

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2025-D03

PROVIDER –
Memorial Hospital

PROVIDER NO. –
15-0072

vs.

MEDICARE CONTRACTOR –
WPS Government Health Administrators – (J-8)

VIDEO HEARING DATE –
May 8, 2024

FISCAL YEAR –
Federal Fiscal Year 2023

CASE NO. –
23-0216

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ISSUE STATEMENT

Whether Logansport Memorial Hospital (“Provider” or “Memorial”) should be subject to a one-fourth reduction to its Fiscal Year (“FY”) 2023 Annual Percentage Update (“APU”) for failure to meet the hospital inpatient quality reporting program (“IQR”) requirements due to extraordinary or extenuating circumstances.¹

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board” or “PRRB”) finds that CMS’ decision to reduce Memorial’s FY 2023 Inpatient Prospective Payment System (“IPPS”) APU by one fourth was correct.

INTRODUCTION

Memorial Hospital is an acute care hospital located in Logansport, Indiana.² The Medicare administrative contractor³ assigned to Memorial for this appeal is WPS Government Health Administrators (“Medicare Contractor”).

On June 1, 2022, the Centers for Medicare & Medicaid (“CMS”) notified Memorial that its FY 2023 IPPS APU would be reduced by one fourth due to its failure to timely submit quality data.⁴ Specifically, CMS notified Memorial that the one-fourth reduction in its FY 2023 IPPS APU was due to Memorial’s failure to timely submit quality data as required by federal law, in this case, the annual Maternal Morbidity Structural Measure.⁵ Following Memorial’s formal request that CMS reconsider its determination,⁶ CMS issued a July 28, 2022 reconsideration decision in which it upheld the payment reduction.⁷

Memorial timely appealed CMS’ reconsideration determination to the Board and met the jurisdictional requirements for a hearing. The Board held a live hearing via Zoom on May 8, 2024. Memorial was represented by Amanda Gebhardt of Memorial Hospital. The Medicare Contractor was represented by Charles Moreland, Esq. of Federal Specialized Services.

¹ Hearing Transcript of Proceedings (hereinafter “Tr.”) at 5 (May 8, 2024).

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

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 relevant law may refer to FIs and MACs interchangeably, and the Board will use the term “Medicare contractor” to refer to both FIs and MACs, as appropriate and relevant.

⁴ Exhibit (hereinafter “Ex.”) C-14 (CMS Initial Noncompliance Letter) (Jun. 1, 2022).

⁵ *Id.*

⁶ *See* Ex. C-10 (Provider Reconsideration Request) (Jun. 17, 2022).

⁷ Ex. C-1 (Notice of Quality Reporting Program Noncompliance Decision Upheld) (Jul. 28, 2022).

STATEMENT OF RELEVANT FACTS

Memorial acknowledged that it did not submit the 2021 Maternal Morbidity Structural Measure prior to the May 16, 2022 due date.⁸ Memorial submitted other FY 2023 IQR measures and signed the Data Accuracy and Completeness Acknowledgement (“DACA”) on April 21, 2022; however, the Maternal Morbidity Structural Measure was added to HCQIS Access Roles and Profile (“HARP”) *after* April 21, 2022 and thus, could not have been submitted at the same time.⁹

During the submission period for the 2021 Maternal Morbidity Structural Measure reporting, Memorial’s quality director was new to the role and was not receiving communication through the CMS QualityNet portal.¹⁰

STATEMENT OF RELEVANT LAW

The Medicare program pays acute care hospitals for inpatient services under the IPPS,¹¹ whereby the Medicare program pays hospitals predetermined, standardized amounts per discharge, subject to certain payment adjustments.¹² Hospitals receive an annual percentage increase in the standardized amount, known as the “market basket update,” or APU, to account for increases in operating costs.¹³

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003¹⁴ amended 42 U.S.C. § 1395ww(b)(3)(B) to establish the IQR that requires every hospital to submit quality of care data “in a form and manner, and at a time, specified by CMS.”¹⁵ For fiscal years 2015 and beyond, CMS reduces the hospital’s annual IPPS APU by one fourth if a hospital fails to report the quality data required under the IQR.¹⁶

As of October 1, 2021, the requirements to participate in the Hospital IQR Program were:

- (a) ***Participation in the Hospital IQR Program.*** In order to participate in the Hospital IQR Program, a section 1886(d) of the hospital must-

- (1) Register on QualityNet website, before it begins to report data;

⁸ See Appeal Issue Statement (arguing, in part: “the requirement . . . that includes the Maternal Morbidity Structural Measure 2021 was not available at the time [of submission]”) (Nov. 11, 2022); see also Provider’s Preliminary Position Paper at 5 (Jul. 7, 2023) and Provider’s Final Position Paper (hereinafter, “Provider’s FPP”) at 5 (Feb. 8, 2024) (section titled: “Why we did not submit the measure:”); see also Tr. at 9.

⁹ Provider’s FPP at 3; Ex. H at ¶ 8 (Witness Affidavit).

¹⁰ Provider’s FPP at 5.

¹¹ 42 U.S.C. § 1395ww(d); 42 C.F.R. Part 412. IPPS hospitals are often referred to as “subsection (d) hospitals.”

¹² 42 C.F.R. Part 412.

¹³ 42 U.S.C. § 1395ww(b)(3)(B). See also 42 C.F.R. § 413.40(a)(3) (“Market basket index is CMS’s projection of the annual percentage increase in hospital inpatient operating costs. The market basket index is a wage and price index that incorporates weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of hospital inpatient operating costs”).

¹⁴ Pub. L. No. 108-173, 117 Stat. 2066 (2003).

¹⁵ *Id.* at § 501, 117 Stat. at 2290; 42 C.F.R. § 412.140(c)(1).

¹⁶ See 42 U.S.C. § 1395ww(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C).

- (2) Identify and register a QualityNet security official as part of the registration process under paragraph (a)(1) of this section; and
- (3) Submit a completed Notice of Participation Form to CMS if the hospital if the hospital is participating in the program for the first time, has previously withdrawn from the program and would like to participate again, or has received a new CMS Certification Number (CCN).¹⁷

To meet the hospital IQR program requirements, IPPS hospitals must submit quality data as specified by the Secretary, and to be clear:

- (II) Each subsection (d) hospital shall submit data on measures selected under this clause to the Secretary *in a form and manner, and at a time, specified by the Secretary* for purposes of this clause. The Secretary may require hospitals to submit data on measures that are not used for the determination of value-based incentive payments under subsection (o).¹⁸

The Maternal Morbidity Structural Measure was adopted in the FY 2022 IPPS/LTCH PPS Final Rule, to begin with an abbreviated reporting period from October 1, 2021 through December 31, 2021.¹⁹ CMS required reporting of this measurement to be submitted through the HARP system, with a reporting deadline of May 15, 2022.²⁰ Participation in this reporting period would impact the FY 2023 payment determination.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

In Memorial's Final Position Paper, Memorial outlined - in a section titled: "Why we did not submit the measure"²¹ - several internal issues present at the time of reporting that led to Memorial's failure to timely report the measure: (1) the quality director was new to their role and "was not registered with the quality net portal," (2) the letter of warning regarding the reporting in question prior to the deadline went to the CEO, not the quality director; (3) after the April 21, 2022 data submission, the quality director did not go back into the system prior to the submission due date to recheck their submission because they were "under the impression everything was submitted"; and (4) the quality director role "has had at least 5 different people in the role" prior to the quality director at the time of this reporting.²²

¹⁷ 42 C.F.R. § 412.140(a).

¹⁸ 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II) (emphasis added).

¹⁹ 86 Fed. Reg. 44774, 44779 (Aug. 13, 2021).

²⁰ Ex. C-6 at 17.

²¹ Provider's FPP at 5.

²² *Id.* Note: The Provider also demonstrated that changes have been made to prevent the reporting failure in the future, such as updating the contact person and information. *See id.* at 6. *See also* Ex. F.

The Medicare Contractor responds that it is Memorial's responsibility to "follow the guidance and resources available to meet program requirements" and that the DACA is a requirement separate and apart from the requirement to submit the Maternal Morbidity Structural Measure.²³

As set forth in the Statement of Relevant Law, *supra*, 42 C.F.R. § 412.140(a) lists the Hospital IQR Program participation requirements, which includes registering both the hospital and a security official on the QualityNet website before the hospital begins reporting data. Memorial states that the new quality director was not registered with QualityNet "due to a lack of understanding that HARP and the quality net portal do not speak to each other."²⁴ In the same "Why we did not submit the measure" section, Memorial states that on April 21, 2022, they submitted data and signed a DACA on HARP. Thus, Memorial's argument that the quality director was new to their role and was not registered with the QualityNet portal is moot as it did not prevent Memorial's ability to submit other required data on HARP.

The Board finds that Memorial's internal turnover issues resulted in their own failure to maintain updated contact information for updates, thus, they were unaware of the required Maternal Morbidity Structural Measure submission requirement and missed the deadline, which was four weeks after their submission of other data on April 21, 2022.

Memorial argues that 42 C.F.R. § 412.140(a) requires the use of the decommissioned QualityNet, but providers were required to use the new HARP system for submitting FY 2023 IQR Measures. Therefore, any action by CMS, including the one-fourth APU reduction for the failure to submit the Maternal Morbidity Structural Measure into HARP, for the reporting period in question, is unenforceable.²⁵ The Board finds that this is a misinterpretation of the regulation.

The Medicare Contractor counters that the regulatory changes went through the required notice-and-comment period, and cites to an explanation in the Federal Register that reads:

Due to an updated URL for the QualityNet website from QualityNet.org to QualityNet.cms.gov, we are also revising Hospital IQR Program regulations at 42 CFR 412.140(a)(1) and 42 CFR 412.140(c)(2)(i) to reflect updates to the QualityNet website.²⁶

The Medicare Contractor also points to various items of guidance that were available to Memorial.²⁷

The alleged failure of CMS to update a website reference in a regulation does not invalidate the entire regulation nor does it render it subject to notice and comment, as such is not a change to the substantive legal standard—it is a change of a website that impacts the procedure one must follow. Moreover, by Memorial's own admission, they were clearly aware of the transition to

²³ Medicare Contractor's FPP at 12.

²⁴ Provider's FPP at 5.

²⁵ *Id.* at 3.

²⁶ 86 Fed. Reg. at 44780.

²⁷ Medicare Contractor's FPP at 9-10.

HARP based on their knowledge that the transition began on April 7, 2020. Accordingly, there is no issue regarding notice to the provider community as to the transition of the portal.

Further, 42 U.S.C. § 1395ww(b)(3)(B)(viii)(II) reiterated at 42 C.F.R. § 412.140(c), requires reporting *in a form and manner, and at a time, specified by the Secretary*. As previously mentioned, the FY 2022 IPPS/LTCH PPS Final Rule adopted the requirement to include the Maternal Morbidity Structural Measure beginning with the October 1, 2021 through December 31, 2021 reporting period. CMS publishes hospital quality reporting guides for each calendar year providing guidance on the specific calendar year's reporting requirements—the when, where, and how.²⁸ More importantly, since the Maternal Morbidity Structural Measure was new or refreshed, CMS issued the “CMS Hospital IQR Program Measures for the FY 2023 Payment Update” in September 2021 and the “Hospital Inpatient Quality Reporting Program Frequently Asked Questions: Maternal Morbidity Structural Measure” in February 2022.²⁹ Accordingly, guidance was available to Memorial Hospital for reporting the Maternal Morbidity Structural Measure in advance of the date it attempted to report its IQR data.

Memorial also argues that “CMS should grant an exception to [Memorial] under 42 C.F.R. § 412.140(c)(2)(ii)” because “the manner in which it implemented the HARP/HQR portal in the middle of a public health emergency” qualifies as an extraordinary circumstance under 42 C.F.R. § 412.140(c)(2)(i). 42 C.F.R. § 412.140(c)(2) states:

- (2) ***Extraordinary circumstances exceptions.*** CMS may grant an exception with respect to quality data reporting requirements in the event of extraordinary circumstances beyond the control of the hospital. CMS may grant an exception as follows:
- (i) For circumstances not relating to the reporting of electronic clinical quality measure data, a hospital participating in the Hospital IQR Program that wishes to request an exception with respect to quality data reporting requirements must submit its request to CMS within 90 days of the date that the extraordinary circumstances occurred. For circumstances relating to the reporting of electronic clinical quality measures, a hospital participating in the Hospital IQR Program that wishes to request an exception must submit its request to CMS by April 1 following the end of the reporting calendar year in which the extraordinary circumstances occurred. Specific requirements for submission of a request for an exception are available on QualityNet website.
- (ii) CMS may grant an exception to one or more hospitals that have not requested an exception if CMS determines that a systemic problem with CMS data collection systems directly affected the ability of the hospital to submit data; or if CMS determines that an

²⁸ See Ex. C-6.

²⁹ See Ex. C-7 and C-8.

extraordinary circumstance has affected an entire region or locale.³⁰

The Board finds that Memorial did not meet the requirements for an extension or exemption under 42 C.F.R. § 412.140(c)(2)(ii) as Memorial has acknowledged that its failure was caused by errors in their own internal processes, which is not an extraordinary circumstance *beyond the control of the hospital*. Moreover, the implementation of the new portal during the pandemic had no impact on the May 15, 2022 submission deadline as Memorial acknowledges that HARP “largely replaced the QualityNet portal in December 2020.”³¹

Finally, Memorial asserts that even though not reported, it did meet the Maternal Morbidity Structural Measure for the reporting period in question.³² The Provider provided evidence of the resources dedicated to meet this incredibly important and noble goal. Indeed, the Board acknowledges Memorial’s efforts, as well as the extraordinary accomplishment of recently having been recognized with CMS 5-Star Status in 2023.³³ However, the Board’s authority is limited in scope to determining whether the **reporting** was “*in a form and manner, and at a time, specified by CMS.*”³⁴ And here, the Board finds that the answer is clear: The Provider failed to report the Maternal Morbidity Structural Measure in a form and manner, and at time, specified by the Secretary.

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that CMS’ decision to reduce Memorial’s FY 2023 IPPS APU by one-fourth was correct.

BOARD MEMBERS PARTICIPATING:

Kevin D. Smith, CPA
Ratina Kelly, CPA
Nicole E. Musgrave, Esq.
Shakeba DuBose, Esq.

FOR THE BOARD:

10/28/2024

X Kevin D. Smith, CPA

Kevin D. Smith, CPA
Acting Chair
Signed by: Kevin D. Smith -A

³⁰ Underscore emphasis added.

³¹ Provider’s FPP at 2-3.

³² *Id.* at 5-6.

³³ Ex. H at ¶ 15.

³⁴ 42 C.F.R. § 412.140(c)(1).