Whether the Provider met the requirements of the Hospital Inpatient Quality (Hospital IQR) Program and is entitled to full Fiscal Year (FY) 2023 Annual Payment Update (APU).

1. **Law and Regulatory Background**

Section 1886 of the Social Security Act (SSA)[[1]](#footnote-1) sets forth the system of payment for the operating and capital-related costs of acute care hospital inpatient stays under Medicare Part A based on prospectively set rates. The Act requires the Secretary to utilize a prospective payment system (PPS) to pay for the operating and capital-related costs. Under the inpatient prospective payment system (IPPS), Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. One of the components of the IPPS payment is the “standardized amount” (SA). The SA is updated annually utilizing a factor called the “applicable percentage increase”, otherwise known as the Market Basket Update (MBU) or APU.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”)[[2]](#footnote-2) amended the Social Security Act (SSA) § 1886(b)(3)(B) to establish the IQR program that requires every hospital to submit quality of care data “in a form and manner, and at a time, specified by CMS.”[[3]](#footnote-3) The reduction factor at that time was 0.4 percentage points. The Deficit Reduction Act of 2005 (DRA)[[4]](#footnote-4) further amended Section 1886 of the SSA with respect to the submission of hospital data. Section 5001 of the DRA expanded the number of measures, for which, hospitals must provide data. Further, Section 5001 amended the reduction factor to the APU where hospitals fail to submit quality data. For fiscal years 2015 and beyond, CMS reduces the hospital’s annual IPPS APU by one-fourth if a hospital fails to report quality data required under the IQR program.[[5]](#footnote-5)

Under Section 1886(b)(3)(B)(viii) of the Act, subsection (d) hospitals are required to report data on measures selected by the Secretary for a fiscal year to receive the full annual percentage increase. In the FY 2022 IPPS/LTCH PPS final rule, certain new measures were adopted, including the Maternal Morbidity Structural Measure beginning with a shortened reporting period from October 1, 2021 through December 31, 2021, affecting the CY reporting period and FY 2023 payment determination.

The participation, data submission, and validation requirements under the Hospital IQR Program are codified at 42 C.F.R. § 412.140.[[6]](#footnote-6)

1. **Facts**

The FY 2022 IPPS/LTCH PPS final rule communicated the newly adopted “Maternal Morbidity Structural Measure”. It began with a shortened reporting period from October 1, 2021, through December 31, 2021, affecting the CY reporting period and FY 2023 payment determination.[[7]](#footnote-7)

Hospitals that participate in the Hospital IQR Program must submit to CMS data on measures in a form, manner, and at a time specified by CMS. The submission period for this annual measure is from April 1 through May 15th of each year. Information regarding the collection, submission and reporting of quality data to CMS for compliance with the Hospital IQR program is available on the QualityNet website.[[8]](#footnote-8)

Hospitals that are found to not meet the quality reporting requirements may file a request for reconsideration no later than 30 days from the date identified on the Hospital Inpatient Quality Reporting Program Annual Payment Update Notification Letter provider to the hospital.[[9]](#footnote-9) According to the July 22, 2022 letter, this initial letter was issued June 1, 2022. Thus, the request for reconsideration was due July 1, 2022. According to what is in the record, the reconsideration request was not filed until October 14, 2022.[[10]](#footnote-10)

**C. Procedural Background**

CMS determined that the provider was not in compliance with the following Hospital IQR Program Requirement:[[11]](#footnote-11)

* Submit Maternal Morbidity Structural Measure – 2021 – Annual

On October 14, 2022 the Provider filed a reconsideration request .

On November 11, 2022, the Provider filed an appeal request contesting the CMS decision to uphold the original decision to decrease the FY 2023 APU for noncompliance.

**D. Arguments**

The Provider’s arguments consist of a repeat of its reconsideration request submitted October 14, 2022, which was after the July 1, 2022 deadline.

Four arguments were raised with the Providers preliminary position paper. Each will be addressed below.

1. The Creation of HARP/HQR and Decommission of QualityNet is Contrary to 42 C.F.R. § 412.140(a) and 42 C.F.R. § 412.140(c).

Healthcare Quality Information System (HCQIS) is the CMS system responsible for various quality reporting applications. HCQIS Access Roles and Profile (HARP) is a secure identity management portal provided by the Centers for Medicare and Medicaid Services (CMS). Creating an account via HARP provides users with a user ID and password that can be used to sign into many CMS applications, including the Hospital Quality Reporting (HQR) system.

The Provider argues the change from the “QualityNet Secure Portal” to the “Hospital Quality Reporting (HQR) Secure Portal” was not specified in the regulations. However, this argument is not factually correct. Prior to 10/01/2021, the regulation at 42 C.F.R. § 412.140(a)(1) stated:

Register on QualityNet.org, before it begins to report data;[[12]](#footnote-12)

As of 10/01/2021, the regulation at 42 C.F.R. § 412.140(a)(1) stated:

Register on QualityNet website, before it begins to report data;[[13]](#footnote-13)

This change was explained in the Federal Register (86 FR 44780) as follows:

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.

Changes went through the required notice-and-comment period. Thus, the position of the Provider is baseless.

Hospitals that participate in the Hospital IQR Program must submit to CMS data on measures in a form, manner, and at a time specified by CMS. The submission period for this annual measure is from April 1 through May 15th of each year. Information regarding the collection, submission and reporting of quality data to CMS for compliance with the Hospital IQR program is available on the QualityNet website. Support was available to offer guidance including but not limited to:

* Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide[[14]](#footnote-14)
* Hospital Inpatient Quality Reporting Program – Frequently Asked Questions: Maternal Morbidity Structural Measure (February 2022)[[15]](#footnote-15)
* CMS Hospital IQR Program Measures for the FY 2023 Payment Update (September 2021)[[16]](#footnote-16)

The information needed to complete the quality reporting was available and properly communicated to the provider community. It is the responsibility of the Provider to keep up to date on the current regulations and program instructions.

1. Provider Did Not Submit the Measure Because the Quality Director was New to the Role.

The Data Accuracy and Completeness Acknowledgement (DACA) is an annual requirement for hospitals participating in the Hospital IQR Program to electronically acknowledge that the data submitted for the Hospital IQR Program are accurate and complete to the best of their knowledge. The open period for signing and completing the DACA is April 1 through May 15, with respect to the reporting period of January 1 through December 31 of the preceding year. Hospitals are required to complete and sign the DACA **on an annual basis** by the May 15 deadline via the *HQR Secure Portal*.[[17]](#footnote-17)

The Provider argues that this attestation (as of April 21, 2022) did not address the Maternal Measure as it does other measures. The Provider did not go back prior to the May 2022 deadline to recheck that everything was submitted.

According to the Program Guide, the DACA and the completion and submission of the Maternal Morbidity Structural Measure are two different steps for FY 2023.[[18]](#footnote-18) Thus, even if the new Quality Director had rechecked the DACA submission, it would not have listed the Maternal Morbidity Structural Measure.

The possibility of the new measure not being handled correctly was addressed in a comment and response within the FY 2022 Final Rule. It stated:

*Comment:* Many commenters had concerns regarding the measure’s initial reporting period starting on October 1, 2021. A commenter recommended using the initial reporting period for information purposes only and not for use in the Hospital IQR Program. Several commenters requested that CMS delay implementation of the Maternal Morbidity structural measure to allow hospitals additional time to research collaborative programs and prepare for accurate reporting…

*Response:* We appreciate the commenters’ concerns about the initial reporting period, however, we believe that maternal morbidity is a pressing issue which deserves serious focus and rapid action for maternal health improvement. We note that the Maternal Morbidity structure measure is being adopted for the Hospital IQR at this time, meaning hospitals will receive credit for the reporting of their measure results, **regardless of their responses to the attestation questions**…With regards to commenters’ concerns that beginning reporting as soon as the FY 2023 payment year could lead to misreporting or unintended consequences, we believe collecting data and reporting results for this measure right away will provide a critical baseline right away and we will monitor the data and any unintended consequences of the measure as part of standard measure maintenance.[[19]](#footnote-19)

Emphasis Added

The DACA acknowledgement is a separate attestation that was not factored into deciding the Provider failed to meet the measure. It is the responsibility of the Provider to follow the guidance and resources available to meet program requirements.

1. Logansport Memorial Hospital (LMH) Met the Maternal Morbidity Structural Measure.

The requirement involves “reporting” not “intent”. The Provider’s Exhibit B seems to indicate that at least some of the patient safety care practices meet the “intent” of the measure. This means, if the measure had been reported, they may have been eligible to select (A) “Yes” instead of (B) “No” or (C) “N/A”. The reporting of the measure was detailed in the FY 2022 Final Rule. It stated:

(2) Overview of the Measure

To report on this measure, hospitals will respond to a two-part question: “Does you hospital or health system participate in a Statewide and/or National Perinatal Quality Improvement Collaborative Program aimed at improving maternal outcomes during inpatient labor, delivery and post-partum care, and has it implemented patient safety practices or bundles related to maternal morbidity to address complications, including, but not limited to, hemorrhage, severe hypertension/preeclampsia or sepsis?” Hospitals will then choose from the following response options: (A) “Yes”; (B) “No”; or (C) “N/A (our hospital does not provide inpatient labor/delivery care)” and will submit responses one a year via a CMS-approved web-based tool on the QualityNet website.[[20]](#footnote-20)

For reporting purpose, the question must be answered regardless of whether the response was to be (A), (B) or (C).

1. Logansport Memorial Hospital (LMH) Updated Their Contact List to Prevent Future Occurrence.

This appeal only involves the FFY 2023 APU. Both parties agree the reporting measure for the Maternal Morbidity Structural Measure was not reported.

The MAC agrees that having the correct contact information is imperative. However, it is also imperative that the appropriate personnel follow the available resources and guidance to prevent future non-compliance.

**E. Conclusion**

The Provider failed to submit the Maternal Morbidity Structural Measure in the form, manner and timeline specified by the Secretary. The statutes require a one-fourth reduction in the Fiscal Year (FY) 2023 APU for the failure to comply with the Hospital IQR Quality Reporting Program. The MAC requests the Board affirm the decision to impose the reduction to the Standard Federal Rate for the Provider’s Medicare payment for FFY 2023.

IV. LAW, REGULATIONS, PROGRAM INSTRUCTIONS

Law:

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”);The Deficit Reduction Act of 2005 (“DRA”);Social Security Act Section 1886(b)(3)

Regulations:

42 C.F.R., Part 412, Subpart H;Section 412.140;42 C.F.R., Part 412, Subpart D;Section 412.64

Federal Registers:

FR Vol. 85, No. 182, Friday, September 18, 2020;FR Vol. 86, No. 154, Friday, August 13, 2021

Other Sources:

QualityNet.cms.gov website

V. EXHIBITS

##### C-1 CMS Noncompliance Decision Upheld

##### C-2 42 C.F.R. Section 412.140 (10/01/2021)

C-3 42 C.F.R. Section 412.140 (10/01/2020)

C-4 86 FR 44774-45607 (August 13, 2021) Extracts

C-5 Provider Reconsideration Request (Excluding Exhibits)

C-6 Fiscal Year 2023 Hospital Inpatient Quality Reporting Program Guide

C-7 Frequently Asked Questions: Maternal Morbidity Structural Measure

C-8 CMS Hospital IQR Program Measures for the FY 2023 Payment Update

C-9 85 FR 58432-58932 (September 18, 2020) Extracts

1. See 42 U.S.C. § 1395ww [↑](#footnote-ref-1)
2. Pub. L. No. 108-173, 117 Stat. 2066 (2003). [↑](#footnote-ref-2)
3. *Id.* at § 501, 117 Stat. at 2290; 42 C.F.R. § 412.140(c). [↑](#footnote-ref-3)
4. See Public Law 109-171 [↑](#footnote-ref-4)
5. *See* SSA § 1886(b)(3)(B)(viii)(I); 42 C.F.R. § 412.64(d)(2)(i)(C). [↑](#footnote-ref-5)
6. *See* Exhibit C-2. [↑](#footnote-ref-6)
7. *See* Exhibit C-4. [↑](#footnote-ref-7)
8. The QualityNet website URL changed from QualityNet.org to QualityNet.cms.gov. The Program regulations at 42 CFR 412.140(a)(1) and 42 CFR 412.140(c)(2)(i) were updated to cite the “QualityNet website”. [↑](#footnote-ref-8)
9. *See* 42 C.F.R. § 412.140(e), Exhibit C-2. [↑](#footnote-ref-9)
10. *See* Exhibit C-5. [↑](#footnote-ref-10)
11. *See* Exhibit C-1. [↑](#footnote-ref-11)
12. *See* Exhibit C-3. [↑](#footnote-ref-12)
13. *See* Exhibit C-2. [↑](#footnote-ref-13)
14. *See* Exhibit C-6. [↑](#footnote-ref-14)
15. *See* Exhibit C-7. [↑](#footnote-ref-15)
16. *See* Exhibit C-8. [↑](#footnote-ref-16)
17. *See* Exhibit C-6, page 16. [↑](#footnote-ref-17)
18. *See* Exhibit C-6, steps 9 and 10 pp 16 and 17. [↑](#footnote-ref-18)
19. *See* Exhibit C-4, p 16. [↑](#footnote-ref-19)
20. *Id,* pp 13-14. [↑](#footnote-ref-20)