PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2025-D02

PROVIDER –
Casa Colina Hospital

VIDEO HEARING DATE –
February 1, 2024

PROVIDER NO. –
05-0782

YEAR –
Federal Fiscal Year 2022

vs.

MEDICARE CONTRACTOR –
Noridian Healthcare Solutions c/o
Cahaba Safeguard Administrators –
J-E

CASE NO. – 22-0373

INDEX

Page No.

ISSUE STATEMENT

Whether the payment penalty imposed by the Centers for Medicare and Medicaid Services ("CMS") under the Inpatient Rehabilitation Facility Quality Reporting Program ("IRF QRP") to reduce Casa Colina Hospital's ("Casa Colina") Inpatient Rehabilitation Facility ("IRF") prospective payment system ("PPS") payment update (i.e., annual increase factor or "AIF") for federal Fiscal Year ("FFY") 2022 by two (2) percentage points was proper.[1]

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the two (2) percentage point reduction of the Medicare AIF for FFY 2022 for Casa Colina was proper.

INTRODUCTION

Casa Colina is a General Acute Care Hospital, including an acute IRF unit, located in Pomona, California.[2] The Medicare administrative contractor[3] assigned to Casa Colina for this appeal is Noridian Healthcare Solutions ("Medicare Contractor").

In order to receive the full AIF for FFY 2022 reimbursement under the IRF prospective payment system, IRFs such as Casa Colina were required to submit data on certain quality measures during calendar year ("CY") 2020. In a letter dated July 12, 2021, the Medicare Contractor notified Casa Colina that it had not met one or more of the QRP requirements for FFY 2022.[4] The notice informed Casa Colina that, as a result, its FFY 2022 AIF would be reduced by two (2)-percentage points.[5] In a letter dated July 15, 2021, CMS notified Casa Colina of the same.[6]

Following Casa Colina's July 21, 2021 formal request to Noridian that CMS reconsider its July 12, 2021 determination,[7] CMS issued a written reconsideration determination on September 21, 2021 that upheld the payment reduction.[8]

---

[1] Transcript of Proceedings (Feb. 1,2024) (hereinafter "Tr.") at 5.
[2] Provider's Final Position Paper (hereinafter, "Provider's FPP") at 1 (Oct. 30, 2023).
[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.") P0001-P0003 at P0001 (Noridian Healthcare Solutions letter dated July 12, 2021). The Board notes that the Provider's Exhibits are referred to by the Bates numbers and will make its citations accordingly.
[5] *Id*.
[6] Ex. P0023-P0024 at P0023 (Letter posted in the QIES system dated 7/15/2021 by the Department of Health and Human Services, CMS, Center for Clinical Standards and Quality).
[7] Ex. P0004-P0017 (July, 2021 IRF ACA 3004 Reconsideration Request to: IRFQRPReconsideratons@cms.hhs.gov, 05T782 IRF 2% Reduction for FY 22 for provider Casa Colina Hospital for Rehab Medicine (AKA Casa Colina Hospital and Centers for Healthcare)). Casa Colina states that it had not yet received the July 15, 2021 letter when compiling the request for reconsideration dated July 21, 2021. *See* Provider's Final Position Paper at 2.
[8] Ex. P0025-P0026 (Letter dated September 21, 2021 from Department of Health and Human Services, CMS, 7500 Security Boulevard, Mail Stop S3-02-01, Baltimore, MD, 21244-1850. Notice of Quality Reporting Program Noncompliance Decision Upheld).

Casa Colina timely appealed its CMS reconsideration determination to the Board and met the jurisdictional requirements for a hearing. The Board held a virtual hearing on February 1, 2024. The Provider was represented by Debra Schultz, Corporate Compliance Officer of Casa Colina. The Medicare Contractor was represented by Jerrod Olszewski, Esq. of Federal Specialized Services.

STATEMENT OF RELEVANT FACTS

Casa Colina submitted Influenza Vaccination Coverage Among Healthcare Personnel Data to CMS via the NHSN system.[9] However:

> After performing additional internal review of the influenza vaccinations submitted for the 2021 season, Casa Colina identified that a consolidated report had been submitted by the required deadline. It was a report that included the data for both provider numbers 50-0782, which was the Acute Unit, and 05T782, which is the Rehabilitation Unit. Therefore, the information was submitted timely, but in a consolidated form and not individually.[10]

Casa Colina's quality control practitioner was trying to avoid "misleading submission of information that she perceived as being duplication."[11] Because the same healthcare personnel work for the Acute Unit and the IRF, the same data would have been submitted for both provider numbers.[12] "[H]istorically, Casa Colina recorded this same duplicated data in both facilities from [2016 to 2019]" but, with a new quality control practitioner facilitating the submission, departed from that practice in 2020, for the FFY 2022 IRF QRP.[13]

STATEMENT OF RELEVANT LAW

Standard of Review and Burden of Proof

A Board decision must include findings of fact and conclusions of law that "the provider carried its burden of production of evidence and burden of proof by establishing, by a preponderance of the evidence, that the provider is entitled to relief on the merits of the matter at issue."[14] Additionally, "[a] decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the [Medicare contractor] and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole."[15] In *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 230 (1938), the U.S. Supreme Court

---

[9] *See* Ex. P0006-P00017.
[10] Tr. at 21. The facility IDs and CMS Certification Numbers ("CCN") are different for the Acute and Rehab Units. *See* Tr. at 30. (The Board notes that the Acute Unit's provider number was transcribed incorrectly in the Hearing Transcript, and is actually 05-0782, as identified on the Provider's FPP at 1.)
[11] Tr. at 23.
[12] *See* Tr. at 27 – 28.
[13] Tr. at 30.
[14] 42 C.F.R. § 405.1871(a)(3) (as of Oct. 1, 2020).
[15] 42 U.S.C. § 1395oo(d). This statutory provision further confirms that "[t]he Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination." *But also see* 42 C.F.R. § 405.1869(a).

held, "[s]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[16] Accordingly, in an appeal before the Board, a provider must prove by a preponderance of substantial, relevant evidence that it is entitled to the relief sought. And while the provider has the burden of proof, the Medicare contractor must "[e]nsure that the evidence it considered in making its determination, . . . is included in the record."[17] Further, the "Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS."[18]

Inpatient Rehabilitation Facility Quality Reporting Program Requirements

Under IRF PPS, the Medicare program pays an IRF predetermined, standardized amounts per discharge, subject to certain payment adjustments.[19] The standardized IRF PPS payment amounts are increased each year by an AIF (sometimes referred to as "market basket update") to account for increases in operating costs.[20]

Section 3004(b)(2) of the Patient Protection and Affordable Care Act amended 42 U.S.C. § 1395ww(j) to establish the IRF QRP.[21] As a result, each IRF is required to submit certain quality of care data "in a form and manner, and at a time, specified by the Secretary."[22] Further, 42 U.S.C. § 1395ww(j)(7)(A)(i) specifies that an IRF that fails to report the quality data required under the IRF QRP is subject to a two (2)-percentage point reduction to its AIF.

The regulation governing IRF QRP data submission is located at 42 C.F.R. § 412.634 and states in pertinent part:

> (b) *Submission Requirements.*
>
> (1) IRFs must submit to CMS data on measures specified under sections 1886(j)(7)(D), 1899B(c)(1), 1899B(d)(1) of the Act, and standardized patient assessment data required under section 1899B(b)(1) of the Act, as applicable. **Such data must be submitted in the form and manner, and at a time, specified by CMS.**
>
> * * * *
>
> (f) *Data Completion Thresholds*.
>
> (1) IRFs must meet or exceed two separate data completeness thresholds: One threshold set at 95 percent for completion of required quality measures data and standardized patient assessment data collected using the IRF-PAI submitted through the CMS designated data submission

[16] *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).
[17] 42 C.F.R. § 405.1853(a)(3).
[18] 42 C.F.R. § 405.1867.
[19] *See* 42 C.F.R. § 412.624 (2018). *See also* 42 U.S.C. § 1395ww(j). The term "rehabilitation facility" as used in 42 U.S.C. § 1395ww(j) refers to "inpatient hospital services of a rehabilitation hospital or a rehabilitation unit."
[20] *See* 42 U.S.C. § 1395ww(j)(3).
[21] The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 at 369 (2010).
[22] *Id*. at § 3004(b)(2); *see also* 42 U.S.C. § 1395ww(j)(7)(C).

> system; and **a second threshold set at 100 percent for measures data collected and submitted using CDC NHSN**.
>
> (2) These thresholds (95 percent for completion of required quality measures data and standardized patient assessment data on the IRF-PAI; **100 percent for CDC NHSN data**) will apply to all measures and standardized patient assessment data requirements adopted into the IRF QRP.
>
> (3) **An IRF must meet or exceed both thresholds to avoid receiving a 2 percentage point reduction to their annual payment update for a given fiscal year, beginning with FY 2016 and for all subsequent payment updates**. [23]

Here, the IRF-PAI data requirements are not at issue; thus, the focus of the instant appeal is the CDC NHSN IRF-QRP quality data requirements. The quality data required by 42 U.S.C. § 1395ww(j) are collected through the Centers for Disease Control and Prevention ("CDC") National Healthcare Safety Network ("NHSN") system.[24]

IRFs need to take certain steps in order to ensure that data entered into the CDC NHSN system is transmitted to CMS by the applicable deadline.[25]

The IRF CDC guidance for the Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) states the following:

> . . . each IRF must submit Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) data for all health care personnel (HCP) physically working in the inpatient locations for at least 1 day between October 1 and March 31.[26]

That guidance, hereinafter "CMS IRF QRP NHSN Guidance," also outlines the ability of IRFs to enroll in NHSN as Acute Care Hospital units designated as IRFs or as freestanding Inpatient Rehabilitation Facilities. However, if the IRF "is not enrolled in NHSN as a separate facility, and instead is currently submitting data as part of an acute-care hospital, i.e., as an acute care hospital unit designated as an IRF, it ***must*** have its own unique IRF CCN."[27] The CMS IRF QRP NHSN Guidance also states that if the IRF "is a freestanding [IRF] and is not currently enrolled in NHSN as a separate facility, it will have to be enrolled in NHSN as a separate facility with a unique orgID that is identified as an IRF."[28]

---

[23] 42 C.F.R. § 412.634(b), (f) (2019) (bold emphasis added and italics in original).
[24] 42 C.F.R. § 412.634(f)(1) (2019).
[25] The Centers for Medicare and Medicaid Services Inpatient Rehabilitation Facilities Quality Reporting Program Guidance for Reporting Data Into The Centers for Disease Control and Prevention's National Healthcare Safety Network (Jan. 2019) (hereinafter "CMS IRF QRP NHSN Guidance") at 2, available at http://cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Downloads/IRF-CDC-Submission-Guidance-January-2019.pdf (accessed Oct. 23, 2024).
[26] CMS IRF QRP NHSN Guidance at 1.
[27] *Id.* at 4 (emphasis added).
[28] *Id.*

In addition to the NHSN guidance described above, CMS provides various materials with guidance on reporting protocols and requirements, including quick reference guides for FFY 2022, with high-level information on the IRF Quality Reporting Program, including frequently asked questions and informational links to archived materials. [29]

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

To satisfy certain IRF quality reporting program requirements, Casa Colina was required to: collect influenza vaccination coverage among healthcare personnel data between October 1, 2020 and March 31, 2021; and to submit that data by May 17, 2021.[30] Failure to submit the data in the correct form and manner, and at the correct time, will result in a two (2) percentage point reduction to an IRF's AIF.[31] For FFY 2022, IRFs were required to report at a 100% completion threshold for quality measures collected and submitted using the CDC NHSN to avoid the two (2) percentage point payment reduction penalty.[32] Specifically, providers are required to report on quality measure NQF #0431: Influenza Vaccination Coverage Among Healthcare Personnel.[33] CMS's notice, dated September 21, 2021, to the Provider upholding its decision to apply the FFY 2022 AIF reduction alleges that the Provider did not meet the 100% completion threshold.[34]

Casa Colina has made clear that its IRF is not a freestanding unit and is unique in the fact that it was an IRF first, which later added a 31-bed acute care unit.[35] The Provider argues that the two (2) percentage point reduction to its AIF is "unduly punitive" because Casa Colina has "always submitted [its] quality reporting data timely for [its IRF], since the quality measures went into effect."[36] The Provider also asserts that Casa Colina complied with the timely reporting requirements and submitted the data in its report for the acute care hospital, albeit not separately for the IRF subunit. Specifically, the Provider admits that it only reported the NQF #0431 quality measures data in ***one*** report, which was submitted for the acute care hospital ***not*** the IRF, although the data reported did reflect both the acute care hospital and IRF because the units share the same personnel.[37] The Provider maintains that "***[e]ven though the influenza data was not reported to the IRF QRP,*** the information was nonetheless sent to CMS via the IQR, which included both the acute and rehabilitation data."[38]

---

[29] *See generally*, Ex. C-7 (Data Collection & Final Submission Deadlines for the FY 2022 IRF QRP) and "Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP) Data Submission Deadlines" at https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-quality-reporting-data-submission-deadlines (accessed Oct. 23, 2024).
[30] Ex. C-7 at 2.
[31] 42 C.F.R. § 412.634(f)(3) (2019).
[32] *Id.*
[33] Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2014, 78 Fed. Reg. 47860, 47905 (Aug. 6, 2013) (finalizing the adoption of new quality measures and reporting requirements, including NQF #0431, Influenza Vaccination Coverage Among Healthcare Personnel). *See also*, Ex. C-8 (Operational Guidance for Inpatient Rehabilitation Facilities to Report Healthcare Personnel (HCP) Influenza Vaccination Data to CDC's National Healthcare Safety Network (NHSN) for the Purpose of Fulfilling CMS's [IRF QRP] Requirements).
[34] Exhibit P0025 (Letter dated September 21, 2021 from Department of Health and Human Services, CMS, 7500 Security Boulevard, Mail Stop S3-02-01, Baltimore, MD, 21244-1850. Notice of Quality Reporting Program Noncompliance Decision Upheld).
[35] Tr. at 27-29.
[36] *Id.* at 46.
[37] *Id.* at 21-23.
[38] *Id.* at 46 (Emphasis added).

The Medicare Contractor cites 42 U.S.C. § 1395ww(j) to support its argument that the provider has failed to submit quality of care data "… in a form and manner, and at a time, specified by the Secretary."[39] The Medicare Contractor asserts that the Provider "acknowledges that an error occurred in its submissions and that it did not meet the IRF QRP reporting requirements for the 2020 data,"[40] as the Provider has admitted the data was only reported for the acute care hospital with the IQR data, and not separately for the IRF.[41] The Medicare Contractor specifies that "[t]he Provider does not dispute that the IRF QRP requirements were not met, resulting in its FFY 2022 IRF PPS market basket update being reduced by two percent." [42]

The Medicare Contractor points to the Provider's timely request for a reconsideration and the subsequent CMS determination to uphold the decision, dated September 21, 2021, to further show that the Provider, again, failed to prove that it properly submitted the required data by the reporting deadline.[43] Thus, the Medicare Contractor contends that "[t]he Board is bound by 42 C.F.R. § 412.634(f)(3)" and "should find that CMS properly reduced the Provider's FFY 2022 market basket update for FFY 2022 IRF PPS payments."[44]

During Casa Colina's live hearing, the Board addressed the fact that neither Casa Colina nor the Medicare Contractor supplied guidance, whether a manual or other instructions, which addresses a provider's requirements for reporting data, specifically for the NQF #0431 quality measure, and whether the Provider must submit for each CCN, or each NHSN facility ID for both the acute care hospital and the IRF sub-unit.[45] The Board noted at the hearing that it is "important that the rules for quality reporting – where there's a quality reporting requirement at issue – be part of the record."[46] Generally, the materials posted on the CMS websites are the current versions of guidance issued; "[t]here may be archives, but those are not necessarily readily available [to the Board]."[47]

Casa Colina and the Medicare Contractor each submitted exhibits accompanying their respective position papers, however *neither* produced the documents the Board was specifically looking for during the Provider's hearing on February 1, 2024, when the Board specifically requested documents which "address the reporting requirements for influenza."[48] Of note, the Medicare Contractor provided an exhibit related to FFY 2019 IRF QRP with its Final Position Paper, which was a reporting period that was not pertinent to the case at hand. [49]

On February 20, 2024, at the direction of the Board following the Provider's live hearing, the Medicare Contractor also filed additional exhibits.[50] The Medicare Contractor's Exhibit C-8, "Operational Guidance for Inpatient Rehabilitation Facilities to Report Healthcare Personnel (HCP)

---

[39] Medicare Contractor's Final Position Paper (hereinafter, "Contractor's FPP") at 5.
[40] *Id*. at 7.
[41] *Id*. at 6, *citing* Provider's Final Position Paper at 2 – 3. ("After performing additional internal review of the Influenza Vaccination submittal for the 2021 season, Casa Colina Hospital identified that a consolidated report had been submitted prior to the deadline. It was a report that included the data for both Provider Numbers 05-0782 (IP Acute) and 05-T782 (IRF). Therefore, the information was timely submitted but in consolidated form, not individually.")
[42] *Id.* at 7.
[43] *Id.* at 8.
[44] *Id.* at 8-9.
[45] Tr. at 42 – 43.
[46] *Id* at 39
[47] *Id.*
[48] *Id.* at 35.
[49] Ex. C-5 (Data Collection & Final Submission Deadlines for the FY 2019 IRF QRP).
[50] Tr. at 42 – 44.

Influenza Vaccination Data to CDC's National Healthcare Safety Network (NHSN) for the Purpose of Fulfilling CMS's IRF QRP Requirements," only included three pages from the overall original document and did not indicate what year or version of the guidance it referenced.

As addressed on the record, the Board reiterates the requirements of 42 C.F.R. § 405.1853(a)(3): Medicare contractors and FSS – who are, by contract, representing CMS – have an obligation to develop the record. The Board reminds Medicare contractors that this is not a new requirement and that the Board continues to require the development of the record in these types of cases. The Medicare contractor may not necessarily rely "solely on the [CMS] website to obtain documents in an archive fashion" even though "there are documents that are available in that manner."[51] But when the relevant documents are not on the website, there should also be a mechanism to obtain them from CMS, who the Medicare contractors and FSS represent.

Nonetheless, the Board finds that Casa Colina failed to comply with the IRF QRP reporting requirements necessary to avoid the two (2) percentage point reduction of its FFY 2022 AIF, *i.e.*, it failed to submit the requisite data "in the form and manner, and at a time, specified by CMS" as required by 42 C.F.R. § 412.634 (b)(1).

Published in January 2019, and available to Casa Colina for the reporting periods in question, the CMS-issued "Guidance for Reporting Data into the Centers for Disease Control and Prevention's National Healthcare Safety Network" manual states in pertinent parts:

> CDC has an annual facility survey that is specific to IRFs and has specific location types to support facilities with data submission for the IRF QRP. Additionally, Acute Care hospitals (ACH) can include ACH units designated ***as IRFs (CMS-certified Rehabilitation Unit mapped as a location within the hospital*, *i.e. the CCN for the Rehabilitation unit includes an 'R' or 'T' in the 3rd position.)*** These IRF-units will be required to complete a small annual survey found within their ACH facility. Questions on this small survey are only to be answered with information from the CMS certified IRF-unit.
>
> ***
>
> **General NHSN Reporting**
>
> ***
>
> **Reminder:** IRFS can be enrolled in NHSN as Acute Care Hospital units designated as IRFs **OR** as freestanding Inpatient Rehabilitation Facilities. If your IRF is not enrolled in NHSN as a separate facility, ***and instead is currently submitting data as part of an acute-care hospital*, *i.e. as an acute care hospital unit designated as an IRF*, *it must have its own unique IRF CCN***. If you have questions or need assistance, please contact IRFCoverage@cms.hhs.gov

[51] *Id.* at 41.

***

3. Basic Steps to NHSN Enrollment and Data Submission

***

6. All patient care units will need to be added as location(s) and mapped in NHSN in advance by a facility user.

***

8. Use one of the following two NHSN Monthly checklists depending on the type of IRF to ensure complete reporting.

- NHSN Monthly Checklist for Acute Care Hospital units designated as Inpatient Rehabilitation Facilities reporting to the CMS IRF IQR Program: https://www.cdc.gov/nhsn/pdfs/cms/IRFs-acute-Monthly-Checklist-CMS-IQR.pdf [52]

The above-referenced sections of the CMS Guidance that was available to the Provider at the time of the reporting period in question states that the quality of care data must be reported for the acute-care hospital and IRF separately, under each unit's own CCN; thus, the Board finds that two separate CCNs are required for individual reports from IRF unit and from the associated acute-care facility. The NHSN reporting tool and its corresponding checklists for completing the forms in the online system also require that Providers verify that separate CCN numbers exist for an IRF that is a subunit of an acute-care hospital.

The Provider acknowledges they failed to report the data for each unit separately but does not assert any arguments supported by statute or regulation to claim an exception, or some other justification for the failure. The Provider simply states that the two (2) percentage point reduction is unduly punitive; however, the Board has no authority to grant the equitable relief the provider seeks.[53]

DECISION

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that the two (2) percentage point reduction of the Medicare AIF for FFY 2022 for Casa Colina was proper.

---

[52] Available at //https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Downloads/IRF-CDC-Submission-Guidance-January-2019.pdf at 2, 4, 6. (bold and italics emphasis added, with the exception of section headings which are bold in the original) (accessed Oct. 24, 2024).
[53] 42 C.F.R. § 405.1867.

Board Members Participating:

Kevin D. Smith, CPA
Ratina Kelly, CPA
Nicole 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