

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2015-D10

PROVIDER –
Liberty Healthcare Group, LLC
Wilmington, North Carolina

Provider No.: 34-7247

vs.

INTERMEDIARY –
Palmetto GBA/
Blue Cross and Blue Shield Association

DATE OF HEARING –
November 25, 2014

Reporting Period Ended -
Calendar Year 2014

CASE NO.: 14-3722

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ISSUE

Was it proper to impose a 2 percent reduction in the Medicare payments to Liberty Healthcare Group, LLC's home health agency located in Supply, North Carolina for calendar year ("CY") 2014?¹

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board finds that CMS properly imposed a 2 percent reduction to the CY 2014 Medicare payments for Liberty Healthcare Group, LLC's home health agency located in Supply, North Carolina.

INTRODUCTION

Liberty Healthcare Group, LLC ("Liberty HC Group") is the parent company of Liberty Healthcare, LLC which operates home health agencies ("HHAs") in North Carolina. CMS imposed a 2 percent reduction to the CY 2014 Medicare payments on one of Liberty-HC Group's HHAs located in Supply, North Carolina ("the Supply HHA"). Liberty HC Group timely appealed this reduction.

HHAs are paid under the home health prospective payment system ("HH-PPS"). CMS imposed the 2 percent reduction on the Supply HHA because CMS determined that the Supply HHA did not comply with § 5201(c) of the Deficit Reduction Act ("DRA") of 2005² that requires HHAs to submit certain quality data as determined by the Secretary. Specifically, the Secretary set up the Home Health Care Consumer Assessment of Health Providers and Systems ("HHCAHPS") and required HHAs to collect and submit certain data to the HHCAHPS Data Center for the four quarters from April 1, 2012 through March 31, 2013 in order to qualify for the full CY 2014 HH-PPS annual payment update.³

The Provider Reimbursement Review Board ("Board") held a telephonic hearing on November 25, 2014. The Liberty HC Group was represented by its General Counsel, Yoel H. Balter, Esq. The Medicare Contractor, Palmetto GBA, was represented by Brendan G. Stuhan, Esq., of the Blue Cross Blue Shield Association.

STATEMENT OF THE FACTS

Prior to 2011, the Supply HHA was a branch location of Liberty-HC's HHA located in Wilmington, North Carolina ("the Wilmington HHA"). As a branch location, it was not necessary for the Supply HHA to independently meet the Medicare conditions of

¹ See Transcript ("Tr.") at 5-6.

² DRA, Pub. L. No. 109-171, § 5201(c), 120 Stat. 4, 46 (2006) (amending 42 U.S.C. § 1395fff(b)(3)(B)).

³ See 74 Fed. Reg. 58078 (Nov. 10, 2009) (excerpt included at Medicare Contractor Exhibit I-6).

participation for HHAs.⁴ Rather, the Supply HHA was dependent on its parent, the Wilmington HHA, for its daily operations, providing and billing for home health services furnished to Medicare beneficiaries under the CMS Certification Number (“CCN”) assigned to the Wilmington HHA (*i.e.*, CCN 34-7001).

In 2011, the Supply HHA requested a change in designation from a “branch location” of the Wilmington HHA to being a “sub-unit” of the Wilmington HHA. As a sub-unit, the Supply HHA had to meet the Medicare conditions of participation for HHAs independent of its parent, the Wilmington HHA.⁵ The CMS designated the Supply HHA as a sub-unit and assigned a separate CCN in a letter dated March 30, 2011 (*i.e.*, CCN 34-7247).⁶

Medicare required that HHAs collect monthly HHCAHPS data and submit the data to the HHCAHPS Data Center for the four calendar quarters from April 1, 2012 through March 31, 2013, in order to qualify for the full CY 2014 HH-PPS annual payment update.⁷ The Supply HHA submitted the required HHCAHPS data for the months of April, May, and June 2012 to the HHCAHPS Data Center but submitted that data under the Wilmington HHA’s CCN 34-7001 rather than its own CCN. For the months of July 2012 through March 2013, the Supply HHA submitted the required HHCAHPS data under its own CCN (*i.e.*, CCN 34-7247).⁸

The Medicare contractor assigned to the Supply HHA, Palmetto GBA (“Medicare Contractor”), notified Liberty Healthcare Group, LLC in a letter dated September 26, 2013 that the Supply HHA HHCAHPS data submissions for the time period of April, May, and June 2012 did not comply with the HHCAHPS reporting requirements and reduced its CY2014 annual payment by 2 percent, an estimated \$18,316.⁹

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

ARGUMENT RELATING TO STATUTE, REGULATIONS AND MANUAL PROVISIONS

The Liberty HC Group contends that there is no language in the applicable laws, rules, regulations or the HHCAHPS Manual which prohibits, restricts, disallows or addresses in any manner the submission of HHCAHPS Survey data under a parent CCN. Liberty asserts that the DRA § 5201(c) only allows for a payment reduction “in the case of a home health agency that does not submit data to the Secretary” and does not authorize a payment reduction due to a valid submission under a parent CCN. Liberty further asserts that its vendor did not receive any error message indicating any deficiency with any of the

⁴ See 42 C.F.R. § 484.2 (defining the terms “branch office” and “subunit”); State Operations Manual, CMS Pub. No. 100-07 (“SOP 100-07”), § 2182.1 (listing “characteristics differentiating branches from subunits of HHAs”).

⁵ See 42 C.F.R. § 484.2; SOP 100-07 § 2182.1.

⁶ See Provider Exhibit P-4 (copy of CMS letter dated Mar. 30, 2011); Tr. at 10-11.

⁷ See 76 Fed. Reg. 68526, 68579 (Nov 4, 2011) (excerpt included at Medicare Contractor Exhibit I-9).

⁸ See Tr. at 12.

⁹ See Provider Exhibit P-1 (copy of Medicare Contractor’s letter dated Sept. 26, 2013); Medicare Administrative Contractor’s Final Position Paper, at 4 of 25.

HHCAHPS data submissions for the April 1, 2012 through the March 31, 2013 reporting period.¹⁰ Absent any error messages, the submissions should be deemed acceptable.

Liberty contends that compliance with the HHCAHPS data submission requirements is reflected both by the absence of any error indication to the vendor and by the validation of the HHCAHPS data submitted by the vendor (also demonstrating CMS' ability to use the data for its intended purpose). The HHCAHPS Survey Data Center's acceptance and approval of the HHCAHPS data that was submitted under a particular CCN demonstrates that the data is able to be connected to that HHA. As the data can be connected to the HHA, compliance with the DRA requirement that "each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality" has been achieved.¹¹

The Board finds that DRA § 5201(c) required each HHA to submit health care quality data as determined by the Secretary and imposed a two percent penalty upon the HHA for failure to do so.¹² The statute gives broad authority to the Secretary to determine the time, form and manner by which to submit this data.¹³

Significantly, the statutory and regulatory HHA quality reporting requirements apply to each "home health agency."¹⁴ Thus, the Board concludes that, in 2011, for Medicare program purposes, when the Supply HHA *independently* met the Medicare conditions of participation for HHAs and was assigned its own CCN, it became a "home health agency" subject to the HHA quality data reporting requirements independent of its parent, the Wilmington HHA.¹⁵

The HHCAHPS Manual explains the requirements and obligations of each HHA and their vendors with respect to data submission. Chapter X of the HHCAHPS Manual contains the guidelines for data submission.¹⁶ The introduction to this chapter directs survey vendors to construct and submit a data file containing a header record and a patient administrative record for every sampled case. The "Header Record" section of the File Specifications states the following:

The Header Record contains the identifying information for the HHA for which data are included on the file, sampling information, survey administration mode, and the method

¹⁰ See Provider's Final Position Paper at 4-5.

¹¹ See: Provider's Final Position Paper at 5.

¹² See: DRA § 5201(c)(2); 42 U.S.C. § 1395fff(b)(3)(B)(v)(I).

¹³ *Id.*, at 42 U.S.C. § 1395fff(b)(3)(B)(v)(II)

¹⁴ The statute states in pertinent part: (II) SUBMISSION OF QUALITY DATA.—For 2007 and *each* subsequent year, *each home health agency* shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality.(emphasis added)

¹⁵ See 42 C.F.R. § 484.2; State Operations Manual 100-07 § 2182.1.

¹⁶ See Home Health Care CAHPS Survey Protocols and Guidelines Manual, Version 4.0 (Jan. 2012) (copy included at Medicare Contractor Exhibit I-11).

by which the sample was selected. Information required in this section includes the name of the HHA and its CCN.¹⁷

Additionally, the HHCAHPS Manual references the Web Site User and Data Submission Manual (“WSUDS Manual”).¹⁸ Section 4.2 of the WSUDS Manual directs survey vendors to submit data only in the XML format. In addition it states each XML file should contain only 1 month of survey data, with one file for each HHA. Section 4.2.1 describes the XML data file specifications and Section 4.2.2 includes the same specifications on the Header Record as the HHCAHPS Manual.¹⁹

CMS notified providers about the CY 2014 HH-PPS annual payment update requirements on multiple occasions, beginning in July 2011, when CMS proposed HHCAHPS Requirements for CY 2014.²⁰ In the proposed rule, CMS proposed to require HHCAHPS data collection and reporting for four quarters, with the data collection period spanning the second quarter of CY 2012 through the first quarter of CY 2013. CMS further proposed specific data submission deadlines. These items were ultimately finalized in the November 2011 final rule. The HHCAHPS data submission deadline for the second quarter of CY 2012 was specified as October 18, 2012.²¹

The Board finds that the Supply HHA failed to satisfy the HHCAHPS program requirements that were necessary to receive a full annual payment update for CY 2014. Specifically, the Supply HHA did not submit HHCAHPS data to the HHCAHPS Data Center for the second quarter of CY 2012 under its assigned CCN of 34-7247. Rather, the Supply HHA submitted the data under the CCN for its parent company, the Wilmington HHA (*i.e.*, CCN 34-7001). As a result, the Supply HHA did not submit the HHCAHPS data in the form and manner specified by the Secretary as required by DRA § 5201(c).

The Board finds that the HHCAHPS Manual and the Web Site User and Data Submission Manual both emphasize that the data files submitted by the HHCAHPS survey vendors must include the CCN of the HHA submitting the data. Without this information, the survey data would not be useful in measuring the quality of the *individual* HHA (*i.e.*, each Medicare participating HHA) because CMS could not match patient survey results to the specific HHA treating the patient. The whole purpose of the survey data is to allow consumers to compare data for individual HHAs. When the Supply HHA was designated as a sub-unit, it became an independent HHA for Medicare program purposes and was issued a separate CCN. That CCN should have been used to submit the four quarters quality data necessary for the CY 2014 HH-PPS annual payment update.²²

¹⁷ *Id.* at 129.

¹⁸ See Web Site User and Data Submission Manual, Version 1.0 (June 2010) (copy included at Medicare Contractor Exhibit I-12).

¹⁹ See *id.* at 20 - 21

²⁰ See 76 Fed. Reg. 40988, 41018 (July 12, 2011) (excerpt included at Medicare Contractor Exhibit I-8).

²¹ See 76 Fed. Reg. 68526, 68579 (Nov 4, 2011) (excerpt included at Medicare Contractor Exhibit I-9).

²² The HHCAHPS Manual (copy included at Medicare Contractor Exhibit I-11) provides guidance on sampling of patients. See HHCAHPS Manual at 129. The Board notes that, even if the Supply HHA’s quality data that was incorrectly submitted under the CCN for the Wilmington HHA were removed, it is unclear how many of the patients submitted under the Wilmington HHA’s CCN were patients of the Supply

ARGUMENT RELATING TO THE OASIS PASSWORD

By letter to the Medicare Contractor dated October 25, 2013, the Liberty HC Group requested reconsideration of CMS' determination to reduce the CY 2014 payments for the Supply HHA by 2 percent. In that letter, the Liberty HC Group explained that it encountered difficulties with the State and did not obtain the appropriate passwords for OASIS submissions related to the Supply HHA's new CCN until June 5, 2012. In order to be consistent in submitting HHCAHPS data and OASIS data under the same number, the Liberty HC Group elected to continue to submit the HHCAHPS data for the Supply HHA under the Wilmington HHA CCN of 34-7001. As a result, through June 2012, all patients of the Supply HHA were included for HHCAHPS survey purposes under the CCN of the Wilmington HHA (*i.e.*, CCN 34-7001). In July 2012, after the password issue had been resolved, the Supply HHA began submitting patients for HHCAHPS survey purposes with the CCN assigned to it (*i.e.*, CCN 34-7247).²³

The Board rejects the Liberty HC Group's claim that the delay in receiving the OASIS password information from the State exempts it from the requirement to submit HHCAHPS data for the Supply HHA under the correct CCN. The Board notes that the Supply HHA was assigned its CCN on March 30, 2011, well before the deadline of October 18, 2012 for the submission of second quarter 2012 HHCAHPS data. Additionally, the Board notes that Liberty received the necessary OASIS password information by June 5, 2012, which again was still more than four months before the October 18, 2012 HHCAHPS data submission deadline.

DECISION

After considering the Medicare law and regulations, the parties' contentions, and the evidence submitted, the Board finds that CMS properly imposed a 2 percent reduction to the CY 2014 Medicare payments for Liberty Healthcare Group, LLC's HHA located in Supply, North Carolina.

BOARD MEMBERS PARTICIPATING:

Michael W. Harty
Clayton J. Nix, Esq.
L. Sue Andersen, Esq.
Charlotte F. Benson, CPA

HHA and whether the sampling requirements would be met. *See* Tr. at 136-139. Moreover, this removal could raise issues whether the Wilmington HHA itself submitted sufficient monthly data to meet the sampling requirements.

²³ *See* Provider Exhibit P-2 at 1-2 (Liberty HC Group letter to Medicare Contractor dated Oct. 25, 2013).

FOR THE BOARD:

/s/

Michael W. Harty
Chairman

DATE: **May 27, 2015**