

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2025-D09

**PROVIDER –**  
Columbus Specialty Hospital, Inc.

**HEARING DATE –**  
October 19, 2023

**PROVIDER NO. –**  
11-2012

**FISCAL YEAR –**  
December 31, 2019

**vs.**

**MEDICARE CONTRACTOR –**  
Palmetto GBA, LLC

**CASE NO. –**  
21-0997

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**ISSUE STATEMENT:**

Whether Columbus Specialty Hospital, Inc. (“Columbus Specialty” or “Provider”) complied with the Affordable Care Act Long Term Care Hospital Quality Reporting Program requirements for submission of quality data for *C. diff* infection or CDI for the first quarter of 2019 (the months of January, February, and March), and therefore is not subject to a two (2) percentage point reduction to its annual payment update (“APU”).<sup>1</sup>

**DECISION:**

After considering the Medicare law, regulations and program instructions, the arguments presented, and the evidence submitted, the Provider Reimbursement Review Board (“Board”) finds that the decision of the Centers for Medicare and Medicaid Services (“CMS”) to reduce Columbus Specialty’s APU for fiscal year (“FY”) 2021 was proper.

**INTRODUCTION:**

Columbus Specialty is a Medicare certified general long-term care hospital (“LTCH”) located in Columbus, Georgia.<sup>2</sup> Columbus Specialty’s assigned Medicare administrative contractor<sup>3</sup> is Palmetto GBA (“Medicare Contractor”).

By letter dated July 13, 2020, the Medicare Contractor notified Columbus Specialty that it failed to meet the LTCH quality reporting program (“QRP”) requirements and was subject to a two (2) percentage point reduction in its FY 2021 APU.<sup>4</sup> On July 30, 2020, the Provider requested reconsideration of the determination via email.<sup>5</sup> On September 11, 2020, CMS, by letter, upheld the July, 2020 determination.<sup>6</sup>

On March 8, 2021, Columbus Specialty timely appealed CMS’ reconsideration denial to the Board and met the jurisdictional requirements for a hearing. The Board held a video hearing on October 19, 2023. Columbus Specialty was represented by Anthony Brett, Esq. of Womble Bond Dickinson, LLP. The Medicare Contractor was represented by Scott Berends, Esq. of Federal Specialized Services.

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<sup>1</sup> Hearing of Transcript Proceedings (hereinafter “Tr.”) at 5 (Oct. 19, 2023).

<sup>2</sup> Medicare Contractor’s Final Position Paper (hereinafter, “Medicare Contractor’s FPP”) at 4 (July 19, 2023).

<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 to organizations known as Medicare administrative contractors (“MACs”). The relevant law may refer to FIs and MACs interchangeably, and the Board will use the term “Medicare contractor” to refer to both FIs and MACs as appropriate and relevant.

<sup>4</sup> Exhibit (hereinafter, “Ex.”) P-1 (Non-Compliance Letter) (July 13, 2020).

<sup>5</sup> Ex. P-2 (Reconsideration Request) (July 30, 2020).

<sup>6</sup> Ex. P-3 (Reconsideration Decision) (Sept. 11, 2020).

### **STATEMENT OF RELEVANT FACTS:**

This case concerns Columbus Specialty's FY 2021 payment determination, which is based upon quality data reporting requirements for the first quarter of CY 2019, particularly, the CDI outcome measure.<sup>7</sup> Specifically, for FY 2021 payment determinations, LTCHs had to collect data related to these measures (*i.e.*, for the LTCH CARE Data Set) and submit that data for the first quarter of CY 2019 (January 1 – March 31) by August 15, 2019.<sup>8</sup>

In the two months before the August 15, 2019, due date, NHSN sent a series of notifications related to an issue that temporarily impacted reports.<sup>9</sup> First, on June 6, 2019, NHSN sent an email indicating that "[t]he NHSN team discovered and resolved an issue that temporarily impacted the accuracy of select *C. difficile* (CDI) LabID Event analysis reports in NHSN."<sup>10</sup> The email further states, "If your facility or group is analyzing CDI LabID Event data in NHSN, **please make sure you have generated datasets after May 9th in order to ensure accurate results in these reports.**"<sup>11</sup>

Next, on July 12, 2019, NHSN sent a reminder of reporting deadlines. This email encourages facilities to "allow ample time before the deadline to review, and if necessary, correct your HAI data," and states that "[d]ata that are modified in NHSN after the submission deadline are not sent to CMS and will not be used in CMS [programs]."<sup>12</sup>

Soon after, on July 19, 2019, NHSN sent a notice that "since the evening of Tuesday, 7/16, users are experiencing problems when trying to modify or save a FACWIDEIN MDRO/CDI summary record."<sup>13</sup> On July 23, 2019, NHSN sent an update to the July 19, 2019 "blast" and announced "[t]he deployment this morning was successful and the NHSN application is available."<sup>14</sup> The notice encouraged facilities "to review their data entry using NHSN's analysis reports" and provided links to resources.<sup>15</sup>

Columbus Specialty's witness testified that the CDI information was entered prior to August 15, 2019, but the witness could not recall the exact date.<sup>16</sup>

By letter dated July 2, 2020, the Medicare Contractor notified Columbus Specialty that it was subject to the two (2) percentage point reduction to its APU for failure to meet quality reporting requirements because of the following reasons:

- The LTCH failed to submit the required data to the Centers for Disease

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<sup>7</sup> Medicare Contractor's FPP at 4-5.

<sup>8</sup> Ex. C-10 at 5 (CMS LTCH Quality Reporting Manual) (C-0030).

<sup>9</sup> The Board notes that the series of notices sent by NHSN are addressed to "the relevant employee of the Provider" at the time" who, at the time of the hearing, was no longer employed by Columbus. Tr. at 8-9, 22.

<sup>10</sup> Ex. P-5 (NHSN Notification, June 6, 2019) (*italic emphasis in original*).

<sup>11</sup> *Id.* (*emphasis in original*).

<sup>12</sup> Ex. P-4 (NHSN Notification, July 12, 2019).

<sup>13</sup> Ex. P-6 (NHSN Notification, July 19, 2019).

<sup>14</sup> Ex. P-7 (NHSN Notification, July 23, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> Tr. at 26.

Control and Prevention (CDC) National Healthcare Safety Network (NHSN); and/or

- The LTCH failed to submit the required quality measures that are to be submitted to the CMS Quality Improvement Evaluation System (QIES) system.<sup>17</sup>

By letter dated July 13, 2020, the Medicare Contractor notified Columbus Specialty that it failed to meet the LTCH quality reporting program (“QRP”) requirements resulting in a two (2) percentage point reduction in its FY 2021 APU because it “[d]id not submit all required months of complete NQF #1717 National Healthcare Safety Network (NHSN) Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection (CDI) Outcome Measure data.”<sup>18</sup>

On July 30, 2020, Columbus Specialty requested reconsideration of the determination.<sup>19</sup> In that reconsideration request, Columbus Specialty states:

In creating the monthly reporting plans in 2019 there was an issue with the location code FACWIDEIN. The facility location code CSH1-CSH was used in order for the system to accept submission of the data. At that time, the quality coordinator emailed the NHSN helpdesk to report the issue but received no response. The system accepted the data reported using the location code CSH1-CSH. After receiving the attached letter from NHSN dated June 6, 2019 regarding the issue that temporarily impacted the accuracy of the CDI data sets, the quality coordinator corrected the location code in the system, however, did not recreate the monthly reporting plan and believes this is why no error was indicated at the time. After receiving the letter of non-compliance and reviewing each reporting month for 2019, we believe this is the cause of the non-compliance letter. We have corrected the location from CSH1-CSH to FACWIDEIN for the months of January, February, and March.<sup>20</sup>

On September 11, 2020, CMS upheld the determination that Columbus Specialty had failed to meet the LTCH QRP requirements and was, therefore, subject to a penalty.<sup>21</sup> Specifically, CMS advised Columbus Specialty that it did not submit NQF #1717 – Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection (CDI) Outcome Measure for Q1.<sup>22</sup>

Columbus Specialty states that it did submit the required data timely, however, “there was a technical issue with the LTCH QRP Facility-wide Hospital-onset *Clostridium difficile* Infection

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<sup>17</sup> Ex. C-5 at 1 (Palmetto GBA Notification Letter, July 2, 2020).

<sup>18</sup> Provider’s Final Position Paper at 1 (hereinafter, “Provider’s FPP”) (June 19, 2023); see also Ex. P-1 (Letter from CMS dated July 13, 2020).

<sup>19</sup> Ex. P-2 (Reconsideration Request Email).

<sup>20</sup> *Id.* The referenced letter from NHSN dated June 6, 2019 is Ex. P-5.

<sup>21</sup> Ex. P-3 (CMS Decision Letter).

<sup>22</sup> *Id.*

(CDI) Outcome Measure – Q1.”<sup>23</sup> Columbus Specialty explains that it re-entered the data correctly prior to the reporting deadline.<sup>24</sup> According to the Medicare Contractor, the documentation that Columbus Specialty submitted with both its reconsideration request and this appeal before the Board does not show the date that the reports were submitted.<sup>25</sup>

### **STATEMENT OF RELEVANT LAW:**

#### ***Requirements of the Long-Term Care Hospital Quality Reporting Program (LTCH QRP)***

The statute at 42 U.S.C. § 1395ww(m)(5)(C) establishes the standards for reporting under the LTCH QRP in effect for the CY 2019 reporting period and it requires LTCHs to submit data on the specified quality measures “in a ***form and manner***, and at a ***time***, specified by the Secretary.”<sup>26</sup> The implementing regulation at 42 C.F.R. § 412.560 that was in effect on August 15, 2019 (the date Columbus Specialty’s reporting was due) states:

*(b) Data submission requirements and payment impact.*

(1) Except as provided in paragraph (c) of this section, a long-term care hospital must submit to CMS data on measures specified under sections 1886 [42 U.S.C. § 1395ww] (m)(5)(D), 1899B [42 U.S.C. § 1395lll](c)(1), and 1899B [42 U.S.C. § 1395lll](d)(1) of the Act, and standardized patient assessment data required under section 1899B [42 U.S.C. § 1395lll](b)(1) of the Act. Such data must be submitted in a form and manner, and at a time, specified by CMS.

(2) A long-term care hospital that does not submit data in accordance with sections 1886 [42 U.S.C. § 1395ww](m)(5)(C) and [42 U.S.C. § 1395ww]1886(m)(5)(F) of the Act with respect to a given fiscal year will have its annual update to the standard Federal rate for discharges for the long-term care hospital during the fiscal year reduced by 2 percentage points.<sup>27</sup>

#### ***Form and Manner***

CMS requires LTCHs to submit quality data – including CDI Outcome Measures – to the National Healthcare Safety Network (“NHSN”) system of the Centers for Disease Control and Prevention (“CDC”).<sup>28</sup> A key component of CMS Guidance on LTCH quality data reporting to

<sup>23</sup> Provider’s FPP at 1.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> Medicare Contractor’s FPP at 7-8.

<sup>26</sup> *See also* 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)).

<sup>27</sup> 42 C.F.R. § 412.560(b)(1)(2) (Oct. 1, 2018).

<sup>28</sup> *See* Ex. C-11 (National Healthcare Safety Network (NHSN) Patient Safety Component Manual) at C-0035. The Fiscal Year 2014 Inpatient Prospective Payment System Long Term Care Hospital Prospective Payment System Final Rule adopted the NHSN Facility-wide Inpatient Hospital-onset CDI Outcome Measure (NQF #1717) for the

the CDC NHSN system is the requirement that LTCHs complete a Monthly Reporting Plan for each month for which quality data is being submitted.<sup>29</sup> The Monthly Reporting Plan must specify each quality measure for which the LTCH is reporting that month (e.g., the CDI Outcome Measure).<sup>30</sup> The CDC NHSN system transmits to CMS the quality data associated with quality measures listed on a Monthly Reporting Plan (i.e., an “in-plan surveillance”).<sup>31</sup> A properly completed Monthly Reporting Plan for a particular month, for a specific LTCH, listing each “in-plan” quality measure for which data is being collected and reported that month, is how the CDC NHSN system knows what “in-plan” quality data to transmit to CMS for that LTCH for that month.<sup>32</sup> Thus, an LTCH must complete **both** the quality data reporting to the CDC NHSN system **and** the Monthly Reporting Plan in order for its quality data to be received by CMS.

### ***Time***

As already established, CMS required LTCHs to collect data and submit that data for the first quarter of CY 2019 (January 1 – March 31) by August 15, 2019.<sup>33</sup>

### ***Exceptions***

The regulation at 42 C.F.R. § 412.560 also provides that CMS may grant an exception or extension “with respect to measures data and standardized patient assessment data reporting requirements.”<sup>34</sup> A LTCH may, within ninety (90) days of an extraordinary circumstance, follow certain procedures to request an exception or extension.<sup>35</sup> Alternatively,

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

- (i) An extraordinary circumstance affects an entire region or locale; or
- (ii) A systemic problem with one of CMS’ data collection systems directly affected the ability of the long-term care hospital to submit measures data and standardized patient assessment data.<sup>36</sup>

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LTCH QRP payment determinations in FY 2017 and subsequent years; for avoidance of doubt, that measure is applicable for FY 2019, the year at issue in this case. *See* 78 Fed. Reg. 50496, 50960 (Aug. 19, 2013).

<sup>29</sup> *See* Ex. C-11 at C-0037.

<sup>30</sup> Ex. C-11 at C-0068.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Ex. C-10 at 5 (C-0030).

<sup>34</sup> 42 C.F.R. § 412.560(c).

<sup>35</sup> 42 C.F.R. § 412.560(c)(1)-(4). For example, the exception request must include identifying and contact information for the LTCH, a statement of the reason for the request, and evidence of the impact of the extraordinary circumstances such as photographs and news articles. *Id.* at § 412.560(c)(3).

<sup>36</sup> 42 C.F.R. § 412.560(c)(4).

### ***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>37</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>38</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>39</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 ensure that the evidence it or the Secretary considered in making a determination is included in the record.<sup>40</sup> Further, “[t]he Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.”<sup>41</sup>

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

#### ***Requirements of the Long-Term Care Hospital Quality Reporting Program (LTCH QRP)***

As previously established, LTCHs “shall submit to the Secretary data on quality measures . . .” and “[s]uch data shall be submitted in a form and manner, and at a time, specified by the Secretary.”<sup>42</sup> That is, a LTCH must complete **both** the quality data reporting to the CDC NHSN system **and** the Monthly Reporting Plan in order for its quality data to be received by CMS. The data must be received by CMS by the due date. A long-term care hospital that fails to timely submit data in this form and manner will have its APU reduced by two (2) percentage points.<sup>43</sup>

The parties dispute whether Columbus Specialty properly submitted to CMS the requisite CDI Outcome Measure - Q1. The Board finds that Columbus Specialty failed to properly submit data as issue for the CDI measure in the form, manner, and at the time specified by the Secretary.

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<sup>37</sup> 42 C.F.R. § 405.1871(a)(3) (as of Oct. 1, 2020).

<sup>38</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 [Medicare contractor] 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 [Medicare contractor] in making such final determination.” *But also see* 42 C.F.R. § 405.1869(a).

<sup>39</sup> *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).

<sup>40</sup> 42 C.F.R. § 405.1853(a)(3).

<sup>41</sup> 42 C.F.R. § 405.1867.

<sup>42</sup> 42 U.S.C. § 1395ww(m)(5)(C).

<sup>43</sup> 42 U.S.C. § 1395ww(m)(5)(A)(i).

***Form and Manner***

Columbus Specialty states that it experienced an issue with the location code “FACWIDEIN” when creating the monthly reporting plans in NHSN.<sup>44</sup> The “FACWIDEIN” location code “was not an available option”, so instead, Columbus Specialty used the location code “CSH1” to force the NHSN system to accept its submission of Q1 FY 2019 data.<sup>45</sup> Columbus Specialty contacted the NHSN help desk to report the issue, but according to Columbus Specialty, it received no response.<sup>46</sup> The Board notes that Columbus Specialty did not provide either this “CSH1 submission” or the help desk correspondence with its exhibits for this hearing. The Provider’s submitted Exhibit P-11 identifies line listing of data as reported for Q1, with create dates of February 4, 2019 for M01 (January) and M02 (February) and July 15, 2019 for M03 (March).<sup>47</sup> However, the Board finds it questionable that the Data for M02 (February of 2019) could be “complete” with a create date of February 4, 2019. The modify date for all lines of data on the same Exhibit is July 27, 2020, which is after the August 15, 2019 deadline.<sup>48</sup> Further, the first page of the Exhibit identifies an ‘as of’ date of September 29, 2023.<sup>49</sup> This is not proof of what was in the system on August 15, 2019.

Columbus Specialty received the series of notifications regarding a technical issue sent by NHSN in the months preceding the August 2019 deadline.<sup>50</sup> Columbus Specialty asserts that, upon NHSN’s resolution of the technical issue, Columbus Specialty re-entered its data prior to the Q1 FY 2019 reporting deadline (i.e., August 15, 2019).<sup>51</sup>

The Medicare Contractor counters that the NHSN notification dated June 6, 2019 impacted the accuracy of the selected CDI LabID event analysis reports between April 27 and May 8, and was resolved on May 9, and notes that Columbus Specialty does not indicate that it submitted data in that timeframe, but even if it had, the issue would not have impaired Columbus Specialty’s ability to meet the August 15 deadline.<sup>52</sup> Additionally, the notification instructed facilities to use datasets generated after May 9, if datasets were generated prior to this date.<sup>53</sup> Columbus Specialty has not offered testimony or submitted evidence of the directive’s inapplicability or of its use of data sets generated after May 9, as instructed.

The Medicare Contractor also counters that the NHSN notification dated July 19, 2019 impacted facilities that were trying to modify or save the FACWIDEIN MDRO/CDI summary record since July 16, 2019.<sup>54</sup> NHSN notified facilities on July 23, 2019, that the July 19 issue was resolved.<sup>55</sup> Columbus Specialty does not indicate that it submitted data in that timeframe, but even if it had,

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<sup>44</sup> Provider’s FPP at 2.

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

<sup>46</sup> *Id.*

<sup>47</sup> Ex. P-11 (NHSN Line Listing – Plan) at P-0046.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at P-0040.

<sup>50</sup> See Statement of Relevant Facts, *supra*.

<sup>51</sup> Provider’s FPP at 1.

<sup>52</sup> Medicare Contractor’s FPP at 8.

<sup>53</sup> *Id.*

<sup>54</sup> Ex. C-8; see also Ex. P-6.

<sup>55</sup> Ex. C-9; see also Ex. P-7.



the issue would not have impaired Columbus Specialty's ability to meet the August 15 deadline.<sup>56</sup> In fact, Columbus Specialty was clear to resubmit its data as early as July 23, 2019, giving Columbus Specialty twenty-three (23) days to meet the deadline. Additionally, the notification instructed facilities to "confirm that accurate event data and summary records have been submitted each month."<sup>57</sup> Columbus Specialty did not present evidence or testimony that it confirmed its data and summary records prior to receiving the letter of non-compliance.

Indeed, as shown in its July 30, 2020, reconsideration request, Columbus Specialty states that it "did not recreate the monthly reporting plan" after the June 6, 2019 notice and *after* receiving the letter of non-compliance it corrected the location from CSH1-CSH to FACWIDEIN for Q1.<sup>58</sup> Indeed, the Board notes that the modify date of July 27, 2020 on Exhibit P-11 supports this idea.<sup>59</sup> Columbus Specialty's letter of non-compliance was dated July 13, 2020. The modify date is soon after (July 27, 2020), and then, Columbus Specialty's reconsideration request was dated July 30, 2020, and references the correction of the location. During the hearing, Columbus Specialty's witness testified as follows:

[BOARD MEMBER]: And so, based on P9, P10, and P11, how do you explain CMS going back and saying your data was not properly submitted?

THE WITNESS: There was a later letter that came out by CMS that went -- during one of the downtimes last year. It forewarned, it said, do not submit the data under your other code because the system may not take when you do it the second time around. There was a letter out there. And I've been looking for that letter, but I remember reading it. It was a notice that was put out by CMS because it did go down again last year and - but it had specific instructions, do not try to submit anything at that time, because if you -- it might not take your second submission or something. That's the only thing I can guess to happen is it didn't hit - - because you'll see as submitted three times. Well, actually, for the C. diff, it was submitted twice under the CSH, under facility-wide. And then you have, of course, your regular CSH, which is for your CAUTIs and CLABSI. My only guess is the CSH went in, probably a little bit ignorance on our part, but we wanted to make sure we had our information into CMS because we didn't know what was going on. We did contact, then we did go in and try to do the facility- wide. So, maybe one wiped out the other -- I'm not sure -- and didn't allow the facility-wide to go through. I don't know. That's my guess.

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<sup>56</sup> Medicare Contractor's FPP at 9.

<sup>57</sup> Ex. C-9; *see also* Ex. P-7.

<sup>58</sup> Ex. P-2; *see also supra* at 4, citing the Reconsideration Request ("After receiving the attached letter from NHSN dated June 6, 2019 regarding the issue that temporarily impacted the accuracy of the CDI data sets, the quality coordinator corrected the location code in the system, however, did not recreate the monthly reporting plan and believes this is why no error was indicated at the time.")

<sup>59</sup> Ex. P-11 at P-0046.

[BOARD MEMBER]: And you said -- so, you said there was something that came out from CMS that said, don't submit your data twice.

THE WITNESS: Yes. That was last year. I read it. I've been trying to research for it. It was just like a -- one of the little notices that they send out when they do have issues in the system.

[BOARD MEMBER]: And if you do submit it twice, it may not be accepted by the system, even though you did it correctly --

THE WITNESS: Mm-hmm.

[BOARD MEMBER]: -- the second time?

THE WITNESS: Yes, sir. That was my impression for that notice as I read it.<sup>60</sup>

Thus, the Board finds that when Columbus Specialty initially submitted the data with the incorrect location code and then resubmitted the data with the correct location code, the data was not properly transmitted from NHSN to CMS. Further, the Board finds that Columbus Specialty failed to quality check its reports after the series of notifications from NHSN.

### *Time*

In support of its contention that the CDI Outcome Measure was re-entered correctly prior to the FY2019 Q1 reporting deadline, Columbus Specialty submitted Exhibit P-8 which is a printout of the Monthly Reporting Plans for FY 2019, and explained in its Final Position Paper:

A summary list of monthly reporting plans is attached (Exhibit P-8), indicating that the reporting plan was entered with the location code CSH1 and then when the technical issue was resolved by NHSN the data was re-entered using the FACWIDEIN location code. All data was entered correctly prior to the LTCH QRP reporting deadline of August 15, 2019. See pages 2 and 3 of Exhibit P-8.<sup>61</sup>

Columbus Specialty states that it submitted facility-wide inpatient ("FACWIDEIN") data for *C. difficile* on July 29, 2019.<sup>62</sup> The Medicare Contractor maintains Columbus Specialty's Exhibit P-8 "does not show the date that the reports were submitted."<sup>63</sup> The Board agrees with the

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<sup>60</sup> Tr. at 95-97.

<sup>61</sup> Provider's FPP at 2.

<sup>62</sup> Provider's FPP at 2. *See also* Provider's Exhibit P-9 (Reporting Plans FACWIDEIN MDRO/CDI) and Tr. at 56, where Columbus offers the print date of July 29, 2019 as proof of timely submission to CMS.

<sup>63</sup> Medicare Contractor's FPP at 8.

Medicare Contractor's assertion that Columbus Specialty's exhibit does not demonstrate this data was transmitted to CMS prior to the stated deadline. The NHSN Summary list does not show what data was submitted or an exact date when it was submitted; indeed, nothing on the list represents CDI, instead, the exhibit shows a column titled "Influenza Subtype."<sup>64</sup> Moreover, the NHSN Summary list does not contain any dated timestamp.

### ***Exceptions***

Whether Columbus Specialty requested an exception is not in dispute – it did not. However, the Board notes that the NHSN system problems were resolved such that they did not affect the ability of the long-term care hospital to submit the *C. difficile* measures.

### ***Conclusion & Burden of Proof***

The Secretary prescribed a "form and manner" by which LTCHs are to report data on specified quality measures. The prescribed form and manner for reporting includes creating and updating monthly reporting plans by checking/marking the applicable monthly reporting plan boxes for purposes of prompting the CDC NHSN system to transmit the underlying data to CMS upon expiration of the applicable reporting deadline. This "form and manner" requirement ensures that the relevant quality data, from all locations which are required to report, is captured and then transmitted/reported to CMS appropriately. The Board finds that Columbus Specialty acknowledges that, due to FACWIDEIN location not being available, "[t]he facility location code CSH1 was used in order to for the system to accept submission of the 2019 Q1 data."<sup>65</sup> The Board finds that the selection of the incorrect facility location code created a failure to transfer the data to CMS. Accordingly, it is clear that Columbus Specialty failed to comply with the prescribed "form and manner."

Based upon the testimony presented, the evidence admitted, and having considered the arguments presented in the context of Medicare law, regulations and guidance, the Board concludes that Columbus Specialty failed to establish, by a preponderance of the evidence, that it fully complied with the LTCHQR Program requirements and, therefore, did not establish that it is entitled to relief on the merits of the matter at issue. The Board concludes that the payment penalty imposed by CMS under the LTCHQR Program to reduce Columbus Specialty's APU for FFY 2021 by two (2) percentage points was proper.

### **DECISION:**

After considering the Medicare law, regulations and program instructions, the arguments presented and the evidence submitted, the Board finds CMS' decision to reduce Columbus Specialty's FY 2021 Prospective Payment System APU by two (2) percentage points was proper.

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<sup>64</sup> Ex. P-8.

<sup>65</sup> Provider's FPP at 2.

**BOARD MEMBERS PARTICIPATING:**

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

**FOR THE BOARD:**

3/11/2025

**X** Kevin D. Smith, CPA

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Kevin D. Smith, CPA

Board Chair

Signed by: Kevin D. Smith -A