

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2026-D17

PROVIDER –
Harris Health System

VIDEO HEARING DATE –
April 9, 2025

PROVIDER NO. –
45-0289

FEDERAL FISCAL YEAR –
2023

vs.

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

CASE NO. –
23-0534

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ISSUE STATEMENT:

Whether the Medicare Contractor's reduction of Harris Health System's ("Harris Health" or "Provider") Federal Fiscal Year ("FFY") 2023 Annual Payment Update ("APU") for alleged noncompliance with the requirements for Hospital Inpatient Quality Reporting ("IQR") was proper.¹

DECISION:

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board" or "PRRB") finds that the reduction of Harris Health's APU was proper.

INTRODUCTION:

Harris Health is an acute care hospital located in Houston, Texas.² The Medicare contractor³ assigned to Harris Health for this appeal is Novitas Solutions, Inc. c/o GuideWell Source ("Medicare Contractor").

By letter dated June 1, 2022, the Centers for Medicare & Medicaid ("CMS") notified Harris Health that its FY 2023 Inpatient Prospective Payment System ("IPPS") APU would be reduced by one fourth.⁴ The reduction was due to Harris Health's failure to submit the COVID-19 Vaccination Coverage Among Health Care Personnel ("HCP") data to the National Healthcare Safety Network ("NHSN") for Q4 2021.⁵ On June 6, 2022, Harris Health requested reconsideration of CMS' imposition of the penalty.⁶ CMS reaffirmed the payment reduction on July 28, 2022.⁷

¹ Hearing Transcript of Proceedings (hereinafter "Tr.") at 5:10-17 (Apr. 9, 2025).

² Harris Health describes itself as a "public health system." *See* Tr. at 8: 2-3. Harris Health is also an "acute care hospital." *See* Medicare Contractor's Final Position Paper (hereinafter "Medicare Contractor's FPP") at 1 (Jul. 11, 2024). During the proceedings, Harris Health identified Houston, Texas as its location. *See* Tr. at 8:3. The Medicare Contractor's FPP at 1, lists Bellaire, Texas as the location. For clarity, Bellaire is a neighbor to Houston in Harris County, Texas. *See* https://hcoed.harriscountytexas.gov/MapRoom_cities.aspx (last accessed May 26, 2026). Harris Health's facilities are located throughout the Houston-Bellaire area. *See* <https://www.harrishealth.org/locations/hhs> (last accessed May 26, 2026).

³ CMS' payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries ("FIs") and these functions are now contracted with organizations known as Medicare Administrative Contractors ("MACs"). The term "Medicare contractor," as used herein, refers to both FIs and MACs as appropriate and relevant.

⁴ Exhibit (hereinafter "Ex.") C-3 (Hospital Inpatient Quality Reporting Program Phase 2 Annual Payment Update Notification Letter) at C-0009.

⁵ *Id.*; *see also* Medicare Contractor's FPP at 4.

⁶ Ex. P-4 (Completed/Filed June 6, 2022, APU Reconsideration Request Form Hospital) and Ex. P-4a (Letter Requesting Reconsideration). (The Board will cite to the exhibit numbers as reported in the Provider's Preliminary Position Paper, noting that the Provider re-uploaded their exhibits on March 28, 2025, and re-numbered, but did not provide an updated listing.)

⁷ *See* Ex. P-3 (Notice of Quality Reporting Program Noncompliance Decision Upheld).

Harris Health timely appealed CMS' determination to the Board and met the jurisdictional requirements for a hearing. The Board held a live video hearing via Zoom on April 9, 2025. Harris Health was represented by Julie Rabat-Torki of Harris Health System. The Medicare Contractor was represented by Robert A. Evarts, Esq. of Federal Specialized Services.

STATEMENT OF RELEVANT FACTS:

The submission deadline for 2021 COVID-19 Vaccination Coverage Among Healthcare Personnel – Q4 data for the Hospital Inpatient Quality Report (Hospital IQR) Program was May 16, 2022.⁸ The Harris Health employee responsible for collecting and reporting of the data was not aware of the CMS reporting deadline.⁹ Consequently, Harris Health did not submit the 2021 COVID-19 Vaccination Coverage Among Healthcare Personnel – Q4 data for the Hospital Inpatient Quality Report (Hospital IQR) Program.¹⁰

In its Request for Reconsideration, Harris Health stated that “[i]t was our unintended oversight that such data was not submitted as required, and we are working diligently to correct this.”¹¹ Harris Health also indicated that it was “having issues with our NHSN account login.”¹² Upon review, CMS *upheld* the noncompliance decision on Reconsideration.¹³

Harris Health is also a participant in the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program and its psychiatric sub-unit also received a notice of non-compliance.¹⁴ As a result, Harris Health also submitted a Request for Reconsideration for their non-compliance with the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program.¹⁵ By contrast to its Hospital IQR Program reconsideration request, CMS *overturned* the noncompliance decision for the IPFQR Program upon reconsideration.¹⁶

STATEMENT OF RELEVANT LAW:

A. Quality Reporting Requirements for Acute Care Hospitals

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

⁸ Ex. C-5 at C-0015 (Hospital Quality Reporting Important Deadlines and Dates).

⁹ Ex. P-1 (Initial Hearing Request) at 5 (Issue Statement).

¹⁰ Provider's Final Position Paper (hereinafter “Provider's FPP”) at 4 (Jun. 17, 2024). For informational purposes, Harris Health filed a “Responsive Position Paper” with the Board on March 6, 2025, which is identical in all respects to Provider's FPP. Because there is no difference between the two papers, the Board refers only to Provider's FPP.

¹¹ Ex. P-4a.

¹² Ex. P-4.

¹³ Provider's FPP at 4. *See also* Ex. P-3.

¹⁴ Provider's FPP at 5. Harris Health did not provide the referenced notice of non-compliance for the IPFQR Program. However, Ex. P-5a (Letter Requesting Reconsideration – CCN# 45S289 Inpatient Psych) indicates the notice was dated September 8, 2022.

¹⁵ Provider's FPP at 5. *See also* Ex. P-5 (Completed/Filed Sept. 20, 2022, APU Reconsideration Request Letter Psych Sub-Provider Unit).

¹⁶ *See* Provider's FPP at 5. *See also* Ex. P-6 (Notice of Quality Reporting Program Noncompliance Decision Overturned).

- (c) Submission and validation of Hospital IQR Program data.
- (1) General rule. Except as provided in paragraph (c)(2) of this section, subsection (d) hospitals that participate in the Hospital IQR Program must submit to CMS data on measures selected under section 1886(b)(3)(B)(viii) of the Act ***in a form and manner, and at a time, specified by CMS***. A hospital must begin submitting data on the first day of the quarter following the date that the hospital submits a completed Notice of Participation form under paragraph (a)(3) of this section.
- (2) Extraordinary circumstances exceptions. CMS may grant an exception with respect to quality data reporting requirements in the event of extraordinary circumstances ***beyond the control of the hospital***. CMS may grant an exception as follows:
- (i) For circumstances not relating to the reporting of electronic clinical quality measure data, a hospital participating in the Hospital IQR Program that wishes to request an exception with respect to quality data reporting requirements must submit its request to CMS within 90 days of the date that the extraordinary circumstances occurred. For circumstances relating to the reporting of electronic clinical quality measures, a hospital participating in the Hospital IQR Program that wishes to request an exception must submit its request to CMS by April 1 following the end of the reporting calendar year in which the extraordinary circumstances occurred. Specific requirements for submission of a request for an exception are available on QualityNet website.
- (ii) CMS may grant an exception to one or more hospitals that have not requested an exception if: CMS determines that a systemic problem with CMS data collection systems directly affected the ability of the hospital to submit data; or if CMS determines that an extraordinary circumstance has affected an entire region or locale.¹⁷

A hospital that fails to report the required quality data under the IQR program is penalized by a reduction of the hospital's Inpatient Prospective Payment System ("IPPS") market basket percentage increase for the relevant year, as explained in 42 C.F.R. § 412.64(d)(2)(i) (Oct. 1, 2021):

- (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

¹⁷ (Bold and italics emphasis added.)

the market basket index (as defined in § 413.40(a)(3) of this chapter) for prospective payment hospitals is reduced –

...

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

B. COVID-19 Vaccination Coverage Among HCP measure

Following the onset of the COVID-19 pandemic, CMS announced its intent to incentivize and track vaccination of healthcare providers (“HCP”) in acute care facilities through quality measurement.¹⁸ The inaugural COVID-19 Vaccination Coverage Among HCP measure began with a reporting period from October 1 to December 31, 2021 (Q4 of 2021) for the FY 2023 payment determination.¹⁹ CMS required hospitals to submit vaccination data through the National Healthcare Safety Network (“NHSN”) Healthcare Personnel Safety (“HPS”) Component before the quarterly deadline.²⁰ In this instance, the deadline for Q4 of 2021 was May 16, 2022.²¹ The new requirement to report COVID-19 Vaccination Coverage Among HCP published in the Aug. 13, 2021 Federal Register, and provides:

j. Data Submission and Reporting Requirements for CDC NHSN Measures

For details on the data submission and reporting requirements for measures reported via the CDC’s National Healthcare Safety Network (NHSN), we refer readers to the FY 2012 IPPS/LTCH PPS final rule (76 FR 51629 through 51633; 51644 through 51645), the FY 2013 IPPS/LTCH PPS final rule (77 FR 53539), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50821 through 50822), and the FY 2015 IPPS/LTCH PPS final rule (79 FR 50259 through 50262). The data submission deadlines are posted on the QualityNet website.

In addition, we refer readers to section VIII.C.5.c. of the preamble of this final rule for more detail on our finalized proposal to adopt the COVID-19 Vaccination Coverage Among HCP measure, which requires facilities to report data on the number of HCP who have received the full regimen of a COVID-19 vaccine through the CDC’s NHSN. *Specific details on data submission for this measure can be found in the CDC’s Overview of the Healthcare Safety Component*, available at:

¹⁸86 Fed. Reg. 44774, 45375 (Aug. 13, 2021) (citing 86 Fed. Reg. 25070, 25571-25575 (May 10, 2021)).

¹⁹ *Id.* at 45382.

²⁰ *Id.* at 45377. See also Ex. C-4 (NHSN Weekly COVID-19 Vaccination Reporting); Ex. C-5 (Hospital Quality Reporting Important Deadlines and Dates); Ex. C-6 (Measure Specification: NHSN COVID-19 Vaccination Coverage Updated August 2021); Ex. C-9 (FAQs on Reporting COVID-19 Vaccination Data Sept. 2021).

²¹ Ex. C-5 at C-0015.

https://www.cdc.gov/nhsn/PDFs/slides/NHSN-Overview-HPS_Aug2012.pdf. For this measure, we will require reporting a single vaccination count for each healthcare facility by each individual facility's CMS Certification Number (CCN). For each CMS CCN, a percentage of the HCP who received a complete course of the COVID-19 vaccination will be calculated and publicly reported on the Care Compare website, so that the public will know what percentage of the HCP have been vaccinated in each hospital.

Consistent with our adopted policies for CDC NHSN measures in the Hospital IQR Program, hospitals will report the measure through the NHSN web-based surveillance system.

Specifically, ***hospitals will use the COVID-19 vaccination data reporting modules in the NHSN Healthcare Personnel Safety (HPS) Component*** to report the number of HCP eligible to have worked at the facility during the self-selected week (denominator) and the number of those HCP who have received COVID-19 vaccination (numerator).

For the COVID-19 HCP Vaccination measure, we proposed that hospitals would collect the numerator and denominator for the COVID-19 HCP vaccination measure for at least one self-selected week during each month of the reporting quarter and submit the data to the NHSN Healthcare Personal Safety (HPS) Component before the quarterly deadline to meet Hospital IQR Program requirements, beginning in October 2021 for the October 1, 2021 through December 31, 2021 reporting period affecting FY 2023 payment determination and continuing for each quarter in subsequent years. If a hospital submits more than one week of data in a month, the most recent week's data would be used to calculate the measure. For example, if first and third week data are submitted, third week data would be used. If first, second, and fourth week data are submitted, fourth week data would be used. We proposed that for each quarter, the CDC would calculate a single quarterly COVID-19 HCP vaccination coverage rate for each hospital by taking the average of the data from the three weekly rates submitted by the hospital for that quarter. CMS will publicly report each quarterly COVID-19 HCP vaccination coverage rate as calculated by the CDC.²²

²² 86 Fed. Reg. 44774, 45422 (Aug. 13, 2021) (bold/italic emphasis added, footnotes omitted).

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.”²³

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.”²⁴ In *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 217 (1938), the U.S. Supreme Court held, “[s]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁵ 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.”²⁶ 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.”²⁷

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

To find in favor of Harris Health (*i.e.*, to find that the one-fourth APU reduction does *not* apply), the Board must find that Harris Health submitted the Hospital IQR program quality data in the “*form and manner, and at a time, specified by CMS.*”²⁸ As established above, the quality data must be submitted through the NHSN portal (form and manner), and prior to the quarterly deadlines (time). Each year, information on the form and manner, and time requirements are published by CMS.²⁹

A. Form, Manner, and Time

Harris Health acknowledges they did not submit the COVID-19 HCP data for Q4 by May 16, 2022, which was the deadline.³⁰ Harris Health admits to “miscommunication internally within [the] organization” that led to missing the deadline.³¹ Harris Health contends that responding to

²³ 42 C.F.R. § 405.1871(a)(3).

²⁴ 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).

²⁵ *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F. 4th 1252, 1258-59 (D.C. Cir. 2023).

²⁶ 42 C.F.R. § 405.1853(a)(3).

²⁷ 42 C.F.R. § 405.1867.

²⁸ 42 C.F.R. § 412.140(c)(1) (as of Oct. 1, 2021) (*italics emphasis added*).

²⁹ *See* Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide (available at https://www.qualityreportingcenter.com/globalassets/2021/11/hospital-iqr-fy-2023-program-guide_nov508.pdf) (last accessed May 27, 2026).

³⁰ *See* Provider’s FPP at 4.

³¹ Tr. at 46:21 - 22.

the COVID-19 pandemic led to missing notices regarding the due dates.³² The Medicare Contractor counters Harris Health's contention arguing that Harris Health did not provide any documentation to support its reconsideration request . . . [and] does not provide a sufficient argument or compelling evidence" that supports overturning the noncompliance decision.³³ The Board agrees. Internal miscommunication does not excuse Harris Health's obligation to comply with Hospital IQR Program requirements. The requirements were published in the Federal Register, which is updated annually and provides constructive notice of any updates to the Hospital IQR Program requirements, including new measures.³⁴ Moreover, CMS published guidance that provided instructions on submitting the data measure, including "Hospital Quality Reporting Important Dates and Deadlines."³⁵ Accordingly, the Board finds that the record does not support that Harris Health submitted the required Q4 2021 COVID-19 Vaccination HCP data in the *form, manner, and time* specified by CMS.

B. Exception and Extension Requirements

1. The "Extraordinary Circumstances" Exception Request

A hospital may request an exception or extension to the Hospital IQR Program requirements in certain extraordinary circumstances *beyond the control of the hospital*.³⁶ Harris Health states their employees were "over-burdened" with "CMS (and other agency) requests for COVID related data, all through-out the pandemic[.]"³⁷ Harris Health requests that a "small amount of leniency be given" by the Board in consideration of the toll it claims was taken on its employees during the public health emergency ("PHE") in 2021.³⁸ While the Board appreciates that the pandemic was extremely difficult for hospitals, extraordinary circumstances exceptions must be requested of CMS within 90 days of the date that the extraordinary circumstances occurred.³⁹ Harris Health did not make any extraordinary circumstances exceptions request. The Board is not a tribunal of equity and has no authority to provide the requested equitable relief.⁴⁰

In addition to its references to the impact of the PHE, Harris Health indicates that, during the submission period, it was having "issues with NHSN set up and portal logins."⁴¹ Even at the time of Harris Health's reconsideration request, it was working with a support team to rectify the past-due reporting.⁴² However, during the hearing, the witness could not clarify what those issues were.⁴³ The witness presented testimony generically referring to issues with access to NHSN for the employee responsible for reporting but the testimony did not relate to technical issues beyond

³² See Provider's FPP at 4.

³³ Medicare Contractor's FPP at 6.

³⁴ Publication in the Federal Register is constructive notice of the contents of the document. See 44 U.S.C.A. § 1507.

³⁵ Ex. C-5; see also Exs. C-4 and C-6.

³⁶ 42 C.F.R. § 412.140(c)(2) (*italics emphasis added*).

³⁷ Provider's FPP at 4.

³⁸ *Id.* at 5.

³⁹ 42 C.F.R. § 412.140(c)(2)(i).

⁴⁰ See 42 C.F.R. § 405.1867.

⁴¹ Provider's FPP at 4.

⁴² Ex. P-4 at 2.

⁴³ See Tr. at 52:14 – 55:18.

the control of the hospital.⁴⁴ Also, there is no direct testimony regarding NHSN issues from the responsible employee. The witness presented also could not explain the delay in seeking resolution.⁴⁵ Further, Harris Health did not seek an extraordinary circumstances exception when it realized it was having trouble submitting the report.⁴⁶

2. Exceptions for a CMS Systemic Problem or Regional Impact

In the absence of an exception request, CMS may, on its own accord, grant an exception if it discovers a systemic problem with CMS data collection systems.⁴⁷ Here, the Board finds that there was no evidence presented to warrant a finding that CMS failed to grant an exception for a systemic problem with CMS' data collection systems that directly affected the ability of Harris Health to submit data, or failed to grant an exception for an extraordinary circumstance which affected the entire region or locale.

C. Reconsideration Requests

On appeal, Harris Health raised the issue that their psychiatric sub-unit faced an APU reduction for the same FFY under identical circumstances. Because CMS reversed the IPFQR Program penalty upon request for reconsideration, Harris Health reasons that the payment penalty should also be reversed for the Hospital IQR Program.⁴⁸

On June 1, 2022, CMS notified Harris Health that it did not meet the Hospital IQR Program requirement to submit the COVID-19 Vaccination Coverage Among Health Care Personnel data.⁴⁹ On June 6, 2022, Harris Health requested a reconsideration citing:

It was our unintended oversight that such data was not submitted as required, and we are working diligently to correct this.

We are in the process of submitting the required data in the NHSN database and expect to have this completed on or before June 24, 2022. In full transparency, we are having issues with our NHSN account login, and are working with their support team to get this corrected. We are also working on an action plan to ensure that this will not occur for any subsequent required reporting.⁵⁰

Nearly three months later, on September 8, 2022, CMS notified Harris Health that it “did not meet the [IPFQR Program] Annual Payment Update due to failure to submit COVID-19

⁴⁴ *Id.* at 46-48.

⁴⁵ *Id.* 52:14 – 54:1.

⁴⁶ *Id.* at 56:1 – 6.

⁴⁷ *See* 42 C.F.R. § 412.140(c)(2)(ii).

⁴⁸ *See* Tr. at 50:18 – 51:10. *See also* Provider's FPP at 5.

⁴⁹ *See* Ex. C-3.

⁵⁰ Ex. P-4a. *See also* Ex. P-4 at 2, “Due to a missed communication, we did not meet the required reporting deadline. We are in the process of submitting the data to the NHSN portal... We are having issues with our NHSN login... and are working [to] rectify the situation so that we may complete all past due reporting.”

vaccination data for healthcare personnel.”⁵¹ On September 26, 2022, Harris Health requested a reconsideration citing:

Our health system has been working diligently throughout the COVID-19 pandemic to respond to many data requests from various healthcare regulatory agencies as part of the COVID-19 pandemic response. The increased reporting workload and staffing shortages in administrative support areas have contributed to the missed the first “COVID vaccines for healthcare employees” deadline. In fact, this was our very first incident where required reporting obligation was not met. We ask that this can be taken into consideration when you review and make your reconsideration decision.

In addition, we were having issues with access to the facility NHSN account and the correct facility setup for the Inpatient Psychiatric unit as a distinct unit/department of the hospital. We have worked diligently with the NHSN support team and the issue was finally corrected. We were able to successfully submit Q1 2022 COVID-19 data, which was due on August 15, 2022.⁵²

Neither party provided information as to the rationale for CMS’ reconsideration decision for the psychiatric sub-unit (IPFQR) versus the Hospital IQR. Regardless, CMS’ reconsideration decision for the psychiatric sub-unit does not control the Board’s decision related to the Hospital IQR Program. Moreover, the IPFQR Program is governed by 42 C.F.R. § 412.433 while the Hospital IQR Program is governed by 42 C.F.R. § 412.140.⁵³ Furthermore, the mere submission of a reconsideration request does not guarantee that CMS will find that the submission meets the criteria for overturning a penalty decision. Accordingly, the Board finds that Harris Health failed to prove that CMS incorrectly denied the reconsideration request.

* * * * *

The Board is sympathetic to the challenges faced by health care providers during the COVID-19 pandemic. However, the challenges of COVID-19 were not unique to Harris Health and all participating providers bore the responsibility to report Hospital QRP Program data in the form, manner, and time specified by CMS.⁵⁴ The regulation at 42 C.F.R. § 412.140(c) leaves no flexibility. The Board is bound by all provisions of Title XVIII of the Social Security Act and

⁵¹ Ex. P-5a (Letter Requesting Reconsideration – CCN# 45S289 Inpatient Psych). Neither party submitted the inpatient psych annual payment update notification letter.

⁵² Ex. P-5a. *See also* Ex. P-5 at 2, “Harris Health was experiencing issues with NHSN account access and correct facility set up in NHSN portal for the hospital distinct inpatient psych unit. Multiple attempts were made, and eventually, NHSN was able to resolve the issue. Q1 2022 COVID-19 vaccine data was submitted on August 15, 2022.”

⁵³ The Board notes that the Hospital IQR Program is set forth in 42 C.F.R. Part 412, **Subpart H**. The IPFQR Program is set forth in 42 C.F.R. Part 412, **Subpart N**. These are two distinct subparts and may be treated differently.

⁵⁴ 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I) - (II) (2021); *See also* 42 C.F.R. § 412.140(c)(1) (2021).

regulations issued thereunder and has no authority to provide equitable relief.⁵⁵ 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 2023.⁵⁶ It is undisputed that Harris Health did not submit Q4 2021 COVID-19 data by the deadline.⁵⁷ There is no evidence that Harris Health requested, or that CMS granted, any exception to this deadline, pursuant to 42 C.F.R. § 412.140(c)(2). For the reasons stated herein, the Board concludes that Harris Health has not proven by a preponderance of substantial, relevant evidence that it is entitled to the relief sought.

DECISION:

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

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

5/28/2026

X Kevin D. Smith, CPA

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

⁵⁵ 42 C.F.R. § 405.1867.

⁵⁶ 42 C.F.R. § 412.64(d)(2)(i)(C).

⁵⁷ Provider FPP at 4. (“At the time of the newly required COVID Vaccine for Healthcare Workers reporting, [Harris Health] was actively responding to the COVID-19 Public Health Emergency (PHE), and as a result missed the deadline. [Harris Health] missed the multiple communications and public notices regarding the due date for the newly required reporting.”)