PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2026-D06

PROVIDER –
Landmark Hospital of Cape Girardeau, LLC

PROVIDER NO. –
26-2015

vs.

MEDICARE CONTRACTOR –
WPS Government Health Administrators

HEARING DATE –
March 5, 2024

FEDERAL FISCAL YEAR –
2022

CASE NO. –
22-0426

INDEX

ISSUE STATEMENT:

Whether the payment penalty that the Centers for Medicare & Medicaid Services ("CMS") imposed under the Long-Term Care Hospital Quality Reporting Program ("LTCH QRP") to reduce Landmark Hospital of Cape Girardeau's ("Landmark" or "Provider") payment update (i.e., annual increase factor or "AIF") for Federal Fiscal Year ("FFY") 2022 by two (2) percentage points was proper.[1]

DECISION:

After considering the Medicare law regulations and program instructions, the arguments presented and the evidence submitted,[2] the Provider Reimbursement Review Board ("Board") finds that the two (2) percentage point reduction of the annual payment update for FFY 2022 for Landmark was proper.

INTRODUCTION:

Landmark is a Medicare-certified long-term care hospital ("LTCH") located in Cape Girardeau, Missouri.[3] Landmark's assigned Medicare contractor[4] is WPS Government Health Administrators ("Medicare Contractor").

By letter dated July 15, 2021, CMS notified Landmark that it failed to meet the LTCH QRP requirements and was subject to a two (2) percentage point reduction to its FFY 2022 annual payment update ("APU").[5] CMS specifically identified NQF #0138 – Catheter-Associated Urinary Tract Infection ("CAUTI") Outcome Measure data and NQF #0139 – Central Line-Associated Bloodstream Infection ("CLABSI") Outcome Measure data during CY 2020 as the source of Landmark's failure to meet the QRP requirements.[6]

Following Landmark's August 7, 2021 formal request[7] that CMS reconsider its initial determination, on September 17, 2021, CMS issued a written reconsideration determination on that upheld the payment reduction.[8]

Landmark timely appealed its CMS reconsideration determination to the Board and met the jurisdictional requirements for a hearing. The Board approved a Record Hearing Request on March 5, 2024. Landmark was represented by Jason M. Healy, Esq. of The Law Offices of

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[1] Stipulations (hereinafter "Stip.") at ¶ 3 (Feb. 27, 2024).
[2] Any arguments or evidence, whether or not specifically referenced or discussed herein, were considered by the Board in the deliberations of this appeal.
[3] *Id*. at ¶ 1.
[4] 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 to 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.
[5] Exhibit (hereinafter "Ex.") P-1 at P0002.
[6] *Id*.
[7] Ex. P-5 at P0011.
[8] Ex. P-2 at P0005.

Jason M. Healy, PLLC. The Medicare Contractor was represented by Joseph Bauers, Esq. of Federal Specialized Services.

STATEMENT OF RELEVANT FACTS and APPLICABLE LAW:

A. Relevant Factual Background

To comply with CMS' LTCH-QRP requirements, LTCHs are required to submit certain quality data measures to the Centers for Disease Control and Prevention ("CDC") through its National Healthcare Safety Network ("NHSN").[9] LTCH-QRP instructions and deadlines for data submissions are routinely posted on CMS' LTCH-QRP website.[10]

LTCH QRP FY 2022 payment determinations were based on compliant submissions of certain quality data measures collected during calendar year ("CY") 2020 (reporting period of January 1, 2020 through December 31, 2020).[11] The following submission deadlines were established for quality measure data collected during CY 2020:

Q1 (January 1-March 31, 2020) – August 17, 2020**
Q2 (April 1-June 30, 2020) – November 16, 2020**
Q3 (July 1-September 30, 2020) – February 15, 2021
Q4 (October 1-December 31, 2020) – May 17, 2021[12]

However, as a result of the COVID-19 pandemic, CMS exempted LTCHs from submitting quality data for Q1 through Q2 of 2020.[13]

As previously mentioned, on July 15, 2021, CMS issued a notice of non-compliance[14] stating that Landmark "[d]id not submit all required months of complete NQF #0138 National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection (CAUTI) Outcome Measure data" and "[d]id not submit all required months of complete NQF #0139 National Healthcare Safety Network (NHSN) Central Line-Associated Bloodstream Infection (CLABSI) Outcome Measure data."[15] Further, the letter also stated, "[d]ue to the impacts of COVID-19 during Q1 and Q2, the APU payment impact for FY 2022 is based upon data collected in Q3 and Q4 of calendar year 2020 only."[16]

To meet LTCH QRP requirements for CAUTI and CLABSI, providers must complete various modules within NHSN that rely upon manual data entries, and they must ensure that all technical requirements are completed at various stages to ensure accurate and complete data submissions

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[9] *See* 77 Fed. Reg. 53258, 53619-21.
[10] *See Long-Term Care Hospital (LTCH) Quality Reporting Program (QRP),* available at: https://www.cms.gov/Medicare/quality/long-term-care-hospital (last accessed Dec, 15, 2025).
[11] Ex. P-3 at P0007-0009.
[12] *Id.*
[13] *Id.* at P0009; *see also* P-13.
[14] *See* Ex. P-1.
[15] Ex. P-1 at P0002; *See also* Stip. at ¶ 7.
[16] *Id.*

and transmissions from NHSN to CMS.[17] Landmark records dated February 11, 2021 (four days before the Q3 deadline), illustrate that in its July 2020 Monthly Reporting Plan, the Device-Associated Module indicates "XY" in the CLABSI and CAUTI boxes and "UNIT-UNIT" in the Locations box.[18] By contrast, the Monthly Reporting Plans for August and September 2020 (also dated February 11, 2021), only "Y" is indicated in the CLABSI and CAUTI boxes under the Device Assisted Module, and the "Locations" boxes on both plans are blank.[19] Additionally, other records, dated February 11, 2021, show that Landmark selected "UNIT-UNIT" as the "Location Code" on the *Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA)* forms (hereinafter "Denominators Form") for August and September 2020.[20] A Denominators Form for July 2020, dated August 6, 2021 (after the submission deadline), also shows "UNIT-UNIT" as the selected Location Code.[21] On the Denominators Forms, the "Report No Events" for CAUTI is checked for July and August, and for CLABSI, it is only checked for August.[22]

As it relates to Q4 2020, records dated May 4, 2021 (13 days before the submission deadline) indicate that in Landmark's Monthly Reporting Plans for October, November, and December, only "Y" is indicated in the CLABSI and CAUTI boxes, and the "Locations" boxes in all three plans are blank.[23] Records dated May 5, 2021, indicate that Landmark selected "UNIT-UNIT" as the "Location Code" on the Denominators Forms for October, November, and December 2020.[24] On the Denominators Forms, the "Report No Events" for CAUTI is checked for November, and for CLABSI, it is checked for October, November, and December.[25]

Landmark's NHSN Line Listing for All Central Line-Associated BSI Events Report dated August 31, 2022, well after the submission deadlines, indicate two (2) CLABSI events entered in CY 2020, but the report does not include any creation ("createdate") or modification ("modifydate") columns to demonstrate when the relevant data or "Unit" location was initially entered or modified.[26] The same applies for the four (4) CAUTI events on the NSHN Line Listing for All Catheter-Associated UTI Events Report.[27]

B. Applicable Law

1. Requirements under the Long-Term Care Hospital Quality Reporting Program (LTCH QRP)

Contrary to the parties' stipulation that CMS reconsiderations for FY 2022 payment determinations

[17] *See discussion infra.*
[18] Ex. P-9 at P0069.
[19] *Id.* at P0070-0071.
[20] Ex. P-5 at P0019-0020.
[21] *Id.* at P0015.
[22] *Id*. at P0015, 0019, 0020.
[23] Ex. P-10 at P0073-0075.
[24] Ex. P-5 at P0027, 0034-0035.
[25] *Id.* at P0027, 0034-0035.
[26] Ex. P-16 at P0124.
[27] Ex. P-17 at P0126.

are ***governed*** in part by the FY 2015 IPPS/LTCH PPS Final Rule,[28] the FY 2015 LTCH IPPS Final Rule was superseded by the FY 2016 IPPS Final Rule, which codified the applicable law in this matter effective "for the FY 2017 Payment Determination and Subsequent Years."[29]Accordingly, the regulations set forth in 42 C.F.R. § 412.560 that were in effect on August 7, 2021 (the date of Landmark's reconsideration request) apply as they fully address the reconsideration process at that time.[30] 42 C.F.R. § 412.560 (October 1, 2019) in pertinent part states:

> (b) ***Data submission requirements and payment impact.***
>
> > (1) Except as provided in paragraph (c) of this section, a long-term care hospital must submit to CMS data on measures specified under sections 1886(m)(5)(D), 1899B(c)(1) and 1899B(d)(1) of the Act, and standardized patient assessment data required under section 1899B(b)(1) of the Act. Such data must be submitted in a form and manner, and at a time, specified by CMS.
> >
> > (2) A long-term care hospital that does not submit data in accordance with sections 1886(m)(5)(C) and 1886(m)(5)(F) of the Act with respect to a given fiscal year will have its annual update to the standard Federal rate for discharges for the long-term care hospital during the fiscal year reduced by 2 percentage points.
> >
> > (3) CMS may remove a quality measure from the LTCH QRP based on one or more of the following factors:
> >
> > > (i) Measure performance among long-term care hospitals is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.
> > >
> > > (ii) Performance or improvement on a measure does not result in better patient outcomes.
> > >
> > > (iii) A measure does not align with current clinical guidelines or practice.

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[28] Stip. at ¶ 11.

[29] As part of the FY 2016 LTCH IPPS Final Rule, the Secretary codified at 42 C.F.R. §§ 412.560(c), (d) and (e) her policies for both the LTCH QRP Reconsideration and Appeals Procedures and the LTCH QRP Submission Exception and Extension Requirements, effective "for the FY 2017 Payment Determination and Subsequent Years." 80 Fed. Reg. 49326, 49755-56 (Aug. 17, 2015) (Section C (Long-Term Care Hospital Quality Reporting Program (LTCH QRP)) at (13) and (14) of the preamble codified these provisions and the headers make clear that this codification was effective "for the FY 2017 Payment Determination and Subsequent Years").

[30] For FY 2017 payment determinations and subsequent years, the FY 2016 IPPS/LTCH PPS Final Rule codified the LTCH QRP exception and extension requirements specifying the extraordinary circumstances standard as well as the procedure for requesting reconsideration of a noncompliance decision. *See* 80 Fed. Reg. 49326, 49755-56, 49769-70. *See* further discussion, *infra*.

(iv) The availability of a more broadly applicable (across settings, populations, or conditions) measure for the particular topic.

(v) The availability of a measure that is more proximal in time to desired patient outcomes for the particular topic.

(vi) The availability of a measure that is more strongly associated with desired patient outcomes for the particular topic.

(vii) Collection or public reporting of a measure leads to negative unintended consequences other than patient harm.

(viii) The costs associated with a measure outweigh the benefit of its continued use in the program.

(c) ***Exception and extension request requirements.*** Upon request by a long-term care hospital, CMS may grant an exception or extension with respect to the measures data and standardized patient assessment data reporting requirements, for one or more quarters, in the event of certain extraordinary circumstances beyond the control of the long-term care hospital, subject to the following:

(1) A long-term care hospital that wishes to request an exception or extension with respect to measures data and standardized patient assessment data reporting requirements must submit its request to CMS within 90 days of the date that the extraordinary circumstances occurred.

(2) A long-term care hospital must submit its request for an exception or extension to CMS via email. Email is the only form that may be used to submit to CMS a request for an exception or an extension.

(3) The email request for an exception or extension must contain the following information:

(i) The CCN for the long-term care hospital.

(ii) The business name of the long-term care hospital.

(iii) The business address of the long-term care hospital.

(iv) Contact information for the long-term care hospital's chief executive officer or designated personnel, including the name, telephone number, title, email address, and physical mailing address. (The mailing address may not be a post office box.)

(v) A statement of the reason for the request for the exception or extension.

(vi) Evidence of the impact of the extraordinary circumstances, including, but not limited to, photographs, newspaper articles, and other media.

(vii) The date on which the long-term care hospital will be able to again submit measures data and standardized patient assessment data under the LTCH QRP and a justification for the proposed date.

(4) CMS may grant an exception or extension to a long-term care hospital that has not been requested by the long-term care hospital if CMS determines that—

(i) An extraordinary circumstance affects an entire region or locale; or

(ii) A systemic problem with one of CMS' data collection systems directly affected the ability of the long-term care hospital to submit measures data and standardized patient assessment data.

(d) ***Reconsiderations of noncompliance decisions*** —

(1) ***Written letter of non-compliance decision.*** Long-term care hospitals that do not meet the requirement in paragraph (b) of this section for a program year will receive a notification of non-compliance sent through at least one of the following methods: The CMS designated data submission system, the United States Postal Service, or via an email from the MAC.

(2) ***Request for reconsideration of noncompliance decision.*** A long-term care hospital may request a reconsideration of CMS' decision of noncompliance no later than 30 calendar days from the date of the written notification of noncompliance. The reconsideration request by the long-term care hospital must be

submitted to CMS via email and must contain the following information:

(i) The CCN for the long-term care hospital.

(ii) The business name of the long-term care hospital.

(iii) The business address of the long-term care hospital.

(iv) Contact information for the long-term care hospital's chief executive officer or designated personnel, including each individual's name, title, email address, telephone number, and physical mailing address. (The physical address may not be a post office box.)

(v) CMS's identified reason(s) for the noncompliance decision from the written notification of noncompliance.

(vi) The reason for requesting reconsideration of CMS' noncompliance decision.

(vii) Accompanying documentation that demonstrates compliance of the long-term care hospital with the LTCH QRP requirements. This documentation must be submitted electronically at the same time as the reconsideration request as an attachment to the email.

(3) ***CMS decision on reconsideration request.*** CMS will notify long-term care hospitals, in writing, of its final decision regarding any reconsideration request through at least one of the following methods: The CMS designated data submission system, the United States Postal Service, or via an email from the MAC.

(e) ***Appeals of reconsideration requests.*** A long-term care hospital that is dissatisfied with a decision made by CMS on its reconsideration request may file an appeal with the Provider Reimbursement Review Board under part 405, subpart R, of this chapter.

(f) ***Data completion thresholds.***

(1) Long-term care hospitals must meet or exceed two separate data completeness thresholds: One threshold set at 80 percent for completion of measures data and standardized patient assessment data collected using the LTCH CARE Data Set submitted through the CMS designated data submission system; and a second

> threshold set at 100 percent for measures data collected and submitted using the CDC NHSN.
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> (2) The thresholds in paragraph (f)(1) of this section apply to all data that must be submitted under paragraph (b) of this section.
>
> (3) A long-term care hospital must meet or exceed both thresholds in paragraph (f)(1) of this section to avoid receiving a 2 percentage point reduction to its annual payment update for a given fiscal year, beginning with the FY 2019 LTCH QRP.

To offer guidance to LTCHs regarding the collection, submission and reporting of quality data to CMS for compliance with the LTCH Quality Reporting Program, CMS issued a Long-Term Care Hospital Quality Reporting Manual. The revised version 4.0, effective July 1, 2018, applies to this case.[31] Particularly, *Chapter 5.1 Overview* states in pertinent parts:

> Each LTCH must submit data for the NHSN CAUTI Outcome Measure (NQF #0138) [and] the NHSN CLABSI Outcome Measure (NGQ#0139) . . . ***on all patients from all inpatient locations***, regardless of payer.[32]
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> . . .
>
> **NHSN CAUTI Outcome Measure (NQF #0138) and NHSN CLABSI Outcome Measure (NQF #0139) Reporting**
>
> For reporting data on the NHSN CAUTI Outcome Measure (NQF #0138) and the NHSN CLABSI Outcome Measure (NQF #0139) under the LTCH QRP, LTCHs must adhere to the definitions and reporting requirements for CAUTIs and CLABSIs as specified in CDC's *NHSN Patient Safety Component Manual*, available at https://www.cdc.gov/nhsn/pdfs/pscmanual/7psccauticurrent.pdf and https://www.cdc.gov/nhsn/pdfs/pscmanual/4psc_clabscurrent.pdf.
>
> These requirements include reporting denominator data (patient days, urinary catheter days, and central line days) by location, as well as CAUTIs and CLABSIs (event data), to NHSN each month. Monthly denominator data must be reported on CAUTIs and CLABSIs, regardless of whether an infection occurred in the LTCH. ***Monthly reporting plans must be created or updated to include CAUTI and CLABSI surveillance in all locations that***

[31] *See* Ex. C-7 for undated version. A dated version can also be found at https://www.cms.gov/medicare/quality/long-term-care-hospital/ltch-quality-reporting-archives (last accessed Dec. 16, 2025) All cited quotes are the same in both Ex. C-7 and the online archive version..
[32] Ex. C-7 at C-0032.

> ***require reporting (i.e., surveillance must be "in-plan").*** All required data fields in the numerator and the denominator, including the "no events" field for any month during which no CAUTIs or CLABSIs were identified, must be submitted to NHSN.[33]

Chapter 5.3 of the CMS LTCH Quality Reporting Program Manual *(Basic Steps to NHSN Enrollment and Data Submission)* provides, in pertinent part:

> 6. All patient care units will need to be added as location(s) and mapped in NHSN in advance by a facility user.
>
> ***
>
> 8. ***The locations must also be added to the monthly reporting plan under the device-associated module section*** for each month you plan on submitting the NHSN CAUTI Outcome Measure (NQF #0138) and the NHSN CLABSI Outcome Measure (NQF #0139) data to CMS. After adding the location, please remember to check the "CAUTI" and "CLABSI" boxes to ensure that the data will be appropriately sent to CMS.[34]

In addition to the NHSN guidance described above, CMS provides various materials with guidance on reporting protocols and requirements, including quick reference guides for FFY 2022, and with high-level information on the LTCH Quality Reporting Program, including frequently asked questions and informational links to archived materials.[35]

2. 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."[36] 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."[37] 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

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[33] *Id.* at C-0033-0034 (Bold, italics, and underline emphasis added).
[34] *Id.* at C-0037 (Bold and italics emphasis added).
[35] *See generally*, Ex. C-6 through C-10. *See also* "Long-Term Care Hospital (LTCH) Quality Reporting Program (QRP)" at https://www.cms.gov/medicare/quality/long-term-care-hospital (last accessed Dec. 16, 2025).
[36] 42 C.F.R. § 405.1871(a)(3) (as of Oct. 1, 2014).
[37] 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).

support a conclusion."[38] 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. Further, the "Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS."[39]

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

To satisfy certain LTCH quality reporting program requirements, Landmark was required to, in part: (1) submit data for the NHSN CAUTI Outcome Measure (NQF #0138) and NHSN CLABSI Outcome Measure (NQF #0139) "on all patients from all inpatient locations, regardless of payer;"[40] (2) "[i]n the event that no patients have the infection or event of interest during the reporting period . . . submit monthly denominator counts (i.e., device days and patient days) along with the "no event" indicators to CDC's NHSN;"[41] and (3) "submit all data collected during a given calendar year (CY) quarter no later than the quarterly data submission deadlines, . . . (approximately 4.5 months or 135 days following the end of each CY quarter)."[42] Failure to submit the data in the correct form and manner, and at the correct time, will result in a two (2) percentage point reduction to a LTCH's APU.[43] For FFY 2022, LTCHs were required to report at a 100% completion threshold for quality measures collected and submitted (for Q3 and Q4 of 2020) using the CDC NHSN to avoid the two (2) percentage point payment reduction penalty.[44]

CMS' July 15, 2021 Notice of Noncompliance states that Landmark "[d]id not submit ***all required months***" for both the NHSN CAUTI Outcome Measure data (NQF #0138) and NHSN CLABSI Outcome Measure data (NQF #0139) and that Landmark's APU for FFY 2022 would be subject to the reduction penalty.[45]

Landmark contends it is entitled to reversal of the 2 percent payment penalty for multiple reasons: (1) Landmark's evidence "demonstrates full compliance with the LTCH QRP requirements for the CAUTI and CLABSI outcome measures at issue;"[46] (2) "even if the Board finds there was less than full compliance, the Reconsideration still must be reversed because there are extenuating circumstances that affected any noncompliance;"[47] (3) "there are extraordinary circumstances that affected any perceived noncompliance;"[48] and (4) the CMS reconsideration decision "violates the most basic requirements of the APA's arbitrary and capricious standard [under] 5 U.S.C. § 706(2)(A)."[49] The arguments are addressed as followed:

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[38] *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).
[39] 42 C.F.R. § 405.1867.
[40] Ex. C-7 at C-0032.
[41] *Id*.
[42] *Id*.
[43] 42 C.F.R. § 412.560(b)(1) and (2) (2019).
[44] 42 C.F.R. § 412.560(f)(1) (2019).
[45] Ex. P-1 at P-0002.
[46] Provider's FPP at 17.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 18.

1. Whether Landmark's evidence demonstrates full compliance with the LTCH QRP requirements for the CAUTI and CLABSI outcome measures at issue.

In its Final Position Paper, Landmark argues:

> Importantly, this is not a case where the provider did not report its quality data to the CDC and CMS. ***Only the monthly reporting plans for CAUTI and CLABSI data are potentially at issue.*** [50]

Landmark goes on:

> * * *
>
> When preparing this PRRB appeal, the Provider investigated why CMS believed that the Provider did not report all required LTCH QRP data. The Provider reviewed the NHSN monthly reporting plans for each month in the second and third quarters of 2020. Exhibit P-9; Exhibit P-10. The July 2020 monthly reporting plan includes a location identifier ("Unit-Unit") in the Device-Associated Module. Exhibit P-9 at P0069; Exhibit P-21 at P0183, ¶6. The July reporting plan also shows that the Provider selected the CLABSI and CAUTI measures for reporting. *Id*. ***However, for the remaining five months in the 2020 calendar year, the Provider discovered that the location identifier disappeared from the "Locations" box*** and the boxes for selecting the CAUTI and CLABSI measures became unchecked. Exhibit P-9 at P0070-P0071; Exhibit P-10; Exhibit P-21 at P0183, ¶6. The box for selecting the CAUTI and CLABSI measures must have been checked originally ***and the location identifier must have been present because, as discussed above, the Provider was able to report its actual CAUTI and CLABSI event and summary data. Exhibit P-21 at P0183, ¶6***. The NHSN system did not provide any error or other alert stating that there was no monthly reporting plan when the Provider reported its CAUTI and CLABSI data. Exhibit P-21 at P0183, ¶8. ***Accordingly, an NHSN system issue must have caused*** the CAUTI and CLABSI boxes on the August through December 2020 monthly reporting plans to become unchecked and the location identifier to disappear after the Provider reported its actual data for the month.[51]

Landmark even specifically discusses how Landmark saved and printed screenshots of denominator forms on February 11, 2021, before the February 15 deadline, and on May 4, 2021,

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[50] *Id.* at 24.
[51] Landmark's Final Position Paper (hereinafter "Landmark's FPP") at 7.

before the May 17 deadline.[52] However, Landmark's 85-page Final Position Paper fails to mention ***that on February 11, 2021, and May 4, 2021—just days before the Q3 and Q4 deadlines—for the months of August, September, October, November and December 2020, there was only "Y" instead of "XY" in the CLABSI and CAUTI boxes, and Locations boxes in the Device-Assisted Module on all five (5) of the Monthly Reporting Plans was blank***.[53] Assuming arguendo that there was some technical glitch with NHSN, on February 11, 2021 and May 4, 2021, Landmark had the ability to enter the correct location and did not. Accordingly, while Landmark believes their "evidence demonstrates full compliance with the LTCH QRP requirements for the CAUTI and CLABSI outcome measures at issue,"[54] Landmark's evidence shows the exact opposite.

42 U.S.C. § 1395ww(m)(5)(C) establishes the standards for reporting under the LTCH QRP in effect for the CY 2021 reporting period and it requires LTCHs to submit to the Secretary the requisite data on the specified quality measures of their services "in a form and manner, and at a time specified by the Secretary . . ." The Secretary instructed LTCHs that the data on the CAUTI and CLABSI outcome measures must be submitted to CMS using the CDC NHSN system (i.e., form and manner).[55] To comply with the form and manner requirements, the operational guidance for the CDC NHSN system instructed LTCHs that "[m]onthly reporting plans ***must*** be created" (and updated as relevant) to include surveillance of the CAUTI and CLABSI outcome measures *in order for data associated with the outcome measure for the relevant month to be transmitted from the CDC NHSN system* ***to CMS***.[56] In this case, leaving the Locations boxes blank on the Device-Associated Module for five (5) consecutive months resulted in the data associated with the CLABSI and CAUTI outcome measures not being transmitted from NSHN to CMS.

The Board finds that, due to the issues cited above, the monthly reporting plan boxes were not properly checked/marked or completed for the CAUTI and CLABSI Measures for the third and fourth quarters of CY 2020. Accordingly, it is clear that the associated quality data at issue for the CAUTI and CLABSI Measures could not and did not transmit from the CDC NHSN system to CMS and that the Provider failed to comply with the prescribed "form and manner" to report its data on the CAUTI and CLABSI Measures to CMS for the third and fourth quarters of CY 2020.

Pursuant to the reconsideration process prescribed at 42 C.F.R. § 412.560(d)(2)(vii) (2019), LTCHs requesting reconsideration are required to submit *all* supporting documentation and evidence that "demonstrates compliance of the long-term care hospital with the LTCH QRP requirements." However, the Provider's evidence in the record indicates that the failure of the data to transmit from CDC NHSN system to CMS was Landmark's fault.[57] As such, there is no evidence to demonstrate full compliance with all LTCH QRP reporting requirements during the reporting period, as required by the regulation at 42 C.F.R. § 412.560(d)(2)(vii) and in the

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[52] *Id.* at 5-6, 20-21.
[53] *See* Ex. P-9 at P0070-0071; Ex. P-10 at P0073-0075.
[54] Provider's Final Position Paper (hereinafter "Provider's FPP") at 17.
[55] 77 Fed. Reg. at 53619-21.
[56] Ex. C-14 at C-0102 and C-0105.
[57] *See* Fn. 65, supra.

relevant final rules (*i.e.,* the Provider did not submit the CAUTI and CLABSI data at issue "in a form and manner, and at a time, specified by the Secretary"). Accordingly, the Board finds that CMS properly concluded that Landmark did *not* report the requisite data on its CAUTI and CLABSI measures to CMS for the third and fourth quarters of CY 2020, in a form and manner and at a time as specified by the Secretary.

Landmark next argues that its case is similar to those in *PAM Squared*.[58] However, the instant appeal is distinguishable from *PAM Squared*. As established above, all of the required measures data for Q3 and Q4 were not properly reported to CMS in the manner specified—through the monthly reporting plans.

Next, the Board recognizes Landmark has alleged that "information disappeared from its monthly reporting plans from August through December 2020. . . The location identifier and checkbox selections of the CAUTI and CLABSI measures disappeared from the Device-Associated Module on these monthly reporting plans."[59] However, its assertion that there should be an alert or error message in such a situation presupposes that the alleged disappearances actually occurred. Landmark has failed to provide sufficient evidence to support its assertion that there was an issue with the NHSN system. Landmark had tools available to confirm whether there were errors, and here there were two errors – the location identifier and the CAUTI and CLABSI checkboxes on the third and fourth quarter reporting plans—which were evident before the Q3 and Q4 deadlines, per Landmark's exhibits in the record. Thus, the Board finds the record before it demonstrates that the Provider was at fault for its failure to submit the required data (or to request an exception or extension if it were not possible to make the required corrections by the deadlines).

Finally, the Board finds that Landmark's assertions that "reporting plans are not data subject to the 2 percent[age point] penalty"[60] and that "monthly reporting plans only serve as a signal for the CDC to send data to CMS, after the provider has already reported the quality data"[61] are moot in this instance and overall, unconvincing. Providers are required to submit data in a form, manner and at a time specified by the Secretary. Thus, Landmark was required to check the boxes for the CAUTI and CLABSI data on the Q3 and Q4 2020 monthly reporting plans in order to prompt the CDC NHSN system to send its data on those quality measures to CMS. The monthly reporting plan is just one of the form and manner requirements for successful submission to CMS. Here, Landmark simply failed to comply with that time-form-and-manner requirement to properly enter (or to correct) the requisite CAUTI and CLABSI summary data, including the Locations and reporting indicators, for Q3 and Q4 2020, prior to the reporting deadlines.

2. Whether any perceived noncompliance should be mitigated by extenuating or extraordinary circumstances.

[58] Provider's FPP at 25 (citing *PAM Squared at Texarkana, LLC v. Azar*, 436 F. Supp. 3d 42 (D.D.C. 2020)).
[59] *Id.* at 23. *See also* Ex. P-9 at P0070-P0071; Ex. P-10; Ex. P-21 at P0183, ¶6.
[60] *Id*. at 24.
[61] *Id*.

Landmark asserts that even if there was any perceived non-compliance with the LTCH QRP requirements, the Board should still reverse the Reconsideration under the second prong of the 2015 Final Rule preamble reconsideration request language because its evidence demonstrated extenuating circumstances that affected noncompliance.[62] The Board finds that Landmark also failed to meet the second prong, which is incorporated into 42 C.F.R. § 412.560(d)(2)(vi), and requires Landmark's reconsideration request to state reasons for the request for reconsideration, which may include a demonstration of extenuating circumstances that affected non-compliance during the reporting period.

Landmark asserts, as extenuating circumstances, that the only explanation for the failed transmission of data from the NHSN system to CMS was a technical problem with the system itself and a lack of software system flags or notifications for failed transmissions.[63] These arguments lack merit because, as previously stated, evidence shows that the monthly reporting plan boxes were not properly checked/marked for the data/completed on the CAUTI and CLABSI Measures for the third and fourth quarters of CY 2020—before the respective deadlines. As the evidence was printed by Landmark before the deadline, it could easily have observed the errors at that time and corrected them, but did not.

Landmark also contends that the COVID-19 pandemic was an extraordinary circumstance that affected it during this period and should excuse any data transmission issue from NHSN to CMS.[64] 42 C.F.R. § 412.560(c)(1) allowed Landmark to request an exception or extension due to extraordinary circumstances beyond its control within 90 days of the date that any purported extraordinary circumstance occurred. However, Landmark did not make this request for CMS' consideration. Although appeals before the Board are relative to the reconsideration process, the Board will address Landmark's assertion that the impact of the pandemic made it difficult for it complete all of the reporting verifications that may have helped identify "that all of the monthly plans were still checked in NHSN so that the Provider's timely reported quality data could be sent from the CDC to CMS."[65] Landmark's former Director of Quality Data Reporting even states, "We had to focus our resources primarily to ensuring patients received optimal care during the pandemic, and therefore processing clerical data was a secondary concern during quarter three and four of 2020."[66] The Board acknowledges the challenges of the COVID-19 pandemic and while it is sympathetic to the difficulties faced, the failure to ensure that the boxes in the Device-Associated Module were completed in the monthly reporting plans before the deadlines was not an extraordinary circumstance beyond Landmark's control, especially considering that Landmark printed and saved the reports showing the omissions days before each respective deadline. Thus, the errors or omissions demonstrated in the record properly result in Landmark receiving the APU reduction for the reporting period in question.

3. Whether the monthly reporting plan requirement violates the APA and the Medicare Act's notice and comment rulemaking requirements.[67]

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[62] *Id*. at 46.
[63] *Id*. at 34-41.
[64] *Id.* at 58-59.
[65] *Id*. at 59.
[66] Ex. P-8 at 66, ¶ 6.
[67] *Id*. at 79.

The Board finds meritless Landmark's assertions that: 1) the monthly reporting plan requirement "violates the APA because CMS and the CDC established an unreasonable and confusing system that does not automatically prepopulate information in the monthly reporting plan"[68] and 2) that CMS "violated the Medicare Act when it applied the monthly reporting plan requirement without first utilizing the notice-and-comment rulemaking procedures."[69]

First, if Landmark takes issue with the user-friendliness of the NHSN platform, it has had and continues to have the opportunity to avail itself of the public comments process or lobbying or whatever contacts it can make with CMS to present its proposed methods. Unfortunately, a Board appeal is not the appropriate forum to request equitable relief from penalty based on arguments about the structure and/or technical requirements of NHSN. Second, Landmark's argument that the monthly reporting plan requirement was not subject to notice and comment is misplaced. The Secretary established the LTCH Quality Reporting Program including penalties for noncompliance in Section VII.C of the FY 2012 IPPS/LTCH PPS final rule,[70] and irrefutably opened the data submission process to notice-and-comment:

> 4. ***Data Submission Methods and Timelines***
>
> a. Method of Data Submission for HAIs [Hospital Acquired Infections]
>
> In the FY 2012 IPPS/LTCH PPS proposed rule (76 FR 25988 through 25890), we proposed to adopt two HAI quality measures, Central Line Catheter-Associated Bloodstream Infection (CLABSI) Event: CLABSI rate per 1000 central line days, and Urinary Catheter Associated Urinary Tract Infection (CAUTI) Event: CAUTI rate per 1000 urinary catheter days. We proposed to use CDC/NHSN for data collection and reporting for these two HAI measures (http://www.cdc.gov/nhsn/).
>
> As we noted above, the NHSN is a secure, Internet-based surveillance system. It is maintained by CDC, and can be utilized by all types of healthcare facilities in the United States, including LTCHs, acute care hospitals that collect and report HAIs through the NHSN as part of our Hospital IQR Program, as well as psychiatric hospitals, rehabilitation hospitals, outpatient dialysis centers, and ambulatory surgery centers. The NHSN enables health care facilities to submit their HAI event data, and access their data for the purposes of internal infection-surveillance.

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[68] *Id*.
[69] *Id*. at 80.
[70] 76 Fed. Reg. at 51743-56. The Secretary established the LTCH Quality Reporting Program pursuant to 42 U.S.C. § 1395ww(m)(5), as added by § 3004 of the Patient Protection and Affordable Care Act. Pub. L. 111-149, § 3004, 124 Stat. 119, 368 (2010).

> ****
>
> Currently the NHSN has data collection forms, data submission, and reporting mechanisms in places that are in use by LTCHs for both CLABSI and CAUTI measures. ***Details related to the procedures using the NHSN for data submission can be found at: http://www.cdc.gov.nhsn.***
>
> ****
>
> We solicited public comment on the ***proposed methods of data submission*** for the CLABSI and CAUTI measures in the FY 2012 IPPS/LTCH PPS proposed rule for the quality reporting program for LTCHs.
>
> ****
>
> After consideration of the public comments received, we are adopting as final our ***proposed method of data submission for HAIs using the CDC/NHSN***, with the first reporting period to begin October 1, 2012, for the FY 2014 payment determination.[71]

Accordingly, the Board finds that CMS' monthly reporting plan requirement does not run afoul of the necessary notice-and-comment process of 42 U.S.C. § 1395hh(a)(2) or the holding in *Allina*.[72]

DECISION:

After considering Medicare law, regulations and program instructions, the arguments presented and the evidence submitted, the Board finds that the two (2) percentage point reduction of the annual payment update for FFY 2022 for Landmark was proper.

[71] *Id*. at 51751-53 (emphasis added).
[72] *See* Provider's FPP at 81.

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FOR THE BOARD:

12/19/2025

X Kevin D. Smith, CPA

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