

**PROVIDER REIMBURSEMENT REVIEW BOARD  
DECISION**

2025-D18

**PROVIDER –**  
Mission Community Hospital

**PROVIDER NO. –** 05-0704

**vs.**

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

**HEARING HELD –**  
October 22, 2024

**FISCAL YEAR–** 2023

**CASE NO. –** 23-0690

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**ISSUE STATEMENT:**

Whether the payment penalty imposed by the Centers for Medicare and Medicaid Services (“CMS”) under the Hospital Inpatient Quality Reporting (“IQR”) Program to reduce Mission Community Hospital’s (“Provider” or “Mission”) Inpatient Prospective Payment System (“IPPS”) payment update for the fiscal year (“FY”) 2023 was proper.<sup>1</sup>

**DECISION:**

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board”) finds that CMS properly imposed the annual payment update (“APU”) penalty, in accordance with 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II).

**INTRODUCTION:**

Mission Community Hospital is an acute-care hospital located in Panorama City, California.<sup>2</sup> Mission’s designated Medicare contractor<sup>3</sup> is Noridian Healthcare Solutions c/o Cahaba Safeguard Administrators (“Medicare Contractor”).

By letter dated June 1, 2022, CMS notified Mission that it failed to meet the Hospital IQR Program requirements for fiscal year (“FY”) 2023<sup>4</sup> because CMS determined that Mission failed to submit the COVID-19 Vaccination Coverage Among Health Care Personnel (“HCP”) data to the National Healthcare Safety Network (“NHSN”) for Q4 2021.<sup>5</sup> After Mission sought reconsideration of the determination, CMS upheld its decision on July 28, 2022.<sup>6</sup> On January 27, 2023, Mission timely appealed CMS’ reconsideration decision to the Board, and met the jurisdictional requirements for a hearing before the Board.

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<sup>1</sup> At the time of filing its appeal, Mission identified the Hospital IQR Program as the program type in addition to identifying the July 28, 2022 Notice of Quality Reporting Program Noncompliance Decision Upheld letter as the Final Determination document. It also based its calculation of the financial impact on lost DRG, IME, and DSH payments, which are all IPPS payments. However, in its Issue Statement and Preliminary Position Paper, Mission framed the issue as it relates to a reduction to the hospital’s calendar year (“CY”) 2022 Outpatient Prospective Payment System (“OPPS”) Annual Payment Update. Prior to the hearing, Mission notified the Board that the issue pertains to the FY 2023 Inpatient Prospective Payment System (“IPPS”) payment reduction (as stated in the July 28, 2022 Notice of Quality Reporting Program Noncompliance Decision Upheld letter). As a result, the Board will only consider arguments and testimony presented relative to the FY 2023 IPPS APU reduction. *See also* Transcript of Proceedings (“Tr.”) at 5:11-17 (Oct. 22, 2024).

<sup>2</sup> Tr. at 7:12-20; *see also* Medicare Contractor’s Preliminary Position Paper (“Contractor’s PPP”) at 1 (Jan. 15, 2024).

<sup>3</sup> CMS’s payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries (“FIs”) and these functions are now contracted with organizations known as Medicare administrative contractors (“MACs”). The relevant law may refer to FIs and MACs interchangeably, and the Board will use the term “Medicare contractor” refers to both FIs and MACs as appropriate and relevant.

<sup>4</sup> The Board notes that the Hospital IQR program FY referred to is the federal fiscal year (“FFY”), running from October 1<sup>st</sup> to September 30<sup>th</sup>. Thus, this APU adjustment is not effective for the provider’s cost reporting period, but the FFY, from Oct. 1, 2022 to Sept. 30, 2023.

<sup>5</sup> Ex. C-13 at C-0080 (Hospital IQR Phase 2 APU Notification Letter) (Jun. 1, 2022).

<sup>6</sup> Ex. C-1 (Notice of QRP Noncompliance Decision Upheld) (Jul. 28, 2022).

The Board conducted a live video hearing on October 22, 2024. Mission was represented by Craig Garner of Garner Health Law Corporation. The Medicare Contractor was represented by Joseph Bauers Esq., of Federal Specialized Services.

### **STATEMENT OF RELEVANT FACTS:**

To receive the full APU for FFY 2023 reimbursement under the Hospital IQR program, hospitals were required to submit data on certain quality measures during calendar year (“CY”) 2021. For the first time, the quality measures included a measure of COVID-19 Vaccination Coverage for HCPs working in the hospitals.<sup>7</sup> The initial reporting period for COVID-19 HCP data was October 1, 2021 through December 31, 2021 (“Q4 2021”).<sup>8</sup> The deadline to report the data was May 16, 2022.<sup>9</sup> Mission acknowledges that it did not timely submit the COVID-19 Vaccination Coverage Among HCP data.<sup>10</sup> However, Mission disputes the propriety of the penalty based upon the underlying circumstances it avers impacted its ability to timely submit the data on or before the May 16, 2022 deadline.<sup>11</sup>

Relative to the COVID-19 HCP Vaccination data required under the Hospital IQR Program for FY 2023 Payment Determinations, hospitals were required to “collect the numerator and denominator for at least one self-selected week during the month of the reporting quarter and submit data to NHSN at least quarterly prior to each quarterly submission deadline.”<sup>12</sup> The numerator is defined as the cumulative number of HCP who had received a complete course of the COVID-19 vaccination and were eligible to work in the hospital for at least one day during the reporting period.<sup>13</sup> The denominator is defined as the number of HCP eligible to work in the hospital for at least one day during the reporting period, excluding those HCP with contraindications to the vaccine.<sup>14</sup> The denominator includes three required categories of healthcare personnel (employees, licensed independent practitioners, and adult students/trainees and volunteers) and one optional category (other contract personnel).<sup>15</sup>

Generally, for quality measures reported to NHSN, Mission’s Infection Preventionist was responsible for the submissions.<sup>16</sup> However, for the reporting period relevant to this matter,

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<sup>7</sup> Ex. C-12 at C-0075 (FY 2023 Hospital IQR Program Guide) (Updated Nov. 2021).

<sup>8</sup> *Id.*

<sup>9</sup> Although there is no dispute as to the submission deadline, neither of the parties’ exhibits clearly identify May 15, 2022, as the submission deadline for the COVID-19 HCP Vaccination Data. However, the Board takes administrative notice of Q4 deadline of May 15 as set forth in NHSN’s publicly available document entitled, *Reporting Requirements and Deadlines in NHSN per CMS Current & Proposed Rules*, last updated Dec. 2021, available at <https://www.cdc.gov/nhsn/pdfs/cms/cms-reporting-requirements-deadlines.pdf> (last visited Apr. 16, 2025). See also Ex. C-12 at C-0075, which states, in pertinent part, “Submission deadlines that fall on a weekend or holiday will be moved to the next business day.” Accordingly, the deadline for Q4 2021 COVID-19 HCP Vaccination data was May 16, 2022.

<sup>10</sup> Tr. at 30:4-9, 31:8-15, 33:17-25.

<sup>11</sup> *Id.* at 8:6-12.

<sup>12</sup> Ex. C-12 at C-0077.

<sup>13</sup> Ex. C-10 at C-0061 (CDC Measure Specification: NHSN COVID-19 Vaccination Coverage) (Updated Aug. 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at C-0061–C-0062.

<sup>16</sup> Tr. at 26-28.

Mission's COVID-19 HCP vaccination data was gathered and maintained by its Employee Health Department ("Employee Health").<sup>17</sup> Prior to the May 16, 2022 deadline,<sup>18</sup> the Infection Preventionist had never been responsible for "employee health" data; but on that day, she was "brought into the loop" to enter the data because she and the Director of the Infection Control Department were the only two employees certified for NHSN reporting.<sup>19</sup> To the Infection Preventionist's knowledge, the overall reporting efforts for the COVID-19 HCP data by Mission Employee Health staff began on the May 16 due date around 10 AM.<sup>20</sup>

After several upload attempts and encountering issues with acceptance of the data, Mission was, at one point, unable to access the NHSN system around the lunch hour.<sup>21</sup> Mission continued in their attempts until 9:30pm to no avail.<sup>22</sup> Concerned about missing the deadline, the Infection Preventionist reached out to a "registry" of unaffiliated QRP reporters to inquire if anyone else was having issues with reporting and found that no one else was reporting issues.<sup>23</sup> After this discovery, Mission received troubleshooting tips from members of the registry and were able to submit the data, albeit past the deadline, on May 17, 2022.<sup>24</sup>

### **STATEMENT OF RELEVANT LAW:**

The data submission requirements under the Hospital IQR Program are set forth in 42 C.F.R. § 412.140 (Oct. 1, 2021), which states in pertinent part:

***(c) Submission and validation of Hospital IQR Program data.***

- (1) General rule.*** Except as provided in paragraph (c)(2) of this section, subsection (d) hospitals that participate in the Hospital IQR Program must submit to CMS data on measures selected under section 1886(b)(3)(B)(viii) of the Act ***in a form and manner, and at a time, specified by CMS.*** A hospital must begin submitting data on the first day of the quarter following the date that the hospital submits a completed Notice of Participation form under paragraph (a)(3) of this section.
- (2) Extraordinary circumstances exceptions.*** CMS may grant an exception with respect to quality data reporting requirements in the event of extraordinary circumstances ***beyond the control of the hospital.*** CMS may grant an exception as follows:
  - (i)*** For circumstances not relating to the reporting of electronic clinical quality measure data, a hospital participating in the Hospital IQR

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<sup>17</sup> *Id.* at 29:1-7, 30:13-31:7.

<sup>18</sup> The Board notes that during the hearing, counsel for Mission continually referred to this deadline as "May 15, 2021." As previously stated, the deadline was, in fact, May 16, 2022.

<sup>19</sup> Tr. at 28-29, 30:13-31:7, 32:9-24.

<sup>20</sup> *Id.* at 31.

<sup>21</sup> *Id.* at 31:16-25.

<sup>22</sup> *Id.* at 33:13-16.

<sup>23</sup> *Id.* at 33-34.

<sup>24</sup> *Id.* at 34-35.

Program that wishes to request an exception with respect to quality data reporting requirements must submit its request to CMS within 90 days of the date that the extraordinary circumstances occurred. For circumstances relating to the reporting of electronic clinical quality measures, a hospital participating in the Hospital IQR Program that wishes to request an exception must submit its request to CMS by April 1 following the end of the reporting calendar year in which the extraordinary circumstances occurred. Specific requirements for submission of a request for an exception are available on QualityNet website.

- (ii) CMS may grant an exception to one or more hospitals that have not requested an exception if: CMS determines that a systemic problem with CMS data collection systems directly affected the ability of the hospital to submit data; or if CMS determines that an extraordinary circumstance has affected an entire region or locale.<sup>25</sup>

A hospital that fails to report the required quality data under the IQR program is penalized by reducing the hospital's IPPS market basket percentage increase for the relevant year by one-fourth.<sup>26</sup> Specifically:

- (i) In the case of a "subsection (d) hospital," as defined under section 1886(d)(1)(B) of the Act, that does not submit quality data on a quarterly basis to CMS, in the form and manner specified by CMS, the percentage increase in the market basket index (as defined in § 413.40(a)(3) of this chapter) for prospective payment hospitals is reduced -

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- (C) For fiscal year 2015 and subsequent fiscal years, by one-fourth.<sup>27</sup>

### **Burden of Proof and Standard of Review**

A Board decision must include findings of fact and conclusions of law that "the provider carried its burden of production of evidence and burden of proof by establishing, by a preponderance of the evidence, that the provider is entitled to relief on the merits of the matter at issue."<sup>28</sup> Additionally, "[a] decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the [Medicare contractor] and such other evidence as may be obtained or received by the Board, and shall be supported by substantial

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<sup>25</sup> (Emphasis added).

<sup>26</sup> 42 C.F.R. § 412.64(d)(2)(i)(C) (as of Oct. 1, 2021).

<sup>27</sup> 42 C.F.R. § 412.64(d)(2)(i) (as of Aug. 15, 2022).

<sup>28</sup> 42 C.F.R. § 405.1871(a)(3).

evidence when the record is viewed as a whole.”<sup>29</sup> In *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 217 (1938), the U.S. Supreme Court held, “[s]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>30</sup> Accordingly, in an appeal before the Board, a provider must prove by a preponderance of substantial, relevant evidence that it is entitled to the relief sought.

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

To find in favor of Mission (*i.e.*, to find that the one-fourth APU reduction does *not* apply), the Board must find that Mission submitted the Hospital IQR program quality data in the “*form and manner, and at a time, specified by CMS.*”<sup>31</sup> As established above, the quality data must be submitted through the NHSN portal (form and manner), and on a quarterly basis prior to the quarterly deadlines (time). Each year, information on the form and manner and time are published by CMS.<sup>32</sup>

As discussed above, one of the quality reporting requirements included the submission of COVID-19 HCP data for Q4 by May 15, 2022.<sup>33</sup> Mission acknowledges they did not meet this deadline.<sup>34</sup> During opening statements at the hearing, counsel for the Provider stated:

[T]here’ll be no testimony, no disputing as to the calculations of that amount [in controversy], but rather the dispute is surrounding the propriety of the penalty based upon circumstances underlying the acts and actions which gave rise to the penalty.

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There’s no – there’s no dispute that the report itself was not filed timely.<sup>35</sup>

Mission’s Infection Preventionist attempted to explain why the COVID-19 vaccination data was not timely submitted:

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<sup>29</sup> 42 U.S.C. § 1395oo(d). This statutory provision also confirms: “[t]he Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.” *But see* 42 C.F.R. § 405.1869(a).

<sup>30</sup> *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).

<sup>31</sup> 42 C.F.R. § 412.140(c)(1) (as of Oct. 1, 2021).

<sup>32</sup> *See* Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide (available at [https://www.qualityreportingcenter.com/globalassets/2021/11/hospital-iqr-fy-2023-program-guide\\_nov508.pdf](https://www.qualityreportingcenter.com/globalassets/2021/11/hospital-iqr-fy-2023-program-guide_nov508.pdf)) (last accessed April 16, 2025). *See also* Ex. C-12 (noting that the exhibit is an excerpt and does not include all pages).

<sup>33</sup> *See supra* n. 10.

<sup>34</sup> Tr. at 8:19-21.

<sup>35</sup> *Id.* at 8:6-12 and 8:19-21.

PROVIDER'S REP: Okay. And as we've already stipulated that the report was not filed on May 15th, [2022].<sup>36</sup> Do you know if efforts were made to submit?

WITNESS: Oh, my goodness. We started trying at 10:00 that day, 10:00 in the morning. 10:00 a.m., we started trying to upload the data.

PROVIDER'S REP: And what obstacles did you encounter?

WITNESS: We were trying to upload the Excel sheet, and somehow it kept refusing our entry. Maybe there was some mistake in the numbers we're entering, or somehow it kept refusing to submit. We tried a lot until 9:30 p.m. that night. In the meantime, at one point, we couldn't even access NHSN. Maybe after lunch or whatever. It was -- it was a very unfortunate day.<sup>37</sup>

As an exhibit to its Preliminary Position Paper, Mission submitted screenshots that show an error message received when they attempted to upload the vaccination data.<sup>38</sup> The images show an "Upload Errors" screen and for the field "numVolVacc," the message, "PFIZBION – Category 'Adult students/trainees/volunteers' is required."<sup>39</sup> The screenshots also illustrate an alert that clearly stated, "Not all records can be skipped. Please correct the records marked Skippable false and re-import the file."<sup>40</sup>

However, in its Position Paper, Mission argues:

At the time the Hospital attempted to submit the data, however, the system through which the Hospital was required to report did not accept the Hospital's data. The Hospital believes, and has evidence to support, that the system through which the Hospital was required to report experienced a surge of submissions on that day, and as a result malfunctioned. That the National Healthcare Safety Network ("NHSN") data management system could not accommodate the overflow of information should not be a penalty for the Hospital to endure.<sup>41</sup>

Contrary to the Provider's assertion, the Board finds that the Provider did not submit evidence to support its explanation that the error message was due to a system malfunction, rather, the evidence supports that Mission's failure was due to user error. Thus, Mission did not prove by a preponderance of substantial, relevant evidence that it is entitled to the relief sought.

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<sup>36</sup> Note that the Provider's representative and witness referenced the incorrect year, the reporting was due by May 15, 2022, as they were required to report on a quarter *after* May 15, 2021.

<sup>37</sup> Tr. at 31:8-32:1.

<sup>38</sup> Ex. P-A.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Provider's PPP at 2.

Furthermore, Mission's argument fails as the Infection Preventionist checked with other providers to inquire about system issues and there were none. However, upon consulting with one of her counterparts, the Infection Preventionist learned that Mission's attempts to upload the spreadsheet that it used to track 1st and 2nd vaccination doses for its HCPs duplicated the doses, which did not comport with the report algorithm.<sup>42</sup> The Infection Preventionist was instructed to input the data on the NHSN weekly form to avoid the duplication, which ultimately allowed Mission to submit the data on May 17, 2022—the day after the deadline.<sup>43</sup>

Moreover, if Mission believed there to be an NHSN portal malfunction, it did not avail itself of CMS' Extraordinary Circumstances Exceptions ("ECE") policy as explained in the *Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide* and as set forth in 42 C.F.R. § 412.140(c)(2). The Guide states, in pertinent part:

**Non-eCQM-Related Extraordinary Circumstances Exceptions Requests<sup>44</sup>**

Hospitals may request an exception with respect to quality data reporting requirements in the event of extraordinary circumstances beyond the control of the hospital. Such circumstances may include, but are not limited to, natural disasters (such as a severe hurricane or flood) or systemic problems with CMS data-collection systems that directly affected the ability of the hospital to submit data.

For non-eCQM-related ECEs, hospitals must submit a CMS Quality Program Extraordinary Circumstances Exceptions (ECE) Request Form with **all** required fields completed **within 90 calendar days** of the extraordinary circumstance. Submission instructions are on the form.<sup>45</sup>

Therefore, the Board finds that the Provider, as it acknowledged, did not meet the reporting requirements as it did not timely submit the COVID-19 Vaccination Coverage Among Health Care Personnel measure for Q4 2021. Thus, for the reasons stated above, the Board concludes that Mission failed to report the required quality data "to the Secretary *in a form and manner, and at a time, specified by the Secretary.*"<sup>46</sup>

The Board acknowledges the Provider's statements that it, "never shut its doors on the community in which it served during the [COVID-19] pandemic, and day after day the Hospital was a beacon of hospital [sic] to those sick and suffering from COVID-19."<sup>47</sup> While it is

<sup>42</sup> Tr. 33-35, 40-41, 42:20-25.

<sup>43</sup> Tr. 34-35.

<sup>44</sup> "Non-eCQM" means non-electronic clinical quality data, which includes data such as health care personnel ("HCP") influenza and COVID-19 vaccination data.

<sup>45</sup> See *Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide* at 22 (available at [https://www.qualityreportingcenter.com/globalassets/2021/11/hospital-iqr-fy-2023-program-guide\\_nov508.pdf](https://www.qualityreportingcenter.com/globalassets/2021/11/hospital-iqr-fy-2023-program-guide_nov508.pdf)) (last accessed Apr. 16, 2025) (Emphasis in original).

<sup>46</sup> 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II) (emphasis added).

<sup>47</sup> Provider's PPP at 3.



sympathetic to the difficulties the pandemic presented to Providers, the Board must nonetheless conclude that Mission failed to report the required quality data “to the Secretary in a form and manner, and at a time, specified by the Secretary.”<sup>48</sup>

**DECISION:**

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that CMS properly imposed the APU penalty, in accordance with 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II).

**BOARD MEMBERS PARTICIPATING:**

Kevin D. Smith, CPA  
Ratina Kelly, CPA  
Nicole E. Musgrave, Esq.  
Shakeba DuBose, Esq.

**FOR THE BOARD:**

4/29/2025

**X** Kevin D. Smith, CPA

Kevin D. Smith, CPA

Board Chair

Signed by: Kevin D. Smith -A

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<sup>48</sup> 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II).