

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2016-D23**

PROVIDER–
Valeo Home Healthcare Services, LLC

Provider No.: 46-7213

vs.

MEDICARE CONTRACTOR –
CGS Administrators

DATE OF HEARING –
December 10, 2015

Calendar Year Ending –
December 31, 2015

CASE NO.: 15-2051

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ISSUE STATEMENT

Whether the Medicare Contractor properly imposed a 2 percent payment reduction upon Valeo Home Health Services, Inc. for calendar year (“CY”) 2015 for failure to submit quality data as required by the Deficit Reduction Act of 2005?¹

DECISION

After considering the Medicare law and regulations, the parties’ contentions, and the evidence submitted, the Provider Reimbursement Review Board (“Board”) finds that the Centers for Medicare & Medicaid Services (“CMS”) properly imposed a 2 percent reduction to the CY 2015 Medicare payments for Valeo Home Health Services, Inc.

INTRODUCTION

Valeo Home Health Services, Inc. (“Valeo”) operates a home health agency (“HHA”) in Salt Lake City, Utah. On September 19, 2014, CGS Administrators, LLC (hereinafter “Medicare Contractor”) notified Valeo in writing that CMS had determined it failed to meet certain quality data reporting requirements, specifically the submission of “Home Health Care Consumer Assessment of Healthcare Providers and Systems” (“HHCAHPS” or “Home Health Care CAHPS”) for the period April 1, 2013 through March 31, 2014, and as a result it would be subject to a 2 percent payment reduction for CY 2015 Medicare payments.²

Valeo timely appealed that decision and has met the jurisdictional requirements required for a hearing before the Board. The Board granted the parties request for a hearing on the record. Valeo was represented by Greg Anjewierden, Esq., of Stucki, Steele & Rencher, LLC. The Medicare Contractor was represented by Wilson C. Leong, Esq., CPA, of Federal Specialized Services, LLC.

STATEMENT OF THE FACTS

Valeo is a Medicare-certified home health agency. The facts of this case are somewhat muddled. It appears that the Medicare Contractor sent its first letter, dated September 27, 2013, to Valeo advising it that its Medicare payment would be reduced by 2 percent for CY 2014.³ By letter dated October 7, 2013, Valeo responded and explained that, while it apparently gathered and submitted patient data to Kinnser, Inc., it failed to contract with another vendor, Fazzi Associates, to presumably submit the quality data to CMS.⁴ Upon learning that it was not in compliance, Valeo contacted Fazzi Associates on October 4, 2013 to establish a contract for submitting quality data to CMS. Consequently, quality data had not been submitted to CMS for

¹ Medicare Contractor’s Final Position Paper at 5.

² Provider Exhibit P-2 at 1.

³ Provider Exhibit P-1 at 1. The Board points out the first paragraph of this letter states “Medicare payments to your agency will be reduced by 2% for 2013.” This appears to be in error as the fourth paragraph of this same letter states “Consequently, for episodes that end on or after January 1, 2014 and prior to January 1, 2015, payments to your agency will be reduced by 2%.”

⁴ Provider Exhibit P-4 at 1.

Valeo prior to October 2013. Valeo states that its failure to contract with Fazzi Associates resulted in unintentional non-compliance with HHCAHPS reporting requirements.⁵

On September 19, 2014, the Medicare Contractor sent a similar notice to Valeo stating that Valeo was not compliant with the HHCAHPS reporting requirements and that Valeo's Medicare payment "for episodes that end on or after January 1, 2015 and prior to January 1, 2016" would be reduced by 2 percent.⁶

Valeo submitted reconsideration requests to CMS for both CY 2014 and CY 2015. CMS responded to both requests upholding its determinations to reduce Valeo Medicare payments by 2 percent for CYs 2014 and 2015.⁷ This case *only* involves the appeal to the Board of the 2 percent reduction in Valeo's Medicare payment for CY 2015.⁸

VALEO HOME HEALTH'S POSITION

Valeo concedes that it did not timely submit data for the four quarters at issue, covering April 1, 2013 through March 31, 2014. As stated in its October 7, 2013 letter, as soon as it became aware of the problem it contracted with Fazzi Associates to initiate proper submission.⁹ However, by the time this contract was signed, Valeo had already missed the submission deadline for at least one quarter of 2013.

Valeo also states that the Medicare Contractor bears a portion of the blame for its failure to report HHCAHPS data because, although it had failed to submit data for the prior reporting periods (*i.e.*, April 1, 2011 through March 2012 and April 2012 through March 31, 2013), the first deficiency notice that it received was on September 27, 2013 and at that point it was already too late to contract with the vendor and comply with reporting requirements for the period at issue (*i.e.*, April, 2013 through March, 2014). Essentially, Valeo maintains that had it known earlier about the earlier deficiencies, it could have corrected the deficiencies pertaining to this appeal for CY 2015.¹⁰

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Board finds that Valeo failed to satisfy the HHCAHPS Survey program requirements that were necessary to receive a full annual payment update for CY 2015. Specifically, Valeo failed to meet the HHCAHPS Survey program requirements when it failed to contract with a vendor and failed to submit HHCAHPS data for the period April 1, 2013 through March 31, 2014.

⁵*Id.*

⁶Provider Exhibit P-2 at 1. The Board points out that similar to the September 27, 2013 letter the first paragraph of this letter appears to be in error when it states "payments to your agency will be reduced by 2% for 2014" as this letter goes on to reference the data submission timeframe from April 1, 2013 through March 31, 2014 and then identifies episodes ending in CY 2015 as receiving payment reductions.

⁷ Provider Exhibits P-3, P-6.

⁸ Provider's Final Position Paper at 1; Medicare Contractor's Final Position Paper at 3.

⁹ See Provider Exhibit P-5 at 1.

¹⁰ Provider's Final Position Paper at 4-5.

The Deficit Reduction Act of 2005¹¹ required each Medicare-certified HHA to submit quality data “that the Secretary determines are appropriate for the measurement of health care quality.”¹² The data is required to be submitted “in a form and manner, and at a time, specified by the Secretary...”¹³ The Act also imposed a two percent penalty upon the HHA for failure to do so.¹⁴

The Secretary communicated these requirements regarding HHA quality data reporting primarily through the Federal Register and the website at www.homehealthCAHPS.org.¹⁵ One of the communications provided to HHAs through the website is the Home Health Care CAHPS Survey Protocols and Guidelines Manual that is maintained on that website.¹⁶

The Secretary requires HHAs to measure and publicly report patient experiences with home health care¹⁷ using the HHCAHPS Survey. HHAs were required to collect and submit data to the HHCAHPS Data Center for four quarters from April 1, 2013 through March 31, 2014 in order to qualify for the full CY 2015 HH-PPS annual payment update.¹⁸ HHAs that fail to submit quality data as required are subject to a payment reduction of 2 percentage points (applied to the home health market basket percentage increase) for the relevant CY, in this case CY 2015.¹⁹ There is no dispute between the parties that the required data was not submitted in the form and manner required by the Secretary.

Specifically, with regard to the HHA’s need to contract with a survey vendor, the preamble to the HH-PPS final rule published on November 10, 2009²⁰ stated:

To collect and submit HHCAHPS data to CMS, Medicare-certified agencies will need to contract with an approved HHCAHPS survey vendor. Beginning in summer 2009, interested vendors applied to become approved HHCAHPS vendors. The application process was (and still is) delineated online at <https://www.homehealthcahps.org>. Vendors are required to attend training conducted by CMS and the HHCAHPS Survey Coordination team, and to pass a post-training certification test.²¹

The Home Health Care CAHPS Survey Protocols and Guidelines Manual (“Manual”), found at https://homehealthcahps.org/portals/0/pandgmanual_noapps.pdf²² and available to all home

¹¹ Deficit Reduction Act, Pub. L. No. 109-171, § 5201(c), 120 Stat. 4, 46 (2006) (amending 42 U.S.C. § 1395fff(b)(3)(B)).

¹² *Id.* at 47.

¹³ *Id.*

¹⁴ *Id.* at 46-47.

¹⁵ 74 Fed. Reg. 58078, 58098-58099 (Nov. 10, 2009). *See also* Medicare Contractor Exhibit I-6.

¹⁶ A copy of relevant parts of this Manual can be found at Medicare Contractor Exhibit I-6.

¹⁷ 74 Fed. Reg. 58078, 58098-58099 (Nov. 10, 2009). *See also* Medicare Contractor Exhibit I-6.

¹⁸ 78 Fed. Reg. 72256, 72295 (Dec. 2, 2013) (excerpt included at Medicare Contractor Exhibit I-4).

¹⁹ 42 U.S.C. § 1395fff(b)(3)(B)(v). *See also* 78 Fed. Reg. 72256, 72259 (Dec. 2, 2013).

²⁰ 74 Fed. Reg. 58078, 58098-58099 (Nov. 10, 2009).

²¹ *Id.* at 58099.

²² *See* Medicare Contractor Exhibit I-6. The Medicare Contractor has provided Version 1.0 of the Manual dated August, 2009. The most recent Version 8.0 (Jan. 2016) is available at https://homehealthcahps.org/portals/0/pandgmanual_noapps.pdf.

health agencies, describes the roles and responsibilities of HHAs in the annual Home Health Care CAHPS Survey. Chapter III of the Manual states “Home health agencies (HHAs) will be responsible for contracting with an approved survey vendor to conduct the Home Health Care CAHPS Survey on their behalf...”²³ The manual further states it is the Home Health Agency’s responsibility to “[r]eview data submission reports to ensure that the survey vendor has submitted data on time and without data problems.”²⁴ Significantly, the manual guidance prescribes contracting with an approved vendor and places an obligation to actively engage and cooperate with a third party in order to ensure proper reporting.

In the HH-PPS final rule published on December 2, 2013, the Secretary communicated Home Health Care CAHPS Survey requirements for the CY 2015 annual payment update (“APU”) as follows:

[F]or the CY 2015 APU, we will require continued monthly HHCAPHS data collection and reporting for 4 quarters. The data collection period for CY 2015 APU includes the second quarter 2013 through the first quarter 2014 (the months of April 2013, through March 2014).²⁵

The Board finds that Valeo simply failed to follow the requirements of the 2009 Final Rule and to diligently follow the Manual with regard to the protocol in complying with the survey and submission requirements.

The Board rejects Valeo’s argument that the Medicare Contractor is partially to blame for the HHA’s failure to report Home Health Care CAHPS Survey data because it failed to forewarn Valeo of earlier admitted deficiencies. The evidence presented demonstrates that Valeo failed to comply with at least two prior reporting years. As discussed above, the Secretary has defined the roles and responsibilities of the HHAs in the Federal Register and on the HHCAPHS website at www.homehealthCAHPS.org. The fact that the Medicare Contractor did not send Valeo any notices of deficiencies for prior years does not excuse the HHA’s failure to comply with clearly-stated contracting requirements.

DECISION

After considering the Medicare law and regulations, the parties’ contentions, and the evidence submitted, the Board finds that CMS properly imposed a 2 percent reduction to the CY 2015 Medicare payments for Valeo Home Health Services, Inc.

²³ Medicare Contractor Exhibit I-6 at 20.

²⁴ Medicare Contractor Exhibit I-6 at 21.

²⁵ 78 Fed. Reg. 72256, 72295 (Dec. 2, 2013).

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/s/
Michael W. Harty
Chairman

DATE: September 27, 2016