PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D21

PROVIDER –
RX Home Health Services, Inc.

Provider No.: 10-8422

vs.

MEDICARE CONTRACTOR -
Palmetto GBA

HEARING DATE –
January 17, 2019

Calendar Year Ending –
December 31, 2018

CASE NO.: 18-0421

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ISSUE STATEMENT:

Whether RX Home Health Services, Inc. ("RX" or "Provider") should be subject to a two percentage point reduction to its Calendar Year ("CY") 2018 Annual Payment Update ("APU") for failure to meet Home Health Quality Reporting Program requirements in accordance with 42 C.F.R. § 484.225(i) (2015).[1]

DECISION:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that the two percentage point reduction to RX's 2018 APU was proper.

INTRODUCTION:

RX is a home health agency ("HHA") located in North Miami, Florida.[2] The Medicare administrative contractor[3] assigned to RX is Palmetto GBA ("Medicare Contractor"). On October 3, 2017, the Medicare Contractor notified RX that its CY 2018 APU would be reduced by two percentage points due to RX's failure to timely submit quality data as required by federal law.[4] Following RX's formal request that CMS reconsider its determination, CMS issued a December 6, 2017 reconsideration decision in which it upheld the payment reduction.[5] RX timely appealed this decision to the Board[6] and met the jurisdictional requirements for a hearing.

The Board held a telephonic hearing on January 17, 2019. Rene Torrado, Esq., represented RX. Scott Berends, Esq., of Federal Specialized Services represented the Medicare Contractor.

STATEMENT OF FACTS AND RELEVANT LAW:

In the Balanced Budget Act of 1997, Congress mandated that the Secretary of Health and Human Services ("Secretary") establish a prospective payment system for home health services covered by Medicare.[7] Along with the establishment of this prospective payment system, Congress also directed the Secretary to increase the prospective payments made to HHAs each calendar year by a percentage, estimated by the Secretary, otherwise known as the "home health market basket percentage increase".[8] Subsequently, in the Deficit Reduction Act of 2005 ("DRA"), Congress

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[1] Transcript ("Tr.") at 5-7.
[2] Tr. at 14.
[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.
[4] Request for Hearing ("RFH") Tab 3 at 1; Provider Final Position Paper at 2; Medicare Contractor Final Position Paper at 9.
[5] RFH Tab 1.
[6] RFH Tab 3 at 1.
[7] Pub. L. No. 105-33, §4603, 111 Stat. 251, 467 (1997).
[8] *Id*. The home health market basket increase is commonly referred to as the APU. The terms are used interchangeably in this decision.

added a data reporting requirement.[9] In order to qualify for the full home health market basket percentage increase, the DRA requires HHAs to submit data that the Secretary determines are appropriate for the measurement of health care quality.[10] Further, if an HHA fails to submit data in a form and manner, and at a time, determined by the Secretary, it is subject to a two percentage point reduction in its APU for a particular payment year.[11]

In an effort to measure and publicly report patient experiences with home health care, the Secretary established that part of an HHA's quality reporting requirements[12] includes submission of Home Health Care Consumer Assessment of Healthcare Providers and Systems ("HHCAHPS") survey results for an HHA's patient population during four, pre-determined calendar quarters.[13] CMS instructs Medicare-participating HHAs to contract with approved HHCAHPS vendors who survey the HHA's patients and submit survey data to CMS.[14]

This case involves the CY 2018 payment year. For CY 2018, the HHCAHPS data collection period ran from April 1, 2016 through March 31, 2017.[15] CMS required HHAs to submit their HHCAHPS data files to the HHCAHPS Data Center on a rolling basis for the four quarters.[16]

CMS' December 6, 2017 reconsideration decision stated that RX's CY 2018 APU was being reduced by two percentage points because RX failed to submit the HHCAHPS data during the specified time period.[17] Specifically, when RX's HHCAHPS vendor, attempted to submit the Provider's July –September 2016 HHCAHPS data, the data was rejected.[18] RX was not notified of this rejection. This case focuses on whether the 2 percentage point penalty should be imposed on RX, due to the failure to of a CMS-approved HHCAHPS vendor.[19]

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

RX explains that it changed its HHCAHPS vendor from Fields Research to Axxess in August 2016.[20] RX presented testimony that Axxess began surveying the Provider's July patients in August 2016.[21] RX states that, although Axxess provided it with a "HHCAHPS Quarterly

[9] Pub. L. No. 109-171, § 5201, 120 Stat. 4, 46-47 (2006).
[10] 42 U.S.C. § 1395fff(b)(3)(B)(v)(II).
[11] 42 U.S.C. § 1395fff(b)(3)(B)(v)(I).
[12] Home Health Prospective Payment System Rate Update for Calendar Year 2013, 77 Fed. Reg. 67068, 67094 (Nov. 8, 2012)
[13] *See id*. at 67095-67096.
[14] Home Health Prospective Payment System Rate Update for Calendar Year 2012, 76 Fed. Reg. 68526, 68577-68578 (Nov. 4, 2011).
[15] Calendar Year 2016 Home Health Quality Reporting Requirements, 80 Fed. Reg. 68624, 68708 (Nov. 5, 2015).
[16] *Id*. For example, HHAs were required to submit their HHCAHPS data files for the second quarter of 2016 by 11:59 p.m., EST, October 20, 2016.
[17] Exhibit I-12.
[18] Provider's Final Position Paper at 3.
[19] Provider's Final Position Paper at 5-6.
[20] *Id*. at 3. The Axxess contract with RX Home Health commenced on August 29, 2016. *See* Exhibit P-6 at 3.
[21] Tr. at 22-23. Provider explains that Axxess used Provider's July 2016 data to start surveys in August 2016.

Summary Report for the period July 2016-September 2016,"[22] CMS rejected the data. RX did not discover that CMS rejected its third quarter 2016 HHCAHPS data until it received the Medicare Contractor's October 3, 2017 notification. At that time RX immediately investigated the reason for CMS' finding of non-compliance.[23] RX determined that its third quarter 2016 HHCAHPS data files were rejected because, at the time Axxess uploaded the third quarter files,[24] Axxess was not authorized as a contractor to upload data on behalf of RX.[25] The Provider argued that Axxess "shirked its responsibility to ensure that RX had completed the authorization process[]"[26] and similarly failed in its responsibility to inform RX that, upon uploading the third quarter HHCAHPS data, Axxess had received notification of lack of authorized access.[27]

The Medicare Contractor does not dispute RX's factual account regarding the third quarter HHCAHPS submissions, but argues that, under the law, RX bears the responsibility for the timely filing of its HHCAHPS data. Therefore, the Medicare Contractor asserts the 2 percent reduction in RX's APU was proper.[28]

The Board observes that, under the Secretary's published quality reporting requirements, HHAs must submit HHCAHPS data for four quarters in predetermined time periods. If an HHA does not submit such data in the time, manner and form prescribed by the Secretary, CMS is required to reduce the HHA's APU by 2 percentage points for the CY associated with the reporting period.[29] Within its various submissions and during the hearing, RX does not and could not dispute the fact that CMS did not receive the HHCHAPS data corresponding to its third quarter 2016 patient data. Indeed, RX concedes that it is "undisputed [that RX] has less than 4 quarters of HHCAHPS data reported."[30] Instead, RX argues that its HHCAHPS vendor, Axxess, is responsible for CMS' finding that RX was "non-compliant with HHCAHPS" submissions for the third quarter of 2016. In addition, RX claims that CMS also bears responsibility as Axxess was a CMS-approved vendor and that such "approval . . . carries with it an expectation that the vendor is knowledg[e]able, ethical and compliant with requirements for submitting data . . ."[31]

The Board notes, however, that CMS explicitly warned providers in the Federal Register to monitor their respective HHCAHPS survey contractors by accessing their HHCAHPS Data Submission Reports. Specifically, CMS states that:

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[22] Provider Final Position Paper at 3-4; *see* Exhibit P-1. As determined during the hearing, the "HHCAHPS Quarterly Summary Report for the period July 2016-September 2016" was a report located on the Axxess website. Tr. at 50, 52-53.
[23] RFH Tab 3, at unnumbered page 2; Provider Final Position Paper at 4; Tr. at 25-28.
[24] The Board notes that CMS required that the fourth quarter 2016 HHCAHPS surveys be uploaded by April 20, 2017. 80 Fed. Reg. at 68708. As RX Home Health does not report that its fourth quarter 2016 files were rejected by CMS, the Board concludes that at some point prior to the Medicare Contractor's October 3, 2017 notification of non-compliance, RX Home Health authorized Axxess to upload HHCAHPS survey data on its behalf.
[25] Exhibit P-5; Tr. at 32-34.
[26] Tr. at 11.
[27] RFH Tab 3, at unnumbered page 2; Provider Final Position Paper at 3.
[28] Medicare Contractor Final Position Paper at 11.
[29] 79 Fed. Reg. 66031, 66073 (Nov. 6, 2014).
[30] Provider Final Position Paper at 3.
[31] *Id*. at 5.

> *HHAs should monitor their* respective HHCAHPS survey *vendors* to ensure that vendors submit their HHCAHPS data on time, ***by accessing their HHCAHPS Data Submission Reports*** on https://homehealthcahps.org. This helps HHAs ensure that their data are submitted in the proper format for data processing to the HHCAHPS Data Center.[32]

CMS further describes an HHA's responsibilities with respect to the HHCAHPS reporting requirements in its sub-regulatory guidance, including the January 2016 HHCAHPS Survey Protocols and Guidelines Manual ("Manual")[33] which states the following under the section entitled "Home Health Agencies' Roles and Responsibilities":

> If an HHA is eligible to participate, it must:
>
> . . . .
>
> • Authorize the contracted survey vendor to collect and submit HHCAHPS Survey data to the HHCAHPS Survey Data Center on the agency's behalf;
>
> . . . .
>
> • *Review data submission reports to ensure that its survey vendor has submitted data* ***on time and without data problems***.[34]

Thus, HHAs have a responsibly to review HHCAHPS Data Submission Reports to ensure that their survey vendor submits data on time and without problem.

As RX notes, a different section of the Manual addresses vendor responsibilities and states that: "It is the vendor's responsibility to ensure that any HHA with which it is contracted to conduct the HHCAHPS Survey completes the authorization process."[35] However, the Board finds this section does not eliminate or trump the HHAs aforementioned responsibilities to: (1) authorize the contracted survey vendor and (2) review the data submission reports to ensure that its data is timely submitted by the vendor. Additionally, the Board points out that the following page of the Manual, CMS declares that "the *Data Submission Summary Report*[] is intended to provide a means for the [home health] agency to monitor its vendor's data submission activities and *should be reviewed on a monthly or quarterly basis*, depending on the agreement that the [home health] agency has worked out with the vendor in terms of frequency of data submission."[36] Had RX properly performed it responsibilities it could have ensured that its HHCAHPS data was timely reported to the HHCAHPS Data Center.

Further, since the implementation of the HHCAHPS Survey Data requirement, CMS has *repeatedly* warned HHAs to "monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time by, accessing their HHCAHPS Data Submission

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[32] 80 Fed. Reg. at 68708 (emphasis added).
[33] The Manual is within the administrative record at Exhibit I-9.
[34] Exhibit I-9 at 15 (emphasis added).
[35] *Id.* at 149; Tr. at 49.
[36] Exhibit I-9 at 150 (emphasis added); Tr. at 50.

Reports on https://homehealthcahps.org."[37] During the hearing, RX's witness admitted that only *after* receiving the Medicare Contractor's October 3, 2017 notification of non-compliance with HHCAHPS submissions did he run a data submission report.[38] While the Board is sympathetic to RX's position, the Board finds that RX did not perform the recommended steps to assure that its third quarter 2016 HHCAHPS data was submitted to the HHCAHPS Data Center, accurately and timely by its vendor. Thus, the Board concludes that RX failed to submit its home health quality data as specified by the Secretary and therefore the two percent reduction to its APU was proper.[39] The Board notes that its decision in this case is consistent with its decisions in similar cases where errors by an HHA's vendor resulted in certain quality data not being transmitted to CMS.[40]

DECISION AND ORDER:

After considering Medicare law and regulations, arguments presented, and the evidence admitted, the Board finds that the two percentage point reduction to RX's CY 2018 APU was proper.

BOARD MEMBERS PARTICIPATING:

Clayton J. Nix, Esq.
Charlotte F. Benson, CPA
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Robert A. Evarts, Esq.
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FOR THE BOARD:

3/27/2019

X Clayton J. Nix

Clayton J. Nix, Esq.
Chair
Signed by: Clayton J. Nix -A

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[37] Home Health Prospective Payment System Rate Update for Calendar Year 2010, 74 Fed. Reg. 58078, 58100 (Nov. 10, 2009); 76 Fed. Reg. at 68577-68578; 77 Fed. Reg. at 67096;79 Fed. Reg. at 66083; 80 Fed. Reg. at 68708; Exhibit I-9 at 25, 153.
[38] Tr. at 51-53, 55-56.
[39] 42 C.F.R. § 484.225(i) (2015).
[40] *See, e.g.*, *CMK Home Health Ag'y, Inc. v. BlueCross BlueShield Ass'n*, PRRB Dec. No. 2013-D26 (Aug. 22, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013); *Sun City Home Care, Inc. v. BlueCross BlueShield Ass'n*, PRRB Dec. No. 2013-D28 (Aug. 26, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013); *LivinRite Home Health Servs. v. BlueCross BlueShiled Ass'n*, PRRB Dec. No. 2013-D30 (Aug. 27, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013); *All Care Home Health 2012 2% CIRP Group v. BlueCross BlueShield Ass'n*, PRRB Dec. No. 2013-D31 (Aug. 28, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013); *Carinosa Helathcare, Inc. v. BlueCross BlueShield Ass'n*, PRRB Dec. No. 2013-D32 (Aug. 28, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013); *MS Healthcare Ctr., Inc. v. BlueCross BlueShiled Ass'n*, PRRB Dec. No. 2013-D33 (Aug. 28, 2013), *declined review*, CMS Adm'r (Oct. 1, 2013).