia Outcome Measure, to CMS via the CDC’s NHSN and NQF #1717 NHSN Facility-Wide Inpatient Hospital-Onset *Clostridium difficile* Infection (CDI) Outcome Measure, to CMS via the CDC’s NHSN.

³ Exhibit P-2; *See also* Exhibit I-2.

⁴ Exhibit P-14.

⁵ “Rehabilitation facilities” includes rehabilitation hospitals and rehabilitation units within a hospital. *See* 42 U.S.C. § 1395ww(j)(1)(A).

⁶ *See* 42 U.S.C. § 1395ww(j); 42 CFR Part 412.600, et al.

⁷ *See* 42 C.F.R. Part 412.624.

⁸ *See* 42 U.S.C. § 1395ww(j)(3).

The Patient Protection and Affordable Care Act (“ACA”) of 2010⁹ amended 42 U.S.C. § 1395ww(j) to establish the IRF QRP, and require each rehabilitation facility to submit quality of care data “...in a form and manner, and at a time, specified by the Secretary...”¹⁰ For fiscal years 2014 and beyond, federal law specifies that a rehabilitation facility that fails to report the required quality data under the IRF QRP is assessed a one-time 2 percent reduction to its annual increase factor to the standard federal IRF prospective payment.¹¹

The regulation addressing IRF QRP data submission at 42 C.F.R. § 412.634 states:

(b) Submission Requirements and Payment Impact.

(1) IRFs must submit to CMS data on measures specified under section 1886(j)(7)(D), 1899B(c)(1), and 1899B(d)(1) of the Act, as applicable. Such data must be submitted in the form and manner, and at a time, specified by CMS.

(2) As required by section 1886(j)(7)(A)(i) of the Act, any IRF that does not submit data in accordance with section 1886(j)(7)(C) and (F) of the Act for a given fiscal year will have its annual update to the standard Federal rate for discharges for the IRF during the fiscal year reduced by two percentage points.

The IRF QRP requires rehabilitation facilities to submit various quality measures, including data regarding MRSA and CDI.¹² CMS instructed rehabilitation facilities to submit MRSA and CDI quality data to the Centers for Disease Control and Prevention (“CDC”) through a CDC computer system called the National Healthcare Safety Network (“NHSN”).¹³ IRF QRP instructions and deadlines¹⁴ for data submission are posted on the CMS “IRF QRP” web site.¹⁵ Since 2012 the NHSN website has made available instructions and manuals for using the NHSN system.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Mary Free Bed contends that it submitted all required MRSA and CDI information through the NHSN, including the required Monthly Reporting Plan (“MRP”). The Provider apparently listed all of its inpatient units individually in the “Location” field, instead of using a “FACWideIN” indicator, which was a means of indicating that the data was being reported on a “facility wide”

⁹ Patient Protection and Affordable Care Act § 3004(b), Pub. L. No. 111-148, 124 Stat. 119 (2010).

¹⁰ Patient Protection and Affordable Care Act § 3004(b)(2)(C), Pub. L. No. 111-148, 124 Stat. 119 (2010). *See also* 42 C.F.R. § 412.634 .

¹¹ *See* 42 U.S.C. § 1395ww(j)(7)(A)(i); 42 C.F.R. § 412.634(b)(2).

¹² *See* 79 Fed. Reg. 45871, 45911-45914 (Aug. 6, 2014). *See also* <https://www.cdc.gov/nhsn/training/patient-safety-component/>

¹³ *See* 79 Fed. Reg. 45871, 45912-45913 (Aug. 6, 2014).

¹⁴ *See* <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Data-Submission-Deadlines.html>

¹⁵ *See* <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/>

basis.¹⁶ Instead, the Provider noted in the “Location” field that it would submit information for its adult inpatient and pediatric inpatient units. The Provider complains that in the MRP, the “Locations” field was not marked as mandatory and the available options in the “Locations” drop-down menu did not include an option for the required, facility-wide inpatient (*i.e.*, “FACWIDEIN”) reporting.¹⁷

Mary Free Bed maintains that it received no alerts from the NHSN regarding any missing data or otherwise faulty reporting. The Provider complains that the NHSN does not maintain one guidebook or manual with a compilation of all applicable instructions for providers. Instead, providers must navigate among a variety of informal instructions to determine their reporting requirements. In addition, the NHSN’s systems and software are under constant revision, with errors identified on a regular basis. Between these constant changes and the unavailability of all relevant NHSN-related policies and directives in one resource, the Provider maintains that the NHSN is incredibly difficult to navigate successfully.¹⁸

The Board finds that the online *Operational Guidance for Inpatient Rehabilitation Facilities*, available on the CDC website, directed that free-standing IRFs were required to conduct facility-wide inpatient (FACWideIN) surveillance of MRSA and CDI events, meaning that they must report monthly denominators summed across all inpatient locations combined (total facility patient days and total facility admissions), beginning on January 1, 2015. The guidance stated that monthly reporting plans were to be updated in NHSN to specify facility wide surveillance. The Board finds that the Provider failed to implement this guidance. As a result, the Provider’s MRSA and CDI data were not shared with CMS, leaving the Provider out of compliance with the IRF QRP requirements.

The Board agrees with the Medicare Contractor that the evidence in this case establishes that the Provider’s failure to properly configure its MRP pursuant to the NHSN guidelines resulted in the untimely submission of its calendar year 2015 MRSA and CDI quality measure data. As the Provider did not submit its quality data in the form and manner, and at a time specified by CMS, the Provider is subject to a two percentage point reduction in its annual payment update for FY 2017.

DECISION AND ORDER:

After considering the Medicare law and regulations, the parties’ contentions, and the evidence submitted, the Board concludes Mary Free Bed Hospital & Rehab Center is not entitled to the full market basket update for FY 2017.

¹⁶ Medicare Contractor’s Final Position Paper, Exhibit I-7.

¹⁷ Provider’s Final Position Paper at 11.

¹⁸ Provider’s Final Position Paper at 12.

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: April 10, 2018