

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION**

2025-D42

PROVIDER –
Fairway Medical Center d/b/a Avala

HEARING HELD –
June 6, 2024

PROVIDER NO. – 19-0267

FISCAL YEAR– 2023

vs.

**MEDICARE ADMINISTRATIVE
CONTRACTOR –**
Novitas Solutions, Inc. c/o GuideWell Source
(J-H)

CASE NO. – 23-0096

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ISSUE STATEMENT

Whether the fiscal year (“FY”) 2023 penalty imposed under the Hospital Inpatient Quality Reporting (“IQR”) program for Fairway Medical Center d/b/a Avala (“Provider” or “Avala”) was improper.¹

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board” or “PRRB”) finds that the one-fourth reduction to the Provider’s FY 2023 annual payment update (“APU”) imposed by the Centers for Medicare and Medicaid Services (“CMS”) was proper.

INTRODUCTION

Fairway Medical Center d/b/a Avala is an acute care hospital located in Covington, Louisiana.² Avala’s designated Medicare contractor³ is Novitas Solutions, Inc. c/o GuideWell Source (“Medicare Contractor”).

The Medicare program pays acute care hospitals⁴ for inpatient services under the Inpatient Prospective Payment System (“IPPS”).⁵ Under the IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.⁶ To account for increases in operating costs, hospitals receive an annual percentage increase in the standardized amount, known as the annual payment update (“APU”).⁷

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”)⁸ amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the pay-for-reporting program, known as the Hospital Inpatient Quality Reporting (“IQR”) Program, designed to increase data transparency for consumers and increase the quality of inpatient care that hospitals and clinicians provide to patients.

¹ See Transcript of Proceedings (“Tr.”) at 6:7-12.

² See Provider’s Preliminary Position Paper (hereinafter, “Provider’s PPP”) at 1 (June 14, 2023). In its March 7, 2024 Final Position Paper, the Provider indicates that the Final Position Paper reiterates and reargues all of the arguments from the Provider’s PPP. Therefore, for ease of reference, the Board will cite to Provider’s PPP.

³ CMS’ 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” to refer to both FIs and MACs as appropriate and relevant.

⁴ Acute care hospitals that are paid under the Inpatient Prospective Payment System do not include children’s hospitals, inpatient psychiatric hospitals, long-term care hospitals, rehabilitation hospitals, and hospitals which have an average inpatient length of stay of greater than 25 days. 42 U.S.C. § 1395ww(d)(1)(B).

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

⁶ See 42 C.F.R. Part 412.

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

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

The IQR program requires each hospital to submit quality of care data “in a form and manner, and at a time, specified by the Secretary.”⁹ CMS reduces the hospital’s IPPS APU by one-fourth if a hospital fails to report the required quality data under the IQR program.¹⁰

In a letter dated June 1, 2022, CMS notified Avala that it had not met the Hospital IQR Program requirements for FY 2023 due to Avala’s non-compliance with the requirement to submit the annual Data Accuracy and Completeness Acknowledgment (“DACA”) between April 1, 2022 and May 16, 2022.¹¹ Consequently, Avala’s Annual Payment Update (“APU”) for FY 2023 would be reduced by one fourth.¹² On June 3, 2022, Avala submitted a request for reconsideration.¹³ On July 28, 2022, after reviewing Avala’s request for reconsideration, CMS upheld its initial finding and informed Avala of its decision.¹⁴

On October 18, 2022, Avala timely appealed the July 28, 2022 decision and met all jurisdictional requirements for a hearing before the Board. On June 6, 2024, the Board held a virtual hearing. Avala was represented by Robert Martin, Esq. of Chehardy, Sherman, and Williams Law Firm and the Medicare Contractor was represented by Joseph Bauers, Esq., of Federal Specialized Services (“FSS”).

STATEMENT OF RELEVANT FACTS

At the hearing, Avala’s witness testified that, for the submission periods for the FY 2023 Hospital IQR program, Avala timely submitted the IQR Data Form,¹⁵ the IQR population and sampling, and the Program Credit Report.¹⁶ The DACA was due by May 16, 2022.¹⁷ The completed DACA in the record was submitted on June 3, 2022, two days after CMS’s notification that Avala failed to timely submit the form.¹⁸ Avala’s witness testified that they thought that they had successfully submitted the DACA form; however, they learned they had not after receiving a letter from CMS.¹⁹

⁹ *Id.* at § 501(b), 117 Stat. 2066, 2289-90. *See also* 42 C.F.R. § 412.140(c). The Board notes that these citations differ slightly, in that the Act refers to “Secretary” while the Code of Federal Regulations (C.F.R.) refers to “CMS.”

¹⁰ 42 C.F.R. § 412.64(d)(2)(i)(C).

¹¹ Medicare Contractor’s Ex. C-1 (CMS Hospital Inpatient Quality Reporting Program Phase 2 Annual Payment Update Notification Letter (June 1, 2022)). The open period for signing and completing the DACA is April 1 through May 15, with respect to the reporting period of January 1 through December 31 of the preceding year. In 2022, May 15 fell on a Sunday so the DACA was due the following business day, May 16.

¹² *See id.* at C-0003.

¹³ *See* Provider Ex. P-3 (APU Reconsideration Form).

¹⁴ *See* Medicare Contractor’s Ex. C-2 (CMS response to Provider reconsideration request (July 28, 2022)).

¹⁵ *See* Tr. at 26:13-27:6; *see also* Ex. P-6 (IQR Data Form).

¹⁶ *See id.* at 27:7-28:4; *see also* Ex. P-7 (IQR Population and Sampling) and P-08 (IQR Program Credit).

¹⁷ Medicare Contractor’s Ex. C-1.

¹⁸ Ex. P-3 at P0011-12. *See also* Medicare Contractor’s Final Position Paper (hereinafter, “Medicare Contractor’s FPP”) at 6 (Mar. 26, 2024).

¹⁹ *See* Tr. at 29:8-19; *see also* Ex. P-1 (Hospital Inpatient Quality Reporting Program Phase 2 Annual Payment Update Notification Letter) and Ex. P-3.

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 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.²⁰

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:

²⁰ (Emphasis added).

- (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 -

* * * *

- (C) For fiscal year 2015 and subsequent fiscal years, by one-fourth.²¹

CMS also provides various materials as guidance on reporting protocols and requirements. For FY 2023, the “Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide” provides information about the program.²² The Hospital Inpatient Quality Reporting Guide specifically states the following about completing the DACA:

To avoid a reduction in the annual payment update, hospitals **must** meet **all** of the listed requirements below. Further information about each requirement is included below the list.

1. Register staff within the Hospital Quality Reporting Secure Portal (formerly known as the QualityNet Secure Portal).

2. Register at least one staff as a Quality Net Security Official.

3. Complete the NOP (for newly reporting hospitals).

4. Submit HCAHPS Survey data.

5. Submit aggregate population and sample size counts for chart-abstracted process measures.

6. Submit clinical process of care measure data (via chart abstraction).

7. Submit COVID-19 Vaccination Coverage Among Health Care Personnel data (via NHSN).

8. Submit Influenza Vaccination Coverage Among Healthcare Personnel data (via NHSN).

²¹ 42 C.F.R. § 412.64(d)(2) (Oct. 1, 2021).

²² Ex. C-3 (Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide Fiscal Year 2023 Payment Determination/Calendar Year 2021 Reporting Period Updated November 2021).

9. Submit eCQM data.

10. Submit structural measure data.

11. Complete the DACA.

12. Meet validation requirements (if hospital is selected for validation).²³

The Hospital Inpatient Quality Reporting Guide specifically states the following about registering staff in the Hospital Quality Reporting (“HCR”) Secure Portal and maintaining an active QualityNet security official:

1. Register Staff within the Hospital Quality Reporting (HQR) Secure Portal

Hospitals must register staff within the *Hospital Quality Reporting (HQR) Secure Portal* to submit a NOP and begin reporting data, regardless of the method used for submitting data. The HQR Secure Portal is the only CMS-approved website for secure healthcare quality data exchange. To register as a Basic User or Security Administrator/Official in the new system:

1. Log into HARP Sign In at <https://hqr.cms.gov/hqrng/login> with your HARP user name and password. (No HARP account? Create one on the HCQIS Access Roles and Profile page at [https://harp.qualitynet.org/.](https://harp.qualitynet.org/))
2. Go to **My Profile** (Under your User Name in the upper right). From this page, you can **Request** access, and **View Current Access**.
3. Select **Basic User** or **Security Administrator/Official** when prompted to select a user type.
4. Select your required permissions and **click submit an access request**. You will be notified by email when your request has been approved.

2. Maintain an Active QualityNet Security Official (SO)

Hospitals submitting data via the *Hospital Quality Reporting Secure Portal* or using a vendor to submit data on their behalf are required to designate at least one QualityNet SO. It is

²³ Ex. C-3 at C-0012 (bold (only) emphasis in original, bold and italics emphasis added).

recommended that SOs log into their accounts at least once per month to maintain an active account. Accounts that have been inactive for 120 days will be disabled. Once an account is disabled, the user must contact the QualityNet Service Center to have the account reset.²⁴

The Hospital Inpatient Quality Reporting Guide specifically states the following about completing the DACA:

9. Complete the Data Accuracy and Completeness Acknowledgement

The Data Accuracy and Completeness Acknowledgement (DACA) is an annual requirement for hospitals participating in the Hospital IQR Program to electronically acknowledge that the data submitted for the Hospital IQR Program are accurate and complete to the best of their knowledge. The open period for signing and completing the DACA is April 1 through May 15, with respect to the reporting period of January 1 through December 31 of the preceding year. Hospitals are required to complete and sign the DACA **on an annual basis** by the May 15 deadline via the *HQR Secure Portal*.²⁵

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.”²⁶ 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 evidence when the record is viewed as a whole.”²⁷ In *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 230 (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.”²⁸ 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.

²⁴ *Id.* (emphasis in original).

²⁵ *Id.* at C-0013 (emphasis in original).

²⁶ 42 C.F.R. § 405.1871(a)(3).

²⁷ 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.” *See also* 42 C.F.R. § 405.1869(a).

²⁸ *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Avala, as a participating provider in the Hospital IQR Program, is required to submit both the quarterly and annual quality data established in 42 C.F.R. § 412.140, *including the DACA attestation form*, to CMS in order to receive its full annual APU payment amount. As established, *supra*, failure to submit the data in the correct form and manner, at the CMS-designated time, will result in a one-fourth reduction to a provider's APU for the fiscal year in question.²⁹

For fiscal year 2023 IQR program, Avala contends it successfully submitted all pertinent data.³⁰ Avala argues that “the DACA form is not data.”³¹ Further, Avala contends that it does not know why CMS did not receive the DACA.³² Avala's Director of Quality testified that it was her first time making the IQR submission, including the DACA form, to CMS and that “[s]he recalls that prior to May 16, 2022, she logged into the HQR secure portal, opened the DACA form, checked the box, and electronically signed the DACA form.”³³ In addition, Avala received documents regarding the required quality data submitted with the “notation from CMS” that stated “All Measures Successfully Submitted.”³⁴ Therefore, Avala argues it had reason to believe that its submission was submitted and received by CMS.³⁵ Avala's witness also testified to a lack of prior knowledge related to the Hospital IQR process.³⁶ Avala, in its position paper, argues that the failure to submit the required DACA was due to “technical difficulties either at CMS's end *or Avala's end*.”³⁷ However, Avala did not expand upon its argument of “technical difficulties” during the hearing.

Finally, Avala urges CMS to grant an extraordinary circumstances exception for reasons “as will be developed in more detail later,”³⁸ despite not requesting an exception within 90 days of the date that the extraordinary circumstances occurred.³⁹ Avala suggest that its “reasons” for extraordinary circumstances are “EMR transition and several personnel changes added to infrastructure disruptions and operational challenges.”⁴⁰ Again, Avala did not produce a Final Position Paper that would address these reasons (simply reiterating its arguments from the Preliminary Position Paper), nor did it expand upon its extraordinary circumstances argument during the hearing, other than to note that it was the responsibility of the witness to submit data to CMS for the year 2022 given the departure of another Avala employee.⁴¹

²⁹ 42 C.F.R. § 412.64(d)(2)(i)(C).

³⁰ See Provider's PPP at 2. See also Tr. at 28:5-10; Ex. P-06 (IQR Data Form); and Ex. P-07 (IQR – Population and Sampling).

³¹ *Id.*

³² See *id.* See also Tr. at 30:10-14.

³³ *Id.* See also Tr. at 28:24-29:12.

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ See Tr. at 42:20–46:14.

³⁷ Provider's PPP at 2 (emphasis added).

³⁸ *Id.* at 4.

³⁹ 42 C.F.R. § 412.140(c)(2)(i).

⁴⁰ Provider's PPP at 4.

⁴¹ See Tr. at 24:23-25:5, 26:3-12, 31:25-32:6.

The Medicare Contractor does not address whether all the *quality measures* Avala submitted were successful. The Medicare Contractor maintains that the DACA in and of itself is an annual reporting requirement which Avala failed to meet.⁴² The Medicare Contractor also reasons that Avala did not request an exception prior to filing its appeal and thus is not entitled to one.⁴³

CMS provides materials that offer guidance to providers regarding Hospital IQR requirements. These materials are accessible on the CMS website and archived by fiscal year. For example, the “Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide,” (or “FY 2023 Program Guide”), updated November 2021,⁴⁴ provides detailed information for providers. The Program Guide informs providers that among the annual reporting requirements is a DACA form. Beginning with the FY 2011 payment determinations, CMS required that providers acknowledge their data accuracy and completeness annually, by electronically submitting the DACA.⁴⁵ Beginning with the FY 2014 payment determinations, the deadline for submitting DACA “was aligned with the final submission quarter for each fiscal year.” This alignment resulted in a May 15 deadline for DACA with respect to the preceding year’s data.⁴⁶

The Board finds that the Secretary mandates the DACA certification as part of the *form and manner* for submitting quality data. Specifically, the Board points to the August 27, 2009 Federal Register where CMS finalized its requirement for the DACA, stating:

We believe that this proposed requirement will ensure that hospitals continue implementing procedures for ensuring data completeness and accuracy. This proposed requirement is intended to supplement our existing submission and validation requirements.

After consideration of the public comments we received, ***we are adopting as final, without modification, our proposal to require hospitals to electronically acknowledge on an annual basis the completeness and accuracy of the data submitted for the RHQDAPU⁴⁷ program payment determination.***⁴⁸

⁴² See *id.* at 15:25-16:7.

⁴³ See Medicare Contractor’s FPP at 8.

⁴⁴ *Hospital IQR Program Guide for FY 2023 (11/2021)*, available at, (https://qualitynet.cms.gov/files/6181b94b9c5061002253f177?filename=IQR_ProgGuide_FY%202023_Nov.pdf) (last accessed Aug. 26, 2025). See, e.g., Ex. C-3 (Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide Excerpts) and Ex. C-5 (Hospital IQR Program CY 2020 (FY 2023 Payment Determination) eCQM Validation Overview for Selected Hospitals Question and Answer Summary Document).

⁴⁵ 74 Fed. Reg. 43754, 43890 (Aug. 27, 2009).

⁴⁶ See 77 Fed. Reg. 53258, 53554 (Aug. 31, 2012). See also 80 Fed. Reg. 49326, 49712 (Aug. 17, 2015) (confirming the DACA requirements were not changed).

⁴⁷ RHQDAPU is the initialism for “Reporting hospital quality data for annual payment update.”

⁴⁸ *Id.* at 43890.

Avala did not provide evidence to support that it timely submitted the DACA apart from a witness affidavit that stated Avala's Director of Quality "recalls that prior to May 16, 2022, she logged into the Hospital Quality Reporting secure portal ("HQR"), opened the [DACA] form, checked the box, electronically signed the DACA form and thought she submitted the DACA form."⁴⁹

During the hearing, the Medicare Contractor's representative questioned Avala's witness regarding the aforementioned FY 2023 Program Guide. The witness affirmed understanding the requirement to submit the DACA and the annual deadline to do so, but did not recall specifically being aware of the manual at the time the DACA in question was submitted for FY 2023.⁵⁰ The witness was unable to produce any proof that the DACA was timely submitted.⁵¹

The "Hospital Inpatient Quality Reporting Program Reference Guide – Accessing and Using Your Provider Participation Report" ("IQR Reference Guide") provides another CMS program tool that enables providers to determine and verify whether the DACA form was successfully submitted and received by CMS.⁵² Avala's witness, in her testimony, stated that this resource was not used to ensure the required DACA form was successfully submitted for the FY 2023 reporting period.⁵³ The Medicare Contractor's representative questioned Avala's witness in reference to the IQR Reference Guide and the witness confirmed that they did not review or use the data submission summary tool prior to submitting the data, including the section pertaining to the DACA, and nor could they verify whether the report indicated a "yes" or "no" that the form had been successfully submitted for the reporting period in question.⁵⁴

It is ultimately a provider's responsibility to meet the reporting requirements, whether that process is new to the staff responsible for the task because of turnover, or some other common (though not ideal) circumstance in which there is a change of hands. This responsibility may be delegated to an employee tasked with the reporting, but the obligation to meet the IQR Program requirements solely rests with the organization. Accordingly, the Board finds that whatever occurred in this instance, it resulted in a failed submission that led to Avala's reduced APU for fiscal year 2023.

Finally, in accordance with 42 C.F.R. § 412.140(c)(2), hospitals participating in the IQR Program may claim an extraordinary circumstances exception to reporting requirements. Although Avala mentions technical difficulties, the Board finds that Avala has failed to demonstrate or fully explain what those technical difficulties were, and how they affected the DACA submission for the fiscal year in question. Further, the record does not show that CMS acknowledged any systemic problem at the time of Avala's attestation period, for Avala, nor for any other provider in the region. Moreover, "[f]or circumstances not relating to the reporting of

⁴⁹ Ex. P-5 (Updated FPP Affidavit of [Director of Quality]) at ¶4.

⁵⁰ See Tr. at 34:1–37:17, referring to Ex. C-3 and C-4.

⁵¹ See *id.* at 38:18-22.

⁵² Ex. C-4.

⁵³ Tr. at 37:5–38:9, referring to Ex. C-4.

⁵⁴ *Id.* at 34:1–37:17, 37:5–38:9, referring to Ex. C-3 and C-4.

electronic clinical quality measure data, a hospital participating in the Hospital IQR 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,”⁵⁵ and Avala failed to do so, only raising this argument in its preliminary position paper, well after the deadline to do so.

Thus, the Board finds that Avala’s failure to complete the DACA by May 16, 2022 was fatal to its successful compliance with the IQR program requirements for FY 2023.⁵⁶ The governing regulation is clear that each hospital “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.*”⁵⁷ As Avala did not submit its DACA for its quality data as specified by CMS, Avala did not prove by a preponderance of substantial, relevant evidence that it is entitled to reversal of the one-fourth reduction to its FY 2023 APU.

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted the Board concludes that CMS’ one-fourth reduction to Avala’s APU for FY 2023 was proper.

BOARD MEMBERS PARTICIPATING

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

FOR THE BOARD

9/3/2025

X Kevin D. Smith, CPA

Kevin D. Smith, CPA
 Board Chair

Signed by: Kevin D. Smith -A

⁵⁵ 42 C.F.R. § 412.140(c)(2)(i).

⁵⁶ 74 Fed. Reg. at 43889.

⁵⁷ 42 C.F.R. § 412.140(c)(1) (emphasis added).