

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2023-D25

PROVIDER –
Carson Tahoe Continuing Care Hospital

Provider No.: 29-2008

vs.

MEDICARE CONTRACTOR -
Noridian Healthcare Solutions, LLC c/o Cahaba
Safeguard Administrators (J-E)

HEARING DATE –
August 23, 2021

Federal Fiscal Year Ending –
September 30, 2021

CASE NO.: 21-0416

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ISSUE

Whether the Center for Medicare and Medicaid Services (“CMS”) properly imposed the penalty, under the Long Term Care Hospital Quality Reporting Program (“LTCH QRP”), to reduce the Provider's Federal fiscal year 2021 (“FFY 2021”) Medicare annual payment update (“APU”) by 2.0 percentage points.¹

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board”) finds that CMS properly imposed a 2 percentage point reduction to the Provider’s FFY 2021 Medicare APU.

INTRODUCTION

Carson Tahoe Continuing Care Hospital (“Carson Tahoe” or “Provider”) is a Long-Term Care Hospital (“LTCH”) located in Carson City, Nevada.² Carson Tahoe’s assigned Medicare contractor³ is Noridian Healthcare Solutions, LLC (“Medicare Contractor”).

On July 13, 2020, the Medicare Contractor notified Carson Tahoe that CMS had determined that it was subject to a reduction in its FFY 2021 payments for not meeting the quality reporting requirements in place for long-term care hospitals.⁴ The quality reporting period relevant to FFY 2021 LTCH payments is the calendar year (“CY”) 2019. Specifically, the Provider was notified that 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” for the third quarter (“Q3”) of CY 2019.⁵ Carson Tahoe requested that CMS reconsider that determination.⁶ However, on September 11, 2020, CMS notified the Provider that it was upholding its decision that Carson Tahoe was non-compliant with the LTCH QRP requirements for Q3 of CY 2019.⁷

Carson Tahoe timely appealed that decision and met the jurisdictional requirements for a hearing before the Board. A video hearing was held on August 23, 2021. Carson Tahoe was represented by Mike Pavlakis, Esq. of Allison MacKenzie, Ltd. The Medicare Contractor was represented by Jerrod Olszewski, Esq. of Federal Specialized Services, LLC.

¹ Hearing Transcript (hereinafter “Tr.”) at 6.

² Medicare Contractor’s Final Position Paper (hereinafter “Medicare Contractor’s FPP”) at 1.

³ 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 with organizations known as Medicare administrative contractors (“MACs”). The term “Medicare contractor” refers to both FIs and MACs as appropriate and relevant.

⁴ Exhibit (“Ex.”) C-3 at 1 (July 13, 2020).

⁵ *Id.*

⁶ Ex. C-2 (July 13, 2020).

⁷ Ex. C-1 at 1 (Sept. 11, 2020).

STATEMENT OF FACTS AND RELEVANT LAW

The statute at 42 U.S.C. § 1395ww(m)(5)(C) requires LTCHs to report on the quality of their services “in a form and manner, and at a time, specified by the Secretary.”⁸ The Secretary implemented this statutory provision at 42 C.F.R. § 412.560(b) which states, in pertinent part:

(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(m)(5)(D), 1899B(c)(1) and 1899B(d)(1) of the Act, and *standardized patient assessment 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(m)(5)(C) and 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 [two] percentage points.⁹

The Fiscal Year 2014 Inpatient Prospective Payment System Long Term Care Hospital Prospective Payment System Final Rule (“FY 2014 IPPS/LTCH PPS Final Rule”) adopted the National Healthcare Safety Network (“NHSN”) Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection (“CDI”) Outcome Measure (NQF #1717) for both the LTCH QRP Fiscal Year 2017 payment determinations and for payment determinations in subsequent years.¹⁰ CMS instructed LTCHs that quality data must be submitted to the NHSN system of the Centers for Disease Control and Prevention (“CDC”).¹¹ A key component of CMS Guidance on LTCH quality data reporting to the CDC NHSN system is the requirement that LTCHs complete a Monthly Reporting Plan for each month for which quality data is being submitted:

The *Patient Safety Monthly Reporting Plan* form (CDC 57.106) is used by NHSN facilities to inform CDC which Patient Safety modules are used during a given month. This allows CDC to select the data that should be included in the aggregate data analysis used for creating national benchmarks. Data entered into NHSN may represent either “in-plan” or “off-plan” surveillance. Each participating facility **must identify and enter a monthly plan** to indicate the module(s) used, if any, and the events, locations and/or procedures that will be monitored ***in-plan***. The

⁸ 42 U.S.C. § 1395ww(m)(5)(C). *See also* Patient Protection & Affordable Care Act of 2010, Pub. L. 111-148, § 3004(a), 124 Stat. 119, 368-69 (Mar. 23, 2010) (adding LTCH QRP statutory provisions at § 1395ww(m)(5)).

⁹ 42 C.F.R. § 412.560(b)(1)(2). *See also* 1395ww(m)(5)(A). (Emphasis added).

¹⁰ 78 Fed. Reg. 50496, 50868 (Aug. 19, 2013).

¹¹ NHSN is a secure, internet-based surveillance system maintained and managed by the CDC and can be used by many types of health care facilities in the United States to collect and use data about HAIs, adherence to clinical practices known to prevent HAIs, the incidence or prevalence of multidrug-resistant organisms within their organizations, and other adverse events. 78 Fed. Reg. at 50960.

modules and locations selected for the month represent *in-plan surveillance* and indicate that the NHSN surveillance protocols will be used in their entirety, for that surveillance.

- Only *in-plan* data are submitted to The Centers for Medicare and Medicaid Services (CMS) in accordance with CMS's Quality Reporting Programs and included in NHSN annual reports or other NHSN publications.
- "Off-plan" surveillance is surveillance that is done because a facility has decided to track a particular event for internal use. A facility makes no commitment to follow the NHSN protocol for "off-plan" events and such data are not included in CMS Quality Reporting Programs, NHSN annual reports or other NHSN publications.

There must be a plan completed for every month that data are entered into NHSN although a facility may choose "No NHSN Patient Safety Modules Followed this Month" as an option. The reporting plan should take into account reporting requirement (for example, local, state, or CMS mandates) when applicable to the facility. The monthly reporting plan is *the first step* in indicating the data that should be submitted to CMS as part of the CMS Quality Reporting Programs.¹²

Thus, an LTCH must submit a Monthly Reporting Plan for *each* month in which a facility plans to submit quality data and that Monthly Reporting Plan must specify each quality measure for which the LTCH is reporting that month (e.g., the CDI Outcome Measure).¹³ If a quality measure is not listed on a Monthly Reporting Plan (i.e., an "in-plan surveillance"), then the CDC NHSN system will not transmit to CMS the quality data associated with that "off-plan" quality measure for that particular month (i.e., 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).¹⁴

For Q3 of CY 2019, the deadline to submit event data was February 15, 2020.¹⁵ The LTCH QRP website, run by CMS, "strongly encourages submitting quality data prior to the deadline to ensure the data are complete and accurate and to allow LTCH providers an opportunity to

¹² Ex. C-6 at 34 (emphasis added).

¹³ Operational Guidance for Long Term Care Hospitals to Report Facility-Wide Inpatient (FacWideIN) *Clostridioides difficile* Infection (CDI) Laboratory-Identified (LabID) Event Data to CDC's NHSN for the Purpose of Fulfilling CMS's Long Term Care Hospital Quality Reporting Requirements (Updated Nov. 2019). Available at: <https://www.cdc.gov/nhsn/pdfs/cms/ltac/ltch-cdi-op-guidance.pdf>

¹⁴ *Id.*

¹⁵ Reporting Requirements and Deadlines in NHSN per CMS Current & Proposed Rules. Available at: <https://www.cdc.gov/nhsn/pdfs/cms/cms-reporting-requirements-deadlines.pdf>

address any submission issues.”¹⁶ Also available on this site, CMS provides links for LTCH QRP Help, with directions on the different help desks available for Provider Support.¹⁷ According to the site, “contact information is intended to assist providers and vendors to ask questions, troubleshoot problems, and request guidance and support.”¹⁸ There are focus areas and contact information for various issues, including LTCH QRP, LTCH quality data submitted to NHSN, and LCDS data submission and reports.¹⁹

Carson Tahoe filed its initial appeal request with the Board on December 23, 2020, because it had been notified that it was facing a 2 percentage point reduction to its FY 2021 Medicare APU based on its failure to timely submit to CMS quality data on NQF #1717 (Facility-wide Inpatient Hospital-onset CDI Outcome Measure) for Q3-2019.²⁰ Carson Tahoe contends that it did, in fact, submit to CMS the CDI outcome measure for 2019 Q3 and, in support of this contention, included printed-out data from the CDC NHSN system dated October 16, 2019 that showed the certain event data for Q3 2019 had been enter into the CDC NHSN system *as of October 16, 2019*.²¹

However, the Medicare Contractor argues that, regardless of whether data was entered into the CDC NHSN system, data entry *alone* does not ensure that the data will be transmitted from the CDC NHSN system to CMS.²² Rather, the Medicare Contractor notes that the relevant Monthly Reporting Plan(s) must be timely and properly completed in order for data to be transmitted from the CDC NHSN system to CMS. Accordingly, it concludes that “a provider can enter data, but if it does not complete the Monthly Reporting Plan, the data does not get submitted to CMS for purposes of determining LTCH QRP compliance. The data is only entered, not submitted.”²³

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Carson Tahoe acknowledges that the event data at issue related to NQF #1717 (Facility-wide Inpatient Hospital-onset CDI Outcome Measure) *for Q3 of CY 2019* was due by February 15, 2020²⁴ (which the Board notes was automatically extended to Tuesday, February 18, 2020 since February 15, 2020 fell on a Saturday and Monday, February 17, 2020 was a Federal holiday).²⁵ Carson Tahoe provided testimony, as well as a Standardized Infection Ration (“SIR”) summary data report from the CDC NHSN system dated October 16, 2019,²⁶ to support its assertion that the requisite NQR #1717 event data for Q3 of CY 2019 was entered *as of October 16, 2019*.²⁷

¹⁶ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/LTCH-Quality-Reporting> (last accessed Jul. 31, 2023).

¹⁷ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/LTCH-Quality-Reporting/LTCH-Quality-Reporting-Help> (last accessed Jul. 31, 2023).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Issue Statement at 1 (Dec. 23, 2020).

²¹ Ex. P-8; Tr. at 25-27.

²² Medicare Contractor’s Post Hearing Brief (“Medicare Contractor’s PHB”) at 3 (Oct. 7, 2021).

²³ *Id.*

²⁴ Tr. at 20.

²⁵ The Feb. 5, 2020 email that Carson Tahoe received from QRPHelp (Ex. P-13 at 23-24) confirms that the deadline was Tuesday, Feb. 18, 2020.

²⁶ Provider’s Post Hearing Brief (“Provider’s PHB”) at 5 (Oct. 7, 2021) (citing to Tr. at 21 and Ex. P-4).

²⁷ *Id.* See also Ex. P-8; Tr at 26.

Carson Tahoe emphasizes the SIR summary data report abstracted by the then-Hospital Epidemiologist from the CDC NHSN system²⁸ as proof that the required event data was in the CDC NHSN system *as of October 16, 2019*. Carson Tahoe's data was used by the NHSN Epidemiologist to generate a SIR.²⁹ According to Carson Tahoe's witness, the data submitted is frozen as of the final submission date for the quarter and, in support of this contention, Carson Tahoe's witness referenced the first page of Exhibit P-9 which CDC guidance dated January 2020 entitled "Using the 'SIR – CDI FacWideIN LabID Data for LTCHQR' Report."³⁰ The Board's review of this exhibit suggests that Carson Tahoe's witness was referring to the following excerpt from that page of the exhibit which, contrary to its suggestion, confirms that the data CMS *receives* is frozen but that the data in the CDC NHSN system can be changed even after the relevant CMS "final submission deadline":

The NHSN Analysis Report, "SIR - CDI FacWideIN LabID Data for LTCHQR" was created in order to allow long term acute care facilities (also known as Long Term Care Hospitals, or LTCHs) to review those *C. difficile* LabID data **that would be submitted to CMS on their behalf**. It's important to keep in mind the following as you begin to use this report:

- The data in this report will represent data **current as of the last time you generated datasets**. NOTE: Quarterly data are frozen as of the final submission date for that quarter (e.g., first quarter (Q1) data will be frozen as of 3 AM ET on August 16th); **any changes made to these data in NHSN after the final submission deadline will not be reflected in the data submitted to CMS.**³¹

As further evidence of this argument, Carson Tahoe submitted Exhibit P-8, a CDC NHSN report generated in October 2020 from the CDC NHSN system, showing that certain event data for Q3 2019 was in the CDC NHSN system *as of October 16, 2019*.³²

The Medicare Contractor counters that entering event data into the CDC NHSN system *alone* does not ensure transmission of data from CDC NHSN system to CMS.³³ The Medicare Contractor contends that Carson Tahoe failed to properly and timely complete its Monthly Reporting Plans for Q3 and, as a result any data that may have been entered into the CDC NHSN

²⁸ Ex. P-4.

²⁹ Tr. at 21-24.

³⁰ Tr. at 25.

³¹ Ex. P-9 at 1 (bold and underline emphasis added). The first page of Ex. P-9 makes clear that SIR reports are based on extractions of data sets from the CDC NHSN system. Accordingly, on page 5 of this exhibit, the CDC reminds users that they will need to regenerate datasets to get new SIR reports if there has been any changes to the data entered into the CDC NHSN system: "REMEMBER: *If you have made any changes to your data, regenerate your datasets in order to review your output options with the most up-do-date data in NHSN.*" (Emphasis added.)

³² Ex. P-8; Tr at 25-27.

³³ Medicare Contractor's PHB at 3.

system was not (and could not be) timely and properly transmitted from the CDC NHSN system to CMS for purposes of determining LTCH QRP compliance.³⁴

Further, the generation of a SIR (4 months prior to the submission deadline) is not evidence of completing the submission requirements because the CDC NHSN system can generate this data monthly, using event data entered, regardless of whether a Monthly Reporting Plan is in place. Therefore, Exhibit P-8 only provides evidence that the event data was entered into the CDC NHSN system.

In support of its contention that the Monthly Reporting Plans for Q3 of CY 2019 were properly completed and in place in a timely manner, Carson Tahoe submitted Exhibit P-6 which is a printout of the Monthly Reporting Plans for Q3 of CY 2019, abstracted from the CDC NHSN system *on June 16, 2021*.³⁵ Carson Tahoe's witness contended that, although abstracted on June 16, 2021 (*i.e.*, well after the submission deadline), Exhibit P-6 is proof that the Monthly Reporting Plan was in place for each month in question.³⁶

At the hearing, the Board discussed the fact that it is unclear when the Q3 Monthly Reporting Plans in Exhibit P-6 were created because, unlike other CDC NHSN documents in the record,³⁷ this document does not include the "last modified" date and the only other date on the document is the June 16, 2021 abstraction date which is more than a year after the submission deadline for Q3 of CY 2019. As a result, the Board requested that Carson Tahoe obtain a last modified date for Exhibit P-6 and submit it following the hearing.³⁸ The Board explained to the Provider that this was in an effort to authenticate Exhibit P-6 as evidence of the timely submission of the Monthly Reporting Plan, so that if a "last modified date" was not obtainable, related evidence such as a history of the Monthly Reporting Plan could be substituted.³⁹ On September 16, 2021, Carson Tahoe responded to the Board request by submitting a revised document as Post-Hearing ("PH") Exhibit P-6-1; however, the new exhibit is identical to the original exhibit except for the abstraction date now showing as September 13, 2021.⁴⁰ In the accompanying Post-Hearing brief, Carson Tahoe restates its argument that, once data is entered into the CDC NHSN system and the due date for submission has passed, the data may not be altered.⁴¹ Significantly, Carson Tahoe failed to address how its new exhibit responded to the Board's request and, in particular, why it was unable to comply with the Board's request that the new exhibit include the last modified date.⁴² Guidance dated January 2020 on how to view the "create" and "modify" dates within the

³⁴ *Id.*

³⁵ Provider's PHB at 2.

³⁶ Tr. at 59.

³⁷ Examples of other CDC NHSN reports with last modified dates include Exhibits P-8 and P-12 as denoted by the column "modifyDate" which captures information different from the column "createDate". See *infra* note 42 and accompanying text (providing information on how to generate CDC NHSN reports with the last modified date).

³⁸ Tr. at 120-123.

³⁹ *Id.*

⁴⁰ Ex. P-6-1 (Sept. 16, 2021).

⁴¹ Provider's PHB at 9-10.

⁴² The Provider's PHB references the new PH Ex. P-6-1 at 3 n.1 and 8; however, the Provider's PHB fails to include any explanation of the new exhibit and how it fulfilled the Board's post-hearing submission request.

CDC NHSN system is available at: <https://www.cdc.gov/nhsn/pdfs/analysis/how2view-create-modify-dates-in-nhsn.pdf>.⁴³

On February 5, 2020, the Provider received an e-mail from QRPHelp.⁴⁴ This e-mail has a subject line of “LTCH QRP – Important Quality Data Information for Upcoming Reporting Deadline.”⁴⁵ It reads, in relevant part:

Good afternoon,

We are reaching out to remind you of the upcoming submission deadline for the Long-Term Care Hospital (LTCH) Quality Reporting Program (QRP). LTCH CARE Data Set (LCDS) assessment data and data submitted via the Center for Disease Control and Prevention (CDC) NHSN for July 1, 2019 – September 30, 2019 (Q3) are due with this submission deadline.

All data must be submitted by February 18, 2020, no later than 11:59 p.m.

According to our records, as of 12:00 a.m. January 16, 2020, CARSON TAHOE CONTINUING CARE HOSPITAL (CCN: 292008) has ***not*** submitted complete data for the following NHSN/CDC measures:

- CDIFF for the month(s) of: July, August, September

...

If you have not yet submitted the required data, please submit and check the appropriate iQIES and/or NHSN analysis reports for errors prior to February 18, 2020, in order to ensure that required data is submitted. Detailed guidance on how to run and interpret NHSN analysis reports can be found the CDC NHSN website at <http://www.cdc.gov/nhsn/cms/index.html>. Resources for how to access and review your LTCH reports are available at <https://iqies.cms.gov/help>.

Providers are also encouraged to verify all facility information prior to submission, including their CCN and facility name.

⁴³ (Last accessed Aug. 2023) (stating: “These detailed instructions can be used when trying to determine when monthly reporting plan, event, procedure, and summary data were first entered (createDate) or last modified (modifyDate) within NHSN. The user in a facility who created and modified the record can also be determined in these reports. This guidance is applicable to all facility types.”).

⁴⁴ Ex. P-13 at 23-24.

⁴⁵ *Id.*

There are several tools on the LTCH QRP website at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/LTCH-Quality-Reporting/index.html> to assist with your submission.⁴⁶

This e-mail put Carson Tahoe on notice that, roughly 2 weeks prior to the submission deadline, there was an issue with the reported data, even though according to Carson Tahoe, the data had entered into the CDC NHSN system 3 ½ months earlier on October 16, 2019.⁴⁷ As discussed previously, the Exhibits submitted by Carson Tahoe in an attempt to establish that point are limited in their scope and are insufficient to do so. Although Exhibits P-4 and P-8 show that the event data at issue was present in the CDC NHSN system *as of October 16, 2019*, these exhibits do not show that all data *and requirements, including the Monthly Reporting Plans*, were submitted at this time (or even whether there were any errors in the October 16, 2019 data entry or whether changes made subsequent to October 16, 2019). Additionally, the timeliness of the Monthly Reporting Plans that Carson Tahoe entered into the record as Exhibits P-6 and P-6-1, could *not* be authenticated before or after the hearing.⁴⁸

The Board questioned Carson Tahoe's Administrator and Director of Nursing, who was responsible for the day-to-day operation of the LTCH,⁴⁹ as to what was done between the February 5, 2020 deficiency notice and the final submission deadline of February 18, 2020:

[Witness]: Yes. When I received this, I followed up with [the Hospital Epidemiologist] and she checked in the system and assured me that all was present within the NHSN.

[Board Member]: Did anyone check with QRP to find out why they had sent this letter and what they thought the error was?

[Witness]: No.⁵⁰

The Board then recalled Carson Tahoe's Hospital Epidemiologist regarding the actions she took after the February 5, 2020 deficiency notice:

[Board Chair]: And so, I was wondering what your recollection is around the February 5th email and what you or Carson may have done in response to the February 5th email?

⁴⁶ *Id.* (emphasis added).

⁴⁷ *Supra* note 21.

⁴⁸ *Supra* note 34.

⁴⁹ Tr. at 90-91.

⁵⁰ Tr. at 106.

[Witness]: Yeah. Thank you for that clarification. So when we received that email stating that data had not been submitted, I went back into NHSN to ensure that all of the data was indeed there the same way that I do every quarter. And if there's any question as to whether or not it's been submitted, I pulled the same information and proof of submission that we had in, I believe, it's [Exhibit] P-4 So I went and I pulled our records that showed that the information was indeed submitted, which was this record right here. And then the line listing that we had just up a moment ago that showed that the data had also been submitted.

[Board Chair]: Did you print anything out relative to that time period that you recall?

[Witness]: So this is what I printed when the data was submitted. This was my proof of submission. So I ensured that it was there, that the date was correct and that the data was actually there.

[Board Chair]: Did you reach out to anyone at NHSN or CMS or –

[Witness]: No. We provided this data for submission with [Carson Tahoe's Administrator and Director of Nursing].⁵¹

Despite being informed that the event data in question was *incomplete*, Carson Tahoe took no additional steps to ensure the CDC NHSN system received the quality data other than to look at the quality data in Exhibit P-4 that they had already entered into the CDC NHSN system 3½ months earlier. Moreover, there was no indication that the Monthly Reporting Plans were reviewed to ensure that any data entered would be transmitted from the CDC NHSN system to CMS. As quoted above, the February 5, 2020 deficiency notice included the specific guidance and recommendations and resources:

1. “[S]ubmit and check the appropriate iQIES and/or NHSN analysis reports for errors prior to February 18, 2020, in order to ensure that all required data is submitted. Detailed guidance on how to run and interpret NHSN analysis reports can be found on the CDC NHSN website at <http://www.cdc.gov/nhsn/cms/index.html>. Resources for how to access and review your LTCH reports are available at <https://iqies.cms.gov/help>.”
2. “[V]erify all facility information prior to submission, including their CCN and facility name.”

⁵¹ Tr. at 114-115.

3. “There are several tools on the LTCH QRP website at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/LTCH-Quality-Reporting/index.html> to assist with your submission.”⁵²

As previously noted, the LTCH QRP website also included several resources including specialized Help Desks for Provider Support.⁵³ Additionally, the Medicare Contractor submitted Exhibit C-7, titled “Long-Term Care Hospital Quality Reporting Program (LTCH QRP) Frequently Asked Questions with Answers.” However, Carson Tahoe’s witness admitted that this document was not frequently used or referenced in preparing or submitting Carson Tahoe’s quality reporting data.⁵⁴ This document includes information on Help Desk contacts in case of issues in reporting,⁵⁵ none of which were utilized by Carson Tahoe, despite it being on notice that there was an issue with its Q3 reporting for CY 2019. Again, the only step that Carson Tahoe appears to have taken was to double-check the quality data was entered in the CDC NHSN system 3½ months earlier as reflected in Exhibit P-4. As explained above, data entry alone is not sufficient to ensure that data is timely transmitted from the CDC NHSN system to CMS. Rather, a Monthly Reporting Plan must be completed to notify the CDC NHSN system what data to transmit to CMS for the relevant month. Further, as indicated in the first recommendation quoted above, there could have been errors that needed to be corrected relative to the data entry or monthly reporting plans and iQIES and/or NHSN analysis reports could have been generated to confirm whether errors existed.

At the hearing, Carson Tahoe provided testimony that this type of problem had occurred before.⁵⁶ According to Carson Tahoe, in Q3 for CY 2018, it received a similar letter notifying it that its data had not been received.⁵⁷ Carson Tahoe’s witness contends that CMS reversed the ruling on reconsideration after Carson Tahoe provided the same proof of submission that is being submitted in this case.⁵⁸ However, the Board notes that this testimony is unsupported because no documentation or other evidence related to Carson Tahoe’s CY 2018 quality reporting submission or reconsideration has been made part of the record in this case. As such, the Board does not give any weight to this testimony and, based on the record before it, finds that any reliance on the alleged CY 2018 experience to be misplaced.

The Board also questioned Carson Tahoe’s witnesses regarding Exhibits P-4 and P-5. Exhibit P-4 is a printout of data entered into the CDC NHSN system database *as of October 16, 2019*.⁵⁹ Exhibit P-5 is a printout *from March 27, 2020* of an iQIES Report sourced (*i.e., received*) from the CDC NHSN system.⁶⁰ A comparison of the data included in the CDC NHSN system printout of October 16 2019 (Exhibit P-4) and the iQIES report showing data received by CMS from the CDC NHSN system after the final submission date (Exhibit P-5) illustrates that the Q3 CDI data

⁵² Ex. P-13 at 18.

⁵³ *Supra* notes 16, 17.

⁵⁴ Tr. at 20.

⁵⁵ Ex. C-7 at 3-5.

⁵⁶ Tr. at 52-53.

⁵⁷ Tr. at 53.

⁵⁸ *Id.*

⁵⁹ Tr. at 14.

⁶⁰ Ex. P-5.

for CY 2019 is missing and was not received by CMS from the CDC NHSN system. When asked about this discrepancy, Carson Tahoe's witness was unable to provide an explanation:

[Board Member]: So you can see it did not - - the last period did not cross over.

[Witness]: Yeah. I can't speak to that. I'm not terribly familiar with this report.⁶¹

While the Board is sympathetic to the fact that Carson Tahoe believes it made a good faith effort to report and submit its quality reporting data for Q3 of CY 2019, the Board is bound by applicable statutes and regulations and has no authority to provide *equitable* relief.⁶² Carson Tahoe contends that the monthly plan printouts at Exhibits P-6 and P-6-1 illustrate timely and proper transmission of its data from the CDC NHSN system to CMS. However, these documents illustrate, at best, that these monthly reporting plans were entered into the CDC NHSN system *at some point* prior to the abstraction/printout date (*i.e.*, June 16, 2021 and September 13, 2021 respectively). The record does not demonstrate *when* the Monthly Reporting Plans were entered, as there is no "submission date" or "last modified date" contained in the documentation. The Board notes that it is Carson Tahoe's burden to establish this fact by a preponderance of the evidence.⁶³ The Board gave Carson Tahoe an opportunity to supplement the record with printouts from NHSN showing the last modified date for the Monthly Reporting Plans at issue; however, as discussed above, Carson Tahoe failed to do so.

Thus, even if it were established that the Q3 quality data was entered into the CDC NHSN system (*without any errors*) prior to the deadline at issue, there is nothing in the record to show that this data was *actually submitted* from the CDC NHSN system *to CMS*. As previously discussed, the CDC NHSN system will not transmit to CMS data that an LTCH has collected on a quality measure for a particular month *unless* the LTCH properly completes (prior to the relevant deadline) a Monthly Reporting Plan for that month listing that quality measure. Here, the February 6, 2019 deficiency notice alerted Carson Tahoe that the data slated to be transmitted to CMS did *not* include NQF #1717 for Q3-2019.⁶⁴ Further, the applicable statute requires Carson Tahoe and other LTCHs to submit their quality data measures *in the form and manner*, and at the time specified by the Secretary.⁶⁵ However, as discussed above, notwithstanding the prior notice that there was a problem with the data at issue as allegedly previously entered, Carson Tahoe took *no* additional steps (such as contacting the Help Desk Support to identify any issues with its data entry or monthly reporting plans, and/or printing out all aspects of its data and monthly reporting plans as entered into CDC NHSN at that time and/or running iQIES and/or NHSN analysis reports for potential errors or alerts⁶⁶) in order to ensure the data at issue

⁶¹ Tr. at 54:19-22.

⁶² 42 C.F.R. § 405.1867.

⁶³ 42 C.F.R. § 405.1871(a)(3).

⁶⁴ *Supra* note 44.

⁶⁵ 42 U.S.C. § 1395ww(m)(5)(C).

⁶⁶ Exhibit P-9 at 6-7 includes the recommendation that LTCHs go through the following steps each month:

STEP 1: Create Monthly Reporting Plans . . .

STEP 2: Enter Events/Procedures . . .

STEP 3: Enter Summary (Denominator) Data . . .

was transmitted from the CDC NHSN system to CMS in the form and manner, and at the time, specified by CMS.⁶⁷

DECISION AND ORDER

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that CMS properly imposed a 2 percentage point reduction to Carson Tahoe’s FFY 2021 Medicare APU.

BOARD MEMBERS PARTICIPATING:

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Signed by: PIV

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- STEP 4: Resolve Alerts . . .
 - STEP 5: Generate Datasets . . .
 - STEP 6: Print/Save Copies of Quarterly CMS Reports . . .

Examples of alerts include: incomplete events, missing events, incomplete summary data, missing summary data, incomplete procedures, missing procedures, missing procedure-associated events, unusual susceptibility profile, confirm CDI test type. *Id.* at 6.

⁶⁷ 42 U.S.C. § 1395ww(m)(5)(C). *See also* Patient Protection & Affordable Care Act of 2010, Pub. L. 111-148, § 3004(a), 124 Stat. 119, 368-69 (Mar. 23, 2010) (adding LTCH QRP statutory provisions at § 1395ww(m)(5)).