PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2015-D17

PROVIDER –
Riverside Hospital of Louisiana

Provider No.: 19-2043

vs.

MEDICARE CONTRACTOR –
Cahaba GBA c/o National Government Services

DATE OF HEARING -
May 15, 2015

Federal Fiscal Year –
September 30, 2015

CASE NO.: 15-0203

INDEX

ISSUE STATEMENT

Whether the payment penalty that the Centers for Medicare and Medicaid Services ("CMS") imposed under the Long-Term Care Hospital Quality Reporting Program to reduce the Provider's payment update for Fiscal Year ("FY") 2015 by two percent was proper?[1]

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board finds that CMS properly imposed a 2 percent reduction to the standard Federal rate used to calculate the FY 2015 Medicare payments for Riverside Hospital of Louisiana ("Riverside") under the inpatient prospective payment system for long-term care hospitals ("LTCH-PPS").

INTRODUCTION

Riverside is a Medicare-certified long-term care hospital ("LTCH") located in Alexandria, Louisiana. Riverside's designated Medicare Administrative Contractor is Cahaba Government Business Administrators, LLC ("Medicare Contractor").

On June 27, 2014, CMS determined that Riverside failed to meet the requirements of the LTCH Quality Reporting Program ("LTCH QRP") for FY 2015. Specifically, the determination stated that Riverside was subject to a 2 percent reduction in Medicare payments for FY 2015 because it did not submit 12 months of data for 2 of the 3 quality measures.[2]

On July 1, 2014, Riverside requested that CMS reconsider the decision regarding the reduction to its FY 2015 Medicare payments.[3] On September 22, 2014, CMS upheld its reduction decision.[4] On October 9, 2014, Riverside timely appealed this reduction to the Provider Reimbursement Review Board ("Board").[5]

The Board held a live hearing on May 15, 2015. Riverside was represented by Jason M. Healy, Esq., of The Law Offices of Jason M. Healy, PLLC. The Medicare Contractor, was represented by Adam Peltzman, Esq., of the Blue Cross and Blue Shield Association.

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[1] *See* Transcript ("Tr.") at 5-6.
[2] *See* Provider's Final Position Paper, Exhibit P-2 at 1.
[3] *See Id.,* Provider Exhibit P-3.
[4] *See Id.,* Provider Exhibit P-4.
[5] *See Id.,* Provider Exhibit P-1.

STATEMENT OF THE FACTS

The Medicare Contractor reduced Riverside's Medicare payment for FY2015 by 2 percent because Riverside failed to submit quality data for the months of October 2013, November 2013, and December 2013. Federal regulations required that Riverside submit this data to the Center for Disease Control and Prevention's ("CDC's") National Health Safety Network ("NHSN") system by May 15, 2014.[6] Specifically, Riverside was required to submit data regarding:

1. Urinary Catheter -Associated Urinary Tract Infections ("CAUTI");
2. Central Line Catheter-Associated Bloodstream Infection ("CLABSI"); and
3. Percent of Residents with Pressure Ulcers that Are New or have Worsened ("Pressure Ulcer measure").[7]

However, Riverside contends that it timely reported all CAUTI and CLABSI occurrences for 2013.[8] More specifically, Riverside contends that the lack of CAUTI and CLABSI data submissions for October through December 2013 is irrelevant because it had no occurrences of either CAUTI or CLABSI during these months. Accordingly, CMS possesses all required data from Riverside regarding the occurrences of CAUTI and CLABSI events at its LTCH in 2013.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Federal statute, 42 U.S.C. 1395ww(m)(5), requires LTCHs to report on the quality of their services in the form, manner, and time as specified by the Secretary.[9] A LTCH that fails to submit the LTCH QRP data to the Secretary is assessed a one-time 2 percent reduction to its annual update to the standard Federal LTCH prospective payment.

The preamble to the August 2011 Final Rule established FY2012 as the first reporting year for the LTCH QRP and required submission of quality data on CAUTI, CLABSI and pressure ulcers. This submission would be used to determine FY 2014 LTCH payments (*i.e.*, an LTCH's failure to report during FY 2012 would result in a 2 percent reduction in the Federal payment rate used to calculate its LTCH-PPS payments during FY 2014).[10]

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[6] *See* 76 Fed. Reg. 51476, at 51753 (Aug. 18, 2011) (excerpt included at Medicare Contractor Exhibit I-2)**{** TA \l "FY 2012 IPPS/LTCH PPS Final Rule, 76 Fed. Reg. 51476 (Aug. 18, 2011)" \s "FY 2012 IPPS/LTCH PPS Final Rule" \c 4 **}**.

[7] Id., at 51745-51750. *See also* 42 U.S.C. § 1395ww(m)(5)(D)(iii) (requiring the Secretary to select and publish LTCH QRP quality measures by October 1, 2012)**{** TA \l "SSA § 1886(m)(5)(D)(iii)" \s "SSA § 1886(m)(5)(D)(iii)" \c 2 **}**.

[8] The submission of data for the Pressure Ulcer measure is not at issue in this case. *See* Provider Exhibit P-2; Provider's Post-Hearing Brief at 2, 7; Provider Exhibit P-3 (copy of Riverside's request for reconsideration).

[9] Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, § 3004(a), 124 Stat. 119, 368-369 (Mar. 23, 2010) (adding LTCH QRP statutory provisions at 42 U.S.C. § 1395ww(m)(5)).**{** TA \l "SSA § 1886(m)(5)(C)" \s "SSA § 1886(m)(5)(C)" \c 2 **}**

[10] See: 76 Fed Reg. 51476, 51743-51748

CMS directed LTCHs to the CDC website at http://www.cdc.gov/nhsn for additional details regarding data submission[11] and stated that additional reporting requirements would be posted on the CMS web site at http://www.cms.gov/LTCH-IRF-Hospitce-Quality-Reporting/ by no later than January 31, 2012.[12] This information and publication of the due dates for data submission was restated again in the August 31, 2012 Final Rule.[13]

Riverside argues that CMS would not have obtained any meaningful data if the Provider had reported zero occurrences of CAUTI and CLABSI for the months at issue. Therefore, the absence of data submissions for the months at issue is irrelevant and not a valid basis for CMS to impose the 2 percent payment penalty.[14]

In support of its position, Riverside argues that reducing all Medicare payments to Riverside for inpatient services during the entire year of FY 2015 in this situation would be inconsistent with the intent of the LTCH QRP. According to CMS, the purpose of the LTCH QRP is "to promote higher quality and more efficient health care for Medicare beneficiaries . . . ."[15] CMS uses the LTCH QRP to "efficiently collect information on valid, reliable, and relevant measures of quality and to share this information with the public, as provided under section 1886(m)(5)(E) of the Act."[16] CMS hopes to "achieve a comprehensive set of quality measures to be available for widespread use for informed decision-making and quality improvement."[17] Accordingly, Riverside maintains that imposing the 2 percent payment penalty on Riverside, based on a failure to report that there were *no* CAUTI or CLABSI occurrences in one quarter of 2013, would be inconsistent with the intent and goals of the program stated above.[18]

The Board finds that 42 U.S.C. § 1395ww(m)(5)(A)(i) requires each LTCH to submit health care quality data as determined by the Secretary and imposes a two percent penalty upon any LTCH that fails to do so. Significantly, the statute gives broad authority to the Secretary to determine and specify the time, form and manner by which an LTCH must

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[11] 76 FR 51476 at 51752

[12] Id., at 51754.

[13] *See* 77 Fed. Reg. 53258, 53619(specifying the CMS web site address as http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/LTCH-Quality-Reporting/LTCHTechnicalInformation.html). CMS noted that it was in the process of finalizing the LTCH QRP Manual and "invited the public to provide submit questions and comments related to the LTCHQR Program and the [then] draft LTCHQR Program Manual" to a specified email address. *See id.* at 53620, 53621, 53622-53623. Excerpts from the LTCH RP Manual, Version 1.1 (Aug. 2012) that was issued contemporaneously with the August 2012 Final Rule are located at Medicare Contractor's Final Position Paper, Exhibit I-3

[14] *See id.* at 3, 6-7.

[15] *See* 76 Fed. Reg. at 51743**{** TA \s "FY 2012 IPPS/LTCH PPS Final Rule" **}**.

[16] *Id.* at 51744**{** TA \s "FY 2012 IPPS/LTCH PPS Final Rule" **}**.

[17] *Id.* at 51750**{** TA \s "FY 2012 IPPS/LTCH PPS Final Rule" **}**.

[18] *See* Provider's Post-Hearing Brief at 8-9.

submit this data.[19] To this end, the Secretary promulgated regulations at 42 C.F.R. § 412.523(c)(4) to implement the statute, and these regulations state in pertinent part:

> (4) *For fiscal year 2014 and subsequent fiscal years*
>
> (i) In the case of a long-term care hospital that does not submit quality reporting data to CMS in the form and manner and at a time specified by the Secretary, the annual update to the standard Federal rate . . . is further reduced by 2.0 percentage points.

These regulations were effective October 1, 2013 and cover the reporting months at issue in the case (*i.e.*, October through December of 2013). CMS provides similar guidance in § 1.2 of the LTCH QRP Manual, Version 1.1 (Aug. 2012) ("2012 LTCH QRP Manual"):[20]

> Under the LTCHQR Program, for rate year 2014 and each subsequent rate year, in the case of a LTCH that does not submit data to the Secretary in accordance with section 1886(m)(5)(C) of the Act with respect to each a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of section 1886(m)(3) of the Act, shall be reduced by two percentage points.

In the preamble to the August 2012 Final Rule, CMS directs LTCHs to the 2012 LTCH QRP Manual for further guidance on the data submission requirements for the FY 2013 reporting year. In particular, the 2012 LTCH QRP Manual explains the requirements and obligations of each LTCH with respect to data submission. Chapters 4 and 5 of the 2012 LTCH QRP Manual contains the guidelines for data submission. Significantly, the following excerpt from § 5.1 of the 2012 LTCH QRP Manual makes clear that the data on any "no events" for CAUTI and CLAPSI during a month must be submitted:

> For reporting of data on the CAUTI and CLABSI measures . . ., LTCHs must adhere to the definitions and reporting requirements for CAUTIs and CLABSIs as specified in the CDC's NHSN Patient Safety Component Manual available at http://www.cdc.gov/nhsn/TOC_PSCManual.html. . . . These include reporting of denominator data (patient days, urinary catheter days, and central line days), as well as CAUTIs and CLABSIs, to

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[19] *See* 42 U.S.C. § 1395ww(m)(5)(C) (stating that "such [LTCH QRP] data shall be submitted in a form and manner, and at a time, specified by the Secretary"); [emphasis added].

[20] Excerpts from the 2012 LTCH QRP Manual are located at Medicare Contractor Exhibit I-3.

> NHSN each month. Monthly denominator data must be reported on CAUTIs and CLABSIs, *regardless of whether an infection occurred in the LTCH*. Monthly reporting plans must be created or updated to include CAUTI and CLABSI surveillance in all locations that require reporting . . . . *All required data fields in the numerator and denominator,* ***including the "no events" field for any month during which no CAUTIs or CLABSIs were identified****, must be submitted to NHSN*.[21]

Similarly, § 5.3.11 includes the following instruction on the submission of data on zero occurrences during a month:

> The number of indwelling catheter days for the location *must be reported, even if that number was zero*.[22] The number of central line days for the location must be reported, even if that number was zero. . . .
>
> c. If there were no CAUTI events identified for the month, the Report No Events: CAUTI box must be checked on the Denominator for Intensive Care Unit/Other Locations screen with the NHSN application. If there were no CLABSI events identified for the month, the Report No Events: CLABSI box must be checked on the Denominator for Intensive Care Unit/Other Locations screen with the NHSN application. See pg. 14-22 for guidance on this http://www.cdc.gov/nhsn/PDFs/pscManual/14pscForm_Instructions_current.pdf

Based on the above, the Board concludes that CMS notified LTCHs that data on "no occurrences" of CAUTI or CLABSI during a month must be reported. Further, based on its review of the record, the Board finds that Riverside failed to report this data for the months of October 2013 through December 2013 and, thereby, failed to comply with the requirement to submit data in the form, manner and time specified by the Secretary. The Board notes that Riverside had the ability to generate reports from the NHSN system to monitor what data had been submitted and to ensure compliance with the data submission requirements.[23] Accordingly, the Board finds that the Riverside failed to satisfy the LTCH QRP requirements that were necessary to receive a full annual payment update for FY 2015.

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[21] (Emphasis added.)
[22] (Emphasis added)
[23] *See* 2012 LTCH QRP Manual at § 4.3 (discussing the ability to create a "Final Validation Report"); Tr. at 49 (Riverside witness stating: "I logged into the NHSN website to see if I could find some problem, if there was something wrong. And I ran a report to show our data from the time we started submitting, through that current point in time, and found that for that fourth quarter, CMS did not show -- or the NHSN system did not show that they had our data for that quarter.")

Riverside requests that the Board provide equitable relief because it made a good faith effort to comply with the LTCH QRP data submission requirements.[24] However, the Board cannot consider Riverside's request for equitable relief because the Board's authority is limited to the statutory and regulatory requirements and to the facts and circumstances of the issues presented.[25] Specifically, in connection with the penalty, the Board does not have the authority to consider factors outside those specifically recognized under the statute and regulations. The Secretary's regulations make no provision for circumstances in which the penalty is overly punitive. Likewise, neither the statute nor relevant regulation provide for any partial penalty that would reduce the full impact of the 2 percent reduction. Rather, the statute, regulations, and relevant final rules mandate application of the 2 percentage point penalty whenever an LTCH fails to submit LTCH quality data in the form, manner and time as specified by the Secretary.

In summary, the Board finds that, in this case, Riverside failed to file its **fourth quarter CY 2013** quality data for both the CAUTI and CLABSI measures by the May 15, 2014 deadline in the form and manner required by the Secretary. The failure to timely file this required data triggers the imposition of the 2 percentage point penalty that was described and announced in both the August 2011 and August 2012 Final Rules. The statute expressly states that if an LTCH fails to submit the required data in the manner, form and time specified by the Secretary that the 2 percentage point penalty must be imposed and did not provide for any waiver of or exception from that penalty in any of the regulations, final rules, and guidance that was issued. CMS' 2012 LTCH QRP Manual explicitly advised LTCHs to report this data even if there were no events to report. Accordingly, the Board finds that Riverside failed to satisfy LTCH QRP reporting requirements and that the 2 percentage point penalty was correctly applied.

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board finds that CMS properly imposed a 2 percent reduction to the standard Federal rate used to calculate the FY 2015 Medicare payments for Riverside under LTCH-PPS.

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[24] Provider's Final Position Paper at 18-19.

[25] In particular, the Board recognizes that Riverside argues that the reconsideration decision issued by CMS was deficient because if failed to properly notify the basis for the decision in violation of the Administrative Procedure Act, 5 U.S.C. Ch. 5, Subch II. Even assuming *arguendo* that there was a notification deficiency, the Board would be unable to offer any relief because the Board is bound by the relevant statute and regulations which specify that Riverside is subject to a 2 percent reduction if it fails to submit CAUTI and CLABSI data in the form, manner and time specified by the Secretary.

BOARD MEMBERS PARTICIPATING:

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FOR THE BOARD:

/s/
Michael W. Harty
Chairman

DATE: August 20, 2015