

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2018-D40

**PROVIDER –**  
Guardian Homecare, LLC

**HEARING DATE –**  
November 28, 2017

Provider No.: 49-7591

Calendar Year Ending –  
December 31, 2017

**vs.**

**MEDICARE CONTRACTOR -**  
CGS Administrators

**CASE NO.:** 17-1266

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**ISSUE STATEMENT:**

Whether the imposition of a two percent reduction in the appealing home health agency's ("HHA's") Medicare payments for calendar year ("CY") 2017 was proper.<sup>1</sup>

**DECISION:**

After considering the Medicare law and regulations, arguments presented and the evidence submitted, the Provider Reimbursement Review Board ("Board") finds that the Centers for Medicare & Medicaid Services ("CMS") properly imposed a two percentage point reduction to the appealing HHA's CY 2017 home health market basket percentage increase.

**INTRODUCTION:**

Guardian Homecare ("Guardian") has home health agencies located in Richmond, Virginia ("Guardian-Richmond") and Norfolk, Virginia ("Guardian-Norfolk"). Each of these locations has a separate Medicare provider number.<sup>2</sup> CGS Administrators, LLC ("Medicare Contractor") notified Guardian that the 2017 Medicare payment update for its Guardian-Norfolk HHA, (Provider Number 49-7591), would be reduced by two percentage points because Guardian-Norfolk failed to timely submit quality data as required by federal law.<sup>3</sup> Following Guardian's formal request that CMS reconsider its determination, CMS issued a January 13, 2017 reconsideration decision in which it upheld its payment reduction.<sup>4</sup> Guardian timely appealed this decision to the Board<sup>5</sup> and met the jurisdictional requirements for a hearing.

The Board held a telephonic hearing on November 28, 2017. Joni Hemmis, Administrator, represented Guardian. Ed Lau, Esq., of Federal Specialized Services, represented the Medicare Contractor.

**BACKGROUND:**

In the Balanced Budget Act of 1997, Congress mandated that the Secretary of Health and Human Services ("Secretary") establish a prospective payment system for home health services covered by Medicare. Along with the establishment of this prospective payment system, Congress also directed the Secretary to increase the prospective payments made to HHAs each calendar year by a percentage, estimated by the Secretary, otherwise known as the "home health market basket percentage increase" or Annual Payment Update ("APU"). Subsequently, in the Deficit Reduction Act of 2005 ("DRA"), Congress added a data reporting requirement. In order to

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<sup>1</sup> Transcript ("Tr.") at 5-6. Although the parties agreed to this issue statement, the Board notes that the appealing HHA ("Guardian-Norfolk") is not subject to a two percent reduction in its Medicare home health prospective payments for 2017 but, rather, a two percent reduction in its home health market basket percentage increase for 2017. See 42 U.S.C. § 1395fff(b)(3)(B)(v)(I) (2012); 42 C.F.R. § 484.225(i) (2014).

<sup>2</sup> Tr. at 9.

<sup>3</sup> Medicare Contractor's Final Position Paper Exhibit I-7.

<sup>4</sup> Request for Hearing Tab 1.

<sup>5</sup> Request for Hearing Tab 3 at 1.

qualify for the full home health market basket percentage increase, the DRA requires HHAs to submit data that the Secretary determines are appropriate for the measurement of health care quality.<sup>6</sup> Further, if an HHA fails to submit data in a form and manner, and at a time, determined by the Secretary, it is subject to a two percentage point reduction in its APU for a particular payment year.<sup>7</sup>

In an effort to measure and publicly report patient experiences with home health care, the Secretary established that part of an HHA's quality reporting requirements<sup>8</sup> is the submission of Consumer Assessment of Healthcare Providers and Systems ("CAHPS") survey results for an HHA's patient population during four, pre-determined calendar quarters. CMS instructs Medicare-participating HHAs to contract with approved CAHPS vendors who survey the HHA's patients and submit survey data ("HHCAPHS") to CMS.<sup>9</sup> The HHCAPHS data collection period for the CY 2017 APU ran from April 1, 2015 through March 31, 2016. CMS required HHAs to submit their HHCAPHS data files to the HHCAPHS Data Center on a rolling basis for the four calendar quarters.<sup>10</sup>

The October 7, 2016 notification from the Medicare Contractor states that Guardian-Norfolk's CY 2017 APU was being reduced by two percentage points because Guardian-Norfolk failed to submit four quarters of HHCAPHS data during the specified time period. The notification states that its **"review of . . . HHCAPHS submissions for this period found that your agency is not excluded or exempt from the reporting requirements and was non-compliant with HHCAPHS."**<sup>11</sup>

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

Guardian argues that its Norfolk location should not be subject to a reduction in its CY 2017 Medicare payments because it was "in compliance with the [Medicare] conditions of participation and the HHCAPHS requirement" when it submitted its patient files to its HHCAPHS contractor, Deyta (now known as Healthcare First), every month.<sup>12</sup> Guardian's Administrator explains that Guardian's original contract with Deyta was to provide surveys for one Medicare provider number with an annual patient count of 200-250.<sup>13</sup> She explains Guardian-Norfolk did not sign up with Deyta because, at that time, its patient count was such a small amount. Guardian's Administrator claims that since the Guardian-Richmond total patient

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<sup>6</sup> 42 U.S.C.A. § 1395fff(b)(3)(B)(v)(II).

<sup>7</sup> 42 U.S.C.A. § 1395fff(b)(3)(B)(v)(I).

<sup>8</sup> Home Health Prospective Payment System Rate Update for Calendar Year 2013, 77 Fed. Reg. 67068, 67092 (Nov. 8, 2012)

<sup>9</sup> Home Health Prospective Payment System Rate Update for Calendar Year 2012, 76 Fed. Reg. 68526, 68577-78 (Nov. 4, 2011).

<sup>10</sup> 79 Fed. Reg. 66032, 66082 (Nov. 6, 2014). For example, HHAs were required to submit their HHCAPHS data files for the second quarter of 2015 by 11:59 p.m., e.d.t. on October 15, 2015.

<sup>11</sup> Medicare Contractor's Final Position Paper Exhibit I-7 at 1.

<sup>12</sup> Request for Hearing Tab 3 at 1.

<sup>13</sup> Provider's Final Position Paper at 1.

count was much less than the contracted 250 patients, Deyta agreed to provide surveys to the Guardian-Norfolk patients as well since, Guardian-Norfolk had only two patients.<sup>14</sup>

Guardian's Administrator explains that in 2014 the Guardian-Norfolk's patient population grew dramatically and that Guardian continued to send the Norfolk patient files to Deyta believing that Deyta was surveying Guardian-Norfolk's patients.<sup>15</sup> Guardian had "no idea" that its files were not being sent to CMS.<sup>16</sup> The Administrator argues that Guardian should not be penalized for Deyta's "mistake" as Guardian "never once got a notification that CMS was not receiving [its] files[,] [and that] [t]here should be some sort of cross check since CMS is making [Guardian] depend on contracted agencies to do the job for us."<sup>17</sup> Guardian ultimately signed a new Deyta contract that now encompasses both provider numbers.<sup>18</sup>

The Medicare Contractor points out that the CY 2015 final rule published on November 6, 2014 contained the HHCAHPS Requirements for CY 2017,<sup>19</sup> and that "it is the provider's responsibility to monitor their HHCAHPS survey vendor to ensure that its HHCAHPS data are submitted on time, and in an acceptable format, to the Home Health Care CAHPS Data Center."<sup>20</sup> The Medicare Contractor believes the two percent reduction was correctly imposed.

The Board observes that, under the Secretary's quality reporting requirements, HHAs must submit HHCAHPS data for four quarters in predetermined time periods. If an HHA does not submit such data in a form and manner, and at a time, prescribed by the Secretary, CMS is required to reduce the HHA's APU by two percentage points for the CY associated with the reporting time period.<sup>21</sup> Within its various submissions and during the hearing, Guardian does not dispute the fact that CMS did not receive HHCHAPS data for Guardian-Norfolk for the required four quarter time period at issue in the instant appeal. Instead, Guardian argues that its HHCAHPS vendor, Deyta, is ultimately responsible for CMS finding that Guardian-Norfolk was "non-compliant with HHCAHPS" submissions for the time period corresponding with the CY 2017 APU.

However, the Board notes that CMS explicitly warns providers to monitor their respective HHCHAPS survey contractors. Specifically, CMS states:

HHAs should always monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time, by accessing their HHCAHPS Data Submission Reports on <https://homehealthcahps.org>. This helps HHAs ensure that their

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<sup>14</sup> Tr. at 9-10.

<sup>15</sup> *Id.* at 30.

<sup>16</sup> Provider's Final Position Paper at 2.

<sup>17</sup> Request for Hearing Tab 3 at 1.

<sup>18</sup> Tr. at 12; Provider's Final Position Paper at 7.

<sup>19</sup> 79 Fed. Reg. at 66082-83.

<sup>20</sup> Medicare Contractor's Final Position Paper at 9. *See also* 79 Fed Reg. at 66083.

<sup>21</sup> 42 U.S.C.A. § 1395fff(b)(3)(B)(v).

data are submitted in the proper format for data processing to the HHCAHPS Data Center.<sup>22</sup>

In response to a question during the hearing, Guardian's Administrator admits that, as Guardian's "registered . . . HHCAHPS survey administrator," she never "request[ed] a submission report or a validation report from the website for the reporting period in question . . . ."<sup>23</sup> As a result, Guardian did not discover that Guardian-Norfolk did not have HHCAHPS survey data associated with it until some of the data submission deadlines had passed.<sup>24</sup>

The Board finds that Guardian did not perform the recommended steps to assure that its HHCAHPS survey vendor had timely submitted HHCAHPS data for Guardian-Norfolk. As a result, Guardian-Norfolk did not submit its quality data measures in a form and manner, and at a time, specified by the Secretary.<sup>25</sup>

**DECISION AND ORDER:**

After considering the Medicare law and regulations, the arguments presented, and evidence submitted, the Board finds that Guardian-Norfolk did not submit its HHA quality data in a form and manner, and at a time, specified by the Secretary and is therefore subject to a two percentage point reduction in its CY 2017 APU.

**BOARD MEMBERS PARTICIPATING:**

Robert A. Evarts, Esq.  
Charlotte F. Benson, C.P.A.  
Gregory H. Ziegler, C.P.A, CPC-A

**FOR THE BOARD:**

/s/  
Charlotte F. Benson, C.P.A.  
Board Member

**DATE:** June 7, 2018

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<sup>22</sup> 79 Fed. Reg. at 66083.

<sup>23</sup> Tr. at 47-48.

<sup>24</sup> Tr. at 42-44.

<sup>25</sup> 42 U.S.C.A. § 1395fff(b)(3)(B)(v).