

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2017-D23

**PROVIDER–**  
Millennium Home Care, LLC

Provider No.: 10-9401

**vs.**

**MEDICARE CONTRACTOR –**  
Palmetto GBA c/o National Government  
Services

**DATE OF HEARING -**  
December 11, 2015

Cost Reporting Period Ended -  
December 31, 2015

**CASE NO.:** 15-2948

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## **ISSUE STATEMENT**

Whether Millennium Home Care, LLC (“Provider” or “MHC”) should be subject to a 2 percent reduction in home health prospective payment system payments for calendar year (“CY”) 2015 in accordance with 42 C.F.R. § 484.225(i) (2013).<sup>1</sup>

## **DECISION**

After considering the Medicare law and regulations, the parties’ contentions, and the evidence submitted, the Provider Reimbursement Review Board (“Board”) finds that the Centers for Medicare & Medicaid Services (“CMS”) properly imposed a 2 percent reduction to MHC’s CY 2015 Medicare payments per 42 C.F.R. § 484.225(i).

## **INTRODUCTION**

Millennium Home Care, LLC is a home health agency (“HHA”) in Port Charlotte, Florida. On September 19, 2014, Palmetto GBA (hereinafter “Medicare Contractor”) determined that MHC failed to meet certain quality data reporting requirements, specifically the submission of “Home Health Care Consumer Assessment of Healthcare Providers and Systems” (“HHCAHPS” or “Home Health Care CAHPS”) for the period April 1, 2013 through March 31, 2014.<sup>2</sup> As a result, the Medicare Contractor subjected MHC to a 2 percent payment reduction for CY 2015 Medicare payments.<sup>3</sup>

MHC timely appealed that decision and met the jurisdictional requirements for a hearing before the Board. MHC represented itself at the hearing. Joe Bauers, Esq., of Federal Specialized Services, LLC, represented the Medicare Contractor.

## **STATEMENT OF THE FACTS**

MHC purchased a Medicare-certified HHA in 2013.<sup>4</sup> MHC states that, at the time of purchase, the previous owners “represented to MHC that HHCAHPS submissions were not due since the provider was below the reporting threshold during the April 1, 2012 – March 31, 2013 fiscal year.”<sup>5</sup> MHC further explains that, at the time of acquisition, MHC “believed that the appropriate waiver notification had been filed.”<sup>6</sup>

In September 2013, MHC received a notice imposing a 2 percent reduction to its payments from Medicare for CY 2014 due to its failure to comply with the HHCAHPS requirements during the prior fiscal year—that is, from April 1, 2012 to March 31, 2013.<sup>7</sup> On September 19, 2014, MHC received a second notice imposing a 2 percent reduction of its Medicare CY 2015 payments due

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<sup>1</sup> Transcript of Proceedings, *Millennium Home Care, LLC v. Palmetto GBA c/o Nat’l Gov’t Servs.*, Provider Reimbursement Review Board at 6 (Dec. 11, 2015) (Case No. 15-2948) [hereinafter Tr.].

<sup>2</sup> Provider’s Final Position Paper at Exhibit P-4, at 1.

<sup>3</sup> *Id.*

<sup>4</sup> Provider’s Final Position Paper at 1.

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

to its failure to comply with the HHCAHPS requirements during a subsequent period from April 1, 2013 – March 31, 2014.<sup>8</sup> On October 17, 2014, MHC requested reconsideration for CY 2015 payment reduction.<sup>9</sup> On January 5, 2015, the Medicare Contractor informed MHC that CMS upheld its determination to reduce MHC's Medicare payments by 2 percent for CY 2015.<sup>10</sup>

### **MILLENNIUM HOME CARE'S POSITION**

MHC contends that, until it received the September 2013 notice imposing the 2 percent reduction for CY 2014, it believed that it was not required to submit HHCAHPS data because of its low volume of patients.<sup>11</sup> MHC explains that, once it received the September 2013 notice, it began to submit HHCAHPS data.<sup>12</sup> However, by the time MHC received this first notice, some of the HHCAHPS due dates for CY 2015 had already passed and MHC was subjected to a 2 percent reduction for CY 2015 as well.<sup>13</sup> MHC also contends that, because "MHC's census is "substantially higher" in CY 2014 and CY 2015 than in previous years, the penalty is "vastly disproportionate."<sup>14</sup>

Although MHC requested documentation to support their representation that reporting was not required from the previous owners, it has not yet received this information and is still uncertain whether it is required to report.<sup>15</sup>

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

The Deficit Reduction Act of 2005 ("Act") required each Medicare-certified HHA to submit quality data "that the Secretary determines [is] appropriate for the measurement of health care quality."<sup>16</sup> The data is required to be submitted "in a form and manner, and at a time, specified by the Secretary . . . ."<sup>17</sup> The Act also imposed a 2 percent penalty upon the HHA for failure to do so.<sup>18</sup> The Secretary communicated these requirements regarding HHA quality data reporting primarily through the Federal Register and the website at [www.homehealthCAHPS.org](http://www.homehealthCAHPS.org).<sup>19</sup> One of the communications provided to HHAs through the website is the Home Health Care CAHPS Survey Protocols and Guidelines Manual that is maintained on that website.<sup>20</sup>

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<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> Medicare Contractor's Final Position Paper at 16.

<sup>10</sup> Provider's Final Position Paper at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3; Tr. at 33-34, 36-39, 46-47; Stipulation at ¶¶ 2-6.

<sup>16</sup> Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 5201(c), 120 Stat. 4, 46-47 (2006) (amending 42 U.S.C. § 1395fff(b)(3)(B)).

<sup>17</sup> *Id.* at 120 Stat. 47.

<sup>18</sup> *Id.* at 120 Stat. 46-47.

<sup>19</sup> See Medicare Contractor's Final Position Paper at Exhibit I-6 (citing Medicare Program; Home Health Prospective Payment System; Rate Update for Calendar Year 2010, 74 Fed. Reg. 58078, 58098-99 (Nov. 10, 2009) (to be codified at 42 C.F.R. pts. 409, 424, & 484) [hereinafter Medicare Program; Home Health Prospective Payment System, 74 Fed. Reg.]).

<sup>20</sup> A copy of relevant parts of this manual is located in the Medicare Contractor's Final Position Paper at Exhibit I-11.

The Secretary requires HHAs to measure and publicly report patient experiences with home health care<sup>21</sup> using the HHCAHPS Survey. HHAs were required to collect and submit data to the HHCAHPS Data Center for all four quarters from April 1, 2013 through March 31, 2014 in order to qualify for the full CY 2015 HH-PPS annual payment update (“APU”). The Secretary communicated Home Health Care CAHPS Survey requirements for the CY 2015 APU in a final rule published on December 2, 2013.<sup>22</sup>

The December 2013 final rule exempted HHAs that have fewer than sixty HHCAHPS-eligible unduplicated or unique patients from the submission requirements, but the final rule required these HHAs to submit a participation exemption request in order to obtain this exemption.<sup>23</sup> CMS required that HHAs submit their patient counts for the period of April 1, 2012, through March 31, 2013 on January 16, 2014 using the HHCAHPS participation exemption request form for the CY 2015 APU which CMS posted on <https://homehealthcahps.org> on April 1, 2013. This deadline is firm, as is true of all quarterly data submission deadlines.<sup>24</sup> HHAs that fail to submit quality data or a participation exemption request as required are subject to a payment reduction of 2 percentage points (applied to the home health market basket percentage increase) for the relevant CY—in this case CY 2015.<sup>25</sup>

Although MHC may have potentially qualified for an HHCAHPS participation exemption,<sup>26</sup> there is no evidence in the record that it, nor the previous owners, submitted the required participation exemption form.<sup>27</sup> Further, it is undisputed that MHC failed to timely submit the required data for the full period from April 1, 2013 through March 31, 2014.

The Board, therefore, finds that MHC failed to follow the requirements delineated in the December 2, 2013 final rule and the requirements at 42 C.F.R. § 484.250. Consistent with the finding that MHC did not submit a participation request exemption form or the HHCAHPS data, the Board finds that CMS properly imposed a 2 percent reduction to MHC’s CY 2015 Medicare payments per 42 C.F.R. § 484.225(i).

## **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 MHC’s CY 2015 Medicare payment per 42 C.F.R. § 484.225(i).

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<sup>21</sup> Medicare Program; Home Health Prospective Payment System, 74 Fed. Reg. at 58098-99.

<sup>22</sup> Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses, 78 Fed. Reg. 72256, 72295 (Dec. 2, 2013) (to be codified at 42 C.F.R. pt. 431) [hereinafter Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, 78 Fed. Reg.]

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

<sup>25</sup> Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, 78 Fed. Reg. at 72259; 42 U.S.C. § 1395fff(b)(3)(B)(v).

<sup>26</sup> MHC submitted monthly census counts in support of its assertion that it qualified for an exemption under 42 C.F.R. § 484.250(b). *See* Provider’s Final Position Paper at Exhibit P-2.

<sup>27</sup> In support of this assertion, MHC did submit a copy of the purchase agreement (located at Provider’s Final Position Paper at Exhibit P-1). However, this agreement contains only general warranties and representations and does not specifically represent that the prior owners had filed an HHCAHPS exemption request form with CMS.

**BOARD MEMBERS:**

Clayton J. Nix, Esq.  
L. Sue Andersen, Esq.  
Charlotte F. Benson, CPA  
Jack Ahern, M.B.A., CHFP  
Gregory Zeigler

**FOR THE BOARD:**

/s/  
L. Sue Andersen, Esq.  
Chairperson

**DATE:** August 2, 2017