

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2025-D43

**PROVIDER –**  
Northwest Specialty Hospital

**RECORD HEARING DATE –**  
February 6, 2024

**PROVIDER NO. –**  
13-0066

**FEDERAL FISCAL YEAR –**  
2022

**vs.**

**MEDICARE CONTRACTOR –**  
Noridian Healthcare Solutions, LLC

**CASE NO. –**  
22-0568

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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 Program (“IQR”) to reduce Northwest Specialty Hospital’s Federal Fiscal Year (“FFY”) 2022 Annual Percentage Update (“APU”) by one-fourth was proper.<sup>1</sup>

## **DECISION**

After considering the Medicare law, regulations and program instructions, the arguments presented, and the evidence submitted, the Provider Reimbursement Review Board (“Board”) finds CMS’ decision to reduce Northwest Specialty Hospital’s APU for FY 2022 was proper.

## **INTRODUCTION**

Northwest Specialty Hospital (“Northwest Specialty Hospital” or “Provider”) is a Medicare certified acute care hospital located in Post Falls, Idaho.<sup>2</sup> Northwest Specialty Hospital’s assigned Medicare administrative contractor is Noridian Healthcare Solutions, Inc. (“Medicare Contractor”).<sup>3</sup>

The Medicare program pays acute care hospitals<sup>4</sup> for inpatient services under the Inpatient Prospective Payment System (“IPPS”),<sup>5</sup> which pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.<sup>6</sup> Hospitals receive an annual percentage increase in the standardized amount, known as the “market basket update,” or annual percentage update (“APU”), to account for increases in operating costs.<sup>7</sup>

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”)<sup>8</sup> 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. The IQR program requires each hospital to submit quality of care data “in a form and

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<sup>1</sup> Joint Stipulations at ¶ 2 (Jan. 30, 2024). The Board notes that “APU” is used to refer to both Annual Percentage Update and Annual Payment Update, historically. The Board will remain consistent with the Parties and use it to refer to Annual Percentage Update in this appeal.

<sup>2</sup> Provider’s Final Position Paper (hereinafter, “Provider’s FPP”) at 2 (Jan. 2, 2024).

<sup>3</sup> Medicare Contractor’s Final Position Paper (hereinafter, “Medicare Contractor’s FPP”) at 1 (Jan. 17, 2024).

<sup>4</sup> Acute care hospitals that are paid under the IPPS 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 greater than 25 days. 42 U.S.C. § 1395ww(d)(1)(B).

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

<sup>6</sup> See 42 C.F.R. Part 412.

<sup>7</sup> 42 U.S.C. § 1395ww(b)(3). See also 42 C.F.R. § 413.40(a)(3) (stating in part: “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...”)

<sup>8</sup> Pub. L. No. 108-173, 117 Stat. 2066 (2003).

manner, and at a time, specified by the Secretary.”<sup>9</sup> For fiscal year 2015 and beyond, CMS reduces the hospital’s IPPS APU by one-fourth if a hospital fails to report the required quality data under the hospital IQR program.<sup>10</sup>

On June 3, 2021, CMS notified Northwest Specialty Hospital that it failed to meet certain hospital IQR program requirements.<sup>11</sup> Specifically, CMS advised Northwest Specialty Hospital that it did not submit aggregate initial patient population and sample size counts for the Severe Sepsis and Septic Shock: Management Bundle (Composite Measure) (“SEP-1”) measure for Quarter 3 (Q3) 2020.<sup>12</sup> Northwest Specialty Hospital’s failure to meet the IQR program requirements resulted in CMS assessing a penalty, specifically, CMS reduced Northwest Specialty Hospital’s FFY 2022 Inpatient Prospective Payment System (“IPPS”) APU by one-fourth.<sup>13</sup> On June 8, 2021, Northwest Specialty Hospital requested that CMS reconsider its determination.<sup>14</sup> On August 6, 2021, CMS upheld its determination that Northwest Specialty Hospital failed to meet the Hospital IQR requirements and was subject to an APU reduction penalty.<sup>15</sup>

Northwest Specialty Hospital timely appealed CMS’ determination to the Board and met the jurisdictional requirements for a hearing. On January 30, 2024, the parties filed a Joint Stipulation of Facts. The Board approved the appeal for a record hearing on February 6, 2024.

Northwest Specialty Hospital was represented by Judith Capraro, Quality and Risk Director at Northwest Specialty Hospital. The Medicare Contractor was represented by Joseph Bauers, Esq. of Federal Specialized Services.

### **STATEMENT OF RELEVANT FACTS**

CMS determined that Northwest Specialty Hospital did not meet the Hospital IQR Program requirement to “[s]ubmit aggregate initial patient population and sample size counts by the posted submission deadlines” for Q3 2020 – SEP (impacting FY 2022).<sup>16</sup> Northwest Specialty Hospital maintains that “Northwest Specialty Hospital did not have any qualifying patients with SEP ICD-10 codes, in quarter 3, 2020.”<sup>17</sup> CMS, after reconsideration, upheld the decision to apply the one-fourth reduction to Northwest Specialty Hospital’s FY 2022 APU. Northwest Specialty Hospital estimates the reimbursement impact of this decision to be approximately \$73,000.00.<sup>18</sup>

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<sup>9</sup> *Id.* at § 501, 117 Stat. at 2289; 42 C.F.R. § 412.140(c)(1). 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.”

<sup>10</sup> 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>11</sup> Exhibit P-2 (CMS Initial Notification Letter) at 10. Note that page numbers refer to the page within Northwest’s submission, where the Provider’s Final Position Paper consists of pages 1 through 7, Provider’s Exhibit List consists of page 8, and Provider’s Exhibits consist of pages 9 through 34.

<sup>12</sup> *Id.* at 12.

<sup>13</sup> *Id.*

<sup>14</sup> Exhibit P-3 (CMS APU Request for Reconsideration Form) at 17.

<sup>15</sup> Exhibit P-4 (CMS Request for Reconsideration Determination Letter).

<sup>16</sup> Exhibit P-2 at 12.

<sup>17</sup> Exhibit P-3 at 16. *See also* Provider’s FPP at 6.

<sup>18</sup> Provider’s FPP at 7. *See also* Ex. P-8 (NWSH FY22 Financial Impact Estimate).

During the time period in question, the medical community was fighting the global COVID-19 pandemic; on March 13, 2020, the President of the United States issued an emergency declaration, and on the same day the Governor of Idaho declared a state of emergency in Idaho.<sup>19</sup> As a result of COVID-19 quarantine protocols, Northwest Specialty Hospital was understaffed.<sup>20</sup> In addition its “quality department staff were inundated with policy development, procedure implementation activities, and weekly community meetings to stay apprised of COVID activity and CDC guidelines.”<sup>21</sup> Northwest Specialty Hospital organized COVID-19 testing sites and vaccination clinics for the community.<sup>22</sup> Idaho’s governor recognized Northwest Specialty Hospital for its efforts.<sup>23</sup>

## **STATEMENT OF RELEVANT LAW**

### ***A. CMS IPSS Quality Reporting Program***

The data submission requirements under the Hospital IQR Program are set forth in 42 C.F.R. § 412.140(c) (Oct. 1, 2017), 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

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 6.

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.org.

(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>24</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:

- (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>25</sup>

CMS also provides various materials as guidance on reporting protocols and requirements. The Fiscal Year 2022 Hospital Inpatient Quality Reporting Program Guide ("Hospital IQR Program Guide") provides the following instructions for submitting aggregate population and sample size counts for chart-abstracted process measures:

Each quarter prior to the submission deadline, hospitals must submit aggregate population and sample size counts for chart-abstracted measure sets via the *Hospital Quality Reporting Secure Portal* Population and Sampling application. These counts include both Medicare and non-Medicare discharges. Calendar year 2020 reporting for the Hospital IQR Program requires entries to all measure sets (i.e., Sepsis).

**Important Note: Fields may not be left blank.** If the hospital had no discharges for the measure set, a zero (0) must be entered, if appropriate.<sup>26</sup>

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<sup>24</sup> 42 C.F.R. § 412.140(c)(1)-(2) (Oct. 1, 2017) (emphasis added).

<sup>25</sup> 42 C.F.R. § 412.64(d)(2) (as of Oct. 1, 2019).

<sup>26</sup> Exhibit C-4 at C0025 (emphasis in original).

In addition, the Hospital IQR Program Guide states:

**Data Submission –SEP-1**

For SEP-1, providers must submit XML files through the *Hospital Quality Reporting Secure Portal*. For abstraction and sampling guidelines for these measures, use the *Specifications Manual for National Hospital Inpatient Quality Measures* located on the Hospital Inpatient Specifications Manuals web page on *QualityNet: QualityNet.org > Hospitals - Inpatient > View all Specifications Manuals > Hospital Inpatient Specifications Manuals*.

**Five or Fewer Discharges:** Hospitals with five or fewer discharges (both Medicare and non-Medicare combined) in a measure set (Sepsis) in a quarter **are not** required to submit patient-level data for that measure set for that quarter. However, population and sampling data must still be entered for the Sepsis measure set; please see Requirement 5, above.<sup>27</sup>

***B. Public Health Emergency (“PHE”) Temporary Relief***

In response to the COVID-19 public health emergency, CMS issued a Program Guidance Memo on March 27, 2020, that set forth exceptions and extensions for Quality Reporting Requirements for acute care hospitals and other provider types. The following excerpts are relevant to the instant case:

The scope and duration of the exceptions under each Medicare quality reporting program and value-based purchasing program are described below. CMS is granting exceptions and extensions for certain deadlines to assist these health care providers while they direct their resources toward caring for their patients and ensuring the health and safety of patients and staff. In some instances, these exceptions and extensions are granted because the data collected may be greatly impacted by the response to COVID-19 and therefore should not be considered in the quality reporting program. CMS is closely monitoring the situation for potential adjustments and will update exceptions lists, exempted reporting periods, and submission deadlines accordingly as events occur.<sup>28</sup>

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For all Hospital IQR Program and HAC Reduction Program chart-abstracted measures, providers are excepted from the reporting of

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<sup>27</sup> Exhibit C-4 at C0026 (emphasis in original).

<sup>28</sup> Exhibit P-7 (COVID-19 Quality Reporting Programs Guidance Memo) at 24.

measure data for May, August, and November 2020 submission deadlines for the following discharge periods:

- October 1, 2019-December 31, 2019 (Q4 2019)
- January 1, 2020-March 31, 2020 (Q1 2020)
- April 1, 2020-June 30, 2020 (Q2 2020)

This exception applies to the following measures, including clinical population and sampling and National Health Safety Network (NHSN) Healthcare-Associated Infection (HAI) measures:

- Severe Sepsis and Septic Shock: Management Bundle (Composite Measure) (SEP-1)<sup>29</sup>

A December 17, 2020, communication from Inpatient VIQR Support Contractor to IQR programs announced that CMS extended certain Q3 2020 submission deadlines by one month, from February 16, 2021, until March 18, 2021.<sup>30</sup> This included the Hospital IQR Deadline for Patient-level, chart-abstracted clinical data for SEP-1.<sup>31</sup>

### ***C. 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>32</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 evidence when the record is viewed as a whole.”<sup>33</sup> 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.”<sup>34</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.

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<sup>29</sup> *Id.* at 27.

<sup>30</sup> Exhibit P-5 (Q3 2020 Data Submission Deadline Extension for Certain Medicare Quality Reporting and Value-Based Purchasing Programs).

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

<sup>32</sup> 42 C.F.R. § 405.1871(a)(3) (as of Oct. 1, 2020).

<sup>33</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.” *See also* 42 C.F.R. § 405.1869(a).

<sup>34</sup> *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**

Northwest Specialty Hospital acknowledges that “the IQR program requirements were not met for CYQ3, resulting in its FFY 2022 IPPS market basket update being reduced by one-fourth.”<sup>35</sup> They argue, however, that the COVID-19 pandemic should qualify as an extraordinary event that should exempt them from the reporting period at issue pursuant to 42 C.F.R. § 412.140.<sup>36</sup>

The Medicare Contractor argues that “[t]he regulations for the IQR program do not allow for such a COVID-19 hardship exception.”<sup>37</sup> The Board agrees, and finds that Northwest Specialty Hospital does not meet the requirements for an exception under the provisions of 42 C.F.R. § 412.140(c)(2)(i) as it did not submit any evidence that it submitted a request for “an exception with respect to quality data reporting requirements . . . to CMS within 90 days of the date that the extraordinary circumstances occurred.”<sup>38</sup>

Additionally, the Board finds that Northwest Specialty Hospital does not meet the requirements for an exception under the provisions of 42 C.F.R. § 412.140(c)(2)(ii) because, as Northwest Specialty Hospital acknowledges, the exemptions that were put in place in light of the COVID-19 pandemic and public health emergency, did not apply to the Q3 2020 data at issue in this case.<sup>39</sup> While CMS did allow an extension to the submission deadline, it did not fully exempt the data submission.

In an attempt to persuade the Board that it has the power to grant an exception despite the aforementioned acknowledgments of the facts and the applicable regulatory exemption already provided by CMS, Northwest Specialty Hospital turns to 42 C.F.R. § 405.1869(a):

[T]he legal authority to fully resolve the matter in a hearing decision (as described in §§ 405.1842(f), 405.1867, and 405.1871 of this subpart), section 1878 of the Act, and paragraph (a) of this section ***give the Board the power to affirm, modify, or reverse the contractor's findings*** on each specific matter at issue in the contractor determination for the cost reporting period under appeal, and to make additional revisions on specific matters regardless of whether the contractor considered the matters in issuing the contractor determination.<sup>40</sup>

However, Northwest Specialty Hospital fails to recognize that:

In exercising its authority to conduct proceedings under this subpart, ***the Board must comply with all the provisions of Title XVIII of the Act and regulations issued thereunder***, as well as

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<sup>35</sup> Provider’s FPP at 5.

<sup>36</sup> *Id.*

<sup>37</sup> Medicare Contractor’s FPP at 6.

<sup>38</sup> 42 C.F.R. § 412.140(c)(2)(i) (Oct. 1, 2017).

<sup>39</sup> Provider FPP at 4, *at* Exhibit P-5.

<sup>40</sup> Provider’s FPP at 5, *see also* 42 C.F.R. § 405.1869(a) (emphasis added).

CMS Rulings issued under the authority of the Administrator as described in § 401.108 of this subchapter. The Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.<sup>41</sup>

Accordingly, the Board again reiterates that Northwest Specialty Hospital does not meet the requirements for another exception to the quality reporting program requirements for Q3 under these circumstances. The Board cannot ignore the regulations and regulatory guidance to grant an exception.

Northwest Specialty Hospital also argues that it would have been reporting zero (0) qualifying events, which did not warrant further reporting.<sup>42</sup> The regulations do not prescribe a threshold or otherwise indicate that the data must be submitted only if the data is greater than zero (0).<sup>43</sup> Additionally, the Hospital IQR Program Guide clearly indicates that “[f]ields may not be left blank. . . . **a zero (0) must be entered, if appropriate.**”<sup>44</sup> The requirement to enter a zero (0) is reiterated elsewhere in the Hospital IQR Program Guide with guidance that “[h]ospitals with five or fewer discharges (both Medicare and non-Medicare combined) in a measure set (Sepsis) in a quarter **are not** required to submit patient-level data for that measure set for that quarter. However, population and sampling data must still be entered for the Sepsis measure set.”<sup>45</sup>

Although appreciative of the service provided by Northwest Specialty Hospital during the throes of the COVID-19 pandemic, the Board finds that Northwest Specialty Hospital is not justifiably excused from submitting the population and sampling data for the Sepsis Composite Measure set for Q3 FY 2020 in a form and manner, and at a time, specified by the Secretary, simply because it did not have any Sepsis data to report. Northwest Specialty Hospital had access to resources that clearly indicated that the Sepsis data was still necessary during the pandemic for healthcare associated infection surveillance purposes (for patient safety)—even if there were zero (0) reportable incidents. Moreover, CMS granted an extraordinary circumstances extension in accordance with 42 C.F.R. § 412.140(c)(2)(ii), where CMS determined that the COVID-19 pandemic affected the entire country. Finally, Northwest did not attempt to avail itself of the extraordinary circumstances exception/extension process provided under 42 C.F.R. § 412.140(c)(2)(i).

For the reasons stated above, the Board concludes that Northwest Specialty Hospital failed to submit quality of care data for Q3 2020 in a form and manner, and at a time specified by the Secretary, and that CMS properly reduced Northwest Specialty Hospital’s FFY 2022 APU by one-fourth.

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<sup>41</sup> 42 C.F.R. § 405.1867 (emphasis added).

<sup>42</sup> Provider’s FPP at 6.

<sup>43</sup> See 42 C.F.R. § 412.140 (Oct. 1, 2017).

<sup>44</sup> Exhibit C-4 at C0025 (emphasis added).

<sup>45</sup> *Id.* at C0026.

**DECISION**

After considering the Medicare law, regulations and program instructions, the arguments presented and the evidence submitted, the Board finds CMS' decision to reduce Northwest Specialty Hospital's CY 2023 Prospective Payment System APU by one-fourth was proper.

**BOARD MEMBERS PARTICIPATING:**

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

**FOR THE BOARD:**

9/4/2025

**X** Kevin D. Smith, CPA

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Kevin D. Smith, CPA  
Board Chair  
Signed by: Kevin D. Smith -A