PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D44

PROVIDER-
Garden City Hospital

Provider No.: 23-0244/23-T244

vs.

MEDICARE CONTRACTOR –
Wisconsin Physicians Service

HEARING DATE –
July 18, 2017

Cost Reporting Period Ended –
September 30, 2017

CASE NO.: 17-0196

INDEX

ISSUE STATEMENT:

Whether the Provider timely submitted required quality data during the required timeframes, and is entitled to the full Market Basket Update for Fiscal Year ("FY") 2017?[1]

DECISION:

After considering the Medicare law and regulations, program instructions, arguments presented and evidence admitted, the Provider Reimbursement Review Board ("Board") finds that Garden City Hospital's Rehabilitation Unit ("Rehab Unit" or "Provider") failed to meet the Inpatient Rehabilitation Facility Quality Reporting Program ("IRF QRP") requirements and that the Centers for Medicare & Medicaid Services ("CMS") properly imposed a two percentage point reduction to its annual increase factor for FY 2017.

INTRODUCTION:

Garden City Hospital is an acute care hospital with an IRF subunit located in Garden City, MI. On July 14, 2016, Wisconsin Physician Services (the "Medicare Contractor") notified the Rehab Unit (CMS Certification Number ("CCN") 23-T244) that it failed to meet the IRF QRP requirements for FY 2017 and that the Rehab Unit would be subject to a two percentage point payment reduction to the FY 2017 annual increase factor. The July 14, 2016 notice stated the following reasons for the payment reduction:

- The IRF failed to submit the required data to the Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network; and/or
- The IRF failed to submit the required quality measures that are to be submitted to the CMS Quality Improvement Evaluation System (QIES) system.[2]

Following the Provider's request for reconsideration, CMS upheld its decision.[3]

The Rehab Unit timely appealed that decision and met the jurisdictional requirements for a hearing before the Board. The Board conducted a telephonic hearing at the request of the parties on July 18, 2017. The Rehab Unit was represented by Christopher Allman, Director of Risk Management, Compliance & Insurance and General Counsel. The Medicare Contractor was represented by Joe Bauers, Esq., of Federal Specialized Services.

STATEMENT OF FACTS AND RELEVANT LAW:

The Medicare program pays rehabilitation facilities[4] for services under the IRF prospective payment system ("IRF PPS").[5] Under IRF PPS, the Medicare program pays predetermined,

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[1] Transcript ("Tr.") at 5-6.
[2] Medicare Contractor's Final Position Paper, Exhibit I-1 at 1.
[3] *Id.* at Exhibit I-2.
[4] "Rehabilitation facilities" includes rehabilitation hospitals and rehabilitation units within a hospital. *See* 42 U.S.C. § 1395ww(j)(1)(A).
[5] *See* 42 U.S.C. § 1395ww(j); 42 C.F.R. §§ 412.600, *et seq.*

standardized amounts per discharge, subject to certain payment adjustments.[6] The standardized amounts are increased each year by a "market basket update" to account for increases in operating costs.[7]

The Patient Protection and Affordable Care Act ("ACA") of 2010[8] amended 42 U.S.C. § 1395ww(j) to establish the IRF QRP, and to require each rehabilitation facility to submit quality of care data "in a form and manner, and at a time, specified by the Secretary."[9] Starting with FY 2014, federal law requires that a rehabilitation facility that fails to report the required quality data under the IRF QRP will receive a one-time two percent reduction to the annual increase factor to the standard federal IRF prospective payment.[10]

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. Sections 1886(j)(7)(C) and (j)(7)(F)(iii) of the Act require each IRF to submit data on the specified measures in the form and manner, and at a time, specified by the Secretary.
> >
> > (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, some of which are to be submitted through a Centers for Disease Control and Prevention ("CDC") computer system called the National Healthcare Safety Network ("NHSN").[11] The Influenza Vaccination Coverage among Healthcare Personnel measure was finalized by CMS in the FY 2014 IRF Final Rule. This Rule states the "data collection for this measure is not 12 months, as with other measures, but is approximately 6 months (that is, October 1st (or when the vaccine becomes available) through March 31st of the following year)."[12] IRFs are required to submit the data for this measure to the NHSN once per influenza season but can choose to submit a cumulative total more frequently.[13] An IRF unit that is affiliated with an acute care facility is considered its own separate type of facility, with its own responsibility for vaccination and data reporting.[14]

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[6] *See* 42 C.F.R. § 412.624.
[7] *See* 42 U.S.C. § 1395ww(j)(3). The market basket update is also referred to as the annual increase factor or annual payment update ("APU").
[8] Patient Protection and Affordable Care Act § 3004(b), Pub. L. No. 111-148, 124 Stat. 119 (2010).
[9] *Id.* at § 3004(b)(2)(C), 124 Stat. at 369. *See also* 42 C.F.R. § 412.634.
[10] 42 U.S.C. § 1395ww(j)(7)(A)(i); 42 C.F.R. § 412.634(b)(2).
[11] 79 Fed. Reg. 45872, 45911-14 (Aug. 6, 2014).
[12] 78 Fed. Reg. 47860; 47905 (Aug. 26, 2013).
[13] *Id.*
[14] *Id.* at 47906.

In April 2015, NHSN instructed inpatient rehabilitation units within acute care and critical access hospitals on how to appropriately designate (within the NHSN system) whether their units were separately licensed IRFs.[15] The instructions specifically apply to rehabilitation units that have an 'R' or 'T' in the third position of their CCN, and they urge providers to "double check the CCN with the billing/administrative departments at your facility prior to moving forward with location set-up."[16] The instructions also explain that entering the rehab specific CCN allows quality data to be sent to CMS to satisfy quality data reporting requirements.[17]

IRF QRP instructions and deadlines[18] for data submission are posted on the CMS "IRF QRP" web site.[19] The measures and deadlines for FY 2017 payment determinations can be found on the IRF QRP web site, under the Archives link.[20]

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This dispute in this case centers on whether or not the Rehab Unit submitted its quality data in the manner and time specified by CMS.[21] The Provider maintained throughout the hearing and in its post-hearing submissions that it submitted its quality data in compliance with the regulatory standards. The Provider stated that it did not know why the two percentage point penalty had been imposed.[22]

Throughout the hearing, the reason behind CMS' determination that the Rehab unit did not meet the IRF QRP requirements was unclear, so the Board asked the Medicare Contractor to submit post-hearing, the precise reason for CMS' determination. With its post-hearing brief, the Medicare Contractor submitted an email from CMS and a notice from the Rehab Unit's Certification and Survey Provider Enhanced Reports ("CASPER") folder dated July 7, 2016, identifying the reason CMS found the Provider noncompliant. The CASPER notice identified the precise reason the Rehab Unit failed the APU compliance was that it "[d]id not submit Influenza Vaccination Coverage among Healthcare Personnel data."[23] The Board notes that the Provider had access to this letter in its CASPER folder, but testified that it was not familiar with this folder.[24]

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[15] *See* "Updates to NHSN for IRF Locations within Acute Care & Critical Access Hospitals," found at https://www.cdc.gov/nhsn/pdfs/irf/updating-irf-locations-within-nhsn.pdf.
[16] *Id.* at 1.
[17] *Id.*
[18] *See* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Data-Submission-Deadlines.html.
[19] *See* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/.
[20] *See* https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Downloads/FY-2017-Payment-Determination-Measures-and-Deadlines.docx, *available at* Medicare Contractor's Final Position Paper, Exhibit I-4.
[21] 42 C.F.R. § 412.634(b)(1).
[22] Tr. at 53.
[23] Medicare Contractor's Post-Hearing Brief, Exhibit I-7 at 2.
[24] Tr. at 53.

Although the Provider testified that it submitted all the required data timely,[25] it did not submit any evidence of timely submission for the Influenza Vaccination Coverage among Healthcare Personnel measure. The evidence submitted by the Provider for this measure[26] identifies data for the 2014/2015 season.[27] The Provider did not submit evidence for this measure for the reporting period of October 1, 2015 through March 31, 2016.[28] The other evidence submitted by the Provider does not relate to the Influenza Vaccination Coverage among Healthcare Personnel measure.[29]

As the Provider did not submit evidence of timely submission of its Influenza Vaccination Coverage among Healthcare Personnel data, the Board concludes the Rehab Unit failed to properly submit all the required quality data in the form and manner, and at the time, specified by the Secretary.[30] Failure to timely file the required quality data triggers the imposition of a two percentage point payment reduction to the Rehab Unit's annual increase factor.

DECISION:

After considering the Medicare law and regulations, program instructions, arguments presented and evidence admitted, the Board finds that the Rehab Unit failed to meet the IRF QRP requirements and that CMS properly imposed a two percentage point reduction to the annual increase factor for FY 2017.

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

/s/
Charlotte F. Benson, CPA
Board Member

DATE: July 27, 2018

[25] Tr. at 36-41.
[26] Provider's Final Position Paper, Exhibit P-5.
[27] *See id.* The Board notes that the run date of this exhibit was September 28, 2016, which is after the May 15, 2016 data submission deadline for the October 1, 2015 to March 31, 2016 Influenza Vaccination coverage measure.
[28] *See* Provider's Final Position Paper, Exhibit P-5 and Medicare Contractor's Post-Hearing Brief, Exhibit I-10 at 2.
[29] *See* Provider's Post-Hearing Brief, Exhibit P-2 and Provider's Final Position Paper, Exhibits P-6 through P-8.
[30] ACA § 3004(b)(2)(C), 124 Stat. at 369; 42 C.F.R. § 412.634.