

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEW LIFECARE HOSPITALS OF
CHESTER COUNTY LLC, *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, U.S. Secretary of Health
and Human Services,

Defendant.

Civil Action No. 19-00705 (EGS)

ANSWER

Defendant, Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, by and through undersigned counsel, respectfully submits the following Answer to Plaintiffs' Complaint (ECF No. 1) and states as follows:

DEFENDANT'S RESPONSES TO THE NUMBERED PARAGRAPHS OF THE COMPLAINT

Defendant denies all allegations in the Complaint, including the relief sought, except when specifically admitted in this Answer. Using the same organization and numbered paragraphs as the Complaint, Defendant answers Plaintiffs' allegations in the paragraphs of the Complaint as follows:

1. This paragraph contains conclusions of law and Plaintiffs' characterization of this action, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denied.

2. Admits the first and second sentences. The third sentence contains Plaintiffs' characterization of this action, not allegations of fact, and thus no response is required, but to the

extent a response may be deemed required, denies. As to the fourth sentence, admits that the Centers for Medicare & Medicaid Services (“CMS”) received comments indicating that commenters believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments but otherwise denies. Denies the fifth and sixth sentences. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the seventh sentence.

3. Denies.

4. Admits that the transition period for the site-neutral rate will expire for cost reporting periods beginning on or after October 1, 2019, but otherwise denies the allegations in this paragraph.

5. Admits.

6. This paragraph contains conclusions of law, not allegations of fact, and thus no response is required.

7. This paragraph contains conclusions of law, not allegations of fact, and thus no response is required.

8. This paragraph contains conclusions of law, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, admits.

9. This paragraph contains conclusions of law, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, admits that the Court has authority to grant certain of the relief requested but otherwise deny.

10. Admits.

11. Admits that Alex M. Azar II is Secretary of Health and Human Services, the federal officer responsible for administering the Medicare program pursuant to the Medicare

statute, and that he has delegated considerable authority for administering the program to the Administrator of CMS. Denies the remaining allegations of this paragraph.

12. This paragraph contains Plaintiffs' characterizations of the Medicare statute and the Medicare program, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, admits.

13. Admits.

14. Admits the first sentence. The second sentence contains conclusions of law and Plaintiffs' characterization of LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies. As to the third and fourth sentences, admits that Medicare pays general acute care hospitals for inpatient discharges under the inpatient prospective payment system ("IPPS"); the remainder of the third and fourth sentences contains Plaintiffs' characterization of IPPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies. As to the fifth sentence, to the extent the time period at issue is not specified, Defendant lacks knowledge or information sufficient to form a belief regarding the truth of the allegation concerning the average length of stay. The sixth sentence contains conclusions of law and Plaintiffs' characterization of IPPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies.

15. Admits that for a hospital to be reimbursed under the LTCH PPS, it must have an average Medicare inpatient length of stay that is greater than twenty five days (as determined by the Secretary); the remainder of the first sentence contains conclusions of law and Plaintiffs' characterization of LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies. As to the second and third sentences,

admits that each patient discharged from a LTCH is assigned to a distinct Medicare severity long-term care diagnosis related group (“MS-LTC-DRG”); the remainder of the second and third sentences contains Plaintiffs’ characterization of LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies.

16. Admits that weights are assigned to MS-DRGs and MS-LTC-DRGS on an annual basis; the remainder of the paragraph contains Plaintiffs’ characterization of IPPS and LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies.

17. Admits the first, second, and third sentences. As to the fourth sentence, admits that the second payment rate is the site neutral payment rate; the remainder of the sentence contains Plaintiffs’ characterization of LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies.

18. Admits that the regulation at 42 C.F.R. § 412.522 addresses the site neutral payment rate; the remainder of the paragraph contains conclusions of law and Plaintiffs’ characterization of LTCH PPS, not allegations of fact, and thus no response is required , but to the extent a response may be deemed required, denies.

19. Admits the first sentence. As to the second sentence, admits that during this transition period, the blended payment rate for site neutral cases is based on one-half of the site neutral payment rate and one-half of the LTCH PPS standard Federal payment rate; the remainder of the sentence contains Plaintiffs’ characterization of LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies. As to the third sentence, admits that the last year of the transition period is for cost reporting periods beginning on or after, October 1, 2018. As to the fourth sentence, admits that

LTCH site neutral discharges will be paid at the site neutral payment rate for discharges occurring in cost reporting periods beginning on or after, October 1, 2019.

20. Admits the first and second sentences. As to the third sentence, admits that CMS sets outlier thresholds under IPPS and LTCH PPS for each year; the remainder of the sentence contains Plaintiffs' characterization of LTCH PPS, not allegations of fact, and thus no response is required, but to the extent a response may be deemed required, denies.

21. Admits.

22. Admits the first and second sentences. As to the third sentence, admits that the quoted text appears in the cited rulemaking. Admits the fourth and fifth sentences. As to the sixth sentence, admits that the IPPS payment rates are used as inputs to determine the IPPS comparable per diem amount under the LTCH PPS site neutral payment rate but otherwise denies.

23. Admits the first sentence. As to the second sentence, admits that CMS received comments indicating that commenters believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments but otherwise denies. Admits the third sentence.

24. Admits that Post Acute Medical, LLC and Vibra Healthcare, LLC submitted comments indicating that they believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments but otherwise denies.

25. Admits that the American Hospital Association submitted a comment letter to CMS that contained the quoted text but otherwise denies.

26. Admits that the Federation of American Hospitals submitted comments to CMS that contained the quoted text but otherwise denies.

27. Admits.

28. Admits that the final rule contains the quoted text and that CMS finalized a 5.1% adjustment to the LTCH site-neutral payment rate to account for outlier payments paid to LTCH site-neutral payment rate cases.

29. Admits the first and second sentences. As to the third, fourth, and fifth sentences, admits that the identified entities submitted comments indicating that they believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments but otherwise denies. Denies the sixth sentence. As to the seventh and eighth sentences, admits that the identified entities submitted comments indicating that they believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments but otherwise denies.

30. Admits that MedPAC submitted a comment to CMS containing the quoted text but otherwise denies.

31. As to the first sentence, admits that CMS finalized a budget neutrality adjustment for the site-neutral payment rate for fiscal year 2017 but otherwise denies. Admits the second and third sentences. As to the fourth sentence, admits that the cited rule contains the quoted text but otherwise denies.

32. Admits the first, second, and third sentences. As to the fourth and fifth sentences, admits that the identified entities submitted comments indicating that they believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments but otherwise denies. As to the sixth sentence, admits that CMS finalized the referenced budget neutrality adjustment but otherwise denies. Admits the seventh sentence.

33. Admits the first, second, third, and fourth sentences. As to the fifth sentence, admits that the IPPS payment rates are used as inputs to determine the IPPS comparable per diem amount under the LTCH PPS site neutral payment rate but otherwise denies.

34. Admits that CMS received comments indicating that commenters believed CMS was purportedly applying duplicative budget neutrality adjustments to site-neutral payments and that certain comments contained the quoted text but otherwise denies.

35. Admits that CMS received comments that included the quoted text but otherwise denies.

36. Admits that CMS received a comment that included the quoted text but otherwise denies.

37. As to the first sentence, admits that CMS finalized the referenced budget neutrality adjustment but otherwise denies. Admits the second sentence. As to the third sentence, admits that the cited rule contains the quoted text but otherwise denies.

38. Denies.

39. As to the first sentence, Defendant lacks knowledge or information to form a belief regarding the truth of the allegation as to what “Plaintiffs had hoped.” As to the second sentence, admits that the transition period for the site-neutral rate will expire for cost reporting periods beginning on or after October 1, 2019 but otherwise denies. As to the third sentence, admits the referenced budget neutrality adjustment will apply to the site-neutral payment rate in 2020 but otherwise denies. Defendant lacks knowledge or information to form a belief regarding the truth of the allegation in the fourth sentence. Denies the fifth and sixth sentences.

40. Admits.

41. This paragraph contains conclusions of law and Plaintiffs' characterization of the Medicare statute and Medicare regulations, not allegations of fact, and thus no response is required. Defendant respectfully refers the Court to the cited provisions for a complete and accurate statement of their contents.

42. Admits.

43. This paragraph contains conclusions of law Plaintiffs' characterizations of their appeal request, not allegations of fact, and thus no response is required. To the extent a response may be deemed required, admits. Defendant respectfully refers the Court to the appeal request for a complete and accurate statement of its contents. By way of further answer, Defendant specifically denies any suggestion that any aspect of Plaintiffs' position before the PRRB has merit.

44. Admits that the PRRB granted the request for expedited judicial review as to the IPPS/LTCH PPS final rule for Federal fiscal year 2019 but otherwise denies.

45. Admits.

46. Admits.

47. Defendant restates and incorporates by reference the responses contained in all preceding paragraphs.

48. This paragraph contains conclusions of law and Plaintiffs' characterization of the APA, the Medicare statute and other statutory provisions, Medicare regulations, and a Federal Register document, not allegations of fact, and thus no response is required, and Defendant respectfully refers the Court to the cited provisions for a complete and accurate statement of their contents. But to the extent a response may be deemed required, denies.

The remainder of Plaintiffs' Complaint consists of a prayer for relief as to which no response is necessary. To the extent a response is deemed necessary, Defendant denies that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Defendant's actions did not violate the Administrative Procedure Act (APA), the Medicare statute, or any other statutory or regulatory provision.
3. The Court lacks jurisdiction over claims regarding rules other than the IPPS/LTCH PPS final rule for Federal fiscal year 2019.

Respectfully submitted,

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