

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

Decision of the Administrator

IN THE CASE OF:	*	MGCRB Case No. 25C0378
	*	
Backus Hospital	*	
	*	
Provider No. 07-0024	*	
	*	Date: January 23, 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 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 request to reclassify from the Rural Connecticut (CT) CBSA 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) 2025 through 2027.² The MGCRB denied the Hospital’s request as it found that the Hospital failed to meet the proximity criteria specified in the regulation at 42 C.F.R. § 412.230(b)(1). The criteria specifies that the distance from the hospital to the requested area must be no more than 15 miles over improved roads for an urban hospital and 35 miles for a rural hospital, and that in this case, the Hospital’s distance was measured to be 129.0 miles.

HOSPITAL’S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital contended that up until 2017, the MGCRB consistently treated travel by ferry as travel over an improved road.³ The Hospital noted that the MGCRB began disregarding years of precedent in 2017, without any apparent change in policy, and denying requests for redesignation that relied on ferry travel. 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. The Hospital was also designated as a rural referral center.

³ Request for Administrator Review, at 2-5 (Feb. 5, 2024).

Hospital pointed out that since 2017, the Administrator has reversed those decisions, and allowed for the use of a ferry.⁴ In fact, the Hospital stated, the Administrator reversed the MGCRB's decision related to this Hospital in a previous MGCRB cycle.⁵

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:

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, paragraph (a)(5)(i) provides “Limitations on redesignation”, including that:

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).

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:

⁴ The Hospital referenced other similar decisions where the MGCRB approved routes relying on ferry travel including: Case Nos. 99C0452, 04C0067, 07C0055, 13C0156, and 16C0088, where between 1999 and 2016, Beebe Medical Center was approved to redesignate to the Ocean City CBSA based on a route that used an overwater ferry; Case No. 97C0435, Olympic Memorial Hospital (now operating as Olympic Medical Center) applied for redesignation to the Seattle-Bellevue-Everett MSA and was granted redesignation relying on travel over improved roads to a ferry terminal, which then transported passengers to an island on the other side of the county/MSA line; and, Case no. 15C0187, Lawrence & Memorial Hospital (Provider No. 07-0007) (“L&M Hospital”) based on the same route and requested CBSA as in this case.

⁵ See Administrator's Decision in *Backus Hospital*, MGCRB Case No. 18C0195.

(a)(2) *Proximity*. Except as provided in paragraph (a)(3) [⁶] 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.

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

⁶ The regulation at 42 C.F.R. § 412.230(a)(3) provides special access rules for SCHs and RRCs.

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.

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

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.⁷ The MGCRB found that the route used by the Hospital showing that it was 21.9 miles from the Hospital’s front entrance to the county line used the Fishers Island Ferry, which is not an improved road that is maintained by a local, state, or federal government entity.

⁷ 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.⁸ The Administrator notes, the Fishers Island Ferry District (District) is a component unit of the Town of Southold in Suffolk County.⁹ 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.¹⁰ The tax levy is assigned to the property owners of Fishers Island.¹¹ 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”.¹² 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:¹³

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.”

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 meets the 35-mile proximity requirement.

Because the Hospital is an RRC, it is not required to meet the rural 106 percent wage comparison threshold of 42 C.F.R. § 412.230(d)(1)(iii)(C), and also, as it is designated as an RRC, needs only meet the 82 percent wage comparison threshold of 42 C.F.R. § 412.230(d)(iv)(E). 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 2025 through 2027.

In light of the foregoing and based on the record, 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 2025 through 2027.

⁸ 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. The 7.7 mile distance was using the same Ferry at issue in the present case. See also 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.

⁹ 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>

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ “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#.WQzIvvrKUK>

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: March 15, 2024

/s/

Jonathan Blum
Principal Deputy Administrator
Centers for Medicare & Medicaid Services