

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

Decision of the Administrator

IN THE CASE OF:	*	MGCRB Case No. 24C0541
	*	
Lawrence + Memorial Hospital	*	
	*	
	*	
Provider No. 07-0007	*	
	*	Date: January 21, 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.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 Lawrence + Memorial (Hospital)’s primary request for redesignation 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 2026.² The MGCRB denied the Hospital’s Primary Request for redesignation, as the Hospital’s requested area is required to be no farther than 35.00 miles under the proximity requirements. The MGCRB noted that the Hospital’s distance was measured to be 119.0 miles. However, the MGCRB approved the Hospital’s secondary request for redesignation to CBSA Code 35980-Norwich-New London, CT.

HOSPITAL’S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital stated that its primary request was to be reclassified to the Nassau-Suffolk CBSA under the “proximity” regulations.³ The Hospital’s submitted application included support for the proximity criteria documenting a 7.6 mile calculation, based on the distance from the Hospital’s front entrance to the

¹ 42 U.S.C. § 1395ww(d).

² The Hospital, geographically located in the urban Norwich-New London, Connecticut (CT) CBSA, was approved as rural under 42 C.F.R. § 412.103(a)(2), effective as of October 1, 2016.

³ See 42 C.F.R. § 412.230(b)(1).

Suffolk County line using the Fishers Island Ferry (“the Ferry”). The MGCRB denied this request because the requested area was required to be no farther than 35.00 miles, and the distance was allegedly measured to be 119.0 miles. The Hospital noted that there was no mention in the Denial of the route used for the measurement, but that it was “obviously made without the use of the Ferry.”⁴ The Hospital further argued that the Denial did not identify any other disputed facts or requirements that were not met other than the proximity criteria, and therefore, the only item at issue is the disallowance of the use of the Ferry.

The Hospital noted that the MGCRB’s decision to deny the Hospital’s reclassification request was arbitrary and capricious, not based on substantial evidence, and was otherwise unlawful and unreasonable. The Hospital stated that the MGCRB granted the Hospital’s application, using the same ferry route at issue in the present case, to the requested area for FFYs 2014-2017.⁵ The MGCRB subsequently denied the Hospital’s request for FFYs 2018-2020, but that decision was overturned by the Administrator.⁶ The Hospital noted that the Administrator has consistently reversed other adverse MGCRB decisions involving a ferry.⁷

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) 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.”

Pursuant to the statute, the Secretary established 42 C.F.R. § 412.230 setting forth criteria for an individual hospital seeking redesignation to another rural area or an urban area. The regulation in part states at (a)(1)(ii) that:

⁴ See Hospital’s Request for Administrator Review, dated February 14, 2023, page 2.

⁵ See MGCRB Case No. 15C0187-1. The Hospital also pointed out that prior to 2017, the MGCRB consistently treated travel by ferry as travel over an improved road, not only for this Hospital, but also for Adirondack Medical Center, Olympic Memorial Hospital, and others. The Hospital noted that this sudden about-face by the MGCRB directly affects “payment of [Medicare] benefits” under 42 U.S.C. § 1395hh(a)(2), and thus is subject to the Supreme Court’s ruling in *Azar v. Allina Health Servs.*, 587 U.S. _____ (2019).

⁶ See Administrator’s Decisions in *Lawrence + Memorial Hospital*, MGCRB Case No. 18C0076, and *Lawrence + Memorial Hospital*, MGCRB Case No. 21C0289.

⁷ The Hospital cited to the Administrator’s Decisions in *Beebe Medical Center*, MGCRB Case No. 19C0212; *Adirondack Medical Center*, MGCRB Case No. 19C0277; and *Backus Medical Center*, MGCRB Case No. 18C0195.

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.

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

(a)(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.

(b) *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.

The regulation at 42 C.F.R. § 412.230(a)(3) provides special access rules for sole community hospitals (SCHs) and rural referral centers (RRCs), stating:

(3) *Special rules for sole community hospitals and rural referral centers.* To be redesignated under the special rules in this paragraph, a hospital must be a sole community hospital or a rural referral center as of the date of the MGCRB's review.

(i) A hospital that is a rural referral center, a sole community hospital, or both does not have to demonstrate a close proximity to the area to which it seeks redesignation.

(ii) If a hospital that is a rural referral center, a sole community hospital, or both qualifies for urban redesignation, it is redesignated to the urban area that is **closest** to the hospital. If the hospital is closer to another rural area than to any urban area, it may seek redesignation to either the closest rural or the closest urban area. (Emphasis added.)

42 C.F.R. § 412.230(d) sets forth the wage criteria which must be met, stating:

d) *Use of urban or other rural area's wage index—*(1) *Criteria for use of area's wage index.* Except as provided in paragraphs (d)(3) and (d)(4) of this section, to use an area's wage index, a hospital must demonstrate the following:

(i) The hospital's incurred wage costs are comparable to hospital wage costs in an urban or other rural area;

(ii) The hospital has the necessary geographic relationship as specified in paragraphs (a) and (b) of this section;

(iii) One of the following conditions apply:

(C) With respect to redesignations for Federal fiscal year 2006 and subsequent years, the hospital's average hourly wage is, in the case of a hospital located in a rural area, at least 106 percent and in the case of a hospital located in an urban area, at least 108 percent of the average hourly wage of all other hospitals in the area in which the hospital is located;

iv) One of the following conditions apply:

(E) With respect to redesignations for fiscal year 2011 and later fiscal years, the hospital's average hourly wage is equal to, in the case of a hospital located in a rural area, at least 82 percent, and in the case of a hospital located in an urban area, at least 84 percent of the average hourly wage of hospitals in the area to which it seeks redesignation.

(2) *Appropriate wage data.* For a wage index change, the hospital must submit appropriate wage data as follows:

(ii) For redesignations effective beginning FY 2003:

(A) For hospital-specific data, the hospital must provide a weighted 3-year average of its average hourly wages using data from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes. However, for the limited purpose of qualifying for geographic reclassification based on wage data from cost reporting periods beginning prior to FY 2000, a hospital may request that its wage data be revised if the hospital is in an urban area that was subject to the rural floor for the period during which the wage data the hospital wishes to revise were used to calculate its wage index.

(B) For data for other hospitals, the hospital must provide a weighted 3-year average of the average hourly wage in the area in which the hospital is located and a weighted 3-year average of the average hourly wage in the area to which the

hospital seeks reclassification. The wage data are taken from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes.

Regarding proximity, MGCRB Rule 4.2 notes:

(A) A provider 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 provider to the requested area must be no more than 15 miles for an urban provider and no more than 35 miles for a rural provider. To demonstrate proximity, the provider must, at a minimum, submit map evidence using a nationally recognized electronic mapping service (e.g., Google Maps, Bing Maps, MapQuest). The map must show the route over improved roads from the provider’s front entrance 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 provider’s front entrance. 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.

Notably, 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).

In this case, the Hospital, which is considered “rural” under 42 C.F.R. § 412.103, requested redesignation to the urban Nassau County-Suffolk County, NY CBSA under the 35-mile rural proximity rules (primary application). Regarding the primary application, 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.⁸ The MGCRB found that the route was measured to be 119.0 miles, which did not utilize the waterway/ferry route. The MGCRB approved the Hospital’s Secondary Request for redesignation to CBSA Code 35980-Norwich-New London, CT.

⁸ 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.

The MGCRB and the Administrator have both allowed the use of a ferry in previous MGCRB cases.⁹ The Administrator notes, the Fishers Island Ferry District (District) is a component unit of the Town of Southold in Suffolk County.¹⁰ The District was created in 1947 by an act of the New York State Legislature, known as the Ferry District Enabling Act, and is authorized to levy and collect taxes in addition to collecting fares, in order to offset its expenditures.¹¹ The tax levy is assigned to the property owners of Fishers Island.¹² The District’s primary mission is “to provide safe, reliable, convenient and cost-effective public marine transportation services from Fishers Island, New York to the Connecticut mainland consistent with its mandate set forth in the Enabling Act”.¹³ As the ferry is owned by a government entity, open to the public, and available year-round, it is consistent with past decisions to allow the Fishers Island Ferry to be considered for purposes of the MGCRB reclassification process. As noted by the U.S. Department of Transportation:¹⁴

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 noted by the Hospital, the purpose of the MGCRB reclassification process is to allow Hospitals to compete with neighboring labor markets. The Hospital’s FFYs 2024-2026 reclassification application used mapping software to show that the distance from the Hospital to the Nassau-Suffolk CBSA was 7.6 miles.¹⁵ The Hospital also clearly meets the 35-mile proximity requirement.

⁹ See *Lawrence & Memorial Hospital*, MGCRB Case No. 15C0187-1, in which the MGCRB found that the Hospital 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. The 7.7 mile distance was using the same Ferry route at issue in the present case. The MGCRB also noted in that case that the Hospital could have used proximity to qualify for redesignation to the Nassau County-Suffolk County, NY CBSA. See also Administrator’s Decisions in *Lawrence + Memorial Hospital*, MGCRB Case No. 21C0289, *Beebe Medical Center*, MGCRB Case No. 19C0212; *Adirondack Medical Center*, MGCRB Case No. 19C0277; and *Backus Medical Center*, MGCRB Case No. 18C0195.

¹⁰ Office of the New York State Comptroller, Division of Local Government & School Accountability, “Report of Examination Period Covered: January 1, 2014 — April 30, 2015”, “Fishers Island Ferry District Financial Operation”, 2016 M-156. Available online at <https://www.fiferry.com/PDF/Fishers%20Island%20Ferry%20District%20-%20NYS%20Comptroller's%202016%20Report.pdf>

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ “DOT support for improved ferry service boosts another transportation option”, published Feb.5, 2013. See <http://usdotblog.typepad.com/secretarysblog/2013/02/dot-support-for-improved-ferry-service-boosts-another-transportation-option.html#.WQzIvvkrKUK>

¹⁵ See Hospital’s Request for Administrator Review, dated February 14, 2023, Attachment C at 5-6.

As the Hospital meets the other necessary 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. The Hospital's secondary application approved for redesignation to CBSA Code 35980-Norwich-New London, CT is vacated.

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