

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D24

**PROVIDER –**  
Westchester General Hospital

Provider No.: 10-0284

**vs.**

**MEDICARE CONTRACTOR –**  
First Coast Service Options

**DATE OF HEARING –**  
June 7, 2016

Cost Reporting Period Ended -  
September 30, 2015

**CASE NO.:** 15-0414

## INDEX

	<b>Page No.</b>
<b>Issue Statement.....</b>	<b>2</b>
<b>Decision.....</b>	<b>2</b>
<b>Introduction.....</b>	<b>2</b>
<b>Statement of the Facts and Relevant law.....</b>	<b>2</b>
<b>Findings of Facts, Conclusions of Law and Discussion.....</b>	<b>4</b>
<b>Decision and Order.....</b>	<b>5</b>

**ISSUE STATEMENT:**

Whether the payment reduction to the market basket update that the Centers for Medicare and Medicaid Services (“CMS”) imposed under the Hospital Inpatient Quality Reporting (“IQR”) program for fiscal year (“FY”) 2015 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 payment reduction to the Hospital’s market basket update for FY 2015 was proper.

**INTRODUCTION:**

Westchester General Hospital, Inc. (“Westchester” or “Hospital”) is an acute care hospital located in Miami, Florida. On May 21, 2014, CMS notified Westchester that it failed to meet IQR program requirements which would result in a one-fourth reduction in Westchester’s FY 2015 market basket update payment. Specifically, CMS alleged that Westchester failed to timely report Healthcare Associated Infection (“HAI”) data for the fourth quarter of calendar year (“CY”) 2013 as required under the IQR program. Following Westchester’s request for reconsideration, CMS upheld its decision.

Westchester timely appealed that decision and has met the jurisdictional requirements for a hearing before the Board. The Board conducted a live hearing on June 7, 2016. The Hospital was represented by Lori A. Rubin, Esq. of Foley & Lardner, LLC. First Coast Service Options, Inc. (“Medicare Contractor”) was represented by Joe Bauers, 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>2</sup> Under IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.<sup>3</sup> The standardized amounts are increased each year by the “market basket update” to account for increases in operating costs.<sup>4</sup>

The Medicare Prescription Drug, Improvement, and Modernization Act (“MMA”) of 2003<sup>5</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

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

<sup>2</sup> See 42 U.S.C. § 1395ww(d); 42 CFR Part 412. IPPS hospitals are often referred to as “subsection (d) hospitals”.

<sup>3</sup> See 42 C.F.R. Part 412.

<sup>4</sup> See 42 U.S.C. § 1395ww(b)(3).

<sup>5</sup> Pub. L. No. 108-173, 117 Stat. 2066 (2003).

Secretary.”<sup>6</sup> For fiscal years 2015 and beyond, federal law specifies that a hospital that fails to 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>7</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>8</sup>

The IQR Program requires hospitals to submit various Healthcare Associated Infection (“HAI”) and patient safety data, including data regarding Methicillin-Resistant Staphylococcus Aureus (“MRSA”) and Clostridium Difficile (“C. Diff”) infections.<sup>9</sup> CMS instructed hospitals to submit MRSA and 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>10</sup> IQR Program instructions and deadlines for data submission are posted on the QualityNet Exchange Web Site.<sup>11</sup> Data reporting instructions<sup>12</sup> and deadlines<sup>13</sup> are also available on the NHSN website.

The NHSN website, available at <https://www.cdc.gov/nhsn/validation/index.html>, contains manuals for using the NHSN system as well as instructions regarding how hospitals can internally validate the completeness and accuracy of data entered into the NHSN system. One of these resources, the “2013 NHSN Data Quality Guidance and Toolkit for Reporting Facilities,” states:

Facilities report to the Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN) for several purposes: to monitor healthcare-associated infections (HAIs) and the impact of their own prevention efforts, to benchmark facility performance against risk-adjusted national data, to fulfill state-mandated reporting requirements, and/or to comply with Centers for Medicare and Medicaid (CMS) Quality Reporting Program requirements. Regardless of the reasons for participation, facilities that report to NHSN are required to follow NHSN methods and to use NHSN definitions and criteria. The principal source of information on NHSN methods, definitions, and criteria for reporters is the NHSN Manual<sup>14</sup>...

And requires:

Those persons responsible for NHSN reporting must remain up-to-date as the system evolves to meet new purposes and expanded capabilities. Given complex and changing definitions, annual training updates are obligatory for NHSN reporters. CDC provides

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<sup>6</sup> MMA § 501(b). *See also* 42 C.F.R. § 412.140.

<sup>7</sup> *See* 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>8</sup> *See* 42 U.S.C. § 1395ww(o)(1)(C)(ii); 88 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).

<sup>9</sup> *See* 76 Fed. Reg. 25788, 25902 (May 5, 2011). *See also* <https://www.cdc.gov/nhsn/training/patient-safety-component/>

<sup>10</sup> *Id.*

<sup>11</sup> *See* <http://www.QualityNet.org>.

<sup>12</sup> [https://www.cdc.gov/nhsn/pdfs/pscmanual/pscmanual\\_current.pdf](https://www.cdc.gov/nhsn/pdfs/pscmanual/pscmanual_current.pdf)

<sup>13</sup> <https://www.cdc.gov/nhsn/pdfs/cms/cms-reporting-requirements-deadlines.pdf>

<sup>14</sup> Also referred to as the “NHSN Patient Safety Component Manual.”

multiple training resources on the NHSN website (<http://www.cdc.gov/nhsn/Training/patient-safety-component/index.html>). These include annually updated self-paced interactive multimedia instruction, training webinars, and case studies. The multimedia trainings include imbedded assessments and can generate evidence of successful completion for each component.

Another resource, the NHSN Patient Safety Manual (Jan. 2013)<sup>15</sup> requires hospitals to complete a *Patient Safety Monthly Reporting Plan* form (CDC 57.106) to inform the CDC regarding whether the facility will provide data and if so, which Patient Safety modules are to be used during a given month as well as the events, locations and/or procedures they monitored. This allows the CDC to select the data that should be included in the aggregate data pool for analysis.

By letter dated May 21, 2014, CMS informed Westchester that it did *not* meet IQR program requirements and that its FY 2015 market basket update would be reduced by one-quarter.<sup>16</sup> Specifically, the letter stated that Westchester did not submit MRSA or C. Diff data to the NHSN for the fourth quarter 2013 by the posted submission deadline.<sup>17</sup> Westchester estimates that the payment reduction has resulted in a \$120,000 loss to the Hospital for FY 2015.<sup>18</sup>

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

This dispute centers on whether or not Westchester submitted its MRSA and C. Diff data in the form and manner and at the time specified by CMS. Westchester contends it timely submitted its MRSA and C. Diff data for the fourth quarter of calendar year 2013, and whether or not CMS ultimately received the data is a CMS or CDC issue, based on a technical shortcoming of the NHSN system.<sup>19</sup> The Hospital states the NHSN system did not send any alerts or identify any outstanding action items which would have notified the Hospital of missing data, rather the NHSN showed “you have no action items.”<sup>20</sup> Westchester refers to Exhibits P-4 and P-5, asserting these Exhibits show that the missing data was submitted. The Hospital believes its reliance on the NHSN’s alerts and outstanding action items was reasonable as they had proven reliable in the past.<sup>21</sup>

The Hospital stated the first indication that data was missing was when a representative from Florida’s Quality Improvement Organization (“QIO”) emailed the Hospital on May 14, 2013 to inform the Hospital that its data submission was incomplete.<sup>22</sup> The Hospital checked the NHSN and it said “you have no action items”.<sup>23</sup> The Hospital claims one day’s notice was not enough time to identify why the data was missing.<sup>24</sup> Again on May 21, 2014 the QIO representative sent an e-mail to the Hospital stating there was a “non-submission of C. difficile and MRSA data for

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<sup>15</sup> <https://www.cdc.gov/nhsn/pdfs/validation/2013/2013-PSC-Manual-validate.pdf> at 3-1.

<sup>16</sup> See Exhibit P-2.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> See Exhibit P-1.

<sup>19</sup> Hospital’s Final Position Paper at 6.

<sup>20</sup> See Hospital’s Final Position Paper at 3; See also Tr. At 8-14.

<sup>21</sup> Provider’s Post-Hearing Brief at 5.

<sup>22</sup> Provider’s Post-Hearing Brief at 8 and Exhibit P-8; See also Tr. at 50-51.

<sup>23</sup> Provider’s Post Hearing Brief at 9.

<sup>24</sup> *Id.*

the 4<sup>th</sup> quarter 2013.”<sup>25</sup> When Westchester realized some of its summary data was missing it submitted the missing data on May 23, 2014, which was after the May 15, 2014 deadline.<sup>26</sup> The Hospital believes its submission should be deemed timely due to its reliance on the NHSN’s alerts.<sup>27</sup>

The Medicare Contractor points out that the Hospital did not submit a complete plan for the fourth quarter of 2013 for the MDRO module<sup>28</sup> until June 9, 2014 which is after the May 15, 2014 deadline. The Medicare Contractor points out when a monthly reporting plan is not completed, information will not transmit to CMS.<sup>29</sup> In addition, when a plan is missing, the NHSN system will not transmit any alerts notifying the hospital that the specific measures were not reported to CMS because the monthly plan is necessary in order for the NHSN system to know what specific measures it is monitoring.<sup>30</sup> Without this information the system cannot generate alerts notifying the hospital of reporting errors.<sup>31</sup>

The Board notes that the NHSN manual states “[e]ach participating institution must enter a monthly Plan to indicate the module(s) used, if any, and the events, locations and/or procedures they monitored.”<sup>32</sup> Although the Board understands Westchester may have in the past relied on the NHSN’s alerts to identify missing information, the Board finds no evidence in the record indicating that alerts or outstanding action items are the means by which CMS will inform hospitals of missing data. The Board points out that hospitals can run Standardized Infection Ratio (“SIR”) reports to verify exactly what data is being transmitted/reported to CMS (Exhibits I-3 through I-7), and these documents are consistent with the instruction to run SIR reports which was provided by the QIO representative.<sup>33</sup> Based on this the Board concludes that it was the Hospital’s fault, not the fault of the NHSN, that Westchester’s quality data was not submitted to CMS in the required form and manner by the May 15, 2014 deadline.

As Westchester failed to submit its quality data for the fourth quarter of 2013 in the form and manner specified by CMS, by the May 15, 2014 deadline, CMS properly imposed the one-quarter percentage point penalty in accordance with 42 C.F.R. § 412.64(d)(2)(i)(C).

### **DECISION AND ORDER:**

After considering the Medicare law and regulations, the parties’ contentions and the evidence submitted, the Board concludes that the payment reduction to the Hospital’s market basket update for FY 2015 was proper.

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<sup>25</sup> Exhibit P-9.

<sup>26</sup> *Tr.* at 38-39; Exhibit P-11.

<sup>27</sup> Provider’s Post-Hearing Brief at 5.

<sup>28</sup> Multidrug-resistant Organism and Clostridium Difficile Infection Module.

<sup>29</sup> *See* Medicare Contractor’s Post Hearing Brief at 10-11; *See also* Exhibit I-5 at 3, and Exhibit I-6 at 4.

<sup>30</sup> *See* Medicare Contractor’s Post Hearing Brief at 10-11.

<sup>31</sup> *Id.*

<sup>32</sup> <https://www.cdc.gov/nhsn/pdfs/validation/2013/2013-PSC-Manual-validate.pdf> at 3-1.

<sup>33</sup> Exhibit P-10.

**BOARD MEMBERS PARTICIPATING:**

L. Sue Andersen, Esq.  
Charlotte F. Benson, C.P.A.  
Greg H. Ziegler, C.P.A, CPC-A

**FOR THE BOARD:**

/s/  
L. Sue Andersen  
Chairperson

**DATE:** February 12, 2018