

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

*Decision of the Administrator*

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| <b>IN THE CASE OF:</b>                        | * | <b>MGCRB Case No. 25C0322</b> |
|   | * |                               |
| <b>Yakima Valley Memorial Hospital</b>        | * |                               |
| <b>(FKA Virginia Mason Memorial Hospital)</b> | * |                               |
|   | * |                               |
| <b>Provider No. 50-0036</b>                   | * |                               |
|   | * | <b>Date: January 23, 2024</b> |
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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.<sup>1</sup> 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 Yakima, Washington (WA) Core-Based Statistical Area (CBSA), CBSA Code 49420, 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 urban Yakima, Washington (WA) CBSA, but is classified as rural under 42 C.F.R. § 412.103 and has sole community hospital status (SCH).

The Hospital’s original application included a Primary Request for redesignation to its geographical home urban area, CBSA 49420 (Yakima, WA), based upon the proximity rules. The MGCRB found that the 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; the AHW comparison was calculated by the MGCRB to be 93.2322 percent, using the Hospital’s rural § 412.103 status as its home area. Further, the MGCRB found that the pre-reclassified AHW for the requested area is lower than the pre-reclassified AHW for the (rural) area in which the Hospital is located (per its §412.103 status); the AHW for the requested area is 45.6878 and the AHW for the Hospital’s home (rural) area is 48.9374.

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<sup>1</sup> 42 U.S.C. § 1395ww(d).

## HOSPITAL'S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital stated that it is a Section 401 and Sole Community Hospital (SCH) geographically located in Yakima, WA (CBSA 49420), and argued that the Board appeared to have considered the Hospital's Section 401 status [also referred to herein as § 412.103 rural status] of Rural Washington as its "home area" in its decision rather than its geographical home area of CBSA of Yakima, WA (CBSA 49420).

The Hospital noted that in *Bates County Memorial Hospital, et al., v. Azar (2020)*, the District Court of the District of Columbia (D.D.C.) interpreted Section 401 and the MGCRB regulations in a way that allowed Section 401 rurally re-designated hospitals to be treated as if they were physically located in their state's rural area for both the wage criteria and wage data required for a geographic reclassification. It added that CMS released an interim final rule on May 10, 2021 to address its intention to comply with this decision.<sup>2</sup>

The Hospital referenced that CMS further clarified the language used in the May 10, 2021 interim final rule in the FY 2022 Final Rule stating that CMS would allow hospitals to reclassify to an area with an average hourly wage that is higher than the average hourly wage of either the hospital's geographic home area or the rural area.<sup>3</sup> The Hospital referenced previous cases where the Administrator overturned the MGCRB's denial of three hospitals attempting to reclassify to their geographic home CBSAs, after rural reclassification, despite the AHW of the desired area being lower than the pre-reclassified AHW where the hospitals were located.<sup>4</sup>

The Hospital also stated that the MGCRB cited the 106 percent wage ceiling test in its decision to deny its geographic reclassification request. The Hospital asserted that it is their understanding that the 106 percent wage ceiling test is not intended to prevent a hospital from receiving the wage index value in its geographical home area CBSA. Rather, the Hospital argued that the 106 percent wage ceiling test appears to exist to ensure a hospital does not receive a higher wage index value outside of its geographic CBSA without demonstrating that its wages truly exceed its geographic CBSA –essentially intending to keep a hospital in its geographic CBSA rather than keep a hospital from out of its geographic CBSA.<sup>5</sup>

## 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

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<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Kaiser Foundation Hospital - Zion (05-0515), Scripps Green Hospital (05-0424), and UC San Diego Health Hillcrest - Hillcrest Medical Center (05-0025).

<sup>5</sup> Request for Administrator Review, at 2.

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.

### *I. General Provisions*

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.

Relevant to this case, the regulation at 42 C.F.R. § 412.230(a)(5) notes the following limitations on redesignation:

- (i) An individual hospital may not be redesignated to another area for purposes of the wage index if the pre-reclassified average hourly wage for that area is lower than the pre-reclassified average hourly wage for the area in which the hospital is located. 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 paragraph (a)(5)(i).
- (ii) A hospital may not be redesignated to more than one area, except for an urban hospital that has been granted redesignation as rural under § 412.103 and receives an additional reclassification by the MGCRB.

## 2. Proximity Criteria and Special Access Rules

42 CFR 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.

(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 approved as a sole community hospital or a rural referral center as of the date of the MGCRB's review.

(i) A hospital that is approved as a rural referral center or 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 approved as a rural referral center or a sole community hospital, or both, qualifies for urban redesignation, it is redesignated to the urban area that is closest to the hospital or to the hospital's geographic home area. If the hospital is closer to another rural area than to any urban area, it may seek redesignation to either the closest rural area or the closest urban area.

Except for sole community hospitals (SCHs) and rural referral centers (RRCs), which have the option of applying under the special access rules, the proximity criteria at 42 C.F.R. § 412.230(b) provides that:

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.

To demonstrate proximity, 42 C.F.R. § 412.230(c) requires that a hospital submit appropriate data relating to its proximity to an area. To demonstrate proximity to the area, the hospital must provide evidence of the shortest route over improved roads to the area and the distance of that route.

## 3. Application of MGCRB Criteria to Hospitals with 42 C.F.R. §412.103 Rural Hospital Status

In 1999, Congress enacted §401 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999<sup>6</sup>, 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 at 42 C.F.R. § 412.230(a)(5)(iii) to prohibit hospitals with § 412.103 rural status from also being redesignated under the MGCRB process based upon this acquired rural status and for a year in which such status was in effect and provided certain limitations. In addition, hospitals were required to meet the reclassification proximity criteria for its geographic location verses its rural classification under § 412.103 at the time of the MGCRB decision.

However, the U.S. Court of Appeals for the Second Circuit, in *Lawrence + Memorial Hospital v. Burwell*<sup>7</sup>, and Third Circuit, in *Geisinger Community Medical Center v. Secretary, DHHS*<sup>8</sup>, respectively held the limiting language of the regulation contrary to the statute and, thus, held that a hospital with “401” rural status pursuant to 42 C.F.R. § 412.103 could reclassify based on the acquired 401 rural status and retain the rural status for the same period as the MGCRB reclassification. So as to not have different policies for different jurisdictional regions, CMS removed the limitation in the reclassification regulation that was invalidated by the courts in *Geisinger* and *Lawrence*.<sup>9</sup> CMS also revised the regulation text at § 412.230(a)(5)(ii) to allow more than one reclassification for those hospitals redesignated as rural under § 412.103 and simultaneously seeking reclassification through the MGCRB. Therefore, for applications due to the MGCRB on September 1, 2016, for reclassification first effective for FY 2018, a hospital could apply for a reclassification under the MGCRB while still being reclassified from urban to rural under § 412.103, and such hospitals would be eligible to use distance and average hourly wage criteria designated for rural hospitals at § 412.230(b)(1) and (d)(1).

CMS reiterated in the August 22, 2016 Final Rule<sup>10</sup> that while hospitals designated as rural under § 412.103 may use the distance (35 miles for a rural hospital, compared to 15 miles for an urban hospital) and average hourly wage *criteria*, the average hourly wage *data* are to be compared to the average hourly wage of the hospital’s actual urban geographic location. Thus, CMS previously allowed hospitals classified as rural under § 412.103 to use the 106 percent AHW criteria (rather than the 108 percent for an urban hospital) but still compared the hospital to the geographic area in which it was located, rather than to the rural area.

Subsequently, the United States District Court for the District of Columbia held in *Bates County Memorial Hospital, et al., v. Azar*<sup>11</sup> that:

A key MGCRB regulation, in turn, requires the MGCRB to compare the

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<sup>6</sup> Pub. Law 106-113.

<sup>7</sup> 812 F.3d 257 (2d. Cir. 2016).

<sup>8</sup> 794 F.3d 282 (3d Cir. 2015).

<sup>9</sup> 81 Fed. Reg. 23,428, 23,433-35 (Apr. 21, 2016).

<sup>10</sup> 81 Fed. Reg. 56,762, 56,925.

<sup>11</sup> 464 F.Supp. 3d 43 (D.D.C. 2020).

hospitals' hourly wage rates with others "in the area in which [they are] located." 42 C.F.R. § 412.230(d)(1)(iii)(C). But in doing so, the Secretary interpreted Section 401 to allow him to use other hospitals in the urban area in which applicant hospitals are geographically located, instead of the rural area to which they were reclassified under Section 401. Plaintiffs sued, arguing that Section 401's command that they be treated as located in the rural areas of their states forecloses the Secretary's application of the MGCRB regulation to them in this way. The Secretary argues, to the contrary, that the statute is vague, his interpretation is reasonable, and it is entitled to Chevron deference. Not so. The Court agrees with Plaintiffs that the text of the statute requires it to enter summary judgment on their behalf, and it will remand the case to the Secretary for action consistent with this opinion.

As a result of the *Bates* court's decision, CMS revised its policy in the May 10, 2021 interim final rule with comment period (IFC)<sup>12</sup> so that the redesignated rural area, and not the hospital's geographic urban area, is considered the area that a § 412.103 hospital is located in for purposes of meeting MGCRB reclassification criteria. Similarly, CMS revised the regulations to consider the redesignated rural area, and not the geographic urban area, as the area that a § 412.103 hospital is located in for the prohibition at § 412.230(a)(5)(i) on reclassifying to an area with a pre-reclassified average hourly wage lower than the prereclassified average hourly wage for the area in which the hospital is located.

However, in the FY 2022 Final Rule<sup>13</sup>, a commenter noted that the IFC stated that a hospital reclassified under § 412.103 "could" potentially reclassify to any area with a pre-reclassified average hourly wage that is higher than the pre-reclassified average hourly wage for the rural area of the state for purposes of the regulation at § 412.230(a)(5)(i). The commenter asserted that CMS' use of the word "could" in this context suggested that CMS would allow the hospital to use either its home average hourly wage or the rural average hourly wage for purposes of the regulation at § 412.230(a)(5)(i). The commenter suggested that CMS allow both comparison options, because the rural average hourly wage may occasionally be higher than the hospital's home urban area's average hourly wage, such as in the State of Massachusetts. CMS responded:

The commenter's interpretation of our policy is correct. While the court's decision in *Bates* requires CMS to permit hospitals to reclassify to any area with a pre-reclassified average hourly wage that is higher than the pre-reclassified average hourly wage for the rural area of the state, we do not believe that we are required to limit hospitals from using their geographic home area for purposes of the regulation at § 412.230(a)(5)(i). Therefore, we are clarifying that *we would allow hospitals to reclassify to an area with an average hourly wage that is higher than the average hourly wage of either the hospital's geographic home area or the rural area.* (Emphasis added).<sup>14</sup>

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<sup>12</sup> 86 Fed. Reg. 24,735.

<sup>13</sup> 86 Fed. Reg. 44,774, (Aug. 13, 2021).

<sup>14</sup> *Id.* at 45,189. (Note the regulation provides for reclassification to an area not lower than the Hospital's home area as defined.)

Consequently, CMS clarified that a hospital could request reclassification to an area that is not lower than its geographical home area or its § 412.103 rural designated home area.

4. *Application of Special Access Rule in context of SCH and/or RRC Rules and a § 412.103 Rural status*

The *Federal Register*, on April 18, 2017, provided guidance on the special rules for SCH and RRC reclassifications based on the 2016 rules governing reclassification.<sup>15</sup> Specifically in the preamble, it is provided:

The existing regulation at § 412.230(a)(3)(ii) states that if an SCH or RRC qualifies for urban redesignation, it is redesignated to the urban area that is closest to the hospital. As currently worded, we believe it is unclear how this provision would apply to a hospital with a § 412.103 rural redesignation *and* SCH or RRC status.<sup>[16]</sup> If the urban area that is closest to the hospital is interpreted to mean the hospital's geographic home area, a hospital with a § 412.103 rural redesignation and SCH or RRC status would not be able to reclassify to any closest area outside of the hospital's geographic home area, but would only be allowed to reclassify to the geographic home area. Alternatively, if the urban area that is closest to the hospital is interpreted to mean the closest urban area to the hospital's geographic home area, the hospital would seem to be precluded from reclassifying under the MGCRB to its geographic home area. In other words, under the existing language of this regulation, the urban area that is closest to the hospital can either be interpreted to mean the hospital's geographic home area, or the closest area outside of the hospital's geographic home area.<sup>17</sup>

The Secretary further clarified that:

We believe it would be appropriate to revise § 412.230(a)(3)(ii) to clarify that it allows for redesignation to either the hospital's geographic home area or to the closest area outside of the hospital's geographic home area. Prior to the April 21, 2016 interim final rule with comment period (IFC) (81 FR 23428), it was not possible for a hospital with § 412.103 rural redesignation to seek reclassification to its geographic home area or to the closest area outside its geographic home area under the MGCRB because dual reclassification under § 412.103 and under the MGCRB was not permitted. However, the IFC allowed dual § 412.103 and MGCRB reclassifications, so a hospital may now reclassify to a rural area under § 412.103 and then reclassify back to its geographic home area or another area under the MGCRB for wage index purposes (if it meets all criteria). *Thus,*

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<sup>15</sup> 82 Fed. Reg. 19796, 19908 (Apr. 18, 2017) (referencing the original 2016 rule in 81 Fed. Reg. 23428 (Apr. 21, 2016)).

<sup>16</sup> (Emphasis added).

<sup>17</sup> 82 Fed. Reg. 19796, 19909.

*depending on the circumstances, a hospital may seek to reclassify to either its geographic home area or the closest area outside of its geographic home area.*<sup>18</sup>

#### 5. Wage Comparison Requirements

In addition, hospitals must meet certain wage criteria at 42 C.F.R. § 412.230(d)(1) supported by wage data that is consistent 42 C.F.R. § 412.230(d)(2)(ii) in order to be redesignated. 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:

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(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:

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(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.

Regarding the appropriate wage data, the regulation at 42 C.F.R. § 412.230(d)(2) states:

(ii) For redesignations effective beginning FY 2003:

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<sup>18</sup> *Id.* (emphasis added).



(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.

(1) 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.

(2) Once a hospital has accumulated at least 1 year of wage data in the applicable 3-year average hourly wage period used by the MGCRB, the hospital is eligible to apply for reclassification based on those data.

(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.

The regulation at 42 C.F.R. § 412.230(d)(3) provides an exception for hospitals that were “ever” approved as an RRC:

(3) *Rural referral center exceptions.* (i) 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.

(ii) If a hospital was ever approved as a rural referral center, it is required to meet only the criterion that applies to rural hospitals under paragraph (d)(1)(iv) of this section, regardless of its actual location in an urban or rural area.

Thus, a hospital that was “ever” approved as an RRC does not have to meet the 108/106 percent of the AHW of all other hospitals in the area in which the hospital is located, and only has to meet the 82 percent of the AHW of hospitals in the area to which it seeks redesignation. In contrast to RRC designations, hospitals that are designated as an SCH or as a rural §412.103 hospital (without RRC status), *do not* receive this wage comparison exemption, and must still meet the 106/108 percent requirements.

#### 6. *Applying MGCRB Criteria to Hospital’s Application*

The Hospital is geographically located in the urban Yakima, WA CBSA (49420). The Hospital documented that it had approval for § 412.103 rural redesignation, as well as SCH status, but applied under the proximity rules (not the special access “closest” area rules) to be reclassified

to its geographical “home” area. The MGCRB evaluated the Hospital’s application, based upon the Hospital’s § 412.103 rural redesignation, using the Hospital’s rural State designation as its “home” labor market area.

The Hospital can request reclassification under the proximity rules to its geographical home area (or under special access rules as an SCH) as it would meet either test. Regarding 42 C.F.R. § 412.230(a)(5)(i), the MGCRB found that the pre-reclassified AHW for the requested area is lower than the pre-reclassified AHW for the (rural) area in which the Hospital is located (per its §412.103 status) based on the Hospital’s rural status as its home area. The AHW for the requested area is 45.6878 and the AHW for the Hospital’s home (rural) area is 48.9374. However, as the Hospital is requesting redesignation to its own home area, the pre-reclassified AHW for the requested area is the same as the pre-reclassified AHW of the area in which the Hospital is located, when the Hospital uses its geographic home area in this computation. Therefore, the Hospital met the criteria at 42 C.F.R. § 412.230(a)(5)(i) using its geographic home area as its home area as the requested area AHW is not lower than the Hospital’s chosen home area.

However, the Hospital must still meet the 106 percent AHW requirements, as a rural hospital, as it was not “ever” an RRC. The MGCRB properly found that the Hospital’s AHW is required to be at least 106 percent of the AHW of all other hospitals in the area in which the Hospital is located. The 106 percent AHW comparison was calculated by the MGCRB to be 93.2322 percent, using the Hospital’s rural § 412.103 status as its home area.

The Administrator agrees with the MGCRB that the Hospital must meet the 106 criteria as a “rural” hospital that has not “ever” been an RRC. However, CMS explained that a hospital with § 412.103 rural status may utilize its geographic home as its home wage area, instead of its §412.103 rural designated area as its home area, the latter having been used by the MGCRB. Therefore, the calculations would differ from the original numbers found by the MGCRB if the Hospital’s geographical home labor market area is used. Under those circumstances, the Hospital’s wage would be 45.6254 and using the alternative data of the Hospital’s geographic home area, the Hospital’s wage comparison to its own home area would be 99.24 percent, however, still below the required 106 percent threshold. Thus, regardless of whether the Hospital uses its geographic home area or its rural §412.103 designated home area, the Hospital’s AHW is less than 106 percent of the AHW of all other hospitals in its chosen “home” area.

Consequently, the Administrator finds that as the Hospital was not “ever” an RRC, it was not exempt from the 106 percent criteria and the Hospital did not satisfy the 106 percent wage comparison requirement. As such, the Hospital does not fulfill the requirements for reclassification to the requested CBSA. The MGCRB’s denial is affirmed.

DECISION

The Administrator affirms 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: March 29, 2024

/s/

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Jonathan Blum  
Principal Deputy Administrator  
Centers for Medicare & Medicaid Services