

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION**

2024-D03

PROVIDER –
Banner-University Medical Center South
Campus

PROVIDER NO. –
03-0111

vs.

MEDICARE CONTRACTOR –
Noridian Healthcare Solutions, LLC

RECORD HEARING DATE –
February 8, 2023

FISCAL YEAR –
September 30, 2020

CASE NO. –
20-1792

INDEX

	Page No.
Issue Statement	2
Decision	2
Introduction	2
Statement of Facts and Relevant Law	2
Discussion, Findings of Facts and Conclusions of Law	4
Decision	6

ISSUE STATEMENT:

Whether the Centers for Medicare and Medicaid Services (“CMS”) properly imposed a two percentage point reduction to the Provider’s Federal Fiscal Year (“FFY”) 2020 Annual Payment Update (“APU”) under the Inpatient Psychiatric Facility Quality Reporting (“IPFQR”) Program was proper?¹

DECISION:

After considering the Medicare law, the regulations and program instructions, the arguments presented and the evidence submitted, the Provider Reimbursement Review Board (“Board”) finds that CMS’ decision to reduce the Provider’s FFY 2020 APU as it relates to the IPF prospective payment system (“IPF-PPS”) by two percentage points was proper.

INTRODUCTION:

Banner University Medical Center, South Campus (“Banner” or “Provider”) is an acute care hospital located in Tucson, Arizona. Banner has an inpatient psychiatric sub-unit (the “Banner IPF Unit”) and that is an excluded unit receiving Medicare payment under the IPF-PPS. The Banner IPF Unit participates in the IPFQR program.² Banner’s Medicare contractor³ (including the Banner IPF Unit) is Noridian Healthcare Solutions (“Medicare Contractor”).

On September 5, 2019, the Medicare Contractor notified Banner that its FFY 2020 IPF-PPS APU for the Banner IPF Unit would be reduced by two percentage points due to its failure to meet the requirements of the IPFQR Program.⁴ Specifically, Banner failed to timely submit quality data for the Banner IPF Unit as required by federal law. Following Banner’s formal request that CMS reconsider its determination, CMS issued a written reconsideration determination on December 26, 2019 that upheld the payment reduction.⁵

Banner timely appealed its CMS reconsideration determination to the Board and met the jurisdictional requirements for a hearing. The Provider submitted an unopposed request for a Record Hearing, which the Board granted on February 8, 2023. The Provider was represented by Tamara Dougan of Banner Health. The Medicare Contractor was represented by Joe Bauers, Esq. of Federal Specialized Services.

STATEMENT OF FACTS AND RELEVANT LAW:

Section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 implemented the IPF Prospective Payment System which is a per diem prospective payment

¹ Joint Stipulation of Facts (hereinafter “Stipulations”) at ¶ 3.

² Provider’s Final Position Paper at 1.

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 Stipulations at ¶ 4.

⁵ *Id.* at ¶ 6.

system for inpatient hospital services furnished by psychiatric hospitals.⁶ The IPF Prospective Payment System was phased-in over a three (3) year period, starting with cost reporting periods beginning on or after January 1, 2005.⁷ Since Congress did not specify a methodology for updating the payment rates under IPF Prospective Payment System, the Secretary adopted an annual update methodology based on the approach used in other prospective payment systems, with the first update to the IPF Prospective Payment System scheduled for July 1, 2006.⁸

The Medicare Statute at 42 U.S.C. § 1395ww(s)(4), as amended by §§ 3401(f) and 10322(a) of the Affordable Care Act,⁹ required the Secretary to implement the IPFQR Program starting with the FFY 2014 payment determination.¹⁰ Section 1395ww(s)(4)(A) ties receipt of a facility's full APU each year to participation in the quality reporting program and requires that, for FFY 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:

(4) Quality reporting

(A) Reduction in update for failure to report

(i) In general

Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

(ii) Special rule

The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.¹¹

Section 1395ww(s)(4)(C) (as referenced in Paragraph (4)(A)(i) above) states that “each . . . psychiatric unit **shall submit** to the Secretary data on [the required] quality measures” and that [s]uch data **shall be submitted in a form and manner, and at a time, specified by the Secretary.**”¹²

⁶ Pub. L. No. 106-113, Appendix F, 113 Stat. 1501A-321, 1501A-332 (1999).

⁷ 69 Fed. Reg. 66921, 66964-67 (Nov. 15, 2004); 42 C.F.R. § 412.426(a).

⁸ 69 Fed. Reg. at 66966.

⁹ Pub. L. No. 111-148, 124 Stat. 119, 483-84, 952-54 (2010).

¹⁰ See also 77 Fed. Reg. 53257, 53644-45 (Aug. 31, 2012).

¹¹ (Bold emphasis in original and italics and underline emphasis added.) See also *id.*

¹² (Emphasis added.) See also 42 C.F.R. § 412.424(d)(1)(vi)(A).

This case involves the FY 2020 payment determination. In a letter dated September 5, 2019, CMS notified Banner that it had failed to submit data for the Banner IPF Unit by the submission deadline for the Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge (SUB-3) and the subset, Alcohol and Other Drug Use Disorder Treatment at Discharge (SUB-3a) (collectively “SUB-3/3a”) measure which resulted in a two percent reduction to the FFY 2020 IPF-PPS APU.¹³ The SUB-3/SUB-3a measure data is a required submission for the IPFQR Program measure for FY 2020 payment determination.¹⁴ The reporting period for SUB-3/SUB-3a for the FY 2020 payment determination was January 1, 2018 through December 31, 2018.¹⁵ The SUB-3/SUB-3a was to be submitted to CMS through *QualityNet* with a reporting deadline of August 15, 2019.¹⁶ Banner failed to submit the Banner IPF Unit’s data on the SUB-3/SUB-3a measure to *QualityNet* by the reporting deadline of August 15, 2019,¹⁷ thus resulting in a two percentage point reduction to the Provider’s FFY IPF-PPS 2020 APU.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Banner characterizes its failure to enter the Banner IPF Unit’s data on the SUB-3/SUB-3a measure timely to *QualityNet* as an “accidental omission.”¹⁸ Specifically, the Provider in its Final Position Paper states:

The Provider submitted the CY2018 (FY2020) IPFQR measure data timely and in good faith to Quality Net. While *there was an accidental omission on the Provider’s part*, all other IPFQR program requirements have been met for FY2020. ***This accidental omission*** would have been corrected before the submission deadline had the proper alerts been in place in the Inpatient Psychiatric Facility Reporting report (“PPR”). Quality Net’s failure to alert providers to this error - either by updating their known issues log or by sending an email alert to providers before the submission deadline – prevented this Provider from correcting their ***accidental omission*** in the required time parameters. Also, had the QIO included the Quality Net SA in communication regarding the submission status for the IPFQR program, the Provider would have had an opportunity to submit the SUB-3 / SUB-3a data into Quality Net prior to submission deadline.¹⁹

The CMS training materials from August 2019 at Exhibit P-6 explain that “[t]o participate in the IPFQR Program and qualify for the full FY 2020 APU, providers had to meet the following requirements by the August 15, 2019, submission deadline (unless otherwise noted)”²⁰:

¹³ Exhibit C-2.

¹⁴ Exhibit P-6 at 28. *See also* 83 Fed. Reg. 38576, 38605 (Aug. 6, 2018)

¹⁵ IPFQR Program Manual at 40 (Version 4.0, May 30, 2018) (available at https://www.qualityreportingcenter.com/globalassets/migrated-pdf/ipf_programmanual_version4.0_201800621_vfinal.508c0723.pdf (last visited Nov. 7, 2023)).

¹⁶ *Id.*

¹⁷ Stipulations at ¶ 7.

¹⁸ Provider’s Final Position Paper at 3.

¹⁹ *Id.* (emphasis added).

²⁰ Exhibit P-6 at 28. *See also* Exhibit C-3 at C0018.

- Have a least one active *QualityNet* Security Administrator
- Have an IPFQR Program Notice of Participation (NOP) status of “Participating”
- Submit measure and non-measure data, including:
 - Aggregate numerator and denominator data for HBIPS-2, -3, -5, SUB-2/-2a, -3/-3a; TOB-2/-2a, -3/-3a; IMM-2 (Quarter [Q] 4 2018 and Q1 2019 only), Screening for Metabolic Disorders, Transition Record with Specified Elements Received by Discharged Patients, and Timely Transmission of Transition Record Measure measures
 - Non-measure Data and Population Counts for calendar year 2018.
- Complete and submit the Data Accuracy and Completeness Acknowledgment (DACA)²¹

The CMS Inpatient Psychiatric Facility Quality Reporting Program Manual (“IPF-QRP Manual”) states: “[e]ffective for FY 2019 payment determination and subsequent years, CMS will collect data for five new measures for the IPFQR Program.”²² The four chart-abstracted measures include “Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge (SUB-3) and the subset measure Alcohol and Other Drug Use Disorder Treatment at Discharge (SUB-3a).”²³ The IPF-QRP Manual serves as a resource to assist IPFs in executing the IPFQR Program. In particular, it instructs facilities to “[s]ubmit measure data *before* the annual data submission deadlines.”²⁴

Although the Board is sympathetic to Banner’s position, the IPFQR Program manuals and other resource materials make clear the importance of *timely* inputting into *QualityNet* all required data on the quality measures.²⁵ Consistent with 42 U.S.C. § 1395ww(s)(4)(C), the Secretary specified

²¹ Exhibit P-6 at 28.

²² Exhibit C-3 at C0022.

²³ *Id.*

²⁴ *Id.* at C0018 (emphasis added).

²⁵ Banner tries to shift its responsibility for submitting quality data to CMS back onto CMS by arguing that that *QualityNet* should “alert providers to this error - either by updating their known issues log or by sending an email alert to providers before the submission deadline” and, as a result, Banner was “prevented . . . from correcting their **accidental omission** in the required time parameters. However, as the Ninth Circuit explained to a provider in *PAM, Ltd. v. Sebelius*, “[the provider] appears to have forgotten the aphorism: ‘Men must turn square corners when they deal with the Government.’ As we will discuss further, the Department has always insisted that the deadline for submitting [quality] data is a square corner, but [the provider] now seeks to make it round. It is not entitled to do so.” 747 F.3d 1214, 1217 (9th Cir. 2014) (citations omitted). *See also Lancaster Hosp. Corp. v. Becerra*, 58 F.4th 124, 129 (4th Cir. 2023) (stating “Lancaster asserts that—even if some reduction were warranted—the Board erred by denying its entire 1997 reimbursement request. There appears no doubt Lancaster provided services to Medicare beneficiaries in 1997 and denying all reimbursement for that year may seem harsh. But the principle that people ‘must turn square corner when they deal with the Government’ ‘has its greatest force when a private party seeks to spend the Government’s money.’ *Heckler v. Community Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 63, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984). ‘As a participant in the Medicare program,’ Lancaster ‘had a duty to familiarize itself with the

“a form and manner, and at a time” by which SUB-3/3a were to be submitted for the FFY 2020 IPF-PPS APU determination. Pursuant to these instructions, the requisite data for Banner’s IPF Unit was required to be entered into *QualityNet* by the August 15, 2019 deadline, so that it could then be transmitted from *QualityNet* to CMS. Since Banner does not dispute the fact that it failed to enter into *QualityNet* the required data on the SUB-3/3a measure by the reported deadline, the Board concludes that Banner failed to submit the SUB-3/3a data in the form and manner, and at the time specified by the Secretary. Due to this failure, 42 U.S.C. § 1395ww(s)(4)(A) specifies that the FFY 2020 IPF-PPS APU “*shall* be reduced by 2 percentage points.” Thus, 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 Banner’s FFY 2020 IPF-PPS APU by two percentage points.

DECISION:

After considering the Medicare law, the regulations and program instructions, the arguments presented and the evidence submitted, the Board finds that CMS’ decision to reduce Banner’s FY 2020 IPF-PPS APU by 2 percentage points was proper.

BOARD MEMBERS PARTICIPATING:

Clayton J. Nix, Esq.
Robert Evarts, Esq.
Kevin D. Smith, CPA
Ratina Kelly, CPA.

FOR THE BOARD:

11/15/2023

X Clayton J. Nix

Clayton J. Nix, Esq.
Chair
Signed by: PIV

legal requirements for cost reimbursement,’ *id.* at 64, 104 S.Ct. 2218, including the need to provide cost data in a form ‘capable of being audited,’ 42 C.F.R. § 413.24(c). The Board’s decision to deny reimbursement for fiscal year 1997 was neither arbitrary nor capricious and was supported by substantial evidence. The district court’s judgment is thus *AFFIRMED*. (footnote omitted)). Further, Banner has cited to no authority granting the Board authority to provide equitable relief to it. *See also* 747 F.3d at 1219 (stating “We agree with the Board that it did not have independent authority to grant equitable relieve in these circumstances).