

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

Decision of the Administrator

IN THE CASE OF:	*	MGCRB Case No. 24C0494
	*	
Bridgeport Hospital	*	
	*	
Provider No. 07-0010	*	Date: January 31, 2023
	*	

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. 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 request to reclassify to the urban Nassau County-Suffolk County, New York (NY) Core-Based Statistical Area (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 found that requested area is required to be no farther than 35.00 miles under the proximity requirements; and the MGCRB measured the distance as 57.0 miles.

HOSPITAL’S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital noted that it has rural status under 42 C.F.R. § 412.103(b), and is a Rural Referral Center (RRC). The Hospital stated that it provided map evidence of a route from the Hospital’s front door to the Suffolk County line (which is part of the Nassau County-Suffolk County, NY CBSA) using the Bridgeport-Port Jefferson Ferry. Using approved mapping software, the distance of this route was 12.1 miles. The Hospital averred that the reason the MGCRB found the Hospital did not meet the distance was because it did not allow the use of the ferry.

The Hospital noted that the Bridgeport and Port Jefferson Steamboat Company, which operates the ferry, is a corporation that provides a public ferry service for passengers and vehicles between Bridgeport, Connecticut and Port Jefferson, New York. The Company, which dates back to 1883, provides year-round public ferry transportation between the two locations with ferries departing every hour to ninety minutes depending on the time of year, the time of day, and the day of the week. As it is a common mode of transport for workers, monthly passes are available for purchase.

The Hospital noted that prior to 2017, the MGCRB granted applications for hospitals for reclassification including the use of Ferries, including *Lawrence & Memorial Hospital* (MGCRB Case No. 15C0187), in which the MGCRB approved the hospital for redesignation to the same Nassau County-Suffolk County, NY CBSA requested in this case. In that case, the hospital utilized the Fishers Island Ferry, and the MGCRB allowed it. The Hospital stated that the MGCRB made an abrupt and unexplained about face in 2017, and no longer allowed the use of a ferry when calculating distance. However, the Hospital noted, the Administrator reversed every one of these MGCRB decisions, and allowed the use of a ferry in every instance.

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.¹

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.

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).

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:

¹ *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).

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. 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 met all the criteria to be reclassified to the Nassau County-Suffolk County, NY CBSA, except for the 35-mile proximity requirement.² The purpose of the MGCRB reclassification process is to allow Hospitals to compete with neighboring labor markets. Based upon the Hospital's designated public access route to the county line, the Hospital clearly meets the 35-mile proximity requirement using the ferry. The MGCRB and the Administrator have both allowed the use of a ferry in previous MGCRB cases.³ As noted by the U.S. Department of Transportation:⁴

Ferry boats offer a valuable option for people living near waterways across the nation traveling to jobs, schools, medical services, grocery stores, and other important destinations. As FHWA Administrator Victor Mendez said, "Ferry service represents a key transportation link for certain communities--much like highways and bridges do in other areas."

As the Hospital meets the criteria, the Administrator approves the Hospital's request to reclassify to the Nassau County-Suffolk County, NY CBSA for purposes of using the area's wage index to determine its payment rate under the Medicare IPPS for the FFY 2024 through 2026.

² As the Hospital is considered "rural" under 42 C.F.R. § 412.103, it may use the rural criteria of 35 miles for proximity, despite its geographical location in an urban area.

³ See *Lawrence & Memorial Hospital*, MGCRB Case No. 15C0187-1, in which the MGCRB found that Lawrence & Memorial Hospital, located in the Norwich-New London, CT CBSA (the same CBSA as the Hospital in the present case) was 7.7 miles from the Suffolk County, NY line and allowed it to reclassify to the Nassau County-Suffolk County, NY CBSA based on it being the closest CBSA. See also Administrator's Decisions in *Adirondack Medical Center*, MGCRB Case No. 22C0178 and 19C0277; *Beebe Medical Center*, MGCRB Case Nos. 22C0296 and 19C0212; *Backus Medical Center*, MGCRB Case Nos. 21C0293 and 18C0195; *Lawrence + Memorial Hospital*, MGCRB Case No. 21C0289, and *Windham Community Memorial Hospital & Hatch Hospital*, MGCRB Case No. 21C0294.

⁴ See "DOT support for improved ferry service boosts another transportation option", published Feb. 5, 2013. Available online at <http://usdotblog.typepad.com/secretarysblog/2013/02/dot-support-for-improved-ferry-service-boosts-another-transportation-option.html>.

DECISION

The Administrator reverses the MGCRB's decision in accordance with the foregoing opinion.

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

Date: April 26, 2023

/s/

Jonathan Blum
Principal Deputy Administrator
Centers for Medicare & Medicaid Services