

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D25

PROVIDER –
Abundant Home Health, LLC

PROVIDER NO. –
45-7803

vs.

MEDICARE CONTRACTOR –
Palmetto Government Benefit Administrators, LLC
c/o National Government Services, Inc.

RECORD HEARING HELD –
March 11, 2019

FISCAL YEAR– 2017

CASE NO. – 17-1221

INDEX

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

ISSUE STATEMENT:

Whether the Centers for Medicare & Medicaid Services properly reduced Abundant Home Health, LLC's home health market basket percentage increase by two percentage points for Calendar Year ("CY") 2017?¹

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the Centers for Medicare & Medicaid Services ("CMS") properly imposed a two percentage point reduction to Abundant Home Health, LLC's ("Abundant" or "Provider") CY 2017 home health market basket percentage increase.

INTRODUCTION:

Abundant is a home health agency ("HHA") located in Arlington, Texas. Its designated Medicare contractor, Palmetto GBA ("Medicare Contractor")², notified Abundant that CMS reduced its 2017 Medicare payment update by two percentage points because it failed to timely submit quality data as required by federal law. Following Abundant's formal request that CMS reconsider its determination, CMS issued a December 20, 2016 reconsideration decision in which it upheld its payment update reduction.³ Abundant appealed CMS's final decision and has met the jurisdictional requirements for a hearing before the Board.

The Board approved a Hearing on the Record on November 28, 2017. John Rivas, Esq. of Rivas Goldstein, LLP represented Abundant Home Health, LLC. Edward Lau, Esq., of Federal Specialized Services represented the Medicare Contractor.

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.⁴ Along with the establishment of this prospective payment system, Congress also directed the Secretary to increase the prospective payments made to HHAs each CY by a

¹ Both the Medicare Contractor and the Provider misidentified the issue in this case as, "Whether CMS properly reduced the provider's Home Health Prospective Payment Systems (HH PPS) payments for Calendar Year (CY) 2017 by two (2.0) percentage points." However, the Board notes that the Provider is not subject to a two percentage point reduction in its total home health prospective payment for 2017. Rather, the Provider is subject to a two percent 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(i) (2014). Accordingly, the Board has corrected the issue statement to reflect the proper payment reduction.

² CMS's payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries ("FIs") and these functions are now contracted with organizations known as Medicare administrative contractors ("MACs"). The term "Medicare contractor" refers to both FIs and MACs as appropriate.

³ Exhibit P-2.

⁴ Pub. L. No. 105-33, § 4603, 111 Stat. 215, 467 (1997). 42 U.S.C. § 1395fff(b)(3)(B)(v)(I) (2012); 42 C.F.R. § 484.225(i) (2014).

percentage, estimated by the Secretary, known as the “home health market basket percentage increase.”⁵ Subsequently, in the Deficit Reduction Act of 2005 (“DRA”), Congress added a data reporting requirement.⁶ In order to qualify for the full home health APU, HHAs are required to submit data that the Secretary determines are appropriate for the measurement of health care quality.⁷ Further, if an HHA fails to submit data in a form and manner, and at a time, determined by the Secretary, the HHA is subject to a two percentage point reduction in its APU for a particular payment year.⁸

In an effort to measure and publicly report patient experiences with home health care, the Secretary requires the submission of Home Health Care Consumer Assessment of Healthcare Providers and Systems (“HHCCHPS”) survey results for an HHA’s patient population during four, pre-determined calendar quarters.⁹ CMS instructs Medicare-participating HHAs to contract with approved HHCCHPS vendors to survey the HHA’s patients and submit survey data to CMS.¹⁰

This case involves the CY 2017 payment year. The HHCCHPS data collection period for the CY 2017 payment year ran from April 1, 2015 through March 31, 2016.¹¹ CMS required HHAs to submit their HHCCHPS data files to the HHCCHPS Data Center on a rolling basis for the four calendar quarters.¹² CMS made clear the importance of timely submission of an HHA’s HHCCHPS data by stating: “These deadlines are firm; no exceptions are permitted.”¹³

The December 20, 2016 notification from the Medicare Contractor states that Abundant’s CY 2017 HH PPS payments are subject to a two percentage point reduction in the APU due to the Provider’s “noncompliance with submitting quality data during the required timeframes.”¹⁴ The notification further states: “Specifically, CMS officials found your home health agency had less than 4 quarters of data as required for meeting HHCCHPS requirements for the CY 2015 [*sic* 2017] annual payment update.”¹⁵

This case focuses on whether Abundant timely submitted HHCCHPS data for its CY 2017 payment year, as required, in order to receive the full APU for that payment year. More specifically, the parties dispute whether Abundant timely submitted its HHCCHPS data for the

⁵ *Id.* The home health market basket increase is commonly referred to as the Annual Payment Update (“APU”). These terms are used interchangeably in this decision. 42 U.S.C. §§ 1395fff(b)(3)(B)(i)-(iii) (2014).

⁶ Pub. L. No. 109-171, § 5201, 120 Stat. 4, 46-47 (2006).

⁷ 42 U.S.C. § 1395fff(b)(3)(B)(v)(II).

⁸ 42 U.S.C. § 1395fff(b)(3)(B)(v)(I).

⁹ Home Health Prospective Payment System Rate Update for Calendar Year 2013, 77 Fed. Reg. 67068, 67092, 67094-67096 (Nov. 8, 2012).

¹⁰ Home Health Prospective Payment System Rate Update for Calendar Year 2012, 76 Fed. Reg. 68526, 68577-68578 (Nov. 4, 2011).

¹¹ CY 2015 Home Health Prospective Payment System Rate Update, 79 Fed. Reg. 66032, 66082 (Nov. 6, 2014).

¹² *Id.* For example, HHAs were required to submit their HHCCHPS data files for the second quarter of 2015 by 11:59 p.m., e.d.t. on October 15, 2015.

¹³ *Id.*

¹⁴ Exhibit P-2.

¹⁵ *Id.*

fourth quarter of CY 2015 (*i.e.*, timely submitted its HHCAHPS data for the period October 1, 2015 through December 31, 2015).¹⁶

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Abundant admits that its fourth quarter HHCAHPS data covering October 1, 2015 through December 31, 2015 (the “2015 Fourth Quarter”) was late.¹⁷ Abundant explains that it was in the process of changing HHCAHPS vendors, from Decision Support Systems, LP (“DSS”) to Axxess, when it inadvertently changed DSS’s start date authorization from September 1, 2010, to January 1, 2016.¹⁸ This change in the start date authorization by Abundant prevented its vendor from timely submitting the fourth quarter data because it removed the vendor’s authorization to do so.¹⁹ Abundant has supplied an Affidavit from an employee of DSS – the vendor responsible for submission of the 2015 Fourth Quarter HHCAHPS data files for Abundant to CMS – confirming this error.²⁰

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 “a form and manner, and at a time”²¹ prescribed by the Secretary. HHCAHPS data was to be collected for the second quarter of CY 2015 through the first quarter of CY 2016 and submitted at regular, prescribed intervals following its collection period.²² Relevant to this appeal, the HHCAHPS data for the fourth quarter of CY 2015 (*i.e.*, beginning October 1, 2015, and ending December 30, 2015) was to be submitted to the HHCAHPS Data Center “by 11:59 p.m., e.d.t. on April 21, 2016.”²³

The facts reveal that CMS imposed a two percent reduction in Abundant’s CY 2017 APU because Abundant did not timely submit its 2015 Fourth Quarter HHCAHPS data. More specifically, Abundant concedes that it submitted HHCAHPS data for the fourth quarter of CY 2015 (*i.e.*, October 1, 2015, through December 31, 2015) late, albeit only “one day after the regulatory deadline.”²⁴

Abundant argues that the federal government must strike a balance between the need to deter violation of the HHCAHPS survey requirements and the need to avoid excessive penalty for minor or inadvertent violations.²⁵ The Board is cognizant of the fact that Abundant missed the Secretary’s deadline by only one day. However, CMS clearly warned HHAs to “monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time,”²⁶ 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

¹⁶ Provider Final Position Paper, 3 (July 18, 2017); MAC Final Position Paper, 7-8 (Sept. 28, 2017).

¹⁷ Provider Final Position Paper at 3.

¹⁸ *Id.* See also, Exhibit P-3.

¹⁹ *Id.*

²⁰ Exhibit P-3.

²¹ 79 Fed. Reg. at 66073.

²² *Id.* at 66082.

²³ *Id.*

²⁴ Provider Final Position Paper at 3.

²⁵ *Id.* at 4.

²⁶ 79 Fed. Reg. 65863, 66083 (Nov. 6, 2014).

the statute and regulations.²⁷ The statute, regulations and relevant final rules mandate application of the two percent APU penalty if a provider fails to submit home health quality data as specified by the Secretary. The Board's decision in this case is consistent with its decisions in similar cases involving HHAs where the HHA failed to meet certain HHCAHPS submission requirements.²⁸

The Board finds that the Secretary had determined April 21, 2016 to be the deadline for HHAs, such as Abundant, to submit their fourth quarter of 2015 HHCAHPS data, but Abundant failed to do so.

DECISION AND ORDER:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that CMS properly imposed a two percentage point reduction to Abundant's CY 2017 home health market basket percentage increase.

BOARD MEMBERS PARTICIPATING:

Clayton J. Nix, Esq.
Charlotte F. Benson, C.P.A.
Gregory H. Ziegler, C.P.A., CPC-A
Robert A. Evarts, Esq.
Susan A. Turner, Esq.

FOR THE BOARD:

4/30/2019

X Clayton J. Nix

Clayton J. Nix, Esq.
Chair
Signed by: Clayton J. Nix -A

²⁷ 42 C.F.R. § 405.1867.

²⁸ See, e.g., *Inteli Home Healthcare, Inc. v. Blue Cross Blue Shield Ass'n*, PRRB Dec. No. 2013-D27 (Aug. 22, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013) (upholding filing deadline and affirming inability to provide equitable relief); *All Care Home Health 2012 2% Reduction CIRP Grp. v. Blue Cross Blue Shield Ass'n*, PRRB Dec. No. 2013-D31 (Aug. 28, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013) (holding HHA "strictly liable for its failure to meet HHCAHPS submission deadlines pursuant to the statute, regulations, and manual provisions governing the HHCAHPS program"); *Liberty Healthcare Grp., LLC v. Palmetto GBA*, PRRB Dec. No. 2015-D10 (May 27, 2015), *declined review*, CMS Adm'r (June 23, 2015); *Valeo Home Healthcare Servs, LLC v. CGS Adm'rs*, PRRB Dec. No. 2016-D23 (Sept. 27, 2016), *declined review*, CMS Adm'r (Nov. 3, 2013).