

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION**

2019-D23

PROVIDER –
Glendora Community Hospital

HEARING HELD –
February 12, 2019

PROVIDER NO. – 05-0205

FISCAL YEAR– 2017

vs.

MEDICARE CONTRACTOR –
Noridian Healthcare Solutions c/o Cahaba Safeguard
Administrators

CASE NO. – 17-0638

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ISSUE STATEMENT:

Whether the payment penalty imposed by CMS [Centers for Medicare and Medicaid Services] under the Hospital Inpatient Quality Reporting (“IQR”) program to reduce the Provider’s payment update for federal fiscal year 2017 by one-fourth of the annual market basket update was proper.¹

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board”) finds the reduction of the Provider’s annual payment update (“APU”)² for fiscal year (“FY”) 2017 was proper.

INTRODUCTION:

Glendora Community Hospital (“Glendora” or the “Provider”) is a 128-bed acute care hospital located in Glendora, California. On March 14, 2016, the CMS notified Glendora that it failed to meet Hospital IQR program requirements for FY 2017 and, as a result, Glendora would be subject to a payment reduction of one-fourth of its FY 2017 Inpatient Prospective Payment System (“IPPS”) APU. The CMS Hospital IQR Program FY 2017 required that certain quality data relating to prenatal care, PC-01, be submitted for calendar year (“CY”) 2015. CMS stated that Glendora failed to comply with the submission requirements for perinatal care, PC-01, for the first quarter (January 1 –March 31) of CY 2015.³ Following the Provider’s request for reconsideration, CMS upheld its decision.⁴

Glendora timely appealed CMS’s reconsideration decision and met the jurisdictional requirements for a hearing before the Board. The Board conducted a telephonic hearing on February 12, 2019. Glendora was represented by Ernessa B. McKie, Esq. and Ian K. Byrnsie, Esq. of Baker Hostetler, LLP. Noridian Healthcare Solutions c/o Cahaba Safeguard Administrators (the “Medicare Contractor”) was represented by Jerrod Olszewski, Esq., of Federal Specialized Services.

¹ Transcript, (“Tr.”) at 5.

²The terms “Market Basket Update” and “Annual Payment Update” are essentially interchangeable. For ease of reference, the Board will utilize Annual Payment Update or APU in this decision.

³ Position Paper Exhibit P-2 at 2. The Record contains two sets of Provider Exhibits, both labeled P-1 through P-7. Between the two sets, there are ten unique documents. The first set is attached to the Provider’s Final Position Paper (hereinafter referred to as “Position Paper Exhibits”), and the second set is in the record separately as tabbed exhibits in a hearing binder (hereinafter referred to as “Hearing Binder Exhibits”). This decision will specify which set is being cited to, as appropriate.

⁴ Position Paper Exhibit P-6.

STATEMENT OF FACTS AND RELEVANT LAW:

Under IPPS, the Medicare program pays acute care hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.⁵ The standardized amounts are increased each year by the APU (*i.e.*, the annual market basket update) to account for certain increases in operating costs.⁶

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003⁷ 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.”⁸ 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 APU for the relevant year by one-quarter.⁹ A hospital that is subject to this penalty during a given year is also excluded from participation in the Value-Based Purchasing program and ineligible to receive any value-based incentive payments for that year.¹⁰

In order to meet the Hospital 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).¹¹

CMS established QualityNet¹² to facilitate the process of quality data submission for IPPS hospitals under the IQR program.¹³ 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

⁵ See 42 U.S.C. § 1395ww(d); 42 CFR Part 412. IPPS hospitals are often referred to as “subsection (d) hospitals.”

⁶ See 42 U.S.C. § 1395ww(b)(3).

⁷ Pub. L. No. 108-173, 117 Stat. 2066 (2003).

⁸ *Id.* § 501(b), 117 Stat. at 2289-90. See also 42 C.F.R. § 412.140(c).

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

¹⁰ See 42 U.S.C. § 1395ww(o)(1)(C)(ii)(I); 79 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).

¹¹ 42 U.S.C. § 1395ww(b)(3)(B)(viii) (emphasis added).

¹² See <http://www.qualitynet.org/>.

¹³ 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”).

vendors.¹⁴ CMS published instructions for the IQR program on QualityNet in the form of a Reference Checklist (“Checklist”).¹⁵

Below is a summary of the requirements contained in the CMS Hospital IQR Program FY 2017 Checklist (“FY 2017 Checklist”):¹⁶

- Register with QualityNet
- Maintain an Active QualityNet Security Administrator (SA)
- Complete a Notice of Participation (NoP) (for newly reporting hospitals)
- Submit HCAHPS Data
- Submit Aggregate Population Sample Size Counts
- Submit Clinical Process of Care Measure Data
- Submit HAI Data, including Influenza Vaccination Coverage Among Healthcare Personnel (HCP) Data
- Submit Perinatal Care Elective Delivery Measure (PC-01) Data
- Complete Structural Measures Information
- Complete the DACA

Additional detail for each of these requirements is included on the FY 2017 Checklist. The CMS Hospital IQR Program FY 2017 required that certain quality data relating to prenatal care, PC-01, be submitted for calendar year (“CY”) 2015. The instruction for PC-01 states that “[h]ospitals are required to complete the Web-Based Measure questions *quarterly*... These data are *manually* entered in the QualityNet Secure Portal. They cannot be submitted via an XML file.”¹⁷ The due date for submitting the PC-01 data for the first quarter of CY 2015 was August 15, 2015.¹⁸

Glendora was notified on March 14, 2016 that its FY 2017 IPPS APU was being reduced by one-fourth because it failed to submit the required PC-01 data for the first quarter of CY 2015.¹⁹ Glendora disagrees and asserts that it did submit all quality measures, including the PC-01 data for the first quarter of CY 2015.²⁰ This case focuses on whether or not Glendora timely submitted its PC-01 data in the form and manner and at the time specified by CMS.

¹⁴ See <http://www.qualitynet.org/>.

¹⁵ QualityNet, *Reference Checklist for Fiscal Year (FY) 2017* (available at: <https://www.qualitynet.org/dcs/ContentServer?cid=1144440979338&pagename=QnetPublic%2FPage%2FQnetTier4&c=Page>).

¹⁶ Hearing Binder Exhibit P-2.

¹⁷ *Id.* at 7.

¹⁸ Hearing Binder Exhibit P-3 at 2. See also <https://www.qualitynet.org/dcs/ContentServer?cid=1144440979338&pagename=QnetPublic%2FPage%2FQnetTier4&c=Page> (providing Important Dates and Deadlines FY 2017).

¹⁹ Exhibit I-1 at 1-2.

²⁰ Glendora Final Position Paper at 6; Tr. at 9.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

During the hearing, Glendora's witness stated that she was the system administrator with the *QualityNet* account and she submitted all the quality data elements according to the FY 2017 Checklist.²¹ Glendora contends that it never received a rejection or any notice that data was missing from the first quarter of CY 2015 submission,²² until it received CMS' notification that Glendora would be penalized one-fourth of its FY 2017 APU.²³ Glendora asserts that its PC-01 data was not received by CMS due to a technical error or based on some technical issue outside of its control.²⁴

Glendora believes that the Board should reverse the APU reduction because it made no mistake or error and has presented documentation confirming its manual submission of "0" in the PC-01 field for the first quarter of CY 2015.²⁵ Additionally Glendora points out that CMS implemented a Measure Exception Form for PC-01 in the third quarter of CY 2015 that, when completed, would exempt a provider from having to report a "0" for that measure.²⁶ Glendora asserts that CMS has acknowledged the unnecessary burden for hospitals to report a "0" for PC-01, supporting its belief that the penalty should be reversed.²⁷

The Medicare Contractor points out that CMS does not have a record of receiving the contested data and that Glendora did not submit any documentation to confirm that CMS received the data in question.²⁸ The Medicare Contractor believes that the Board should find that CMS properly reduced Glendora's FY 2017 APU.²⁹

The Board recognizes that Glendora believes it submitted its PC-01 data timely. Specifically, Glendora's witness testified that she submitted zero for the PC-01 measure because Glendora had no elective deliveries in the first quarter of CY 2015 due to the fact that it closed its obstetrics unit in September 2014.³⁰ Glendora's witness also testified that she ran certain "output reports" but did not print or keep them because she did not think it would be necessary.³¹ The Board notes that it is unclear what these "output reports" were (*e.g.*, hospital validation reports which hospitals can use to monitor submission versus the APU Dashboard which is a reference

²¹ Tr. at 20-25.

²² Glendora Final Position Paper at 5-6.

²³ Position Paper Exhibit P-2.

²⁴ Glendora Final Position Paper at 6.

²⁵ *Id.*

²⁶ *Id.* at 7.

²⁷ *Id.*

²⁸ Medicare Contractor's Final Position Paper at 5.

²⁹ *Id.* at 6.

³⁰ Tr. at 31.

³¹ *Id.* at 49-50, 58.

tool used in determining the hospital's progress in submitting requirements for the Hospital IQR Program) and what information was in those reports.³² Without the reports, the Board cannot find that Glendora was diligent in confirming that the PC-01 data for the first quarter of CY 2015 had been submitted to CMS.

Since Glendora had no "output reports," Glendora tried to document that it submitted its data with a web history report. However, this report does not confirm that the PC-01 data was submitted timely because it only shows that the Provider *accessed* multiple pages on the QualityNet website on July 28, 2015.³³ While the Board finds the testimony of the Glendora's witness to be credible, the Board cannot conclude that Glendora submitted its PC-01 data timely without any supporting documentation, such as output reports or screen prints, to confirm that the data was, in fact, submitted before the deadline.³⁴

During the hearing, Glendora pointed out that it did not receive notification of the missing PC-01 information before the submission deadline.³⁵ While notification of missing information would have been helpful, the Board finds no evidence in the record indicating that CMS has an obligation to notify hospitals of missing data before submission deadlines. Further, through its discussion of output reports, Glendora recognizes that there are tools available on QualityNet to both monitor and verify that submissions to CMS are successful; however, Glendora failed to confirm it was diligent by retaining documentation to verify its use of those tools relevant to the PC-01 submissions. Finally, the Board finds no evidence that Glendora attempted to use (or could have used) the Measure Exception Form that CMS implemented for the PC-01 measure in the third quarter of CY 2015.³⁶

While the Board empathizes with the Provider, the Board concludes that Glendora failed to timely submit its quality data for the first quarter of CY 2015 in the form and manner and at the time specified by the Secretary. The Board finds that CMS properly imposed the one-fourth APU penalty, in accordance with 42 C.F.R. § 412.64(d)(2)(C).

³² See Handbook II: CMS Hospital Inpatient Quality Reporting Program at 31-32 (Dec. 5, 2011) (handbook link posted as "Guide to CMS Hospital IQR Program" available at: <https://www.qualitynet.org/dcs/ContentServer?cid=1144440979338&pagename=QnetPublic%2FPage%2FQnetTier4&c=Page>).

³³ Tr. at 42, 52-53. Position Paper Exhibit P-3.

³⁴ Tr. at 52-53, 58.

³⁵ *Id.* at 38-40.

³⁶ Glendora Final Position Paper at 7.

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the reduction of Glendora's APU for FY 2017 was proper.

BOARD MEMBERS PARTICIPATING:

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FOR THE BOARD:

3/29/2019

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Chair

Signed by: Clayton J. Nix -A