

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

Decision of the Administrator

IN THE CASE OF:	*	
	*	
Palmetto General Hospital	*	MGCRB Case No. 25C0077
	*	
	*	
Provider No. 10-0187	*	Dated: January 28, 2024
	*	

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 time period specified in 42 C.F.R. § 412.278. 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 Miami Beach - Kendall (FL) 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) 2025 through 2027. The Hospital is geographically located in the Miami-Miami Beach-Kendall, FL CBSA, but is classified as rural under 42 C.F.R. § 412.103. The MGCRB found that the Hospital’s average hourly wage (AHW) is required to be at least 106.0000 percent of the AHW of all other hospitals in the area in which the Hospital is located; but in this case, the Hospital’s AHW was calculated to be 104.4510 percent of the AHW of all other hospitals in the area in which the Hospital is located.

HOSPITAL’S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital argued that the MGCRB compared the Hospital’s AHW to the Hospital’s geographic home area, but the Hospital had been classified by CMS as a Rural Referral Center (RRC) which makes it exempt from this requirement. Therefore, the Hospital argued that it should receive the wage index for the Miami-Miami Beach-Kendall, FL CBSA effective October 1, 2024, and the MGCRB decision should be reversed.

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.

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. Per the regulation in subsection (a):

(ii) 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.

(iii) An urban hospital that has been granted redesignation as rural under § 412.103 is considered to be located in the rural area of the state for the purposes of this section.

A hospital must demonstrate that it meets certain proximity criteria to be redesignated to the requested area. There are also wage criteria which must be met. Pertinent to this case, the regulation at 42 C.F.R. § 412.230(d)(1)(iii)(C) states:

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;

Regarding what wage data the hospital must submit, for redesignations effective beginning FY 2003, 42 C.F.R. § 412.230(d)(2)(ii) notes:

(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.

(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.

In 1999, Congress enacted §401 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, 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. When the Secretary implemented 42 C.F.R. § 412.103, the Secretary also initially amended the MGCRB process. CMS further amended its regulations to recognize the current case law.

Hospitals that have been classified as an RRC are not required to meet the Home Area Wage Test. First, under §1886(d)(10)(D)(iii) which states:

Under the guidelines published by the Secretary under the clause (i), in the case of a hospital which has ever been classified by the Secretary as a rural referral center under paragraph 5(c), the Board may not reject the application of the hospital under this paragraph on the basis of any comparison between the average hourly wage of the hospital and the average hourly wage of the hospitals in the are in which it is located.

The Home Area Wage Test exemption for RRCs, which CMS implemented in the regulations at 42 C.F.R. § 412.230(d)(3)(i) specifically states:

If a hospital was **ever** approved as a rural referral center, it does not have to demonstrate that it meets the average hourly wage criterion set forth in paragraph (d)(1)(iii) of this section. [Emphasis added]

In the instant case, the Hospital is located in the Miami-Miami Beach-Kendall, FL CBSA. The Hospital submitted an Individual Hospital Application for Geographic Application for FFY 2025-2027 to the MGCRB on August 21, 2023 for primary wage index redesignation back into its home area.¹ On November 1, 2023, the Hospital sent an application for Urban to Rural Reclassification pursuant to 42 C.F.R. §412.103.² On November 21, 2023, the Hospital received notice that the request for reclassification to rural status met the Federal requirements found in 42 C.F.R. §412.103(a)(3).³ The effective date of the hospital's rural status was determined to be the date of filing, November 1, 2023.

¹ See Palmetto General Hospital Appeal of Denial for MGCRB Case 25C007, dated February 7, 2024, Attachment 1.

² *Id.*, at Attachment 4.

³³ *Id.*

Subsequently, the Provider Representative uploaded a letter dated January 2, 2024, setting forth the rural status approval and RRC status approval. On January 23, 2024, the MGCRB issued its decision denying the Hospital's Primary Request for redesignation to the Miami-Miami Beach-Kendall, FL CBSA, as the Hospital's AHW was required to be at least 106.00 percent of the AHW of all other providers in the area in which the Hospital is located and the Hospitals AHW comparison was calculated to be 104.4510 percent. Supplied in the record was a letter dated February 1, 2024, where the Hospital's request for classification as a RRC pursuant to 42 C.F.R. §412.96(1)(ii) was approved **effective May 1, 2024**.⁴ [Emphasis added].

The Hospital argued that it was designated as having Rural Reclassification and RRC status, and thus should be exempt from the Home Area Wage Test. The Hospital contended that it met the requirements for classification as an RRC because it was approved for Rural Reclassification based on 42 C.F.R. §412.103(a)(3). It further argued that when CMS approved the Hospital for Rural Reclassification, it classified the hospital as an RRC as required by the statute. The Hospital noted that the statute and regulation for the exemptions to the Home Area Wage Test requires that a hospital be classified for RRC status but does not require that the RRC status be effective or approved as of a certain date.

The regulations at 42 C.F.R. §412.230(a)(3) provide the special rules for community hospitals and rural referral centers, and specifically states:

To be redesignated under the special rules in this paragraph, a hospital must be approved as a sole community hospital or a rural referral center as of the date of the MGCRB's review.

However, the Hospital argued that Section 1886(d)(5)(c) of the Social Security Act requires that the application for RRC status be submitted during the final quarter of the hospital's cost reporting period. It noted that it had an April 30 year-end, which means that the earliest the RRC approval letter could be issued was February 1, 2024, which it was in this case. It also contended that the law allows the MGCRB until the end of February to issue its decisions, yet, in recent years the decisions have been issued earlier. This year the Hospital's decision was issued on January 23, 2024. The Hospital argued that issuing decisions earlier makes it more difficult for hospitals to receive things like RRC approvals and submit those approvals to the MGCRB, especially when they are limited by the year-end of the hospital.

In the FY 2024 IPPS Final Rule⁵, a commentor raised the issue of these status approvals that may depend on the year-end of the hospital. The commentor requested that CMS limit the MGCRB from issuing decisions prior to the first week of February to allow hospitals ample time to submit documentation of rural reclassification, SCH, and RRC status to the Board. CMS responded:

We disagree with the commentor that hospitals are disadvantaged by earlier issuance of the MGCRB decisions. First, we believe that hospital should submit applications complete with supporting documentation at the time MGCRB applications are due. Hospitals taking advantage of the MGCRB's practice of

⁴ *Id.*

⁵ 88 Fed. Reg. 58,982, (Aug. 28, 2023).

accepting supporting documentation to supplement applications until the date of the MGCRB's review are aware that the review is not held on the same date annually. In fact, the MGCRB even issued determinations for FY 2024 on a date *later* date in January than its issued determinations for FY 2023 (January 31, 2023, versus January 24, 2022). Furthermore, rural reclassifications may be obtained at any time, and hospitals seeking benefits of rural status for MGCRB reclassification should plan accordingly. Finally, we note that hospitals dissatisfied with the MGCRB's decision may request the Administrator's review under §412.278.⁶

In light of the foregoing, the Administrator finds that the MGCRB properly denied the Hospital's request to reclassify to the urban Miami Beach - Kendall (FL) Core-Based Statistical Area (CBSA) for purposes of using the area's wage index to determine its payment rate under the Medicare IPPS for the FFY 2025 through 2027. The Hospital failed to qualify for the RRC exemption under 42 C.F.R. §412.230(d)(3)(i), as it was not "ever" an RRC at the date of the MGCRB decision. A Hospital cannot claim that status until the date that the RRC status takes effect. The record shows that pursuant to the letter issued February 1, 2024, the Hospital's RRC status is effective May 1, 2024. Moreover, the regulations at 42 C.F.R. §412.230(a)(3) specifically states that a Hospital must be approved as of the date of the MGCRB's review.

The submission of the February 1, 2024 RRC approval letter, stating that the Hospital's RRC status was approved and effective May 1, 2024, shows that on January 23, 2024, the date of MGCRB review, the RRC status was still not approved or effective. Thus, as the Hospital's three-year AHW is 104.4510 percent of the three-year AHW of all other hospitals where it is geographically located, it fails to meet the required 106.0000 percent minimum. Accordingly, the Hospital is denied redesignation for purposes of using the requested area's wage index to determine its IPPS payment rate for the FFYs 2025 through 2027.

⁶ Id. at 58,983.

DECISION

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

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

Date: April 11, 2024

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