

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D9

**PROVIDER –**  
TLC Health Network – Lake Shore Hospital

Provider No.: 33-0132

**vs.**

**MEDICARE CONTRACTOR –**  
National Government Services, Inc.

**DATE OF HEARING -**  
July 7, 2016

Cost Reporting Period Ended –  
2016

**CASE NO.:** 16-0395

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## **ISSUE STATEMENT**

Whether the reduction of the Provider's Market Basket Update for federal fiscal year ("FY") 2016 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 Provider Reimbursement Review Board ("Board") concludes that the reduction of the Provider's market basket update for FY 2016 was proper.

## **INTRODUCTION**

TLC Health Network, Lake Shore Hospital ("TLC" or "Provider") is an acute care hospital located in Irving, NY. On May 22, 2015, the Centers for Medicare and Medicaid Services ("CMS") notified TLC that it failed to meet IQR program requirements which would result in a one-fourth reduction in its FY 2016 market basket update. Specifically, CMS alleged that TLC failed to complete the annual structural measure questions and the annual data accuracy and completeness acknowledgement ("DACA") between April 1 and May 15, 2015.<sup>2</sup> On May 28, 2015, TLC requested that CMS reconsider its decision and on July 7, 2015 CMS responded to the request and upheld the payment reduction.

TLC timely appealed that decision and has met the jurisdictional requirements for a hearing before the Board. A hearing was held on July 7, 2016. The Provider represented itself at the hearing. National Government Services, Inc. ("Medicare Contractor") was represented by Edward Lau, Esq., of Federal Specialized Services.

## **STATEMENT OF FACTS AND RELEVANT LAW**

The Medicare program pays acute care hospitals for inpatient services under the inpatient prospective payment system ("IPPS").<sup>3</sup> Under IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.<sup>4</sup> Hospitals receive annual percentage increase in the standardized amount, known as the "market basket update," to account for increases in operating costs.<sup>5</sup>

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003<sup>6</sup> amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the IQR program that requires each hospital to submit quality of care data "in a form and manner, and at a time, specified by CMS."<sup>7</sup> For fiscal years 2015 and beyond, CMS reduces the hospital's annual IPPS market basket percentage increase by

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<sup>1</sup> Transcript at 5-6.

<sup>2</sup> Medicare Contractor Final Position Paper, Exhibit I-4.

<sup>3</sup> See 42 U.S.C. § 1395ww(d); 42 C.F.R. Part 412. IPPS hospitals are often referred to as "subsection (d) hospitals."

<sup>4</sup> See 42 C.F.R. Part 412.

<sup>5</sup> See 42 U.S.C. § 1395ww(b)(3).

<sup>6</sup> Pub. L. No. 108-173, 117 Stat. 2066 (2003).

<sup>7</sup> 42 C.F.R. § 412.140(c).

one-fourth if a hospital fails to report the required quality data under the IQR program.<sup>8</sup> A hospital that is subject to this penalty during a given year is also excluded from participation in the value-based purchasing (“VBP”) program and ineligible to receive any value-based incentive payments for that year.<sup>9</sup>

For FY 2016 payment determinations, CMS required hospitals participating in the IQR program to submit data regarding certain structural measures questions as well as DACA. CMS instructed the hospitals to submit the required measures through a Web-Based Measure Tool. CMS indicated that the timeframe to report the structural measures is April 1 – May 15 of the preceding calendar year.<sup>10</sup> In a letter dated May 22, 2015, CMS notified TLC that the structural measures questions and the DACA had not been submitted. Upon receipt of the letter TLC immediately went online and tried to submit the required data and was not able to do so because the May 15, 2015 deadline had passed.<sup>11</sup>

### **DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

TLC was previously part of an organization known as Lake Erie Regional Health System New York (“LERHSNY”). TLC and LERHSNY parted ways in December 2014.<sup>12</sup> According to the Provider, the parent organization had been responsible for submitting its quality information for both organizations.<sup>13</sup> Although TLC asserts that it contacted CMS on several occasions to change the contact information, the notices continued to go to LERHSNY.<sup>14</sup> TLC states that it was not able to timely submit the structural measures data or the DACA because it did not receive notices timely, or in some cases did not receive notices at all, relating to the submission deadlines.

The Medicare Contractor maintains that, “[t]here is no statute, regulation, or requirement that prior notice must be given to the Provider prior to the filing deadline. The multiple notices, telephone calls, and emails were sent to Provider as an accommodation and not pursuant to any legal requirement to do so.”<sup>15</sup> Further the Medicare Contractor claims the Provider failed to understand the quality reporting program is run through a CMS support contractor and the QualityNet Secure Portal is the only CMS approved website for secure healthcare quality data exchange. The same website tells providers what to do in the event of a change in provider personnel or security administrator.<sup>16</sup>

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<sup>8</sup> See 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>9</sup> See 42 U.S.C. § 1395ww(o)(1)(C)(ii); 79 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).

<sup>10</sup> See 78 Fed. Reg. 50495, 50820-21 (Aug. 19, 2013).

<sup>11</sup> See TLC’s August 17, 2016 response to Hearing Request for Additional Information at 1.

<sup>12</sup> See TLC Appeal Request dated December 10, 2015 at 2.

<sup>13</sup> See July 14, 2015 letter from TLC at 1 (this letter is included as an attachment to TLC’s Appeal Request).

<sup>14</sup> See Letter Dated June 23, 2016 from the Provider to the Board. The Provider included a timeline of its various contacts with CMS, and also included a copy of a letter from CMS dated December 6, 2013, which acknowledged a change in contact information for TLC. This letter from CMS references the Medicare Part A program and also the Provider Enrollment, Chain & Organization System (“PECOS”); the letter does not make mention of the IQR program.

<sup>15</sup> Medicare Contractor Post Hearing Brief at 6.

<sup>16</sup> *Id.* at 5.

Based on its review of the record, the Board finds TLC's provider enrollment change for Part A and B, including TLC's update of its CEO, was made in CMS' Provider Enrollment Chain Ownership System (PECOS).<sup>17</sup> However, the Board notes that a separate update was needed to change the contact information for the IQR program. Specifically, the inpatient quality reporting program requires that providers register with QualityNet and maintain an Active QualityNet Security Administrator.<sup>18</sup> Contact information updates for the IQR program are to be reported to the Hospital Quality Reporting Support Center by using the Hospital Contract Change Form available through QualityNet.<sup>19</sup> The Board finds nothing in the record to indicate that TLC contacted anyone associated with quality reporting to change its QualityNet Security Administrator or any other quality reporting contact until after the May 15 due date.<sup>20</sup> As a result, the Board concludes that any misdirected data reporting reminder notices was the result of TLC's delay in notifying the quality reporting program of its contact changes

Furthermore, the Board finds no basis for TLC's claim that it was not able to timely submit the structural measure questions or the DACA because CMS failed to properly notify it of the submission deadlines. The Board points out that the August 19, 2013 Federal Register clearly identified the due dates for submission of the quality measures, which included the structural measure questions and DACA.<sup>21</sup> This Federal Register provision stated:

For each Hospital IQR Program year, we require that hospitals submit data on each measure in accordance with the measure's specifications for a particular period of time. The data submission requirements, Specifications Manual, and submission deadlines are posted on the QualityNet Web site at: <http://www.QualityNet.org/>.

Therefore, the Board concludes that TLC had sufficient notice but failed to submit the structural measure questions and DACA between April 1 and May 15, 2015 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 2016 pursuant to 42 C.F.R. § 412.64(d)(2)(i).

#### 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 2016 was proper.

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<sup>17</sup> See Letter dated June 23, 2016 from the Provider to the Board. One of the attachments to this letter is a letter to TLC indicating approval of its change request.

<sup>18</sup> Medicare Contractor Post Hearing Brief, Exhibit I-9 at 3.

<sup>19</sup> See *id.* at Exhibit I-10.

<sup>20</sup> See Letter dated March 24, 2016 from the Provider to the Board. Included as attachments are emails to the quality reporting staff in March 2016.

See page 4 for a copy of the Hospital Contact Change Form dated May 28, 2015.

<sup>21</sup> 78 FR 50496, 50810(August 19, 2013).

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: December 22, 2017