

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D42

PROVIDER –
Conway Regional Rehabilitation Hospital

Provider No.: 04-3033

vs.

MEDICARE CONTRACTOR –
Novitas Solutions, Inc.

HEARING DATE –
October 4, 2017

Cost Reporting Period Ended –
2017

CASE NO.: 17-1167

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ISSUE STATEMENT:

Conway Regional Rehabilitation Hospital (“Conway” or the “Provider”) challenges the reduction of its Annual Payment Update (“APU”) for the federal fiscal year (“FFY”) 2017 by the Centers for Medicare & Medicaid Services (“CMS”) under the Inpatient Rehabilitation Facility (“IRF”) Quality Reporting Program (“QRP”).¹

DECISION:

After considering the Medicare law and regulations, arguments presented, and evidence submitted, the Provider Reimbursement Review Board (“Board”) concludes Conway is not entitled to the full APU for 2017.

INTRODUCTION:

The Provider is an IRF located in Conway, AR. On July 18, 2016, Novitas Solutions, Inc. (“Medicare Contractor”) notified Conway that CMS determined the Provider failed to meet IRF QRP requirements for FY 2017, and as a result, the Provider would be subject to a two percentage point (“2%”) payment reduction in the FY 2017 annual increase factor.² Specifically, CMS alleged that the Provider failed to submit IRF QRP data for the National Quality Forum (“NQF”) #0138 National Health Safety Network (“NHSN”) Catheter-Associated Urinary Tract Infection (“CAUTI”) Outcome Measure for the third quarter of calendar year 2015 (July 2015 – September 2015).³ Following the Provider’s request for reconsideration, CMS upheld its decision.⁴

Conway timely appealed CMS’ reconsideration decision and met the jurisdictional requirements for a hearing before the Board. The Board held a hearing on October 4, 2017. Christina Hughes of Powers Pyles Sutter & Verville, P.C. represented Conway. The Medicare Contractor was represented by Joe Bauers, Esq., of Federal Specialized Services.

STATEMENT OF FACTS AND RELEVANT LAW:

The Medicare program pays a rehabilitation facility⁵ for services under the IRF prospective payment system (“IRF PPS”).⁶ Under IRF PPS, the Medicare program pays predetermined, standardized amounts per discharge, subject to certain payment adjustments.⁷ The standardized

¹ Transcript (“Tr”) at 5-6.

² Provider’s Final Position Paper, Exhibit P-1.

³ The Board notes this reason was not identified in the CMS notice. The reason is identified in the Medicare Contractor’s Final Position Paper at 5 and supported by Provider’s Final Position Paper, Exhibit P-3 at 6, indicating no CAUTI data was reported to CMS for the month of July 2015.

⁴ See Provider’s Final Position Paper, Exhibit P-5.

⁵ “Rehabilitation facility” includes inpatient hospital services of a rehabilitation hospital and a rehabilitation unit within a hospital for purposes of this subsection of the Social Security Act (“Act”). See 42 U.S.C. § 1395ww(j)(1)(A).

⁶ See 42 U.S.C. § 1395ww(j); 42 C.F.R. §§ 412.600 – 412.634.

⁷ See 42 C.F.R. § 412.624.

IRF PPS payment amounts are increased each year by a “market basket update” to account for increases in operating costs.⁸

The Patient Protection and Affordable Care Act (“ACA”) of 2010⁹ amended 42 U.S.C. § 1395ww(j) to establish the IRF QRP. This amendment requires each rehabilitation facility to submit quality of care data “in a form and manner, and at a time, specified by the Secretary.”¹⁰ For 2014 and subsequent fiscal years, a rehabilitation facility failing to report the required quality data under the IRF QRP is assessed a one-time 2% reduction to its market basket update for the affected fiscal year.¹¹

The regulation addressing IRF QRP data submission at 42 C.F.R. § 412.634 states:

(b) Submission Requirements and Payment Impact.

(1) IRFs must submit to CMS data on measures specified under section 1886(j)(7)(D), 1899B(c)(1), and 1899B(d)(1) of the Act, as applicable. Such data must be submitted in the form and manner, and at a time, specified by CMS.

(2) As required by section 1886(j)(7)(A)(i) of the Act, any IRF that does not submit data in accordance with section 1886(j)(7)(C) and (F) of the Act for a given fiscal year will have its annual update to the standard Federal rate for discharges for the IRF during the fiscal year reduced by two percentage points.

The IRF QRP requires rehabilitation facilities to submit various quality measures, including data regarding CAUTI.¹² CMS instructed rehabilitation facilities to submit CAUTI quality data to the Centers for Disease Control and Prevention (“CDC”) through its NHSN system.¹³ IRF QRP instructions and deadlines¹⁴ for data submission are posted on the CMS “IRF QRP” website.¹⁵ Since 2012, the NHSN website has made available instructions and manuals for using the NHSN system.

⁸ See 42 U.S.C. § 1395ww(j)(3). The “market basket update” is also referred to as the APU.

⁹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 3004(b), 124 Stat. 119, 369-70 (2010).

¹⁰ *Id.* at § 3004(b)(2)(C), 124 Stat. at 369. See also 42 C.F.R. § 412.634.

¹¹ See 42 U.S.C. § 1395ww(j)(7)(A)(i); 42 C.F.R. § 412.634(b)(2).

¹² See 79 Fed. Reg. 45872, 45911-14 (Aug. 6, 2014). See also <https://www.cdc.gov/nhsn/training/patient-safety-component/>.

¹³ See 79 Fed. Reg. at 45912-13.

¹⁴ See <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Data-Submission-Deadlines.html>.

¹⁵ See <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/>.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

Conway explains that IRFs report on the CAUTI measure by submitting the information quarterly to the CDC through the NHSN. The NHSN system has a multi-step reporting mechanism for the CAUTI measure for IRFs. First, after verifying its CMS Certification Number (“CCN”), an IRF must create a Monthly Reporting Plan (“MRP”) within the NHSN. The MRP is created when the hospital selects applicable data that it intends to track, and report on, through the NHSN. Once it is completed, the MRP is used to inform the CDC as to which quality measures the IRF will report on in a given month. When reporting CAUTI, if there have been no incidences during the month, the IRF selects “Report No Events.” If one or more incidences of CAUTI occurred during the month, the IRF adds this information as events within the NHSN. The IRF’s CAUTI data is then transmitted by the NHSN to CMS on a quarterly basis.¹⁶

Conway contends that it properly submitted all required CAUTI information through the NHSN (including the required MRP). The Provider also asserts that it took all steps to ensure its CAUTI information was correctly submitted under the IRF QRP and received no alerts from the NHSN regarding any missing CAUTI data for July 2015.¹⁷ Conway supplied a NHSN printout for July 2015 entitled “Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA)” that was printed on September 16, 2015;¹⁸ before the CAUTI data submission deadline of February 15, 2016.¹⁹ The Provider alleges that this printout supports its claim that the CAUTI data it submitted for July 2015 included total patient days, the urinary catheter days, and the selection of “Report No Events” for the CAUTI measure.²⁰

The Board finds that a close examination of the NHSN printout, dated September 16, 2015, reveals that Conway failed to submit the monthly plan for CAUTI for July 2015. The Board notes that the CAUTI data elements on the August and September 2015 printouts are denoted with an asterisk,²¹ while the CAUTI data elements on the July 2015 printout do not have asterisks.²² As clarified by CMS, the asterisks appear once a data module has been added into a provider’s MRP. The asterisks are intended to notify a provider that required data points are added for modules that are included in the MRP.²³ Additionally, the Board notes that the Provider’s Certification and Survey Provider Enhanced Reporting (“CASPER”) indicates that CAUTI data was successfully reported by Conway for the months of August and September 2015, but was not successfully reported for July 2015.²⁴

¹⁶ Provider’s Final Position Paper at 6-7.

¹⁷ *Id.* at 9-10.

¹⁸ *See Id.* at Exhibit P-4.

¹⁹ *See Id.* at Exhibit P-6. The data submission deadline for the first three quarters of calendar year 2015 was February 15, 2016. The fourth quarter deadline was May 15, 2016. Successful submission of data for all four quarters was required to qualify for a full market basket update.

²⁰ *See* Provider’s Final Position Paper, Exhibit P-4.

²¹ *See Id.* at Exhibits P-17 and P-18.

²² *See Id.* at Exhibit P-4.

²³ *See* Medicare Contractor’s Post-Hearing Brief, Exhibit I-9 at 2.

²⁴ *See* Provider’s Final Position Paper, Exhibit P-3 at 6.

Additionally, the Board notes the CDC confirmed that, as of the reporting deadline, Conway only had “MRSA and CDI” in its MRP for July 2015.²⁵ The device-associated (CAUTI) plan was not added to the MRP for July 2015 until August 9, 2016, well after the February 15, 2016 reporting deadline.²⁶

Finally, the Board points out that the NHSN website contains a CMS resource page dedicated to assisting providers in reporting and checking their data for the different CMS programs. This resource page includes MRP checklists, quick reference guides, facility specific operational guidelines and other helpful documentation regarding CMS reporting. These items are found at <https://www.cdc.gov/nhsn/cms/index.html>.²⁷ Providers are expected to avail themselves of these resources.

The Board finds that the evidence in this case establishes that Conway failed to properly configure its MRP for July 2015 pursuant to the NHSN guidelines. As a result, the July 2015 CAUTI data was not transmitted from the NHSN to CMS. As Conway did not submit its calendar year 2015 quality data in the form and manner, and at a time, specified by CMS, the Board concludes that Conway is subject to a 2% reduction in its market basket update for FY 2017.

DECISION AND ORDER:

After considering the Medicare law and regulations, arguments presented, and the evidence submitted, the Board concludes Conway is not entitled to the full APU for 2017.

BOARD MEMBERS:

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

FOR THE BOARD:

/s/
Charlotte F. Benson, CPA
Board Member

DATE: June 28, 2018

²⁵ Methicillin-resistant Staphylococcus aureus (“MRSA”) and Clostridium difficile Infection (“CDI”) are two other quality measures.

²⁶ Medicare Contractor’s November 3, 2017 Response to Board Request for Additional Information at 4. *See also* Provider’s Final Position Paper, Exhibit P-16.

²⁷ *See* Medicare Contractor’s Post-Hearing Brief, Exhibit I-9 at 2.