

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

Decision of the Administrator

IN THE CASE OF:	*	MGCRB Case No. 23G0650
	*	
Essex County (NJ) Group	*	
	*	
	*	
Provider No. VARIOUS	*	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 time period in 42 C.F.R. §412.278. The Group submitted comments requesting the Administrator reverse the MGCRB’s decision. 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 Group’s request to reclassify to the urban New York-Jersey City-White Plains, New York-New Jersey (NY-NJ) Core-Based Statistical Area (CBSA) (CBSA 35614)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 MGCRB found that the aggregate average hourly wage (AHW) for all hospitals in the county must be at least 85.0000 percent of the AHW in the adjacent area to which the Group seeks reclassification; but that in this case, the Group’s aggregate AHW was only 84.8944 percent of the AHW in the requested area.

GROUP’S COMMENTS

The Group commented, requesting review by the Administrator. The Group noted that they had requested an oral hearing from the MGCRB, which was not granted. The Group argued that it met the 85.0000 percent criteria when using the wage data of all acute care hospitals with available three-year AHW data in the New York-Jersey City-White Plains, NY-NJ CBSA. The Group noted that three hospitals in that CBSA had AHW data that was deemed “aberrant” by CMS and excluded from the public use file (PUF) and respective annual wage index. The Group claimed that when the data from these hospitals is excluded three-year AHW for the New York-Jersey City-White Plains, NY-NJ CBSA is not accurate. The Group argued that while the FFY 2024 IPPS Final Rule states CMS has the “discretion” to exclude aberrant hospital data, CMS did not disclose any criteria or methodology for removing this aberrant hospital data. The Group also argued that without providing criteria or methodology, there is no way to ensure the appropriateness of removing the hospital data, and no assurance of consistent treatment of which data is “aberrant”. The Group stated that removing the data is not a correction, but rather an omission of wages in a particular area, and that all available AHW data should be used. The Group averred that Medicare

reimbursement should not be based on undisclosed decisions regarding the accuracy of provider data.

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 criteria at 42 C.F.R. §412.234 for all hospitals in an urban county seeking redesignation to another urban area. This regulation states that all hospitals in an urban county must apply for redesignation as a group, and the county in which the hospitals are located must be adjacent to the urban area to which they seek redesignation. For Federal fiscal year 2008 and thereafter, hospitals located in counties that are in the same Combined Statistical Area (CSA) or Core-Based Statistical Area (CBSA) (under the most recent OMB standards for delineating statistical areas adopted by CMS and the most recent Census Bureau data) as the urban area to which they seek redesignation qualify as meeting the proximity requirement for reclassification to the urban area to which they seek redesignation.

In addition, the pre-reclassified average hourly wage for the area to which the Group seeks redesignation must be higher than the pre-reclassified average hourly wage for the area in which they are currently located. With respect to redesignations effective for FY 2011 and later fiscal years, 42 C.F.R. § 412.234(b)(3) requires the aggregate average hourly wage (or AHW) for all hospitals in the urban county must be at least 85 percent of the AHW in the urban area to which the hospitals in the county seek reclassification.

The Hospitals in the Group must submit appropriate wage data as provided for in § 412.230(d)(2), which specifies that:

(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.

(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 constructing the wage survey, the Social Security Act requires that the wage index be updated annually, based on a survey of wages and wage-related costs of short-term, acute care hospitals. Because of the amount of time that is needed for hospitals to compile and submit cost reports and for the MAC to then review these cost reports for wage data, there is usually a three-to-four-year lag between the date upon which the Hospital reports the wage data and the date when the wage data is used for the IPPS wage survey and IPPS payment. In addition, due to statutory changes to the MGCRB reclassifications, a three-year weighted AHW is used under 42 C.F.R. § 412.230(d), except for hospitals with new owners that do not take assignment, thus, the wage survey data from three constructed wage surveys used for IPPS payment purposes are used.

Significant to this case, the wage survey data used by the MGCRB for this application period comes from the “Three Year MGCRB Reclassification Data for FY 2025 Applications”. The three-year weighted AHW uses the FFYs 2022, 2023, and 2024 wage surveys, which are based on cost reports beginning in Federal fiscal years 2018, 2019 and 2020. **Neither the MGCRB nor the Administrator can alter this data when making a decision regarding reclassification.**

As a standard part of the refinement of the annual wage index, CMS evaluates the wage data for both accuracy and reasonableness to ensure that the wage index is a relative measure of the labor value provided to a typical hospital in a particular labor market area. As part of this evaluation process, CMS makes decisions to include or exclude a hospital’s data from the wage index. CMS has consistently noted that it has the “discretion to exclude aberrant hospital data from the wage index PUFs to help ensure that the costs attributable to wages and wage-related costs in fact reflect the relative hospital wage level in the hospitals’ geographic area.”¹ “Aberrant” hospitals may be those that fail edits for reasonableness (extraordinarily high or extraordinarily low average hourly wages relative to their labor market areas), or whose data are unresolvable.² However, it has never been CMS’ policy to disclose specific audit protocol.³ CMS has repeatedly responded to concerns about the lawfulness of excluding wage data for these “aberrant” hospitals, stating that it is required under § 1886(d)(3)(E) of the Act to adjust the proportion of hospitals’ costs attributable to wages and wage-related costs for area differences reflecting the relative hospital wage level in the

¹ See 80 Fed. Reg. 49,325, 49,490 (Aug. 17, 2015); 86 Fed. Reg. 44,774, 45,168 (Aug. 13, 2021); and 87 Fed. Reg. 48,780, 48,996-97 (Aug. 10, 2022).

² 86 Fed. Reg. 44,774, 45,169 (Aug. 13, 2021).

³ 88 Fed. Reg. 58,640, 58,964 (Aug. 28, 2023).

geographic area of the hospital compared to the national average hospital wage level.⁴ CMS has also noted that the established annual wage index timetable gives sufficient time for hospitals to review, appeal, and/or correct their data, as each time a PUF is posted, CMS instructs the MACs to send letters to each of their hospitals notifying and instructing them to review their wage index data that were posted and submit any appeals to CMS.⁵

In this case, the Group argued that if the “aberrant” data from three hospitals were included in the AHW calculations, it would meet the 85 percent threshold. The AHW tables excluded FFY 2022 AHW data for CCN 31-006, FFY 2023 AHW data for CCN 31-0118, and FFY 2024 AHW data for CCN 33-0405. However, as noted above, the wage survey data used by the MGCRB for this application period comes from the “Three Year MGCRB Reclassification Data for FY 2025 Applications”. The three-year weighted AHW uses the FFYs 2022, 2023, and 2024 wage surveys, which are based on cost reports beginning in Federal fiscal years 2018, 2019 and 2020. **Neither the MGCRB nor the Administrator can alter this data when making a decision regarding reclassification.** Thus, the MGCRB correctly found, using the appropriate data, that the Hospital did not meet the wage criteria per 42 C.F.R. § 412.234(b)(3). The Group’s aggregate AHW was only 84.8944 percent of the AHW in the requested area, thus the Group did not meet the 85.0000 percent threshold.

In light of the foregoing and based on the record, the Administrator finds that the MGCRB properly determined that the Group did not qualify for redesignation.

⁴ 88 Fed. Reg. 58,640, 58,963 (Aug. 28, 2023). *See also* 80 Fed. Reg. 49,325, 49,490 (Aug. 17, 2015); 86 Fed. Reg. 44,774, 45,168 (Aug. 13, 2021); and 87 Fed. Reg. 48,780, 48,996-97 (Aug. 10, 2022).

⁵ 86 Fed. Reg. 44,774, 45,169 (Aug. 13, 2021).

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: April 19, 2024

/s/

Jonathan Blum
Principal Deputy Administrator
Centers for Medicare & Medicaid Services