

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2015-D22

**PROVIDER –**  
Ochsner Medical Center - Northshore

Provider No.: 19-0204

**vs.**

**MEDICARE CONTRACTOR –**  
Wisconsin Physicians Service

**DATE OF HEARING -**  
May 12, 2015

Cost Reporting Period Ended -  
September 30, 2015

**CASE NO.:** 15-0404

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**ISSUE STATEMENT:**

Whether the reduction of the Provider's market basket update for federal fiscal year ("FY") 2015 under the Hospital Inpatient Quality Reporting ("IQR") program was proper?<sup>1</sup>

**DECISION**

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 2015 was proper.

**INTRODUCTION**

In May, 2014, the Centers for Medicare & Medicaid ("CMS") determined that Ochsner Medical Center – Northshore, LLC ("Ochsner" or Provider) failed to meet IQR program requirements which resulted in a penalty of a one-quarter reduction in Ochsner's FY 2015 market basket update.<sup>2</sup> Specifically, CMS alleged that Ochsner failed to timely report Healthcare Associated Infection ("HAI") data for the fourth quarter of calendar year ("CY") 2013 as required under the IQR program.<sup>3</sup> Following Ochsner's request for reconsideration, CMS upheld its decision. Ochsner appealed CMS' final determination to the Provider Reimbursement Review Board ("Board") on November 14, 2014.

The Board conducted a live hearing on May 12, 2015. Ochsner MC was represented by Barbara Straub Williams, Esq., of Powers, Pyles, Sutter, and Verville, P.C. The Medicare Contractor was represented by Robin Sanders, Esq., of the Blue Cross and Blue Shield Association.

**STATEMENT OF FACTS AND RELEVANT LAW**

The Medicare program pays acute care hospitals for inpatient services under the inpatient prospective payment system ("IPPS").<sup>4</sup> Under IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.<sup>5</sup> The standardized amounts are increased each year by "market basket update" to account for increases in operating costs.<sup>6</sup>

The Medicare Prescription Drug, Improvement, and Modernization Act ("MMA") of 2003<sup>7</sup> amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the IQR program and require each hospital to submit quality of care data "...in a form and manner, and at a time, specified by the Secretary."<sup>8</sup> For fiscal years 2015 and beyond, federal law specifies that a hospital that fails to

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<sup>1</sup> Transcript, ("Tr.") at 5-6.

<sup>2</sup> See Provider Exhibit P-1.

<sup>3</sup> See *id.*

<sup>4</sup> See 42 U.S.C. § 1395ww(d); 42 CFR Part 412. IPPS hospitals are often referred to as "subsection (d) hospitals".

<sup>5</sup> See 42 C.F.R. Part 412.

<sup>6</sup> See 42 U.S.C. § 1395ww(b)(3).

<sup>7</sup> Pub. L. No. 108-173, 117 Stat. 2066 (2003).

<sup>8</sup> MMA § 501(b). See also 42 C.F.R. § 412.140.

report the required quality data under the IQR program is penalized by reducing the hospital's IPPS market basket percentage increase for the relevant year by one-quarter.<sup>9</sup> Federal law further specifies that a hospital that is subject to this penalty during a given year is also excluded from participation in the value-based purchasing ("VBP") program for that year and, thereby, not eligible to receive any value-based incentive payments under the VBP program for that year.<sup>10</sup>

For FY 2015 payment determinations, CMS required hospitals participating in the IQR Program to submit data beginning in January 2013 regarding various HAIs, including *Clostridium Difficile* ("C. Diff"), a bacterium that may cause serious, life-threatening health problems.<sup>11</sup> CMS instructed the hospitals to submit C. Diff data to the Centers for Disease Control and Prevention ("CDC") through a CDC computer system called the National Healthcare Safety Network ("NHSN").<sup>12</sup> CMS posted IQR Program instructions and deadlines for quarterly data submission on the QualityNet Exchange Web Site.<sup>13</sup> The hospitals had to submit C. Diff data for the CY 2013 fourth quarter by May 15, 2014.<sup>14</sup>

By letter dated May 21, 2014, CMS informed Ochsner that it did *not* meet IQR program requirements and that its FY 2015 market basket update would be reduced by one-quarter.<sup>15</sup> Specifically, the letter stated that Ochsner did not submit the C. Diff data for the fourth quarter 2013 by the posted submission deadline.<sup>16</sup> Ochsner estimates that the reduction in its FY 2015 market basket update will be almost \$75,000<sup>17</sup> and will cost the hospital an additional "hundreds of thousands of dollars" because its failure to comply with the IQR program reporting requirements means that it is excluded from participation in the VBP program for that year.<sup>18</sup>

#### DISCUSSIONS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

Ochsner asserts it submitted its fourth quarter 2013 data using the same process and procedures used during the first three quarters of 2013, which resulted in successful submission of the NHSN data to CMS.<sup>19</sup> The hospital states that it had one C. Diff event in October 2013 and no events in November or December 2013.<sup>20</sup> Ochsner's witness, Mr. Brady, testified that he personally reported the 2013 fourth quarter data in early 2014, checked to ensure that it had been accepted and reported that the data had been submitted by January 16, 2014<sup>21</sup> to his supervisor, the Director of Performance Improvement, according to the established process.<sup>22</sup> He testified

<sup>9</sup> See 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>10</sup> See 42 U.S.C. § 1395ww(o)(1)(C)(ii); 88 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).

<sup>11</sup> See 76 Fed. Reg. 25788, 25902 (May 5, 2011).

<sup>12</sup> See "Reference Checklist for FY 2015" (available at: <https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=OnetPublic%2FPage%2FQnetTier2&cid=1138115987129>). See also Provider Exhibit P-14 at 30.

<sup>13</sup> See <http://www.QualityNet.org>.

<sup>14</sup> See Provider Exhibit P-22.

<sup>15</sup> See Provider Exhibit P-1.

<sup>16</sup> See *id.* at 1.

<sup>17</sup> See Provider's Responsive Brief at 1; Provider Exhibit P-39.

<sup>18</sup> See Provider's Position Paper at 3-4.

<sup>19</sup> See Provider's Post-Hearing Brief at 5-6.

<sup>20</sup> See *id.*; Provider Exhibit P-5.

<sup>21</sup> See Provider Exhibit P-3.

<sup>22</sup> See Tr. at 36:6-14.

that he received no “alerts” telling him that the data submission was incomplete or that gave him “a link to where that missing data is.”<sup>23</sup>

Ochsner also provided an email from a second employee, Ms. Alexis, who had entered staff influenza vaccination data into the NHSN database on May 14, 2014. She reported in an email that she had queried the NHSN system and obtained an undated NHSN computer screenshot stating “[n]o missing ‘in plan’ summary data records found.”<sup>24</sup> Finally, Ochsner provided a letter and a declaration from the Executive Vice President of Government Relations and Policy Development at the American Medical Rehabilitation Providers Association describing a number of problems with the IRF quality data submission process through NHSN in 2013.<sup>25</sup> Ochsner contends that the NHSN may have suffered a technical glitch in transmitting data for the fourth quarter 2013.<sup>26</sup>

The Board finds insufficient evidence in the record to support Ochsner’s position that it submitted all of the required quality data for the fourth quarter of 2013 by the May 15, 2014 deadline. Testimony from Mr. Brady indicated that he sent an email confirmation to his supervisor after each monthly data submission. In support of this testimony, Ochsner submitted examples of these monthly emails as exhibits. However, it was unable to locate and submit any of the alleged monthly email confirmations that would pertain to the data submissions for the fourth quarter of 2013 because it claims that they are unavailable due to a change in Ochsner’s computer system during 2014.<sup>27</sup> Conversely, evidence from the Medicare Contractor and Ochsner confirms that the QIO<sup>28</sup> attempted several times to contact both Mr. Brady and his supervisor both by email *and* phone in April and May 2014 regarding certain required data that was missing from the submission of IQR/HAI data to NHSN (namely C. Diff. *and* influenza vaccination data was missing).<sup>29</sup> The evidence suggests that Ochsner took actions to respond to this contact by submitting certain data just prior to the deadline on May 14, 2014 as supported by an email from Ms. Alexis and an alleged screenshot from the NHSN system showing “[n]o missing ‘in plan’ summary data records found.”<sup>30</sup> However, Ms. Alexis’ email and the NHSN screenshot appear to pertain only to the submission of the missing influenza vaccination data because Ms. Alexis’ job responsibilities only pertained to reporting influenza vaccination data and Mr. Brady testified that the screenshot pertained only to the influenza vaccination data as it

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<sup>23</sup> Tr. at 31:23-25 -32:1-5.

<sup>24</sup> Provider Exhibit P-4 at 9.

<sup>25</sup> See Provider Exhibits P-31 (letter from AMRPA), P-32 (declaration from AMRPA). Mr. Brady’s testimony at the hearing also indicated that NHSN updated the software and “fixed minor bugs” in February and August, 2013. See Tr. at 45-47.

<sup>26</sup> Provider’s Position Paper at 17.

<sup>27</sup> See Provider’s Post-Hearing Brief at 7. Ochsner only produced a general email confirmation from Brady on January 16, 2014 stating that “all the data for 2013 has been submitted and confirmed to NHSN.” Provider Exhibit P-3.

<sup>28</sup> The QIO is Telligen, the Hospital Inpatient Quality Reporting Program Support Contractor for CMS. See MAC’s Final Position Paper at 5n.8.

<sup>29</sup> Medicare Contractor Exhibits I-4, I-5 (documenting telephone conversations and messages); Provider Exhibits P-36, P-37 (emails dated April 2, 2014 and May 5, 2014 notifying Ochsner that, as of a specified date, “your complete HAI data has not been received in the QIO Clinical Data Warehouse”). See also Tr. at 74-75 (testimony confirming that the phone number to which the Medicare Contractor left the message described in Medicare Contractor Exhibit I-5 was one of Mr. Brady’s direct line).

<sup>30</sup> Provider Exhibit P-4 at 9.

is in a separate module from the C. Diff. data.<sup>31</sup> The Board finds that the MAC's evidence is more credible because: (1) Ochsner cannot establish that it did submit the required data consistent with its normal protocol of checking and reporting monthly on the complete submission of the data for the last quarter of 2013, which may have alerted it to a data submission problem; (2) prior to the May 15, 2014 deadline, Ochsner received from the QIO multiple notifications of the missing C. Diff. data but failed to submit the missing C. Diff. data; and (3) unlike submission of the required influenza vaccination data, Ochsner did not produce any screenshots from the C. Diff. module on NHSN system confirming that there was no missing C. Diff. data on May 14, 2014 as it alleges.

The Board is not persuaded by Ochsner's submission of evidence to support its allegation that there were problems with NHSN system and that these problems explain why *some* but not all of the data that Mr. Brady allegedly entered into the NHSN system for the fourth quarter of 2013 was not transmitted from there to CMS. This is primarily due to the fact that the Medicare Contractor's "Report Runs" for each quarter of 2013 apparently reported that Ochsner had submitted data — until the last quarter of 2013. This evidence demonstrates that NHSN worked "well enough" in the first 3 quarters of 2013 to credit Ochsner's data in those months and Ochsner has not demonstrated that this situation changed in the last quarter sufficient to explain the failure of C. Diff. reporting for November 2013. Further, even if there were problems in transmitting Mr. Brady's data entries, Ochsner had an opportunity to correct them because, as discussed above, Ochsner received multiple notifications in April and May 2014 that certain required data was missing (including C. Diff. data) but failed to fully address the missing data.

Finally, the Board finds evidence in the record that Ochsner failed to report "no events" for C. Diff. for the month of November 2013 consistently and in accordance with the IQR program instructions. Specifically, the Board notes that in Provider Exhibit P-9, the Outcome Measures Monthly Reporting screenshot for November 2013 reports "No Events" in the box "Infection Surveillance" rather than in the C. Diff "LabID Event" box as Ochsner had been reported in all other months of 2013.<sup>32</sup> An NHSN Provider education webcast dated May 1, 2013 states on slide 24 that, if the LabID Event is not checked, the hospital data will not be submitted to CMS.<sup>33</sup> This webcast further states the following on slide 26:

- Facilities must appropriately "Report No Events" for those months for which no LabID events of each type under surveillance were identified.
- If no LabID events have been reported and this box is not checked, your data will *not* be submitted to CMS.<sup>34</sup>

This instruction and warning is repeated again in an NHSN Reporting Update:

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<sup>31</sup> See Tr. at 41-42. The Board notes that, while Ochsner opted not to have Ms. Alexis testify, Ochsner did submit a declaration from her. However, this declaration has limited evidentiary value because it does not describe to what data the May 14, 2014 screenshot pertained and it does not *specifically* refer to C. Diff. See Provider Exhibit P-35.

<sup>32</sup> See Provider Exhibit P-26.

<sup>33</sup> See Provider Exhibit I-7 at 24.

<sup>34</sup> *Id.* at 26.

[E]nter LabID events when identified, enter summary data records each month, and indicate when they have zero LabID events to report for the facility in a given month. If these reporting requirements are not met, your facility's data will not be sent to CMS.<sup>35</sup>

Based on the evidence in the record, the Board finds that Ochsner failed to report its fourth quarter IQR data for CY 2013 in 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 2015 pursuant to 42 C.F.R. § 412.64(d)(2)(i). The Board is bound by § 412.64(d)(2)(i) pursuant to 42. C.F.R. § 405.1867. Therefore, in accordance with § 412.64(d)(2)(i), the Board finds that CMS properly reduced Ochsner's FY 2015 market basket update.

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 2015 was proper.

BOARD MEMBERS PARTICIPATING:

Michael W. Harty  
Clayton J. Nix, Esq.  
L. Sue Andersen, Esq.  
Charlotte F. Benson, C.P.A.  
Jack Ahern, M.B.A.

FOR THE BOARD:

/s/  
Michael W. Harty  
Chairman

DATE: September 10, 2015

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<sup>35</sup> See Provider Exhibit P-18 at 78.