DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

Decision of the Administrator

IN THE CASE OF:	*	**MGCRB Case No. 24C0313**
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Samaritan Albany General Hospital	*	
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Provider No. 38-0022	*	**Date: January 31, 2023**
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This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the decision entered by the Medicare Geographic Classification Review Board (MGCRB). The review is during the 90-day period in § 1886(d)(10) of the Social Security Act (Act), as amended.[1] The Hospital requested that the Administrator reverse the MGCRB's denial of its reclassification application. Accordingly, this case is now before the Administrator for final agency review.

ISSUE AND MGCRB DECISION

The issue involves whether the MGCRB properly denied the Hospital's primary request for reclassification. The Hospital, geographically located in the urban Albany-Lebanon, Oregon (OR) Core-Based Statistical Area (CBSA) to reclassify to the urban Portland-Vancouver-Hillsboro, Oregon-Washington (OR-WA) CBSA for purposes of using the area's wage index to determine its payment rate under the Medicare inpatient prospective payment system (IPPS) for the Federal Fiscal Years (FFY) 2024 through 2026. The MGCRB noted that the requested area is required to be no more than 35.00 miles under the proximity requirements. The MGCRB measured the distance as 35.4 miles. The MGCRB approved the Hospital's secondary request to reclassify to the urban Salem, OR CBSA.

HOSPITAL'S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital noted that it in its denial, the MGCRB did not provide any evidence to support its assertion that the distance was greater than 35.00 miles. The Hospital argued that the MGCRB decision was inconsistent with the regulation at 42 C.F.R. § 412.230(c)(1), which requires a hospital to submit "evidence" of the shortest route and the distance of that route, but does not limit the type of evidence. The Hospital stated that the MGCRB decision is also inconsistent with past decisions by the Administrator where hospitals have been approved using affidavits and other evidence to demonstrate proximity to a target area. The Hospital noted that the online mapping services are not accurate. Specifically, the Bing map shows the distance as being 35.1 miles, however, the Hospital's Engineering Director

[1] 42 U.S.C. § 1395ww(d).

actually drove the specified route and measured the distance as 35.0 miles. The affidavit submitted by the Engineering Director in support of the distance contained pictures that clearly show the odometer at 0 when the car leaves the front entrance of the hospital and at 35.0 when arriving at the border of Yamhill County, which is part of the Portland-Vancouver-Hillsboro, OR-WA CBSA. The Hospital argued that different mapping software uses proprietary technology to determine distances, and thus, it cannot be determined how certain calculations were made. However, actually driving the route, the distance was 35.0 miles. The Hospital theorized that the MGCRB's requirement that a URL link be provided to the map software route may result in a change in the route when reviewed by the MGCRB and that the MGCRB does not review the copy provided in the application.

The Hospital also pointed out that this exact issue was previously litigated for this same hospital exactly 3 years ago, and that the CMS Administrator ruled in favor of the Hospital.[2]

DISCUSSION

The entire record furnished by the MGCRB has been examined, including any correspondence, position papers, exhibits, and subsequent submissions. All comments received timely are included in the record and have been considered.

Section 1886(d)(10)(C)(iii)(II) of the Social Security Act and the Medicare regulations at 42 C.F.R. § 412.278 provide for the CMS Administrator's review of the MGCRB decisions. In exercising its authority under § 1886(d)(10) of the Act, the MGCRB must comply with all of the provisions of Title XVIII of the Act and the regulations issued there under, including the regulations at 42 C.F.R. § 412.230, *et seq*. Likewise, the regulations promulgated by the Secretary establishing procedures and criteria for the MGCRB are binding on the agency and on the Administrator in reviewing MGCRB decisions.[3]

Section 1886(d)(10) of the Act provides for the MGCRB to consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year its wage index. Further, § 1886(d)(10)(D)(i)(I) requires the Secretary to publish guidelines for comparing wages, taking into account to the extent the Secretary determines appropriate, occupational mix in the area in which the hospital is classified and the area in which the hospital is applying to be classified.

In 1999, ten years after the MGCRB was established, Congress enacted § 401 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Pub. Law 106-113), which established a separate procedure from the MGCRB process whereby urban hospitals can be reclassified from urban to rural status if they meet certain criteria. This provision was set forth at § 1886(d)(8)(E) of the Act and promulgated at 42 C.F.R. § 412.103.

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[2] Administrator's Decision in MGCRB Case No. 21C0401.

[3] *United States v. Nixon*, 418 U.S. 683, 694-96 (1974). *See also* K. Davis and R. Pierce, Administrative Law Treatise §6.5 at 251 (3rd ed. 1994).

Consistent with the statute, the Medicare regulations at 42 C.F.R. §412.103, provides special treatment for hospitals located in urban areas that apply for reclassification as rural. Hospitals with § 412.103 rural status are eligible to use distance and average hourly wage criteria designated for rural hospitals at § 412.230(b)(1) and (d)(1).[4]

The regulation at 42 C.F.R. § 412.230 sets forth criteria for an individual hospital seeking redesignation to another rural area or an urban area, stating in part at (a)(1)(ii) that:

> Effective for fiscal year 2005 and subsequent fiscal years, an individual hospital may be redesignated from an urban area to another urban area, from a rural area to another rural area, or from a rural area to another urban area for the purposes of using the other area's wage index value.

A hospital must demonstrate that it meets certain proximity criteria to be redesignated to the requested area. 42 C.F.R. § 412.230(a) provides that:

> *(2) Proximity.* Except as provided in paragraph (a)(3) of this section, to be redesignated to another rural area or an urban area, a hospital must demonstrate a close proximity to the area to which it seeks redesignation by meeting the criteria in paragraph (b) of this section, and submitting data requested under paragraph (c) of this section.

The regulation at 412.230(b) states:

> *Proximity criteria.* A hospital demonstrates a close proximity with the area to which it seeks redesignation if one of the following conditions applies: (1) The distance from the hospital to the area is no more than 15 miles for an urban hospital and no more than 35 miles for a rural hospital. (2) At least 50 percent of the hospital's employees reside in the area.

Regarding the "proximity" criteria, MGCRB Rule 5.2 notes:

> (A) A hospital must demonstrate a close proximity to the area to which it seeks redesignation or qualify for special access by meeting one of the following conditions:
>
> (1) Proximity – Distance. The distance from the hospital to the requested area must be no more than 15 miles for an urban hospital and no more than 35 miles for a rural hospital. To demonstrate proximity, the provider must submit map evidence (using a nationally recognized electronic mapping service (e.g., Google Maps, Bing Maps, MapQuest) showing the shortest route over improved roads from the front entrance of the hospital to the county line of the requested area and the distance of that route.

[4] *Id.*

> An improved road is any road that is maintained by a local, state, or federal government entity and available for use by the general public. An improved road includes the paved surface up to the front entrance of the hospital. For further information, see 66 Fed. Reg. 39874-75 (Aug. 1, 2001), which discusses the definition of mileage for purposes of meeting the proximity requirements.

In this case, the MGCRB found that the Hospital, which is classified as rural under § 412.103, met all the criteria to be reclassified to the Portland-Vancouver-Hillsboro, OR-WA CBSA, except for the 35 mile proximity requirement. The MGCRB found that the requested area was 35.4 miles. However, the Administrator, using Mapquest, finds that the Hospital meets the 35.00 mile requirement.

In light of the foregoing and based on the record presented by the Hospital for this reclassification period, the Administrator reverses the MGCRB decision. As the Hospital also met the other necessary criteria, including the wage comparison criteria for redesignation, the Hospital qualifies for redesignation to the urban Portland-Vancouver-Hillsboro, OR-WA CBSA, for purposes of using that area's wage index to determine its payment rate under the Medicare inpatient prospective payment system (IPPS) for the Federal Fiscal Years (FFYs) 2024 through 2026. The MGCRB's decision approving the Hospital's secondary request for redesignation to the Salem, OR CBSA is hereby vacated.

DECISION

The Administrator reverses the MGCRB's decision in this case.

THIS CONSTITUTES THE FINAL ADMINISTRATIVE DECISION OF THE SECRETARY OF HEALTH AND HUMAN SERVICES

Date: April 7, 2023

/s/
Jonathan Blum
Principal Deputy Administrator
Centers for Medicare & Medicaid Services