

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D35

PROVIDER -
National Jewish Health

Provider No.: 06-0107

vs.

MEDICARE CONTRACTOR –
Novitas Solutions, Inc.

DATE OF HEARING –
February 21, 2019

Cost Reporting Period Ended -
September 30, 2019

CASE NO.: 18-1391

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ISSUE STATEMENT

Whether the Provider should be subject to a one-fourth reduction to its Federal Fiscal Year (“FFY”) 2019 Annual Percentage Update (“APU”) for noncompliance with the Hospital Inpatient Quality Reporting (“IQR”) Program requirements.¹

DECISION

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board”) concludes that the one-fourth reduction to the Provider’s APU for FFY 2019 was proper.

INTRODUCTION

National Jewish Health (“National Jewish” or “Provider”) is an acute-care hospital in Denver, Colorado. On March 8, 2018, the Centers for Medicare and Medicaid Services (“CMS”) notified National Jewish that it failed to meet Hospital IQR program requirements, which would result in a one-fourth reduction to its FFY 2019 APU,² because National Jewish failed to submit its sepsis clinical process measure data timely.³ National Jewish requested that CMS reconsider its decision and, on May 15, 2018, CMS upheld the payment reduction.⁴

National Jewish timely appealed CMS’ May 15, 2018 reconsideration decision to the Board and met the jurisdictional requirements for a hearing. The Board conducted a telephonic hearing on February 21, 2019. Ellen Stewart, Esq., of Spencer Fane LLP represented National Jewish. Scott Berends, Esq. of Federal Specialized Services represented Novitas Solutions, Inc. which is the Medicare administrative contractor (“Medicare Contractor”) assigned to National Jewish.

STATEMENT OF FACTS

The Medicare program pays acute care hospitals for inpatient services under the Inpatient Prospective Payment System (“IPPS”),⁵ whereby the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.⁶ Hospitals receive an annual percentage increase in the standardized amount, known as the “market basket update” or APU, to account for increases in operating costs.⁷

¹ Transcript (“Tr.”) at 6.

² MAC Final Position Paper at 2.

³ Exhibit C-1 at 2.

⁴ MAC Final Position Paper at 2, Exhibit C-3.

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

⁶ 42 C.F.R. Part 412.

⁷ 42 U.S.C. § 1395ww(b)(3). *See also* 42 C.F.R. §413.40(a)(3). “*Market basket index* is CMS’s projection of the annual percentage increase in hospital inpatient operating costs. The market basket index is a wage and price index that incorporates weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of hospital inpatient operating costs”

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”)⁸ amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the IQR program that requires every hospital to submit quality of care data “in a form and manner, and at a time, specified by CMS.”⁹ For fiscal years 2015 and beyond, CMS reduces the hospital’s annual IPPS APU by one-fourth if a hospital fails to report the quality data required under the IQR program.¹⁰

National Jewish admits it made a mistake and entered “12” rather than “0” when submitting its sepsis data for the first quarter 2017 (“SEP Q1 2017”).¹¹ By submitting “12”, National Jewish was representing that it had 12 sepsis cases during the first quarter 2017. Further, following the deadline for submitting this data, National Jewish was selected for data validation which required it to submit additional data consisting of charts to “validate” or support the reported “12” sepsis cases.¹² As part of the validation process, National Jewish did not submit any sepsis charts as it did not have charts supporting any of the reported “12” sepsis cases.¹³ However, National Jewish attempted to correct its data entry error but could not because the August 1, 2017 data submission deadline had already passed.¹⁴

The dispute in this case is whether National Jewish met the IQR program requirements related to the SEP Q1 2017 measure when it submitted incorrect data.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

In order to meet the IQR program requirements, IPPS hospitals must submit quality data in a specified format:

(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).¹⁵

⁸ Pub. L. No. 108-173, 117 Stat. 2066 (2003).

⁹ *Id.* at § 501, 117 Stat. at 2290; 42 C.F.R. § 412.140(c).

¹⁰ *See* 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

¹¹ The Provider argued in its Final Position Paper that “a simple and unintentional typographical error was made while entering data relative to the aggregate initial patient population and sampling size counts for IQR-SEP Q1 2017. Rather than entering the value ‘0’, the number ‘10’ was entered.” Provider’s Final Position Paper at 1. However, at hearing, the Provider explained that for the first quarter of 2017, the Hospital had 12 total inpatients. National Jewish’s witness testified that she should have entered the value “0” in the SEP Initial Inpatient Population data field, but she “failed to completely acknowledge” the “extensive definition” for the Initial Inpatient Population field, and inadvertently entered incorrect SEP data. Tr. at 20-23, 37.

¹² *Id.* at 26, 37.

¹³ *Id.* at 30.

¹⁴ Exhibit C-2 at 2 and Tr. at 26-27.

¹⁵ 42 U.S.C. § 1395ww(b)(3)(B)(viii) (2017) (emphasis added).

National Jewish entered “12” sepsis cases for its SEP Q1 2017 submission.¹⁶ The Provider was contacted to determine why records documenting its sepsis cases were not uploaded to the data warehouse. As a result National Jewish performed an in-house investigation and found it should have entered “0” rather than “12” for the SEP Q1 2017 measure, because there were no patients that met the criteria for the sepsis measure.¹⁷ The Provider’s Reconsideration Request further detailed the data submission error:

Submission of aggregate Initial Inpatient Population for SEP Q1 2017 should have been zero, there were no patients that met this measure. Data entry personnel mistakenly entered numbers from the Global (IQR-GLB) Initial Inpatient Population field into the SEP (IQR-SEP) Initial Inpatient Population fields, with zero for sample size. No abstractions for the Sepsis measure were uploaded to the data warehouse. QualityNet was notified of the data entry error but since the submission deadline passed there was no method to make the correction or changes.¹⁸

National Jewish contends that it timely submitted all quality data required by the plain language of the quality reporting statute.¹⁹ They argue that they submitted all their Quality data timely but made a simple clerical error in reporting “12” Sepsis cases instead of “0” and, therefore, could not report abstractions on sepsis cases that did not exist.²⁰ In their reconsideration request, National Jewish noted new procedures for data review, including second person review, before final deadlines, to avoid future incorrect submissions to QualityNet.²¹

The Medicare Contractor’s argument, in essence, is strict liability, supported by the language of the Statute and Regulations. National Jewish submitted incorrect data, and failed to support that data with documentation when requested by CMS.²² The Medicare Contractor notes that the Statute requires the Secretary to establish a process to validate the IQR measures²³ and, by National Jewish’s own admission, it submitted erroneous data that could not be validated.²⁴

The Board finds that the failure to accurately complete the quality measures was fatal to National Jewish’s successful compliance with IQR program requirements for its FFY 2019 payment determination. The Statute is clear that all data shall be submitted “*in a form and manner, and at a time, specified by the Secretary.*”²⁵ Further, CMS regulations state that “CMS may validate one or more measures”²⁶ and that, “[u]pon written request by CMS or its contractor, a hospital

¹⁶ Tr. at 37.

¹⁷ *Id.* at 26.

¹⁸ Exhibit C-2 at 2.

¹⁹ Tr. at 9. National Jewish also argues that a mistake occurred on CMS’ end, that in its reconsideration, it requested clinical measures for services that National Jewish does not provide. It was noted, however, during the hearing that National Jewish’s allegation of CMS’ mistake was not related to their rejection. *Id.* at 11-12, 34-35 and 41.

²⁰ *Id.* at 9-10

²¹ Exhibit C-2 at 2.

²² Tr. at 13. *See also* MAC Final Position Paper at 6-7.

²³ 42 U.S.C. 1395ww(b)(3)(B)(viii)(XI); MAC Final Position Paper at 5.

²⁴ *See* Tr. at 53. *See also* Exhibit C-2.

²⁵ 42 U.S.C. § 1395ww(b)(3)(B)(viii) (2017) (emphasis added).

²⁶ 42 C.F.R. 412.140(d).

must submit to CMS a sample of patient charts that the hospital used for the purposes of data submission under the program.”²⁷ Additionally, the Board points out that guidance specific to the sepsis measure was available in the Specifications Manual for National Hospital Inpatient Quality Measures,²⁸ and the 2017 IQR Program Reference Checklist was clear that quarterly data submissions must be timely, complete, and accurate.²⁹

Based on the statute, regulations and guidance identified above the Board finds it is not sufficient to simply submit data, rather the submitted data must be accurate and capable of being verified, in order to meet the requirements of the IQR program.³⁰ Consequently, the Board concludes that National Jewish failed to meet the requirements of the Hospital IQR program and is subject to a one-fourth reduction to its APU for FFY 2019 pursuant to 42 C.F.R. § 412.64(d)(2)(i)(C).

DECISION AND ORDER:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board concludes that the one-fourth reduction to National Jewish’s APU for FFY 2019 was proper.

BOARD MEMBERS:

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

FOR THE BOARD:

7/31/2019

X Charlotte F. Benson

Charlotte F. Benson, CPA
Board Member
Signed by: PIV

²⁷ 42 C.F.R. 412.140(d)(1).

²⁸ See § 2.1 of the Specifications Manual version 5.2b (available at <https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=OnetPublic%2FPage%2FOnetTier4&cid=1228775749207>).

²⁹ Hospital Inpatient Quality Reporting (IQR) Program Reference Checklist at 9 (available at https://cdn2.hubspot.net/hubfs/491484/IQR_FY19_ProgRefChklist_021717.pdf).³⁰ See *id.* at 5-6, 9.