

**PROVIDER REIMBURSEMENT REVIEW BOARD  
DECISION**

2026-D11

**PROVIDER –**  
McPherson Hospital, Inc.

**PROVIDER NO. –** 17-0105

**vs.**

**MEDICARE CONTRACTOR –**  
WPS Government Health Administrators

**HEARING HELD –**  
May 14, 2025

**Cost Reporting Period –** FFY 2024

**CASE NO. –** 24-0135

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**ISSUE STATEMENT:**

Whether McPherson Hospital, Inc. (“Provider” or “McPherson”) met the requirements of the Hospital Inpatient Quality Reporting (“IQR”) Program and is entitled to a full fiscal year (“FY”) 2024 Annual Payment Update (“APU”), or whether McPherson qualified for the exception of extraordinary circumstances under 42 C.F.R. § 412.140(c)(2)(ii) for the FY 2024 payment determination.<sup>1</sup>

**DECISION:**

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board”) finds the Medicare Contractor properly imposed a one fourth reduction to McPherson’s FY 2024 APU.

**INTRODUCTION:**

McPherson is an acute care hospital located in McPherson County, Kansas.<sup>2</sup> The Medicare Contractor<sup>3</sup> assigned to McPherson for this appeal is WPS Government Health Administrators (“Medicare Contractor”). On March 9, 2023, McPherson received a letter from the Centers for Medicare and Medicaid Services (“CMS”) noting that it “did not meet the Hospital [IQR] Program requirements impacting Fiscal Year 2024.”<sup>4</sup> As a result, CMS informed the Provider that it expected “to reduce McPherson Hospital’s Annual Payment Update by *one fourth*.”<sup>5</sup> McPherson submitted an APU Reconsideration Request Form that was signed on March 16, 2023.<sup>6</sup> On May 12, 2023, CMS issued a decision titled Notice of Quality Reporting Program Noncompliance Decision Upheld, which stated that CMS “reviewed your reconsideration request and decided to uphold the decision to reduce the FY 2024 APU.”<sup>7</sup> McPherson filed an individual appeal request on November 6, 2023 taken from this final determination and met all jurisdictional requirements for a hearing before the Board.

The Board held a virtual hearing on May 14, 2025. McPherson was represented by Ann M. Elliott, Esq. of Elliott Law, LLC. The Medicare Contractor was represented by Robert A. Evarts, Esq. of Federal Specialized Services.

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<sup>1</sup> Transcript (hereinafter “Tr.”) at 5 (May 14, 2025).

<sup>2</sup> McPherson Hospital Final Position Paper, ¶ 1 (Feb. 13, 2025).

<sup>3</sup> 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.

<sup>4</sup> Exhibit (hereinafter “Ex.”) C-1 at C-0002.

<sup>5</sup> *Id.* at 2 (emphasis in original).

<sup>6</sup> Ex. C-10.

<sup>7</sup> Ex. C-2 at C-0007.

## **STATEMENT OF RELEVANT LAW:**

### ***A. 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>8</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>9</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>10</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. And, while the provider has the burden of proof, the Medicare contractor must “[e]nsure that the evidence it considered in making its determination . . . is included in the record.”<sup>11</sup> 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.”<sup>12</sup>

### ***B. Quality Reporting Requirements for Acute Care Hospitals***

Effective for cost reporting periods beginning on or after July 1, 1979, CMS developed a price index for operating costs commonly referred to as a “market basket.”<sup>13</sup> Since the inception of the Inpatient Prospective Payment System (“IPPS”) in 1983, the market basket has been updated annually by a factor based on inflation.<sup>14</sup> This adjustment is commonly referred to as the market basket update or annual percentage update (“APU”).

In July 2003, CMS began the National Voluntary Hospital Reporting Initiative which established a set of ten quality measures for voluntary reporting as of November 1, 2003.<sup>15</sup> Section 501(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003<sup>16</sup> added 42 U.S.C. § 1395ww(b)(3)(B)(vii) to the Social Security Act and made this quality reporting mandatory beginning with FY 2005. The statute was later implemented via 42 C.F.R. § 412.64(d)<sup>17</sup> and institutes a fixed reduction to a hospital’s APU if it fails to submit specified

<sup>8</sup> 42 C.F.R. § 405.1871(a)(3).

<sup>9</sup> 42 U.S.C. § 1395oo(d). This statutory provision further confirms that: “[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>10</sup> *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).

<sup>11</sup> 42 C.F.R. § 405.1853(a)(3).

<sup>12</sup> 42 C.F.R. § 405.1867.

<sup>13</sup> *See* 74 Fed. Reg. 43754, 43843-43844 (Aug. 27, 2009).

<sup>14</sup> *Id.*; *see also* 48 Fed. Reg. 39752, 39764 (Sept. 1, 1983).

<sup>15</sup> *See* 73 Fed. Reg. 48434, 48598 (Aug. 19, 2008).

<sup>16</sup> Pub. Law. 108-173, 117 Stat. 2066, 2289 (Dec. 8, 2003).

<sup>17</sup> *See* 74 Fed. Reg. at 43861.

quality data to the Secretary for an applicable FY. The program encompassing the quality data reporting is known as the Inpatient Quality Reporting Program. Section 5001(a) of the Deficit Reduction Act of 2005<sup>18</sup> added 42 U.S.C. § 1395ww(b)(3)(B)(viii), which allows the Secretary to expand the reporting requirements to include additional measures she determines “to be appropriate for the measurement of the quality of care furnished by hospitals in inpatient settings.”

For the FY 2013 payment determination, CMS began collecting data on certain Healthcare-Associated Infection (“HAI”) measures which were already being collected by the Centers for Disease Control (“CDC”) via the National Healthcare Safety Network (“NHSN”).<sup>19</sup> NHSN is “a secure, Internet-based surveillance system maintained and managed by the CDC, and can be utilized by all types of health care facilities in the United States . . . to collect and use data about HAIs, adherence to clinical practices known to prevent HAIs, the incidence or prevalence of multidrug-resistant organisms within their organizations, and other adverse events.”<sup>20</sup> In order to access NHSN, the CDC utilizes Secure Access Management Services (“SAMS”), a federal information technology system designed to provide centralized access to computer applications operated by the CDC.<sup>21</sup> Once a user registers with NHSN and completes the required NHSN training, they are automatically invited to SAMS via e-mail.<sup>22</sup>

Following the onset of the COVID-19 pandemic, the Secretary announced its intent to incentivize and track vaccination of healthcare providers in acute care facilities through quality measurement.<sup>23</sup> Thus, a new quality reporting measure, COVID-19 vaccination coverage among healthcare providers, was adopted during the CY 2021 reporting period for the FY 2023 payment determination. The measure was adopted to “assess the proportion of a hospital’s health care workforce that has been vaccinated against COVID-19.”<sup>24</sup> Hospitals were to collect data on COVID-19 vaccination and submit it to NHSN before each quarterly deadline to meet Hospital IQR Program requirements.<sup>25</sup> The same reporting requirements would continue for the CY 2022 reporting period, which would affect the FY 2024 payment determination, and accordingly for subsequent years.<sup>26</sup> The Hospital IQR Program quarterly reporting deadlines for the CY 2022 reporting period were as follows:<sup>27</sup>

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<sup>18</sup> Pub. Law. 109-171, 120 Stat. 4, 28 (Feb. 8, 2006).

<sup>19</sup> 75 Fed. Reg. 50042, 50200-50201 (Aug. 16, 2010).

<sup>20</sup> *Id.* at 50201.

<sup>21</sup> <https://www.cdc.gov/nhsn/sams/about-sams.html>.

<sup>22</sup> <https://www.cdc.gov/nhsn/sams/sams-user-faq.html>.

<sup>23</sup> See 86 Fed. Reg. 44774, 45375 (Aug. 13, 2021) (citing 86 Fed. Reg. 25070, 25571-25575 (May 10, 2021)).

<sup>24</sup> *Id.* at 45375, 45382.

<sup>25</sup> *Id.* at 45377.

<sup>26</sup> *Id.* at 45382. See also 87 Fed. Reg. 48780, 49305 (Aug. 10, 2022).

<sup>27</sup> Hospital IQR Program: Summary of FY 2022 IPPS Final Rule Changes at 2 (Dec. 2021) (copy at Ex. C-6), available at [https://qualityreportingcenter.com/globalassets/2022/01/3.-hiqr\\_summary-of-fy-2022-final-rule-program-changes\\_vfinal508.pdf](https://qualityreportingcenter.com/globalassets/2022/01/3.-hiqr_summary-of-fy-2022-final-rule-program-changes_vfinal508.pdf) (last visited Mar. 5, 2026).

<b>Discharge Quarter</b>	<b>Reporting Period</b>	<b>Submission Deadline</b>
<i><b>Q1 2022</b></i>	<i><b>January 1 – March 31</b></i>	<i><b>August 15, 2022</b></i>
Q2 2022	April 1 – June 30	November 16, 2022
Q3 2022	July 1 – September 30	February 15, 2023
Q4 2022	October 1 – December 31	May 15, 2023

IPPS hospitals are required to submit all data included in the IQR Program “in a form and manner, and at a time, specified by the Secretary[.]”<sup>28</sup> A hospital that does not submit its data in the form and manner, and at the time specified by the Secretary will have its APU reduced by one fourth for FY 2015 and subsequent FYs.<sup>29</sup> However, there may be exceptions to the reporting deadlines based on extraordinary circumstances pursuant to 42 C.F.R. § 412.140(c)(2) (2021):

(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,<sup>30</sup> **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.**<sup>31</sup> 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**

<sup>28</sup> 42 U.S.C. § 1395ww(b)(3)(B)(vii)(II); 42 C.F.R. § 412.140(c)(1).

<sup>29</sup> 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>30</sup> The reporting of electronic clinical quality measure (“eCQM”) data is a different component of the Hospital IQR Program that is not relevant to the instant appeal. It was implemented anticipating that, “[t]hrough electronic reporting, hospitals will be able to leverage EHRs to capture, calculate, and electronically submit quality data that is currently manually chart-abstracted and submitted to CMS for the Hospital IQR Program. . . . [and] as health information technology evolves and infrastructure is expanded, we will have the capacity to accept electronic reporting of many of the chart-abstracted measures that are currently part of the Hospital IQR Program.” 78 Fed. Reg. 50496, 50807 (Aug. 19, 2013). For the CY 2022 reporting period (impacting the FY 2024 payment determination), hospitals were required “to report one, self-selected calendar quarter of data for: (1) Three self-selected eCQMs; and (2) the finalized “safe use of Opioids –Concurrent Prescribing” eCQM with a clarification and update, for a total of four eCQMs” 84 Fed. Reg. 42044, 42505 (Aug. 16, 2019).

<sup>31</sup> (Emphasis added).

**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>32</sup>**

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

### ***A. Procedural History***

As previously noted, on March 9, 2023, McPherson received a letter from CMS noting that it “did not meet the Hospital [IQR] Program requirements impacting Fiscal Year 2024.”<sup>33</sup> The letter noted that the Hospital IQR Program required submission of the following data:

- Submission of COVID-19 Vaccination Coverage Among Health Care Personnel (HCP) data to NHSN, each quarter by the posted submission deadlines (Q1 2022-Q3 2022)<sup>34</sup>

The letter concluded that McPherson did not submit this data for Quarter 1, and thus “CMS expects to reduce McPherson Hospital’s Annual Payment Update by *one fourth*.”<sup>35</sup>

McPherson submitted an APU Reconsideration Request Form which was signed on March 16, 2023, explaining:

The Director of Employee Health resigned and left the organization. McPherson Hospital is a rural facility with limited staffing resources where multiple employees have a variety of roles/responsibilities. The Employee Health director responsibilities were divided and assigned to two different employees when the director left. The new employee supporting employee health did not have NHSN access to submit data. Data was collected. Request for access was made July 1, 2022, and the "Welcome to NHSN" email was sent on August 18, 2022. This was past the August 15 deadline. The employee attempted to sign on and access the system to report the data with difficulty and called the help desk multiple times to get this resolved into late September. When the employee health provider was finally able to get in it was past the due date. At that time, it would not allow the data to be entered for the past quarter. Since then the data has been entered and all data after Q1 has been entered. In addition to these circumstances our Facility Admin for NHSN went on medical/maternity leave. Moving forward we have requested multiple members of the quality team have access and training to provide back up for unexpected events like this. See attached data

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<sup>32</sup> (Emphasis added).

<sup>33</sup> Ex. C-1.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> *Id.* (emphasis in original).

for the missing Quarter 1. Please reconsider this for the APU decision.<sup>36</sup>

On May 12, 2023, CMS issued a decision titled Notice of Quality Reporting Program Noncompliance Decision Upheld, which stated that CMS “reviewed your reconsideration request and decided to uphold the decision to reduce the FY 2024 APU.”<sup>37</sup>

### ***B. Positions of the Parties***

The Provider filed a Preliminary Position Paper (“PPP”) on July 3, 2024. It noted that “Data regarding COVID 19 vaccinations in acute care hospitals was required by CMS from October 2021 until May of 2022. (Pursuant to NHSN and 42 C.F.R. Part 412, subpart H, final rule 87 FR 48780)[,]” but argued that extraordinary circumstances prevented the timely submission of this data for the first quarter.<sup>38</sup> It explained that “[d]uring the COVID-19 pandemic, the Hospital suffered extreme staffing shortages, including a lack of full-time employees”<sup>39</sup> and “[t]he employee responsible for submitting the quality data for the Hospital resigned in the Spring of 2022.”<sup>40</sup>

McPherson alleged that it contacted NHSN in May and June of 2022 regarding access to the reporting system, but did not hear back until July 1.<sup>41</sup> McPherson claims it followed the instructions from NHSN but could still not access the reporting system and contacted NHSN again.<sup>42</sup> The Provider received a reply from NHSN on August 18, 2022 (after the reporting deadline), but did not have access to the SAMS portal required to report the data and was not granted said access until September 22, 2022, at which time it uploaded the missing data.<sup>43</sup>

The Provider explains that:

CMS may grant an exception to the quality reporting requirements pursuant to 42 C.F.R. 412.140(c)(2)(i) and (ii).

‘CMS may grant an exception to one or more hospitals that have not requested an exception if: CMS determines that a systematic 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.’  
42 C.F.R. 412.140(c)(2)(ii).<sup>44</sup>

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<sup>36</sup> Ex. C-10 at C-0087.

<sup>37</sup> Ex. C-2 at C-0007.

<sup>38</sup> McPherson Hospital Preliminary Position Paper, ¶¶ 8-9 (July 3, 2024).

<sup>39</sup> *Id.* at ¶ 10.

<sup>40</sup> *Id.* at ¶ 11.

<sup>41</sup> *Id.* at ¶¶ 13-15.

<sup>42</sup> *Id.* at ¶¶ 16-19.

<sup>43</sup> *Id.* at ¶¶ 20-22.

<sup>44</sup> *Id.* at 4.

The Provider noted that the CDC website says “it takes ‘1-2 days’ to gain access for a new user in [the] NHSN system”, and that SAMS “registration can be completed ‘in as little as 10 minutes’” but that NHSN’s delay in communication created extraordinary circumstances resulting in the hospital’s inability to report its data.<sup>45</sup> They also suggest that the COVID-19 pandemic created extraordinary circumstances for hospitals, in general.<sup>46</sup>

The Medicare Contractor filed a PPP on October 29, 2024. It noted that 42 C.F.R. § 412.140(c)(2)(ii) permits CMS to grant exceptions to the quality reporting requirements but “[t]here is nothing in the record to suggest that CMS has granted an exception under this section.”<sup>47</sup> The Medicare Contractor suggests that McPherson could have requested an exception under 42 C.F.R. § 412.140(c)(2)(i), which allows providers to request an exception “[f]or circumstances relating to the reporting of electronic clinical quality measures,”<sup>48</sup> but notes there is nothing in the record to show such a request was made or approved.<sup>49</sup> The Medicare Contractor also points out that the record does not show the attempts in May and June of 2022 to contact NHSN regarding access for quality data reporting.<sup>50</sup>

The Provider filed a Final Position Paper (“FPP”) on February 13, 2025 to supplement the facts from its PPP.<sup>51</sup> It included the May 11, 2022 emails requesting access to the NHSN and SAMS portals.<sup>52</sup> The emails show that SAMS immediately instructed McPherson to contact NHSN by email and request a new invitation to the SAMS portal.<sup>53</sup> However, NHSN did not reply to McPherson’s May 11 email until July 1, 2022, where it provided instructions which McPherson says it followed the same day.<sup>54</sup> The Provider did not receive a registration email until August 18, 2022.<sup>55</sup> This email noted that “[d]ue to the volume of registrants it may take up to 24 business hours to receive your SAMS registration . . . . If you have not received your SAMS registration after 24 business hours, please contact NHSN@cdc.gov[.]”<sup>56</sup> McPherson’s employee followed up with NHSN on September 22, 2022 about whether it had been “added . . . as a user?”<sup>57</sup> NHSN emailed McPherson the same day noting that a SAMS invite should be received in 2-3 hours.<sup>58</sup>

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<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 5-6.

<sup>47</sup> MAC Preliminary Position Paper at 8 (Oct. 29, 2024).

<sup>48</sup> 42 C.F.R. § 412.140(c)(2)(i).

<sup>49</sup> MAC Preliminary Position Paper at 8-9. Here, the Medicare Contractor erroneously cited to the extraordinary circumstance exception request deadline of April 1 for “circumstances relating to the reporting of electronic clinical quality measures.” Electronic clinical quality measures, referred to as “eCQM,” are separate and distinct Hospital IQRP data requirements submitted through the Hospital Quality Reporting Portal, not NHSN. The COVID-19 HCP vaccination data measure at issue in this appeal is submitted via NHSN and falls under the “within 90 days of the date that the extraordinary circumstances occurred” category addressed in 42 C.F.R. § 412.140(c)(2)(i) as of October 1, 2021. Note that as of October 1, 2025, 42 C.F.R. § 412.140(c) has been amended and eliminates the distinction between eCQM data and non-eCQM data.

<sup>50</sup> *Id.* at 9.

<sup>51</sup> McPherson Hospital Final Position Paper, ¶ 2 (Feb. 13, 2025).

<sup>52</sup> *Id.* at ¶¶ 3-4; Exs. 3 and 4.

<sup>53</sup> Ex. 5.

<sup>54</sup> McPherson Hospital Final Position Paper at ¶¶ 6-8; Ex. 6.

<sup>55</sup> *Id.* at ¶ 10; Ex. 8.

<sup>56</sup> Ex. 8.

<sup>57</sup> Ex. 10 at P016.

<sup>58</sup> Ex. 12 at P019.

The Medicare Contractor filed a FPP on March 14, 2025. In the FPP, the Medicare Contractor rebuts the Provider's argument that the COVID-19 pandemic impacted its ability to meet its quality reporting requirements. The Medicare Contractor states:

On March 27, 2020, CMS published the Exception and Extensions for Quality Reporting Requirements (MLN). In it, CMS announced quality reporting relief to, among other provider types, Acute Care Hospitals. Those exemptions and extensions expired well before the January 1, 2022 reporting period start date.<sup>59</sup>

The Medicare Contractor reiterates that no exceptions were requested pursuant to 42 C.F.R. § 412.140(c)(2)(i).<sup>60</sup> With regard to the staffing issues alleged by the Provider, the Medicare Contractor argues:

The Fiscal Year 2024 Hospital Inpatient Quality Reporting Program Guide encouraged providers to 'have at least two active NHSN users who have the ability to enter HCP data. **This practice may help hospitals meet data submission deadlines in the event one of the NHSN users becomes unavailable.**'<sup>61</sup>

### *C. Discussion and Decision of the Board*

McPherson's APU for FY 2024 was reduced by one fourth because it did not submit its quality reporting data for Q1 2022 (January 1 through March 31, 2022), which was due by August 15, 2022.<sup>62</sup> Neither party disputes that the quality reporting data was not, in fact, submitted by August 15, 2022.<sup>63</sup> McPherson argues that "extreme staffing shortages" during the COVID-19 pandemic qualify as extraordinary circumstances which should excuse the late submission of data.<sup>64</sup> It argues that, because of these staffing shortages, "the Hospital was unable to have more than one person credentialed at a time for the data reporting requirements of CMS."<sup>65</sup> McPherson also contends that "the failures on the part of NHSN" caused its employee to be "unable to gain access to the reporting system prior to the submission deadline."<sup>66</sup>

In 2022, McPherson was experiencing a high volume of patients and relied on supplemental agency staffing to meet the needs of the hospital.<sup>67</sup> In the beginning of 2022, only one person had access to NHSN to upload the Hospital IQR Program data<sup>68</sup> and she abruptly resigned on

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<sup>59</sup> MAC Final Position Paper at 7 (citing Exs. C-4 and C-11) (Mar. 14, 2025).

<sup>60</sup> *Id.* at 7-8.

<sup>61</sup> *Id.* at 9 (citing Ex. C-7 at C-0057) (emphasis in original).

<sup>62</sup> Exs. C-1 & C-6.

<sup>63</sup> McPherson Hospital Preliminary Position Paper at ¶ 9 ("The Hospital collected all required data, but because of extraordinary circumstances, was unable to report the first quarter of data by the submission date.").

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 4-5.

<sup>67</sup> Tr. at 15.

<sup>68</sup> *Id.* at 16.

May 2, 2022.<sup>69</sup> Upon her resignation, the position was split amongst two other individuals, one of whom continued to collect the required data but could not upload it to NHSN since she lacked access to the system.<sup>70</sup> The two positions were an Infection Control Coordinator and an Employee Health physician assistant.<sup>71</sup>

The steps taken by McPherson and its staff to gain access to NHSN and SAMS are documented through several emails in the record.<sup>72</sup> Though the original request for assistance is not in the record,<sup>73</sup> it appears that the Infection Control Coordinator contacted the SAMS help desk and, on May 11, 2022, the help desk instructed the recipient to “[p]lease have the individuals contact NHSN by email and request a new invitation to the SAMS portal.” The NHSN email address was also provided, and the Infection Control Coordinator forwarded this help desk email to the Employee Health physician assistant,<sup>74</sup> who then emailed NHSN the same day stating, “I was informed that I need to register for this.”<sup>75</sup>

On July 1, 2022, NHSN replied by email to the Employee Health physician assistant with instructions for McPherson’s facility administrator to add a user to the facility in NHSN.<sup>76</sup> The e-mail also noted that the new user should receive an email shortly thereafter to complete their registration in NHSN, which would automatically prompt an invitation to the new user for SAMS.<sup>77</sup>

On July 14, 2022, an unknown McPherson employee received an automated message from NHSN to review and correct their quality reporting data, if necessary.<sup>78</sup> On August 18, 2022, **three days after the reporting deadline for Q1 2022**, internal e-mails show the Infection Control Coordinator inquiring to the Employee Health physician assistant.<sup>79</sup>

Were you ever able to get into this?

Im [sic] unsure if it’s our network or something with their site that is giving me trouble with my reporting so I had wondered if the request ever went through.<sup>80</sup>

The Employee Health physician assistant was apparently not registered with NHSN at this time, replying that she had just received an email to register,<sup>81</sup> though that e-mail was not included in

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<sup>69</sup> *Id.* at 17, 30, 64.

<sup>70</sup> *Id.* at 18.

<sup>71</sup> *Id.* at 22, 25, 29.

<sup>72</sup> The Board notes that the e-mails in the record have the senders’ and recipients’ e-mails redacted. There was some confusion as to who sent or received which e-mails, *see, e.g.*, Tr. at 33-38, but the witnesses were able to identify the majority of the interactions, and any discrepancies are immaterial to the Board’s decision.

<sup>73</sup> *See id.* at 33-34.

<sup>74</sup> Ex. 3. *See also* Tr. at 28, 74.

<sup>75</sup> Ex. 4. *See also* Tr. at 35, 74-75.

<sup>76</sup> Ex. 6. *See also* Tr. at 75.

<sup>77</sup> Ex. 6.

<sup>78</sup> Ex. 7. *See also* Tr. at 42-43.

<sup>79</sup> *See also* Tr. at 77-78.

<sup>80</sup> Ex. 9 at P013. *See also* Tr. at 78.

<sup>81</sup> *Id.*

the record. The Infection Control Coordinator replied noting “[w]ell I had thought I sent it and then got nervous and redid it. But then it said it was already in use[.]”<sup>82</sup> The exhibits then show screenshots of the Employee Health physician assistant completing the registration and later acknowledging “I’m registered with NHSN. Waiting on SAMS verification.”<sup>83</sup> The record also contains an e-mail received by the Employee Health physician assistant that same day from NHSN confirming registration but also noting that SAMS registration was still pending, that an invitation would be forthcoming within 24 business hours, and to contact NHSN if it was not received.<sup>84</sup>

On September 22, 2022, the Employee Health physician assistant e-mailed the Infection Control Coordinator:

Have you added me as a user? I feel like we’ve already gone through this process but I’d rather do it twice to know it’s done[.]<sup>85</sup>

The Infection Control Coordinator replied with a screenshot showing her email address was already in use.<sup>86</sup> She also emailed NHSN the same day indicating she was still having trouble getting her employee “into NHSN[.]”<sup>87</sup> Later that day, NHSN sent an e-mail to the Employee Health physician assistant indicating that she was being invited to SAMS and that an invitation was forthcoming, but that registration was expected to take 30 days or longer.<sup>88</sup> The Employee Health physician assistant is not sure when, exactly, she was granted access to SAMS,<sup>89</sup> nor does the record not indicate the specific date.

The Board reiterates that the data that was not timely submitted related to Q1 2022 (*i.e.*, January 1 – March 31, 2022). The individual who was previously reporting the COVID-19 vaccination data, and who had access to NHSN and SAMS, did not resign from McPherson until May 2, 2022,<sup>90</sup> more than a month after the data would have been available for reporting. Indeed, the record indicates the first five weeks of Q1 2022 (*i.e.*, from December 27, 2021 through January 30, 2022) were submitted between January 19 – 26, 2022, as indicated by the “Date Created” and “Date Last Modified” fields.<sup>91</sup> However, beginning with the “Week of Data Collection” for January 31, 2022 to February 6, 2022 (prior to the employee’s resignation on May 2), the fields for “Date Created” and “Date Last Modified” indicate entries made between March 10 and 15, 2023. This was *immediately* prior to the signature date of March 16, 2023 on the APU Reconsideration Request Form—indicating the data was not actually submitted to NHSN until CMS had already notified McPherson that its data was missing and its APU was being reduced.

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<sup>82</sup> *Id.* at P012.

<sup>83</sup> *Id.* at P010-P012.

<sup>84</sup> Ex. 8. *See also* Tr. at 76.

<sup>85</sup> Ex. 10 at P016. *See also* Tr. at 46-47, 80.

<sup>86</sup> *Id.* at P015.

<sup>87</sup> Ex. 11. *See also* Tr. at 47, 81.

<sup>88</sup> Ex. 12. *See also* Tr at 49.

<sup>89</sup> Tr. at 97-98, 121.

<sup>90</sup> *Id.* at 17, 30, 64.

<sup>91</sup> Ex. C-10 at 4-13.

The Provider argues that, in addition to “the failures on the part of NHSN,” due to staffing shortages, “the Hospital was unable to have more than one person credentialed at a time for the data reporting requirements of CMS.”<sup>92</sup> With regard to staffing shortages being the cause of this, the Board notes that, in the FY 2024 Hospital Inpatient Quality Reporting Program Guide, published in December, 2021, CMS *specifically* states:

**Best Practice:** It is highly recommended that hospitals have at least two active NHSN users who have the ability to enter HCP data. **This practice may help hospitals meet data submission deadlines in the event one of the NHSN users becomes unavailable.**<sup>93</sup>

Yet, while McPherson blames its inability to have more than one person registered on staffing shortages at that time, as a corrective action in response to the APU reduction at issue in this appeal, *it now has at least five employees* registered with access to submit quality data, including the Chief Operating Officer.<sup>94</sup>

The Board also notes that there were significant periods of time between any attempts by McPherson to gain access to NHSN and SAMS. McPherson had an affirmative obligation to ensure its data was timely submitted but the record demonstrates a lack of diligence in ensuring the necessary registrations were being processed. The record does not show any attempts were made to follow up with NHSN between May 11 and July 1 (51 days); between July 14 and August 18 (35 days); or between August 18 and September 22 (35 days).<sup>95</sup>

Ultimately, the Board finds unpersuasive McPherson’s arguments that it was impacted by “the extraordinary circumstances caused by the pandemic and staffing shortages” and that “[w]hen reviewing the ‘extraordinary circumstances’ exception under 42 C.F.R. § 412.140(c)(2)(ii), certainly a global pandemic and the effects of it qualifies as extraordinary circumstances as outlined in the regulations.”<sup>96</sup> And although McPherson *now* requests consideration under 42 C.F.R. § 412.140(c)(2)(ii), McPherson failed to request an exception based on its own extraordinary circumstances pursuant to 42 C.F.R. § 412.140(c)(2)(ii), or if it did, there is nothing in the record to substantiate this was done. Moreover, only CMS may grant such an exception under 42 C.F.R. § 412.140(c)(2); pursuant to 42 C.F.R. § 412.140(e)(3), the Board’s review is limited to a hospital’s dissatisfaction “with a decision made by CMS on its reconsideration request.” Nothing in the record indicates that McPherson’s reconsideration request is premised upon CMS’ denial of a timely exception request under 42 C.F.R. § 412.140(c)(2). Additionally, as it relates to the COVID-19 pandemic, in accordance with 42 C.F.R. § 412.140(c)(2)(ii), CMS exercised its discretion with regard to certain NHSN reporting during the COVID-19 pandemic,<sup>97</sup> but this exception was never applicable to COVID-19 Coverage Among Health Care Personnel (HCP) data for Q1 2022.

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<sup>92</sup> McPherson Preliminary Hospital Position Paper at 4-5.

<sup>93</sup> Ex. C-7 at 15 (emphasis in original).

<sup>94</sup> Tr. at 26, 50, 81.

<sup>95</sup> See, e.g., Tr. at 52-53.

<sup>96</sup> McPherson Preliminary Hospital Position Paper at 5-6.

<sup>97</sup> MLN Connects Newsletter at 4 (Mar. 27, 2020) (Copy at Ex. C-11).

The Board is bound by all provisions of Title XVIII of the Social Security Act and regulations issued thereunder and has no authority to provide equitable relief.<sup>98</sup> IPPS hospitals are required to submit all data included in the IQR Program “in a form and manner, and at a time, specified by the Secretary[.]”<sup>99</sup> A hospital that does not submit its data in the form and manner, and at the time specified by the Secretary will have its APU reduced by one fourth for FY 2024.<sup>100</sup> It is undisputed that McPherson did not submit its quality reporting data for Q1 2022 by the applicable deadline.<sup>101</sup> There is no evidence that McPherson requested, or that CMS granted, any exception to this deadline pursuant to 42 C.F.R. § 412.140(c)(2). Based on the foregoing, the Medicare Contractor’s reduction of McPherson’s FY 2024 APU was appropriate.

**DECISION:**

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds the Medicare Contractor properly imposed a one fourth reduction to McPherson’s FY 2024 APU.

**BOARD MEMBERS PARTICIPATING:**

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Ratina Kelly, CPA  
Nicole E. Musgrave, Esq.  
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**FOR THE BOARD:**

3/12/2026

**X** Kevin D. Smith, CPA

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

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<sup>98</sup> 42 C.F.R. § 405.1867.

<sup>99</sup> 42 U.S.C. § 1395ww(b)(3)(B)(vii)(II) (2021); *See also* 42 C.F.R. § 412.140(c)(1) (2021).

<sup>100</sup> 42 C.F.R. § 412.64(d)(2)(i)(C).

<sup>101</sup> McPherson Hospital Preliminary Position Paper at ¶ 9 (“The Hospital collected all required data, but because of extraordinary circumstances, was unable to report the first quarter of data by the submission date.”).