PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D1

PROVIDER-
United Hospital Center

Provider No.: 51-0006

vs.

MEDICARE CONTRACTOR –
Palmetto GBA c/o
National Government Services, Inc.

HEARING DATE –
August 15, 2017

Cost Reporting Period Ended –
FFY 2017

CASE NO. – 17-0646

INDEX

ISSUE STATEMENT:

Whether the reduction by one-fourth of the Provider's fiscal year ("FY") 2017 Inpatient Prospective Payment System annual payment update for the failure to meet all of the inpatient quality reporting requirements is proper.[1]

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the reduction of the Provider's annual payment update for FY 2017 was proper.

INTRODUCTION:

United Hospital Center ("UHC" or "Provider") is an acute care hospital located in Bridgeport, WV. On May 23, 2016, the Centers for Medicare and Medicaid Services ("CMS") notified UHC that it failed to meet the Hospital Inpatient Quality Reporting ("IQR") program requirements resulting in a one-fourth reduction in its FY 2017 Inpatient Prospective Payment System ("IPPS") annual payment update ("APU").[2] Specifically, CMS alleged that UHC did not meet the validation requirements for the clinical process measures.[3] UHC requested that CMS reconsider its decision[4] and on July 8, 2016 CMS upheld the payment reduction.[5]

UHC timely appealed CMS' July 8, 2016 reconsideration decision to the Board and has met the jurisdictional requirements for a hearing. The Board conducted a live hearing on August 15, 2017. Lauren Krupica, Esq. of West Virginia University Medicine represented UHC. John Hamada, Esq. of Federal Specialized Services represented Palmetto GBA c/o National Government Services ("Medicare Contractor").

STATEMENT OF FACTS:

The Medicare program pays acute care hospitals for inpatient services under the IPPS.[6] Under IPPS, Medicare pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.[7] Hospitals receive an annual percentage increase in the standardized amount, known as the APU, to account for increases in operating costs.[8]

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003[9] amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the IQR program requiring each hospital to submit

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[1] Transcript ("Tr.") at 5-6.
[2] Exhibit P-3.
[3] *Id.*
[4] Exhibit P-25.
[5] Exhibit P-4.
[6] 42 U.S.C. § 1395ww(d); 42 C.F.R. Part 412.
[7] 42 C.F.R. Part 412.
[8] 42 U.S.C. § 1395ww(b)(3).
[9] Pub. L. No. 108-173, 117 Stat. 2066 (2003).

quality of care data "in a form and manner, and at a time, specified by CMS."[10] Starting with FY 2015, CMS regulations require a hospital's APU to be reduced by one-fourth if a hospital fails to report the required quality data under the IQR program.[11] A hospital that is subject to this penalty during a given year is also ineligible for incentive payments from the value-based purchasing ("VBP") program.[12]

For FY 2017 payment determinations, CMS required hospitals participating in the IQR program to submit the IQR program data for all four quarters of calendar year ("CY") 2015 by the established deadlines and, if selected, meet validation requirements for data submitted for the third and fourth quarters of CY 2014 and the first and second quarters of CY 2015.[13] The focus of this appeal is on the validation requirements. In this regard, 42 C.F.R. § 412.140(d)(1) states:

> (1) Upon written request by CMS or its contractor, a hospital must submit to CMS a sample of patient charts that the hospital used for purposes of data submission under the program. The specific sample that a hospital must submit will be identified in the written request. A hospital must submit the patient charts to CMS or its contractor within 30 days of the date identified on the written request.

Edaptive, the CMS Clinical Data Abstraction Center ("CDAC") contractor, did not receive UHC's validation records for the CY 2014 fourth quarter until October 2, 2015.[14] This was one-day after the October 1, 2015 deadline identified in Edaptive's record request.[15] UHC submitted a request to CMS on October 8, 2015 for an extraordinary circumstances extension/exemption.[16] CMS denied UHC's extraordinary circumstances extension/exemption request on November 25, 2015 because it did not meet the criteria outlined in the relevant Federal Register instructions.[17]

The parties in this appeal dispute whether UHC timely submitted its medical records to the CDAC.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

UHC claims it received correspondence from Edaptive on September 7, 2015, requesting IQR medical record documentation for certain cases from the CY 2014 fourth quarter selected for validation under the Hospital IQR program. This letter provided instructions on how and when to submit the data.[18] The letter stated:

> Requested documentation not received by Edaptive within 30 calendar days of this original request is not eligible for validation and will not be abstracted.

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[10] 42 C.F.R. § 412.140(c).
[11] *See* 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).
[12] *See* 42 U.S.C. § 1395ww(o)(1)(C)(ii); 79 Fed. Reg. 49854, 50048-50049 (Aug. 22, 2014).
[13] Exhibits P-3 and P-5 at 28. *See also* 42 C.F.R. § 412.140(d).
[14] Provider's Final Position Paper at 3. *See also* Exhibits P-6 at 87, P-22 at 218.
[15] Exhibit P-20 at 192.
[16] Exhibit P-22 at 216.
[17] Exhibit P-2 (CMS letter citing to 76 Fed. Reg. 51476, 51651 (Aug. 18, 2011)).
[18] Exhibit P-20.

> Failure to submit requested documentation for abstraction and validation for receipt by Edaptive within 30 calendar days of the original request under CMS' Initial Hospital IQR Program validation may result in the hospital failing this program[.][19]

On October 7, 2015, UHC learned that its fourth quarter charts were not received by Edaptive by the October 1, 2015 deadline, but rather were received on October 2, 2015 at 9:46 a.m.[20]

UHC contends that it should have been afforded a full 30 days from September 7, 2015 to respond to Edaptive's record request.[21] In support of its position, the Provider asserts that the definition of "date of receipt" stated in 42 C.F.R. § 405.1801(a) is controlling and, in particular, would have the Board focus on the following excerpt from that regulation:

> The date of receipt by a party or affected nonparty of documents involved in proceedings before a reviewing entity is presumed to be 5 days after the date of issuance of a contractor notice . . . This presumption, which is otherwise conclusive, may be overcome if it is established by a preponderance of the evidence that such materials were actually received on a later date.

Additionally UHC argues that it was disadvantaged because KEPRO, its new Quality Improvement Organization ("QIO"), did not issue any notifications to alert UHC that its CY 2014 fourth quarter charts were due for submission to CMS.[22] UHC explained that its previous QIO did send such notifications.[23] Finally, UHC contends that it mailed its data submission on time and that FedEx picked up the package on time, but that somehow the package was not timely delivered.[24]

The Board reviewed the definition of "date of receipt" at 42 C.F.R. § 405.1801(a) and finds that it is not applicable to UHC's receipt of the Edaptive notice. This regulation is only applicable to 42 C.F.R. Part 405, Subpart R, governing Board appeals and establishes the "mailbox rule" for correspondence related to Board appeals (*e.g.*, filing an appeal with the Board no later than 180 days after the "date of receipt" by the provider of relevant Medicare Contractor final determination per § 405.1835(a)(3)). The regulations governing the IQR program are located in 42 C.F.R. Part 412, Subpart H and make no mention of the applicability of the definitions in Part 405, Subpart R to Part 412, Subpart H, such as receiving notices for IQR purposes.

The Board finds that the regulation at 42 C.F.R. § 412.140(d)(1) is controlling in this case. It specifies that the "hospital must submit the patient charts . . . *within* 30 days of the date identified on the written request."[25] Consistent with this regulation, the Edaptive notice clearly identified the request date of September 1, 2015 and the submission due date of October 1, 2015.[26]

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[19] *Id*.
[20] Provider's Post-Hearing Brief at 3.
[21] *Id.* at 14.
[22] Provider's Final Position Paper at 3-5.
[23] *Id.* at 4.
[24] *Id.* at 3.
[25] (Emphasis added.)
[26] Exhibit P-20 at 192.

Additionally the Board finds no requirement for a QIO to send reminder notices related to quality reporting. The Board understands that UHC may have relied on these courtesy notices from its former QIO.[27] However, since there is no requirement to send courtesy reminder notices related to validation audits, the Board finds that UHC's allegation related to KEPRO's failure is moot.

The Board also notes that the record contains contradictory evidence as to when the medical record submission was mailed to Edaptive. During the hearing, UHC's witness, the Vice President of Quality, Chief Quality Office and Chairman of Infection Control, testified that he reviewed security footage which showed FedEx picking up a package on September 28th.[28] The same witness went on to explain that, after additional "investigation" including meeting with a FedEx representative, he determined that the package with the data submission at issue was picked up on September 30th and scheduled for overnight delivery.[29] However, there is no security footage available for September 30th[30] and the record contains a FedEx tracking notice showing that a package addressed to Edaptive was picked up from UHC at 4:01pm on October 1st, and delivered on October 2nd at 9:46 a.m.[31] Accordingly, the Board finds that there is no documentary evidence to support the testimony that UHC timely mailed its data submission to Edaptive. To the contrary, this documentation establishes that the package was picked up by FedEx on October 1st (it certainly could have been placed in the mailbox on September 30th) and delivered to Edaptive on October 2nd.

The Board recognizes that 42 C.F.R. § 412.140(c)(2) provides for certain exemptions and exceptions and understands that UHC would like to Board grant the full payment update based on the circumstances presented in UHC's extraordinary circumstances extension/exemption request dated October 8, 2015.[32] This regulation specifies that "CMS may grant an extension or exception of one or more data submission deadlines in the event of extraordinary circumstances beyond the control of the hospital." Here, UHC's extraordinary circumstances extension/exemption request claimed that the Fed Ex package was picked up on September 29th (as seen on surveillance video) but not delivered until October 2nd.[33] UHC revised this statement at the hearing claiming the package was *available for pick-up* on September 30th for overnight delivery by October 1st.[34] However as noted above, the documentation in the record shows that FedEx picked up the package on October 1st at 4:01 p.m. and delivered it to Edaptive on October 2nd.[35] The Board concurs with CMS' denial of the extraordinary circumstances extension/exemption request[36] because the identified circumstances do not meet the criteria for

[27] Provider's Post Hearing Brief at 11-12.
[28] Tr. at 31-32. *See also* Provider's Final Position Paper at 3.
[29] Tr. at 32-35. *See also* Provider's Final Position Paper at 3.
[30] Tr. at 32.
[31] Exhibit P-6.
[32] Provider's Final Position Paper at 5.
[33] Exhibit P-22 at 216.
[34] Tr. at 35.
[35] Exhibit P-22 at 218.
[36] Exhibit P-2.

"circumstances beyond the control of the hospital"[37] as the UHC did not ensure that FedEx had the documents in sufficient time for delivery by October 1st.

In summary, the Board concludes that UHC failed to submit its CY 2014 fourth quarter data for validation to CDAC/Edaptive within 30 days of the date on the written request as required by 42 C.F.R. § 140.140(d)(1). Accordingly, UHC is subject to a reduction to its APU for FY 2017 pursuant to 42 C.F.R. § 412.64(d)(2)(i).

DECISION AND ORDER:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the reduction of the Provider's APU for FY 2017 was proper.

BOARD MEMBERS:

Clayton J. Nix, Esq.
Charlotte F. Benson, CPA
Gregory H. Ziegler, CPA, CPC-A
Robert Evarts, Esq.

FOR THE BOARD:

/s/
Clayton J. Nix, Esq.
Chair

DATE: October 31, 2018

[37] 42 C.F.R. § 412.140(c)(2). *See also* 76 Fed. Reg. at 51651-51652.