PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D32

PROVIDER–
Lightbridge Hospice

HEARING DATE –
April 7, 2016

Provider No.: 05-1763

Fiscal Year – 2016

vs.

MEDICARE CONTRACTOR –
National Government Services

CASE NO.: 16-0159

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ISSUE

Whether the imposition of a two percent reduction in Lightbridge Hospice's ("Lightbridge" 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 Lightbridge 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

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

The Board held an in-person hearing on April 7, 2016. Jordan Keville, Esq. of Hooper, Lundy & Bookman, P.C. represented Lightbridge. 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 ("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.[6] 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 this issue statement. 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* 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] Lightbridge's Final Position Paper Ex. P-2, Dec. 30, 2015.

[4] Medicare Contractor's Final Position Paper Ex. I-1, Jan. 28, 2016.

[5] *See* Lightbridge's Appeal Request at 1, Oct. 30, 2015.

[6] 79 Fed. Reg. 50452, 50457 (Aug. 22, 2014).

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

In order to meet the quality reporting requirements for the FY 2016 payment determination and receive the full market basket percentage increase, CMS required hospice providers to use CMS' standardized data collection instrument called the Hospice Item Set ("HIS")[11] to electronically submit the hospice's quality data measures for each patient admitted to the hospice on or after July 1, 2014[12] through CMS's Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) system.[13] The data collection period for the FY 2016 payment determination ran from July 1, 2014 through December 31, 2014, with the data submission deadline of April 1, 2015.[14]

Lightbridge's September 4, 2015 notification from NGS states that Lightbridge's 2016 APU was being reduced by two percentage points because Lightbridge "fail[ed] to report quality data via the HIS in 2014." Lightbridge admits it submitted its data using an incorrect facility ID number.[15]

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

Lightbridge argues that it is entitled to the full market basket update because (1) it complied with all applicable, expressly stated data submission requirements; (2) the enabling statute does not authorize CMS to deny the Provider's full market update based on the timely submission of data without a facility identification number; and, (3) the data submission deadlines and facility identification number requirements are invalid because they were not adopted in accordance with federal statutes.[16]

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[7] 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).
[8] Section 3004(c) of the Patient Protection and Affordable Care Act (2010) (Pub. L. 111-148).
[9] *Id.*
[10] 78 Fed. Reg. 48234, 48257-48258 (Aug. 7, 2013).
[11] 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. 49659, 50487 (Aug. 22, 2014).
[12] 79 Fed. Reg. at 50486.
[13] 78 Fed. Reg. at 48258.
[14] *See* 78 Fed. Reg. at 48262.
[15] Lightbridge's Final Position Paper at 6-7.
[16] *Id.* at 8.

Lightbridge states that CMS made it clear that providers would be in compliance with the quality reporting requirement simply by submitting the required data, and cites to the following excerpt from the August 22, 2014 Federal Register in support of its position:[17]

> Hospice programs will be evaluated for purposes of the quality reporting program based on whether or not they submit data, not on their substantive performance level with respect to the required measures. We have provided hospices with information and details about use of the HIS through postings on the Hospice Quality Reporting Program Web page, Open Door Forums, announcements in the CMS MLN Connects Provider e-News (E-News), and provider training. Electronic data submission is required for HIS submission in CY [calendar year] 2014 and beyond; there are no other data submission methods available. CMS will make available submission software for the HIS to hospices at no cost. . . .
>
> Submission of the HIS on all patient admissions to hospice, regardless of payer or patient age, is required. The data submission system provides reports upon successful submission and successful processing of the HIS records. The final validation report may serve as evidence of submission. . . .[18]

Further, Lightbridge contends that Congress conditioned the receipt of the full payment update on one thing and only one thing – the submission of the quality data itself. Lightbridge believes the statute does not grant CMS authority to create other grounds to deny the full payment update.[19]

Lightbridge explains that it "continually submitted files containing quality data to the HIS system" from July 8, 2014 through December 31, 2014.[20] Lightbridge states in each and every instance it received a message stating "[y]our submission has been received[,]" along with the following message:

> Your submission file will be processed for errors within 24 hours. The Final Validation Report, which contains detailed information about your submission, may be accessed in the CASPER Reporting application. It is recommended that you print and retain the Final Validation Reports.[21]

Lightbridge argues that this acknowledgement is evidence that the data was received by CMS.[22] Further, Lightbridge alleges that CMS gave no indication that there were problems with the data being submitted, nor did CMS provide guidance that it was mandatory for hospices to access their Final Validation Reports.[23]

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[17] *Id*. at 3.
[18] 79 Fed. Reg. at 50542, 50487.
[19] Lightbridge's Final Position Paper at 10.
[20] *Id*. at 5 (citing "Hospice File Submission," Ex. P-5).
[21] *Id*. at Ex. P-5.
[22] *Id*. at 9.
[23] Lightbridge's Post-Hr'g Br. at 2, Jul. 6, 2016; *see also* PRRB Hr'g Tr. 94:4-10, Apr. 7, 2016.

Lightbridge also contends that the required use of a facility identification number is invalid and unenforceable because it was not mentioned in the rulemaking process.[24] Lightbridge argues that the facility identification number is "not itself a component of the quality data that hospices must submit . . . " because it is a "control item" necessary for transmission of data through the designated electronic system.[25] Lightbridge states that the enabling statute[26] does not authorize CMS to deny a hospice's APU based on an identification number.[27]

The Medicare Contractor points out 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[]"[28] and that "the Provider freely admits that its data submissions were rejected by CMS due to [an] incorrect facility ID . . ."[29] 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[,]"[30] and that "the Provider admits that its corrected submissions occurred after the required timeline."[31]

The Board finds that CMS required the use of a facility identifier for the submission of HIS records.[32] While the Board agrees that a provider is not required to review and printout the final validation reports, the Board asserts it is in the provider's best interest to run these validation reports to confirm that the quality data input passed all edits and transmitted from QIES ASAP to CASPER. Numerous documents have been admitted into the record and state the importance of running these validation reports.[33] Specifically, the 2014 HIS manual provides 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.[34]

The message Lightbridge 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.[35] The

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[24] Lightbridge's Final Position Paper at 12-13; *see also* Lightbridge's Post-Hr'g Br. at 30.
[25] Lightbridge's Post-Hr'g Br. at 22.
[26] 42 U.S.C. § 1395f(i)(5) (also cited throughout this decision as § 1814(i)(5)(C) of the Social Security Act).
[27] Lightbridge's Post-Hr'g Br. at 30.
[28] Medicare Contractor's Post-Hr'g Br. at 3, Aug. 15, 2015 (citing 77 Fed. Reg. 67067, 67132 (Nov. 8, 2012)).
[29] Medicare Contractor's Post-Hr'g Br. at 2; *see also* Hr'g Tr. 45, 58-59.
[30] Medicare Contractor's Post-Hr'g Br. at 6.
[31] *Id*. at 7; Hr'g Tr. 57-59.
[32] Medicare Contractor's Post-Hr'g Br. Ex. I-20, at 6 (Hospice Introduction to QIES ASAP and CASPER Reporting Systems).
[33] In addition to exhibits submitted by the Provider and the Medicare Contractor, the Board introduced Ex. 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) ("HIS Manual").
[34] Ex. B-1 (HIS Manual) at Page 3-2.
[35] Lightbridge's Final Position Paper Ex. P-5.

record shows that Lightbridge didn't run the final validation reports until June 2015.[36] As a result, Lightbridge was not aware that the data it input into QIES ASAP had the incorrect Facility Identifier and did not transmit to CASPER, until the data submission deadline had passed. [37]

The Board finds that the Provider did not perform the recommended steps to assure that the quality data measures it input into QIES ASAP were error-free and could be transmitted into CASPER. As a result, Lightbridge did not submit its quality data measures in the form and manner, and at a time specified by the Secretary.[38]

DECISION AND ORDER

After considering the Medicare law and regulations, the parties' contentions and the evidence submitted, the Board finds that Lightbridge 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 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: April 17, 2018

[36] Hr'g Tr. 89-90; Lightbridge's Final Position Paper Ex. P-7.
[37] Hr'g Tr. 59, 90.
[38] 42 C.F.R § 418.312(a) (2014) ("Data submission requirements under the hospice quality reporting program," referencing § 1814(i)(5)(C) of the Social Security Act).