

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D6

**PROVIDER -**  
Metroplex Hospital

Provider No.: 45-0152

**vs.**

**MEDICARE CONTRACTOR –**  
First Coast Service Options, Inc.

**DATE OF HEARING –**  
September 19, 2018

Cost Reporting Period Ended -  
September 30, 2018

**CASE NO.:** 18-0460

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**ISSUE STATEMENT:**

Whether the payment penalty under the Hospital Inpatient Quality Reporting Program was properly applied to the Provider.<sup>1</sup>

**DECISION:**

After considering Medicare law and regulations, arguments presented, and evidence admitted, the Provider Reimbursement Review Board (“Board”) finds that the one-fourth reduction of the Provider’s annual payment update (“APU”) for Fiscal Year (“FY”) 2018 was proper.

**INTRODUCTION:**

Metroplex Adventist Hospital (“Metroplex”) is a 148-bed acute-care hospital in Killeen, Texas. On May 25, 2017, the Centers for Medicare and Medicaid Services (“CMS”) notified Metroplex that it failed to meet Hospital Inpatient Quality Reporting (“IQR”) program requirements resulting in a one-fourth reduction in its FY 2018 Inpatient Prospective Payment System (“IPPS”) APU, as well as ineligibility to participate in the Hospital Value Based Purchasing (“VBP”) Program for the FY 2018 program year.<sup>2</sup> Specifically, CMS alleged that Metroplex did not submit the annual Data Accuracy and Completeness Acknowledgement (“DACA”) between April 1, and May 15, 2017 in compliance with its quality reporting requirements.<sup>3</sup> Metroplex requested that CMS reconsider its decision and, on July 17, 2017, CMS responded and upheld its decision.<sup>4</sup>

Metroplex timely appealed CMS’ July 17, 2017 reconsideration denial to the Board and met the jurisdictional requirements for a hearing. The Board conducted a live hearing on September 19, 2018. Leslie Demaree Goldsmith, Esq., and Donna Thiel, Esq., of Baker, Donelson, Bearman, Caldwell & Berkowitz represented Metroplex. Edward Lau, Esq. of Federal Specialized Services represented First Coast Service Options (“Medicare Contractor”).

**STATEMENT OF FACTS:**

The Medicare program pays acute care hospitals for inpatient services under the IPPS.<sup>5</sup> Under IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.<sup>6</sup> To account for increases in operating costs hospitals receive an annual percentage increase in the standardized amount, known as the APU.<sup>7</sup>

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

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

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Exhibit P-2.

<sup>5</sup> 42 U.S.C. § 1395ww(d); 42 C.F.R. Part 412. IPPS hospitals are often referred to as “subsection (d) hospitals.”

<sup>6</sup> 42 C.F.R. Part 412.

<sup>7</sup> 42 U.S.C. § 1395ww(b)(3). The APU is also referred to as the “market basket update”.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”)<sup>8</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>9</sup> For fiscal years 2015 and beyond, CMS reduces the hospital’s IPPS APU by one-fourth if a hospital fails to report the required quality data under the IQR program.<sup>10</sup> A hospital that is subject to this penalty during a given year is also ineligible to participate in the Hospital VBP program.<sup>11</sup>

In order to meet the IQR program requirements, IPPS hospitals must submit quality data as specified by the Secretary:

(II) Each subsection (d) hospital shall submit data on measures selected under this clause to the Secretary *in a form and manner, and at a time, specified by the Secretary* for purposes of this clause. The Secretary may require hospitals to submit data on measures that are not used for the determination of value-based incentive payments under subsection (o).<sup>12</sup>

CMS established QualityNet<sup>13</sup> to facilitate the process of quality data submission for IPPS hospitals under the IQR program.<sup>14</sup> QualityNet is utilized for secure communications and healthcare quality data exchange between: quality improvement organizations, hospitals, physician offices, nursing homes, end stage renal disease networks and facilities, and data vendors.<sup>15</sup> CMS published instructions for the IQR program on QualityNet in the form of a Reference Checklist (“Checklist”).<sup>16</sup>

Beginning with the FY 2011 payment determinations, CMS required that providers acknowledge their data accuracy and completeness annually, by electronically submitting the DACA.<sup>17</sup> Beginning with the FY 2014 payment determinations, the deadline for submitting DACA was aligned with the final submission quarter for each fiscal year. This resulted in a May 15 deadline for DACA with respect to the preceding year data.<sup>18</sup>

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<sup>8</sup> Pub. L. No. 108-173, 117 Stat. 2066 (2003).

<sup>9</sup> *Id.* at § 501, 117 Stat. 2066, 2289-90; 42 C.F.R. § 412.140(c).

<sup>10</sup> 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>11</sup> 42 U.S.C. § 1395ww(o)(1)(C)(ii); 79 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).

<sup>12</sup> 42 U.S.C. § 1395ww(b)(3)(B)(viii) (emphasis added).

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

<sup>14</sup> See 69 Fed. Reg. 48916, 49078 (Aug. 11, 2004) (stating that a provider must submit their data to the Quality Improvement Organization (“QIO”) Clinical Warehouse using the “CMS Abstraction & Reporting Tool (CART), the JCAHO Oryx Core Measures Performance Measurement System (PMS), or another third-party vendor” and that “[t]he QIO Clinical Warehouse will submit the data to CMS on behalf of the hospitals . . . [t]hrough QualityNet Exchange”).

<sup>15</sup> *Id.*

<sup>16</sup> QualityNet, *Reference Checklist for Fiscal Year (FY) 2018* (Jan. 2017) (available at: <https://www.qualitynet.org/dcs/ContentServer?cid=1144440979338&pagename=QnetPublic%2FPPage%2FQnetTier4&c=Page>).

<sup>17</sup> 74 Fed. Reg. 43754, 43889-43890 (Aug. 27, 2009).

<sup>18</sup> 77 Fed. Reg. 53258, 53554 (Aug. 31, 2012). See also 80 Fed. Reg. 49325, 49712 (Aug. 17, 2015) (confirming the DACA requirements were not changed).

The QualityNet website includes various information related to DACA including the following:<sup>19</sup>

The DACA is a requirement for hospitals participating in the Hospital IQR Program to electronically acknowledge that the data submitted for the Hospital IQR Program are accurate and complete to the best of their knowledge. The open period for signing and completing the DACA is April 1 through May 15, with respect to the reporting period of January 1 through December 31 of the preceding year. Hospitals are required to complete and sign the DACA on an annual basis via the *QualityNet Secure Portal*.

Specifically for 2018 payment determinations, CMS dictated that hospitals complete the DACA electronically “between April 1, 2017 and May 15, 2017, with respect to the time period January 1, 2016 through December 31, 2016.”<sup>20</sup>

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

Metroplex contends that it timely submitted all *quality data* required by the plain language of the quality reporting statute.<sup>21</sup> The Provider cites to 42 U.S.C. § 1395ww(b)(3)(B) in arguing that the MMA adopted the statutory language in establishing the core tenet of the IQR program: the hospital’s obligation to submit quality data.<sup>22</sup> Metroplex’s initial argument is that the DACA requirement is not data, but a certification.<sup>23</sup> They argue that the IQR program mandated hospitals to submit data on the measures selected by the Secretary that are meant to reflect the quality of care provided at those hospitals.<sup>24</sup> To that end, Metroplex cites that CMS’ own published list of measures that hospitals are required to meet in order to qualify for the APU lack any reference to the DACA as a “measure” or as part of the quality data required by the IQR program.<sup>25</sup>

Additionally, the Provider explains that it used QualityNet to successfully submit all structural measures and IQR quality data requirements by the appropriate deadline and that only the DACA remained incomplete for FY 2018. The Provider claims a design flaw in the QualityNet concealed the DACA from the person responsible for filing the Provider’s submission. Specifically the Provider points out that one would have to scroll all the way over to the right on the computer screen to see the column containing the DACA.<sup>26</sup> The Provider points out that CMS knew of the poor website design and implemented several corrective actions related to the DACA for the FY 2019 payment determinations.<sup>27</sup>

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<sup>19</sup> See *Reference Checklist for Fiscal Year (FY) 2018* at 9 (italics in original). Similar language is in the January 2016 version of the Reference Checklist for Fiscal Year (FY) 2018 included in Exhibit I-4 at 8.

<sup>20</sup> *Reporting Quarters for FY 2018 Payment Determination* (copy at Exhibit P-19) (available at: <https://www.qualitynet.org/dcs/ContentServer?cid=1144440979338&pagename=QnetPublic%2FPage%2FQnetTier4&c=Page>).

<sup>21</sup> Provider’s Final Position Paper at 12.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 15-16; Tr. at 20.

<sup>24</sup> Provider’s Final Position Paper at 14.

<sup>25</sup> *Id.* at 14-15; Tr. at 24-25.

<sup>26</sup> Provider’s Final Position Paper at 10.

<sup>27</sup> Provider’s Final Position Paper at 19; Exhibit P-6.

Finally, Metroplex demonstrated that CMS accepted and published the quality data that it submitted, despite the lack of a DACA certification.<sup>28</sup> Metroplex argues that this supports its argument that the DACA is *not quality data*.<sup>29</sup>

The Board agrees with Metroplex that the DACA certification is not quality data. Rather, the Board finds that the Secretary requires the DACA certification as part of the form and manner for submitting quality data. The Board points to the August 27, 2009 Federal register where CMS finalized its requirement for the DACA stating: “A single annual electronic acknowledgement will provide us with explicit documentation acknowledging that the hospital’s data is accurate and complete[.]”<sup>30</sup> In implementing DACA, the agency referenced a 2006 GAO recommendation that hospitals self-report that their data are complete and accurate. The agency stated that hospitals would be able to submit this acknowledgement on the same web page they use to submit data necessary to calculate the structural measures.<sup>31</sup> The agency further explained that this requirement would supplement the existing submission and validation requirements.<sup>32</sup> Moreover, the agency memorialized that the DACA is a condition for meeting IQR requirements in the DACA certification language itself.<sup>33</sup>

The Board reviewed the website screenshots submitted by the Metroplex that show the data submitter would have to scroll to the right to open the window for the DACA submission.<sup>34</sup> The Board understands how this website design lead to the Provider’s failure to submit its DACA. However, the Board points out that the Provider would have recognized this omission had it used the monitoring reports and tools that were available to it for the express purposes of “monitor[ing] case and validation status.”<sup>35</sup> Specifically, the Board notes that the Hospital IQR Handbook Section 9 entitled “Monitoring Reports” states that “[t]he APU dashboard is a reference tool used in determining the hospital’s progress in submitting requirements for the Hospital IQR Program.”<sup>36</sup> The Board points out that the Dashboard contains a section for the status of the DACA.<sup>37</sup> Notably, the Dashboard will reflect if the DACA requirement is “Not Satisfied,” “Partially Satisfied,” or “Fully Satisfied”.<sup>38</sup> At the hearing, Metroplex recognized that DACA was a requirement<sup>39</sup> and confirmed that they had properly submitted the DACA in previous years without issue.<sup>40</sup> However, Metroplex’s witness could not confirm that anyone

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<sup>28</sup> Exhibit P-20; Tr. at 74-78.

<sup>29</sup> Tr. at 12, 37-38.

<sup>30</sup> 74 Fed. Reg. at 43889.

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

<sup>32</sup> *Id.* at 43890.

<sup>33</sup> Exhibit P-9 (copy of the DACA certification language (Nov. 2016) (“I understand that this acknowledgement is required for the purpose of meeting any PY 2018 Hospital IQR Program requirements.”)).

<sup>34</sup> Exhibits P-4 to P-7.

<sup>35</sup> IFMC, *Handbook II: CMS Hospital Inpatient Quality Reporting Program*, at 31 (Dec. 5, 2011) (copy at Exhibit I-3).

<sup>36</sup> *Id.* at 32.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 41.

<sup>39</sup> Tr. at 83.

<sup>40</sup> Tr. at 91-92.

had viewed the “APU Dashboard” or had run the validation reports, either of which would have informed the Provider that the DACA had not been completed.<sup>41</sup>

The Board finds that Metroplex’s failure to complete the DACA by May 15, 2017 was fatal to its successful compliance with the IQR program requirements for FY 2018.<sup>42</sup> While the Board acknowledges that CMS used and published the submitted quality data,<sup>43</sup> this does not absolve Metroplex from completing and submitting the DACA. The Statute is clear that each hospital “shall submit data on measures selected *in a form and manner, and at a time, specified by the Secretary.*”<sup>44</sup> As Metroplex did not submit its accuracy and certification attestation for its quality data, it did not submit its data “in the form and manner” specified by the Secretary.

**DECISION AND ORDER:**

After considering Medicare law and regulations, arguments presented, and evidence admitted, the Board concludes that the one-fourth reduction of Metroplex’s APU for FY 2018 was proper.

**BOARD MEMBERS:**

Charlotte F. Benson, CPA  
Gregory H. Ziegler, CPA, CPC-A  
Robert Evarts, Esq.

**FOR THE BOARD:**

/s/  
Board Member

**DATE:** November 29, 2018

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<sup>41</sup> Tr. at 97-99; The CMS Hospital and Patient Quality Reporting Program handbook details a dashboard available within the QualityNet portal, which provides the hospital with tools to determine the hospital’s progress in submitting requirements for the Hospital IQR program. Exhibit I-3 at 32.

<sup>42</sup> 77 Fed. Reg. at 53554. *See also* 80 Fed. Reg. at 49712 (confirming the DACA requirements were not changed).

<sup>43</sup> The Board questions the use of uncertified quality data on Hospital Compare since it could be unreliable and/or inaccurate.

<sup>44</sup> 42 U.S.C. § 1395ww(b)(3)(B)(viii) (emphasis added).