PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D19

PROVIDER –
Cottonwood Springs, LLC

RECORD HEARING DATE –
October 20, 2018

PROVIDER NO. – 17-4020

Cost Reporting Period Ended –
September 30, 2018

vs.

MEDICARE CONTRACTOR –
WPS Government Health Administrators

CASE NO. – 18-1292

INDEX

ISSUE STATEMENT:

Whether Cottonwood Springs, LLC ("Cottonwood" or "Provider") is entitled to the full market basket adjustment to its Inpatient Psychiatric Facility Prospective Payment System ("IPF PPS") rate for fiscal year 2018.[1]

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the two percent reduction to Cottonwood's IPF-PPS annual percentage update ("APU")[2] for fiscal year ("FY") 2018 was proper.

INTRODUCTION:

Cottonwood is an inpatient psychiatric hospital located in Olathe, Kansas. Cottonwood's designated Medicare administrative contractor[3] is WPS Government Health Administrators ("Medicare Contractor").

In a letter dated September 11, 2017, the Centers for Medicare and Medicaid Services ("CMS") reduced Cottonwood's APU by two percent for FY 2018 because it failed to meet all of the Inpatient Psychiatric Facility Quality Reporting ("IPFQR") Program requirements established by CMS.[4] On September 17, 2017, Cottonwood requested that CMS reconsider its decision.[5] In a letter dated February 5, 2018, CMS notified Cottonwood that it was upholding its decision to reduce the APU by two percent for FY 2018.[6]

On May 16, 2018, Cottonwood timely appealed the reconsideration decision to the Board and met the jurisdictional requirements for a hearing. Cottonwood submitted a request for a Record Hearing, which the Board granted on September 20, 2018. Cottonwood's representative was Kimberly Tabales, Director of Quality, Risk and Compliance for Cottonwood. The Medicare Contractor was represented by Peter Garasimchuk of Federal Specialized Services.

---

[1] *See* MAC's Final Position Paper at 2 (Aug. 30, 2018).
[2] Market Basket Adjustment and Annual Percentage Update are interchangeable terms. For ease of reference, the Board shall utilize Annual Percentage Update ("APU") in this decision.
[3] CMS's payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries ("FIs") and these functions are now contracted with organizations known as Medicare administrative contractors ("MACs"). The term "Medicare contractor" refers to both FIs and MACs as appropriate.
[4] Provider's Final Position Paper at Tab 1.
[5] *See id.* at Tab 7.
[6] *Id.* at Tab 6.

STATEMENT OF FACTS:

Section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 implemented IPF-PPS which is a per diem prospective payment system for inpatient hospital services furnished by psychiatric hospitals.[7] The IPF-PPS was phased-in over a three (3) year period, starting with cost reporting periods beginning on or after January 1, 2005.[8] Since Congress did not specify a methodology for updating the payment rates under IPF-PPS, the Secretary adopted an annual update methodology based on the approach used in other hospital prospective payment systems, with the first update to the IPF-PPS scheduled for July 1, 2006.[9]

42 U.S.C. § 1395ww(s)(4), as amended by §§ 3401(f) and 10322(a) of the Affordable Care Act,[10] required the Secretary to implement the IPFQR Program starting with the FY 2014 payment determination.[11] Section 1395ww(s)(4) ties receipt of a facility's full APU each year to participation in the quality reporting program and requires that, for FY 2014 and each subsequent fiscal year, the Secretary shall reduce the APU by two percentage points for any inpatient psychiatric hospital that does not comply with the quality data submission requirements for that fiscal year.[12] Section 1395ww(s)(4) also states that psychiatric facilities must submit their quality data measures in a form and manner, and at a time, specified by the Secretary.[13]

In the final rule published on August 6, 2014, CMS announced the IPFQR Program requirement for inpatient psychiatric hospitals to report data for the "influenza vaccination coverage among healthcare personnel" ("Influenza Vaccine Data") quality measure, beginning with the FY 2017 payment determination.[14]

This case involves the FY 2018 payment determination. The reporting period for Influenza Vaccine Data for the FY 2018 payment determination was October 1, 2016 through March 31, 2017.[15] The Influenza Vaccine Data was to be submitted through the CDC's National Healthcare Safety Network ("NHSN"), with a reporting deadline of May 15, 2017.[16] Once entered into NHSN, the data would be sent to CMS according to the facility's CMS Certification Number ("CCN").[17] The 2014 final rule also directed participants to the QualityNet web site for access to a manual containing direction regarding the form, manner, and timing of the data

---

[7] Pub. L. No. 106-113, Appendix F, 113 Stat. 1501A-321, 1501A–332 (1999).
[8] 69 Fed. Reg. 66921, 66964-67 (Nov. 15, 2004); 42 C.F.R. § 412.426(a).
[9] 69 Fed. Reg. at 66966.
[10] Pub. L. No. 111-148, 124 Stat. 119, 483-84, 952-54 (2010).
[11] *See also* 77 Fed. Reg. 53257, 53644-45 (Aug. 31, 2012).
[12] *Id*.
[13] 42 U.S.C. § 1395ww(s)(4)(C). *See also* 42 C.F.R. § 412.424(d)(1)(vi)(A).
[14] 79 Fed. Reg. 45937, 45968-70 (Aug. 6, 2014).
[15] Inpatient Psychiatric Facility Quality Reporting Program Manual at 7, 32 (Version 2.1, June 7, 2016) (*available at* https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772864255)
[16] *Id*. at 30, 32.
[17] CMS Quality Reporting Programs Frequently Asked Questions (Last reviewed March 30, 2015) (*available at* https://www.cdc.gov/nhsn/faqs/cms/faq_cms_hai.html#q8).

submission for the IPFQR Program quality measures.[18] NHSN also provides a number of resources on its website, including Frequently Asked Questions ("FAQs") for CMS quality reporting programs[19] and an Enrollment and Set-Up Checklist for Inpatient Psychiatric Facilities.[20]

Cottonwood entered its Influenza Vaccination Data for the 2016-2017 influenza season into NHSN on April 19, 2017. However, at that time, it had not entered its CCN and the effective date of that CCN into NHSN. As a result, the data did not transmit from NHSN to CMS by the reporting deadline of May 15, 2017.[21] This case focuses on whether the Provider submitted Influenza Vaccine Data for the 2016-2017 influenza season, as required under the IPFQR Program, in order to receive the full APU for FY 2018.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Cottonwood received a letter dated September 11, 2017 from CMS which informed them that the required quality data for the IPFQR Program was not received, and they would receive a two percentage point reduction in their APU for FY 2018. Cottonwood asked CMS to reconsider its decision and, on February 5, 2018, CMS upheld it decision to reduce the Provider's APU by two percent. After receiving this letter, Cottonwood contacted NHSN to determine why they were deemed non-compliant in their IPFQR Program reporting requirements for FY 2018.[22] On April 11, 2018, a NHSN contact explained that, although Cottonwood's Influenza Vaccine Data had been entered into NHSN on April 19, 2017 for the 2016-2017 influenza season, the Provider had not entered its CCN and the CCN's effective date, which were required in order for that data to be transmitted from NHSN to CMS.[23] The NHSN contact also provided instructions on how to update this CCN information in NHSN,[24] which Provider did the same day.[25] The next day, the NHSN contact confirmed that, while Cottonwood's CCN number and effective date were now entered into NHSN, the May 15, 2017 deadline for reporting data on the 2016-2017 influenza season had passed and, as a result, the data would not be sent to CMS.[26]

Cottonwood subsequently filed an appeal and is requesting the Board to overturn CMS's decision to impose a two percent reduction to its FY 2018 APU.[27] Cottonwood does not dispute that it failed to enter its CCN and effective date when submitting their Influenza Vaccine Data. Instead, they claim that the data fields for the CCN and effective date were "hidden" on the

[18] 79 Fed Reg. at 45976. *See also* 77 Fed. Reg. at 53654-55.
[19] (Last reviewed March 30, 2015) (*available at* https://www.cdc.gov/nhsn/faqs/cms/faq_cms_hai.html).
[20] (Last revised April, 2015) (*available at* https://www.cdc.gov/nhsn/PDFs/IPFs/IPF-Enrollment-Checklist.pdf).
[21] Provider's Final Position Paper at Tab 9.
[22] *Id.* at 2 & Tabs 7, 8.
[23] *Id.* at Tab 9.
[24] *Id.*
[25] *Id.* at Tab 11.
[26] *Id.*
[27] *Id.* at 2.

submission page, and that they were "never informed why [the data] submission was non-compliant despite . . . numerous inquiries."[28]

Although the Board is sympathetic to Cottonwood's position, the IPFQR Program manuals and materials make clear the importance of inputting the CCN number so that quality data input into NHSN will transmit to CMS. In April, 2015, NHSN provided a Facility Enrollment & Set-Up Checklist which walks facilities through the enrollment process.[29] In particular, it instructs facilities to verify and update their CCN, stating:

> Step 2: Verify Your Facility's CMS Certification Number (CCN)
>
> After logging into NHSN, click "Facility" on the navigation bar, and then click "Facility Info." At the top of the Facility Information screen, verify and update, if necessary, the CCN in the appropriate data entry field. If any changes have been made, remember to click the "Update" button at the bottom of the screen. *Please be sure to double- and triple-check this number!*
>
> Note: An accurate CCN is required for those facilities participating in CMS Quality Reporting Programs, as this is the ID that will be used to submit data to CMS on your behalf.[30]

The CDC has also published FAQs for CMS Quality Reporting Programs, which specifically address situations where a CCN is not validated when a facility is enrolled into NHSN.[31] Those FAQs contain step-by-step instructions on how a facility can correct its CCN, and caution that, if the CCN is not entered into NHSN by the CMS reporting deadline, the facility's data will ***not*** be sent to CMS.[32]

The Secretary specified the form, manner, and time at which the Influenza Vaccine Data was to be submitted for the FY 2018 APU determination. The data was required to be entered into NHSN by the May 15, 2017 deadline so that it could be submitted to CMS.[33] Submission to

---

[28] *Id.* On November 17, 2017, the Provider followed up on the request for reconsideration it submitted to CMS on September 21, 2017. *Id.* at 1 & Tab 5. Provider was not provided with any elaboration on their non-compliance at that time, and were informed that their request was still being reviewed. *Id.* Between April 2 and April 11, 2018, nearly two months after receiving CMS's letter declining to reconsider its decision, Provider sent two e-mails and left a number of voicemails seeking clarification as to why they were deemed non-compliant. *Id.* at 2. NHSN did, in fact, respond to these inquiries on April 11, 2018. *Id.* at Tab 9.

[29] (Last revised April, 2015) (*available at* https://www.cdc.gov/nhsn/PDFs/IPFs/IPF-Enrollment-Checklist.pdf).

[30] *Id.* (emphasis added).

[31] (Last reviewed March 30, 2015) (*available at* https://www.cdc.gov/nhsn/faqs/cms/faq_cms_hai.html).

[32] *Id. See also* Adding/Correcting a CMS Certification Number within NHSN (July 2015) (*available at* https://www.cdc.gov/nhsn/pdfs/cms/Changing-CCN-within-NHSN.pdf) (instructions and screenshots illustrating how to change or enter a CCN).

[33] Inpatient Psychiatric Facility Quality Reporting Program Manual at 7, 32 (Version 2.1, June 7, 2016) (*available at* https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772864255.

CMS required the Provider to associate their data with the correct CCN and CCN effective date. Since Cottonwood does not dispute that it failed to enter its CCN and effective date before the reporting deadline, the Board concludes that Cottonwood did not submit its Influenza Vaccine Data in the form and manner, and at the time specified by the Secretary. Further, the Board finds that, in accordance with 42 U.S.C. § 1395ww(s)(4)(A)(i) and 42 C.F.R. § 412.424(d)(1)(vi)(A), CMS was correct in reducing Cottonwood's 2018 APU by two percentage points. The Board notes that its decision in this case is consistent with its decisions in similar cases where the provider failed to enter its CCN correctly which resulted in certain quality data not being transmitted to CMS.[34]

DECISION AND ORDER:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the two percent reduction to Cottonwood's IPF-PPS APU for FY 2018 was proper.

BOARD MEMBERS PARTICIPATING:

Clayton J. Nix, Esq.
Charlotte F. Benson, C.P.A
Gregory H. Ziegler, C.P.A., CPC-A
Robert A. Evarts, Esq.
Susan A. Turner, Esq.

FOR THE BOARD:

3/26/2019

X Clayton J. Nix

Clayton J. Nix, Esq.
Chair
Signed by: Clayton J. Nix -A

[34] *See, e.g., Christian Healthcare Ctr. v. Novitas Solutions, Inc.*, PRRB Dec. No. 2019-D9 (Dec. 28, 2018); *North Carolina Baptist Hosp. v. Palmetto GBA*, PRRB Dec. No. 2018-D38 (May 25, 2018), *declined review*, CMS Adm'r (Aug. 2, 2018); *Cornerstone Hosp. v. Novitas Solutions, Inc.*, PRRB Dec. No. 2017-D3 (Jan. 26, 2017), *declined review*, CMS Adm'r (Feb. 21, 2017); *Liberty Healthcare Grp., LLC v. Palmetto GBA*, PRRB Dec. No. 2015-D10 (May 27, 2015), *declined review*, CMS Adm'r (June 23, 2015).