CENTERS FOR MEDICARE AND MEDICAID SERVICES

Decision of the Administrator

In the case of:	**Claim for:**
Mary Greeley Medical Center **Ames, IA**	**Reimbursement Determination for Period Ending:** **June 30, 2009**
Provider	
vs.	**Review of:**
Blue Cross Blue Shield Association/ **Wisconsin Physicians Service (MAC)**	**PRRB Dec. No. 2014-D23**
Intermediary	**Dated: September 10, 2014**

This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the decision of the Provider Reimbursement Review Board (Board). The review is during the 60-day period in §1878(f) (1) of the Social Security Act (Act), as amended (42 USC 1395oo (f)). Comments were received from CMS' Center for Medicare (CM) requesting a modification of the Board's decision. The parties were notified of the Administrator's intention to review the Board's decision. Comments were also received from the Provider requesting a partial reversal of the Boards decision. Accordingly, this case is now before the Administrator for final agency review.

ISSUE AND BOARD DECISION

The issue is 1.) whether the Medicare Administrative Contractor[1] ("MAC") and CMS Regional Office for Region VII ("CMS Regional Office") evaluated market share for the Provider for the correct geographic area when they denied the Provider's request for classification as a sole community hospital ("SCH") on the grounds that the Provider failed to meet the market share criteria under 42 C.F.R.

[1] The fiscal intermediaries are now referred to as Medicare Administrative Contractors pursuant to a change in law.

§412.92(a)(1)(i); and 2.) Whether the Regional Office used the correct denominator in its market share calculation will also be addressed.

The Board found that the Intermediary and Regional Office properly denied the Provider's request for classification as a Sole Community Hospital on the grounds that the Provider failed to meet the market share criteria under 42 C.F.R. § 412.92(a)(1)(i). The Board disagreed with the Intermediary's method of calculating market share in this case and held that the alternative calculation that the Board determined to be the best interpretation of the language and intent of the regulation supports the Intermediary's determination to deny SCH status to the Provider.

SUMMARY OF COMMENTS

The CM submitted comments stating that it agreed with the Board that the MAC properly denied the Provider's request for classification as an SCH on the grounds that the Provider failed to meet the market share criteria. However, CM strongly disagreed with the Board's introduction of a new and alternative methodology to calculate the market share test and do not believe it should be used. According to CM, the regulation stipulates that the market share test reflect the percentage of service area residents, or service area Medicare beneficiaries that become inpatients at other like hospitals that are located within a 35-mile radius of the hospital, or, if larger, within its service area.

The Provider submitted comments stating that it disagreed with the Board's decision and reiterated its arguments presented in the administrative record. The Provider also disagreed with CMS' comments on the Board's decision regarding the appropriate calculation methodology to be used for the market share test.

BACKGROUND AND DISCUSSION

The entire record, which was furnished by the Board, has been examined, including all correspondence, position papers, and exhibits. The Administrator has reviewed the Board's decision and finds that the Board's decision should be modified. The Board's decision on the market share calculation is not supported by the controlling regulations, policies and precedents.

The Provider is a 220-bed regional referral center located in Ames, Iowa, which is an urban area, approximately 30 miles north of Des Moines, Iowa. The Provider is located between 25 and 35 miles from 5 other "like" hospitals located in Des Moines, and 36 miles from another "like" hospital located in Marshalltown, Iowa, which lies within the Provider's service area.

On February 24, 2009, the Provider applied to the Intermediary for SCH classification. The Provider sought to qualify as an SCH under 42 C.F.R. §412.92(a)(1)(i) as a hospital that both is located between 25 and 35 miles from other "like" hospitals and satisfies the market share criterion. On April 3, 2009, the Intermediary forwarded the Provider's application to the CMS. Regional. Office, recommended that the CMS Regional Office accept the Provider's SCH application, and requested the agency's final determination.

On April 16, 2009, the Provider also requested rural reclassification under 42 C.F.R. §412.103(a)(3) on the grounds that it would qualify as a SCH under 42 C.F.R. §412.92(a)(1)(i) if it were located in a rural area.

On June 12, 2009, the CMS Regional Office denied the Provider's requests for rural reclassification and SCH classification on the grounds that it would not qualify as a SCH if it were located in a rural area because it failed to satisfy the market share criterion. On June 16, 2009, the Intermediary notified the Provider of CMS' denial of its rural reclassification and SCH classification requests because the Provider was unable to document that no more than 25 percent of the residents of its service area who became inpatients were admitted to other like hospitals within its service area. In making this denial, the Intermediary determined that the percentage of discharges to other like hospitals in the Provider's service area is 41.48 percent which is greater than the required 25 percent.

In this case, the Administrator finds that the Board properly concluded that the Provider did not qualify as an SCH, however, the Administrator also finds that the Board's methodology used in reaching that decision was improper. The Inpatient Prospective Payment System ("IPPS") allows special treatment for facilities that qualify as "Sole Community Hospitals or SCHs." The main statutory provisions governing SCHs are located at Section 1886(d)(5)(D) of the Social Security Act and they define an SCH as a facility that: (1) is located more than 35 road miles from another hospital; (2) by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care, location, weather conditions, travel conditions, or absence of other like hospitals, is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A; or (3) is located in a rural area that has been designated as an essential access community hospital.

The regulations at 42 CFR §412.92 set forth the special treatment for SCHs and establishes the criteria that must be met in order for a hospital to be classified as a SCH. CMS adjusts the PPS rates for SCHs to accommodate their special operating circumstances (e.g., isolated location, weather/travel conditions, unavailability of other hospitals, etc.). In particular, §412.92(a)(I)(i) establishes the market share criteria that the Provider in this case must meet to obtain SCH status:

> (I) The hospital is located between 25 and 35 miles from other like hospitals and meets one of the following criteria:
>
> (i) No more than 25 percent of residents who become hospital inpatients or no more than 25 percent of the Medicare beneficiaries who become hospital inpatients in the hospital's service area are admitted to other like hospitals located within a 35-mile radius of the hospital, or, if larger, within its service area;

In this case, the Provider's service area was identified as an area comprised of sixteen zip codes that extends beyond the geographic area of the 35-mile radius from the Provider.

In addition to the controlling regulation, CMS also provides interpretive guidelines in the Provider Reimbursement Manual, CMS Pub. No. 15-1 ("PRM 15-1"), §2810 which further clarifies the process of qualifying for classification as an SCH. In the August 1, 2001 final rule, CMS noted:

> [W]e believe it is reasonable to examine a hospital's competitors within a 35-mile radius. Most competing hospitals will not be at the outer limit of the 35-mile radius, and, if these hospitals are not truly competitors, the discharge data will bear out that fact. Also, we examine a hospital's service area based on discharges within zip code areas, and, often, this will exceed a 35-mile radius. Therefore, we believe the 35-mile radius is reasonable….

CMS' language in the Final Rule did not exclude the hospitals inside the 35-mile radius but rather those that were outside the service area from the market share test. The MAC's methodology is a reasonable interpretation of the regulation since it includes the 35-mile radius and the service area in its market share test. This interpretation of the regulation allows for an expansion of the market share test which parallels the geographic expansion of the area in question when the service area extends beyond the 35-mile radius.

The core dispute in this case centers on the application of the statute to the proper methodology of calculating market share for determining whether the Provider's market share meets the requirements for acquiring approval of its SCH status request. The MAC determined that 41.48 percent of the Medicare beneficiaries in Provider's service area were admitted to other like hospitals. This exceeds the 25 percent threshold which made the Provider ineligible for SCH status.

The MAC's methodology in calculating the Provider's Medicare market share is as follows:

1) Identity all like hospitals that are located 25 to 35 road miles from the Provider.
   - The Provider has 5 like hospitals that are within a 35 mile radius.

2) Identify the area that is encompassed by a 35-mile radius from the Provider.

3) Identify the "service area." These would be patients from the zip codes that produce 75 percent of the hospital discharges.
   - There are sixteen area zip codes that comprise PROVIDER's service area.
   - The Provider's service area extends beyond the 35-mile radius.
   - None of the 5 like hospitals identified in step 1 are located in the Provider's service area.

4) Examine whether the service area extends outside the geographic boundary of the 35-mile radius. Determine if there is a hospital in the service that is more than 35 miles away. If yes, that becomes part of the market share analysis, the same way as the hospitals' identified in step 1 above.

   There is an additional hospital located in the Provider's service area (which is outside of the 35-mile radius). The five hospitals located within the 35-mile radius and the sixth hospital located in the Provider's service area will be considered in the market share analysis.

5) The market share calculation is as follows: The numerator is the discharges from the other like hospitals within 25 to 35 miles plus the discharges from the hospital in the service area. The denominator contains the discharges in the numerator plus the discharges from service area residents at the applicant hospital.

The equation is as follows:

$$\frac{5348}{12890} = 41.5\% \qquad \frac{(A+B)}{A+B+C}$$

A = 2435, discharges of residents of the service area from the five hospitals within 35 miles,

B = 2913, discharges of residents of the service are from the hospital located in the service area which is more than 35 miles away.

C = 7542, discharges of residents of the service area from MGMC

The Board determined that 27.9 percent of the Medicare beneficiaries in the Provider's service area were admitted to other like hospitals and was therefore ineligible for SCH status.

The Board's methodology in calculating the Provider's Medicare market share is as follows:

1) Identify all like hospitals that are located 25 to 35 road miles from Provider's. The Provider has 5 like hospitals that are within a 35 mile radius.

2) Identify the area that is encompassed by a 35-mile radius from the Provider.

3) Identify the service area. These would be patients from the zip codes that produce 75 percent of the hospital discharges.
- There are sixteen area zip codes that comprise Provider's service area.
- The Provider service area extends beyond the 35-mile radius. None of the 5 like hospitals identified in step 1 are located in the Provider's service area.

4) Examine whether the service area extends outside the geographic boundary of the 35-mile radius. Determine if there is a hospital in the service area that is more than 35 miles away.

- There is an additional hospital located in the Provider's service area (which is outside of the 35-mile radius).
Since the service area is "larger" i.e., it extends beyond the boundary of the 35-mile radius, only the one hospital located in MGMC's service area will be considered in the market share analysis.
- The five hospitals located within the 35-mile radius will NOT be considered in the market share analysis.

5) The market share calculation is as follows: The numerator is the discharges from the other like hospital in the service area. The denominator contains the discharges in the numerator plus the discharges from service area residents at the applicant hospital.

The equation is as follows:

$$\frac{2913}{10455} = 27.9\% \quad \frac{B}{B+C}$$

B = 2913, discharges of residents in the service are from the hospital located in the service area which is more than 35 miles away.

C = 7542, discharges of residents in the service area from MGMC

As indicated above, the Board's interpretation of the regulatory language allows for an either/or comparison of the 35-mile radius to the service area, which results in applying a different set of criteria in the market share test for a provider whose service area extends beyond the 35-mile radius If the service area extends beyond that 35-mile radius, the Board's interpretation incorrectly allows the market share test to be calculated using only like hospitals located within the service area and incorrectly excludes all like hospitals that are within the 35-mile radius to the applicant hospital but outside the service area.

The Boards methodology leads to erroneous results and will allow a hospital to classify as an SCH without consideration of patient discharges and market share of hospitals located within 25 to 35 miles if a hospital's service area extended beyond its 35-mile radius. The regulation does not create a distinction in the market share calculation between hospitals that have a service area that extends beyond a 35-mile radius and those whose service area are subsumed by a 35-mile radius.

The Board's methodology contradicts the statute's definition of a sole community hospital as, "the sole source of inpatient hospital services reasonably available to individuals in the geographic area who are entitled to benefits under part A" since it removed the five like hospitals from its calculation and neglecting to ascertain whether the Provider is truly the sole source of inpatient hospital services.

In light of the foregoing, the Administrator affirms the Board's decision that the MAC properly denied the Provider's request for classification as an SCH on the grounds that the Provider failed to meet the market share criteria. However, the Administrator modifies the Board's decision with respect to the Board's methodology used to calculate the market share test. The existing regulation stipulates that the market share test reflect the percentage of service area residents or service area Medicare beneficiaries that become inpatients at other like hospitals that are, located within a 35-mile radius of the hospital, or, if larger, within its service area.

The phrase "located within a 35-mile radius of the hospital, or, if larger, within its service area" means that if the service area extends beyond the geographic boundary of the 35-mile radius, that portion be included in the analysis so that the competition base includes discharges from any like hospital within the 35-mile radius and the portion of the service area that extends beyond the 35-mile radius. In most cases, the service area is contained within the 35-mile radius. Thus, the regulation was worded on the logical assumption that competing like hospitals would be located within a 35-mile radius. Accordingly, the Administrator modifies the Board's decision as it specifically relates to the calculation of the Provider's market share test.

DECISION

The decision of the Board is affirmed in accordance with the foregoing opinion.

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

Date: 11/5/14 /s/

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services