PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2026-D20

PROVIDER –
Samaritan Health Services FFY 2023 Quality Reporting Payment Reduction CIRP Group

PROVIDER NUMBERS –
38-0014 and 38-0022

vs.

MEDICARE CONTRACTOR –
Noridian Healthcare Solutions

VIDEO HEARING DATE –
May 7, 2025

FEDERAL FISCAL YEAR –
2023

CASE NO. –
23-0506GC

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ISSUE STATEMENT:

Whether the Centers for Medicare and Medicaid Services' ("CMS") reduction of the hospitals' Federal Fiscal Year ("FFY") 2023 Annual Payment Updates ("APUs") (by one-fourth) for alleged non-compliance with the requirements for the Hospital Inpatient Quality Reporting ("IQR") was proper?[1]

DECISION:

After considering Medicare law and regulations, the arguments presented, and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds that CMS' reduction of the Provider's FFY 2023 APU by one-fourth and its subsequent exclusion of the Providers from the Hospital Value-Based Purchasing ("VBP") Program was proper.

INTRODUCTION:

Good Samaritan Regional Medical Center (Provider Number 38-0014) and Samaritan Albany General Hospital (Provider Number 38-0022) (collectively, "Providers") are Medicare participating acute care hospitals located in Corvallis, Oregon and Albany, Oregon, respectively.[2] The Providers are participants in the Samaritan Health Services FFY 2023 Quality Reporting Payment Reduction CIRP Group ("Samaritan Health").[3] The Providers' Medicare contractor[4] is Noridian Healthcare Solutions ("Medicare Contractor").

On June 1, 2022, CMS notified the Providers that they "did not meet the Hospital Inpatient Quality Reporting (IQR) Program requirements impacting Fiscal Year 2023,"[5] therefore, their APU for FFY 2023 would be reduced by one-fourth. CMS determined that the Providers did not submit the COVID-19 Vaccination Coverage Among Health Care Personnel Data ("CVCD") to CMS through the National Healthcare Safety Network ("NHSN") for the fourth quarter of calendar year ("CY") 2021 ("Q4 2021").[6] Following the Providers' June 22, 2022 Requests for Reconsideration, CMS issued reconsideration decisions on July 28, 2022, upholding the payment reductions.[7]

On December 16, 2022, CMS notified the Providers that they were not eligible for the 2023 Hospital Value-Based Purchasing ("HVBP") Program incentive payment because they did not meet the requirements of the Hospital IQRP.[8] The Providers timely appealed CMS' determination to the Board on January 12, 2023, and met the jurisdictional requirements for a

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[1] *See* Transcript of Proceedings (hereinafter "Tr.") at 5; *see also* Medicare Contractor's Final Position Paper (hereinafter "Medicare Contractor's FPP") at 4 (Mar. 7, 2025).
[2] Stipulations of the Parties (hereinafter "Stip.") at ¶¶ 1 and 2 (Apr. 30, 2025).
[3] *Id.* at ¶ 1; Providers' Final Position Paper (hereinafter "Providers' FPP") at 1 (Feb. 5, 2025).
[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 with organizations knows as Medicare Administrative Contractors ("MACs"). The term "Medicare contractor," as used herein, refers to both FIs and MACs as appropriate and relevant.
[5] *See, e.g.,* Ex. P-8 at 1 (Feb. 5, 2025).
[6] Providers' FPP at 2-3, *see also* Ex. P-8, Stip. at ¶¶ 19 and 22.
[7] Providers' FPP at 3, Ex. P-9, P-10, P-12, P-13 (Feb. 5, 2025); s*ee also* Stip. at ¶¶ 20, 21, 23, and 24.
[8] Providers' FPP at 3, Ex. P-14, P-15 (Feb. 5, 2025); s*ee also* Stip. at ¶ 10.

hearing. The Board held a video hearing on May 7, 2025. The Providers were represented by Daniel F. Miller, Esq. and Sarah M. Crosby, Esq., Hall, Render, Killian, Heath, & Lyman, P.C. The Medicare Contractor was represented by Robert A. Evarts, Esq., Federal Specialized Services.

STATEMENT OF RELEVANT FACTS:

The Medicare program pays acute care hospitals for inpatient services under the Inpatient Prospective Payment System ("IPPS").[9] Under the IPPS, the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.[10] The standardized amounts are increased each year by the APU to account for increases in operating costs.[11]

On June 1, 2022, CMS sent initial determinations of noncompliance to the Providers notifying them of its determination that the Providers had failed to meet the Hospital IQRP reporting requirements.[12] Specifically, the letters stated that CMS had determined that the Providers did not meet the following Hospital IQRP requirement:

- Submit the COVID-19 Vaccination Coverage Among Health Care Personnel data
    - Failed to submit HCP COVID 19[13]

Consequently, CMS informed the Providers they may be subject to a one-fourth reduction of their respective APUs.[14]

On July 28, 2022, in response to the Providers' June 22, 2022 Requests for Reconsideration, CMS issued decisions upholding its noncompliance decisions.[15] The Reconsideration Determinations specified that the Providers did not meet the program reporting requirements for the following reason:

- Submit NHSN measure data by the posted submission deadline - 2021 [COVID-19 Vaccination Coverage Among Healthcare Personnel - Q4].[16]

The Q4 COVID-19 data was due to CMS by May 16, 2022, at 11:59pm.[17] CMS imposed a one-fourth reduction to the Providers' FFY 2023 APUs for failing to meet the Hospital IQRP reporting requirement.[18] CMS also barred the Providers from Participating in the HVBP for FFY

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[9] Stip. at ¶ 5.
[10] *Id*. at ¶ 6.
[11] *Id*. at ¶ 7.
[12] *Id.* at ¶ 8.
[13] Ex. P-8. *See also* Stip. at ¶¶ 13, 19, and 22.
[14] Ex. P-8.
[15] *See* Exs. P-12, P-13.
[16] This measure was measure made mandatory in the FY 2022 IPPS Final Rule 86 Fed. Reg. 44774 (Aug. 13, 2021); *see* Ex. C-5 (Mar. 7, 2025); s*ee also* Ex. P-12, P-13 (Feb. 5, 2025), Stip. at ¶ 13.
[17] Stip. at ¶ 14.
[18] *Id*. at ¶ 9.

2023.[19] The Providers contest the reductions to their respective APUs and the denial of their participation in the HVBP for FFY 2023 IPPS.[20]

STATEMENT OF RELEVANT LAW:

A. *Quality Reporting Requirements for Acute Care Hospitals*

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the Hospital Inpatient Quality Reporting Program that requires each hospital to submit quality of care data "***in a form and manner, and at a time, specified by CMS***."[21] For fiscal years 2015 and beyond, a hospital that fails to make the reporting requirements by the established deadlines will have its APU reduced by one-fourth.[22]

Specifically, 42 C.F.R. § 412.64(d)(2)(i) provides:

> (i) In the case of a "subsection (d) hospital," as defined under section 1886(d)(1)(B) of the Act, that does not submit quality data on a quarterly basis to CMS, in the form and manner specified by CMS, the percentage increase in the market basket index (as defined in § 413.40(a)(3) of this chapter) for prospective payment hospitals is reduced –
>
> (A) For fiscal years 2005 and 2006, by 0.4 percentage points; and
>
> (B) For fiscal year 2007 through 2014, by 2 percentage points.
>
> (C) For fiscal year 2015 and subsequent fiscal years, by one-fourth.

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."[23] Since the inception of the IPPS in 1983, the market basket has been updated annually by a factor based on inflation.[24] This adjustment is commonly referred to as the market basket update or annual percentage update.

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.[25] Section 501(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003[26] 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)[27] and institutes a fixed reduction to a hospital's APU if it fails to submit specified quality data to the Secretary for an applicable fiscal year ("FY"). The program encompassing the

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[19] *Id*. at ¶ 10.
[20] *Id*. at ¶ 12.
[21] 42 C.F.R. § 412.140(c)(1); *see also* 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II) (Bold and italics emphasis added).
[22] 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).
[23] *See* 74 Fed. Reg. 43754, 43843-43844 (Aug. 27, 2009).
[24] *See id* at 43844.; s*ee also* 48 Fed. Reg. 39752, 39764 (Sept. 1, 1983).
[25] *See* 73 Fed. Reg. 48434, 48598 (Aug. 19, 2008).
[26] Pub. L. No. 108-173, 117 Stat. 2066, 2289 (Dec. 8, 2003).
[27] *See* 74 Fed. Reg. at 43860.

quality data reporting is known as the Inpatient Quality Reporting Program. Section 5001(a) of the Deficit Reduction Act of 2005[28] added 42 U.S.C. § 1395ww(b)(3)(B)(viii)(III), which allows the Secretary to expand the reporting requirements to include additional measures determined "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").[29] 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."[30] In order to access NHSN, the CDC utilizes Secure Access Management Services ("SAMS"), a federal information technology system "designed to provide centralized access to public health information and computer applications operated by the CDC."[31] Once a user registers with NHSN and completes the required NHSN training, they are automatically invited to SAMS via e-mail.[32]

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.[33] 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."[34] Hospitals were to collect data on COVID-19 vaccination and submit it to NHSN before the quarterly deadline to meet Hospital IQRP requirements.[35]

In the FY 2022 IPPS Final Rule,[36] CMS specified the ***form and manner*** in which Providers were to submit CVCD for the FFY 2023 payment year:

> (4) Data Submission and Reporting
>
> Given the time-sensitive nature of this measure in light of the PHE, we proposed that for the FY 2023 program year, ***the reporting period would be from October 1, 2021, through December 31, 2021***. The reporting period we proposed is shorter than the reporting period for subsequent years to expedite data collection for this measure in order to respond to the current PHE. Thereafter,

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[28] Pub. L. No. 109-171, 120 Stat. 4, 28 (Feb. 8, 2006).
[29] 75 Fed. Reg. 50042, 50200-50201 (Aug. 16, 2010).
[30] *Id.* at 50201.
[31] https://www.cdc.gov/nhsn/sams/about-sams.html.
[32] https://www.cdc.gov/nhsn/sams/sams-user-faq.html.
[33] *See* 86 Fed. Reg. 44774, 45375 (Aug. 13, 2021) (citing 86 Fed. Reg. 25070, 25571-25575 (May 10, 2021)).
[34] *Id.* at 45375.
[35] *Id.* at 45377.
[36] *Id. See also* Ex. C-5.

> we proposed quarterly reporting deadlines for the Hospital IQR Program beginning with the CY 2022 reporting period/FY 2024 payment determination and for subsequent years.
>
> To report this measure, we proposed that hospitals would collect the numerator and denominator for the COVID–19 Vaccination Coverage Among HCP 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***.[37]

Upon the adoption of the proposed COVID-19 Vaccination Coverage Among HCP measure CMS stated:

> After consideration of the public comments we received, we are finalizing our proposal to adopt the COVID–19 Vaccination Coverage Among HCP measure ***beginning with a shortened reporting period from October 1, 2021, through December 31, 2021, for the FY 2023 payment determination***, and continuing with quarterly reporting deadlines for the CY 2022 reporting period/FY 2024 payment determination and subsequent years. We are also finalizing our proposal to publicly report the measure, which will begin with the October 2022 Care Compare refresh, or as soon as technically feasible, ***using data collected from Q4 2021 (October 1, 2021, through December 31, 2021***). However, based on public comment, we are finalizing a modification to our proposal. We will not finalize our plan to add one additional quarter of data during each advancing refresh, until the point that four full quarters of data is reached and then report the measure using four rolling quarters of data. Instead, we will only report the most recent quarter of data. This would result in more meaningful information that is up to date and not diluted with older data.[38]

The regulation at 42 C.F.R. § 412.140(c)(2) (2022) sets forth the criteria for exceptions to the reporting deadlines based on extraordinary circumstances and provides, in pertinent part:

> (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

[37] (Emphasis added.)
[38] 86 Fed. Reg. at 45382.

> 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. . . .
>
> (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.

The regulation at 42 C.F.R. § 412.64(d)(2)(i) further provides:

> **(2)(i)** In the case of a "subsection (d) hospital," as defined under section 1886(d)(1)(B) of the Act, that does not submit quality data on a quarterly basis to CMS, ***in the form and manner specified by CMS***, the percentage increase in the market basket index (as defined in § 413.40(a)(3) of this chapter) for prospective payment hospitals is reduced—
>
> ***
>
> **(C)** For fiscal year 2015 and subsequent fiscal years, by one-fourth.[39]

Finally, 42 C.F.R. § 412.160 (Definitions for the Hospital Value-Based Purchasing (VBP) Program) provides:

> Hospital means a hospital described in section 1886(d)(1)(B) of the Act, but does not include a hospital, with respect to a fiscal year, for which one or more of the following applies:
>
> (1) The hospital is subject to a payment reduction under section 1886(b)(3)(B)(viii)(I) of the Act for the fiscal year. . . .

B. 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."[40] 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."[41] In *Consolidated Edison Co. v. NLRB*, 305

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[39] (Emphasis added.)
[40] 42 C.F.R. § 405.1871(a)(3).
[41] 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

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."[42] 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."[43] 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."[44]

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

To satisfy certain Hospital IQRP requirements, the Providers were required to collect the COVID-19 Vaccination Coverage among Healthcare Personnel data between October 1, 2021, through December 31, 2021, and report the CVCD through NHSN by the deadline date of May 16, 2022.[45] Failure to submit the data in the correct form and manner, and at the correct time, would result in a one-fourth reduction in the FFY 2023 APU.[46]

The Providers' primary arguments in this case are that: 1) they uploaded their COVID-19 vaccination data before the deadline and substantially complied with all reporting requirements;[47] and 2) a systemic problem with the NHSN system affected their ability to submit the required data, thus, the circumstances warrant an exception under 42 C.F.R. § 412.140(c)(2).[48]

The Board will address the Providers' arguments as follows:

1) ***Whether the Providers submitted their data before the deadline and complied with all reporting requirements.***

The Providers maintain that they uploaded the required CVCD to the NHSN portal at 9:08pm and 9:12pm before the May 16, 2022, 11:59pm deadline.[49] They uploaded their data using the same process and tools used for the successful submission of other measures, including the Healthcare Personnel Influenza measure.[50] The Providers assert that the NHSN CVCD module did not provide confirmation of their successful data uploads. However, they "captured screenshots of the data uploads at the time of the submission which include time stamps"[51] which

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).

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

[43] 42 C.F.R. § 405.1853(a)(3).

[44] 42 C.F.R. § 405.1867.

[45] Ex. C-7 (Mar. 7, 2025).

[46] 42 U.S.C. § 1395ww(b)(3)(B)(viii) (II); 42 C.F.R. § 412.140(c)(1); 42 C.F.R. § 412.64(d)(2)(i)(C).

[47] Providers' FPP at 2.

[48] *Id.* at 13-14.

[49] *See* Ex. P-9, P-10; *see also* Stip. at ¶ 15.

[50] *See* Stip. at ¶ 17.

[51] Providers' FPP at 2.

show a date last modified date of 5/16/2022 9:08pm for Good Samaritan[52] and 05/16/2022 9:12PM for Samaritan Albany.[53] They included the screenshots with their reconsideration requests demonstrating timely uploads of the CVCD prior to the deadline.[54]

The Providers argue they "followed all required procedures and uploaded all required NHSN Data in a manner that complied with all requirements."[55] Particularly, Providers posit that they "met the standard of substantial compliance for the submission of COVID-19 Vaccination Coverage Among Healthcare Personnel to the Quality Reporting Program."[56] As such, Providers contend that their APUs "should be restored, and they should be permitted to participate in value-based purchasing."[57]

The Board notes that, when questioned on direct examination, the Providers' witness, the Workforce Health and Safety Program Manager for Samaritan Health Services, accurately summarized the process for submitting CVCD through NHSN:

> **PROVIDER REPRESENTATIVE ("REP")**: Okay. Now I'd like to walk through how you actually submit COVID-19 vaccination coverage amongst healthcare personnel data. Can you walk me through what is the first step you would do to start the process?
>
> **WITNESS**: At the time, it was creating a monthly reporting plan, and then gathering the vaccination data, then picking one week per month, inputting the data, then generating data sets.[58]

The witness also acknowledged that CVCD needed to be submitted quarterly and that she was responsible for submitting that data:

> **PROVIDER REP**: How often do you have to submit the quality data through NHSN?
>
> **WITNESS**: For influenza, annually; and for COVID, quarterly.
>
> **PROVIDER REP**: And were you the person responsible for submitting the COVID-19 healthcare personnel vaccination data for Good Samaritan and Samaritan Albany in 2022?
>
> **WITNESS:** Yes.[59]

Although the period for reporting CVCD was one week per month for Q4 of 2021, the witness testified that she ***consolidated*** the CVCD for a 6-month period (October 2021 through March

[52] Ex. P-9 (Feb. 5, 2025) at SHSFPP0058; *see also* Stip. at ¶ 16.
[53] Ex. P-10 (Feb. 5, 2025) at SHSFPP0062; *see also* Stip. at ¶ 16.
[54] *See* Ex. P-9 and P-10.
[55] Providers' FPP at 3.
[56] *Id.* at 4.
[57] *Id*. at 10.
[58] Tr. at 20:25-21:10.
[59] Tr. at 20:6-14.

2022) and reported all of the consolidated data in the data collection week for ***March 21-27, 2022:***

> **PROVIDER REP:** I am looking at the MAC's Exhibit C-9, Bates number C0053. This is, [what] you were talking to Mr. Evarts about the CMS deadline for COVID-19 vaccination summary data. This red box here, in the middle of the page. And it says one week of data for each month of the quarter, quarter four, October to December through quarter one, January through March. Is that correct?
>
> **WITNESS:** Yes.
>
> **PROVIDER REP:** And what was your understanding of the data requirements based on this NHSN checklist for healthcare personnel reporting to CMS hospitals?
>
> ****
>
> **WITNESS**: At the time, the -- I hadn't seen this specific checklist, but my understanding was it was COVID-19 summary data for that time period. And it was similar to the influenza vaccination summary data that I was submitting.
>
> **PROVIDER REP:** So, you believed you were supposed to submit a summary of all of the data for October to December and January to March as one summary, correct?
>
> **WITNESS:** Yes.
>
> **PROVIDER REP:** Okay. And this is Provider's Exhibit P-9, the screenshot of the data showing the week of collection 3-21 to 3-27. Is this a summary of all of the data for quarter one and quarter four or, excuse me, quarter four of 2021 and quarter one of 2022, based on your belief from the exhibit that we just looked at?
>
> **WITNESS:** Yes.
>
> **PROVIDER REP:** So, you did submit the quarter four data and the quarter one data collectively in what you provided as Exhibit A at Exhibit P-9. And for Samaritan, I believe this is, if that's Good Samaritan. And then also at P-10 for Samaritan Albany. Those are cumulative data for quarter four and quarter one?
>
> **WITNESS:** Yes.[60]

[60] Tr. at 84:8-22 and 85:2-86:5.

When questioned by Board Member Kelly, the witness confirmed that she submitted cumulative CVCD for 6 months.

> **BOARD MEMBER KELLY:** Okay. All right. I just have a few questions. Really, clarification questions. My first question is what, there has been a lot of testimony in terms of what Exhibit C-9 represents in terms of the data collection. The dates of submittal. So, I want to, if you can sum up for me what was submitted on May 16th, 2021?
>
> **WITNESS:** On May 16th, 2022.
>
> **BOARD MEMBER KELLY:** I mean, 2022. Sorry.
>
> **WITNESS**: I did submit COVID-19 vaccination data, summary data, for the time period of October 1st through March 31st, but it was cumulative data.[61]

When questioned by Board Chair Smith, the witness acknowledged that submitting CVCD for the week of March 21-27, 2022, as support for Q4 2021 could have caused confusion during the reconsideration process.

> **BOARD CHAIR SMITH**: If CMS were to receive this, would it be possible that they would be confused that you've said you've submitted quarter four '21 and this is your support for that, but when they look at this, it identifies the data collection as relating to '22, in which case they would perhaps consider it not to support it and that may be the reason for denial?
>
> **WITNESS:** Yes.[62]

When questioned by Board Member DuBose, the witness ***admitted that she did not use the right process to submit the CVCD***.

> **BOARD MEMBER DUBOSE:** I promise this is my final question. We're in real time now, as of May 7, 2025. You submitted data on 5-16- of 2022.
>
> **WITNESS:** Yes.
>
> **BOARD MEMBER DUBOSE:** Did you use the right process to submit COVID data, one week from each quarter for Q4? Well, I'm sorry. One week from each month of the quarter, for Q4 and

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[61] *Id*. at 86:22-87:11.
[62] *Id*. at 100:15-25.

> Q1, on May 16, 2022. Do you now, as of today, believe that you submitted the data correctly as it should be submitted?
>
> **WITNESS:** No.[63]

Based on the foregoing, the Board finds that the Providers may have uploaded cumulative CVCD to the NHSN portal for Good Samaritan Regional Medical Center at 9:08 P.M. and for Samaritan Albany General Hospital at 9:12 P.M. before the May 16, 2022, 11:59pm deadline;[64] however, the CVCD was ***not submitted in the form and manner*** specified by CMS. The Providers were required to submit one self-selected week of CVCD for each month of Q4 2021 for the FFY 2023 program year.[65] Instead, the Providers submitted cumulative CVCD for six months (from October 1, 2021 through March 31, 2022) for the week of March 21-27, 2022 (Q1 2022)—resulting in a submission of indiscernible data for Q1 2022, and no data for Q4 2021.[66]

2) Whether a systemic problem with the NHSN system affected the Providers' ability to submit the CVCD and whether the circumstances warrant an exception.

The Providers maintain that if CMS does not determine that they complied with their reporting responsibilities, 42 C.F.R. § 412.140(c)(2)(ii) "provides that CMS may grant an exception if a systemic problem affected a hospital's ability to submit the required data."[67] The Providers aver that "the error was not with the Providers but rather was a systemic connectivity issue with the reporting website."[68]
The Providers contend that a communication from the NHSN User Support Team dated June 17, 2022, "acknowledged that the NHSN system had experienced connectivity issues that required corrections."[69] The email states:

> Hello,
>
> Thank you for your patience!
>
> We have received your message and we apologize for the inconvenience.
>
> Our Technical Team has resolved the connectivity issues with the NHSN application. Please log off your device, re log-in to the NHSN application and re-access the function that was being utilized.
>
> Thank you!

[63] *Id*. at 106:7-20.
[64] *See* Ex. P-9 at SHSFPP0058, Ex. P-10 at SHSFPP0062.
[65] 86 Fed. Reg. 45377, 45382.
[66] Tr. at 104:20-105:4; *see also* Ex. P-9, P-10.
[67] Providers' FPP at 8.
[68] *Id.*
[69] *Id.* at 3.

> The NHSN User Support Team[70]

However, the original email sent to NSHN, embedded within the June 17, 2022 email, reads:

> Hello –
>
> I am working with our system data management team in regards to COVID vaccination HC data submission requirements. ***Recently CMS stated two of our facilities were missing the data*** – however we do have our pdfs that show submission to NHSN – I was hoping you could help me understand if we are doing anything incorrectly on our end that prevented this data from being fully submitted. As an organization we strive to make sure we have a thorough process on our part to ensure the required data is available to CMS. Any assistance you could provide would be greatly appreciated – Thank you – Cindy
>
> ** We are submitting the APU reconsideration request as we have our pdfs with the submission date and time on them.[71]

The Board notes that the June 17, 2022 NHSN email was dated ***after*** the Providers had been notified on June 1, 2022, by CMS, of their failure to comply with the CVCD reporting requirements. Moreover, as discussed above, after coming to the realization of their own error, the Providers admit that they submitted cumulative data for the CVCD measure, which was not the proper form and manner for the submission. Thus, any argument of systemic issues with the NHSN portal fails. Accordingly, the Board finds that the Providers' communication from the NHSN User Support Team dated June 17, 2022, is not evidence of a systemic problem with the NHSN system that ***directly*** affected the Providers' ability to submit the correct CVCD for Q4 by the May 16, 2022, deadline.

Additionally, the Providers assert a third provider associated with Samaritan Health, an inpatient psychiatric facility ("IPF"), also "submitted the NHSN data at the same time and in the same manner as the Providers in this group appeal."[72] This third Good Samaritan facility "was also found to have failed to submit the NHSN data"[73] and also filed a request for reconsideration in September 2022.[74] The Providers maintain that, "[b]y the time the reconsideration request was considered in February 2023, CMS had apparently become aware of the Contractor's system error and determined that the third Good Samaritan facility had complied with its obligation . . . and reversed the two percent payment penalty."[75] The Providers argue in granting reversal to the IPF facility, there is "no doubt that CMS determined it's Contractor's technical difficulties at the time of these submissions warranted a reversal. The problem the Contractor has acknowledged

[70] Ex. P-11 at SHSFPP0064 (Feb. 5, 2025).
[71] *Id.*
[72] Providers' FPP at 3.
[73] *Id.* at 3-4.
[74] *Id.* at 4.
[75] *Id.*

prevented the data from being logged into the Contractor's system."[76] The Providers assert that, as with the third Good Samaritan IPF facility, they also complied with their reporting responsibilities and as such, the payment penalties imposed upon them should be reversed.[77]

The Board finds unpersuasive the Providers' contention that their respective reconsideration requests should be handled consistently with the IPF facility's reconsideration request because as admitted by the Providers' witness, they ***did not*** properly submit the CVCD measure data as required.[78] Moreover, the IPFQRP requires separate data collection, entry, and submission from the IQRP. Thus, it is possible for a provider to correctly submit data for the IPFQRP and incorrectly submit data for the Hospital IQRP.

Accordingly, the Board finds that the Providers have not demonstrated the existence of a systemic problem with the CMS data collection systems that directly affected their ability to submit data. No extraordinary circumstances beyond the control of the Providers existed to warrant an exception to the quality data reporting requirements under 42 C.F.R. § 412.140(c)(2)(ii).

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Based on the foregoing, the Board concludes the Providers did not comply with all the reporting requirements and that the reduction to the Providers' FFY 2023 APU by one fourth was proper. Additionally, as the Providers are subject to a payment reduction under §1886(b)(3)(B)(viii)(I), the Medicare Contractor also properly excluded the Providers from the HVBP.

DECISION:

After considering the Medicare law, regulations and program instructions, the arguments presented and the evidence submitted, the Board concludes that CMS' decision to reduce the Providers' FFY 2023 APU by one fourth and to exclude the Providers from the HVBP was proper.

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

6/25/2026

X Kevin D. Smith, CPA

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

[76] *Id.* at 13.
[77] *Id*. at 13-14.
[78] *See* Tr. 106:12-20.