

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2019-D8

**PROVIDER –**

Toyon, Dignity Health, and Sutter Health 2012  
Inpatient and Outpatient Payment CBSA No.  
40900 Wage Data Groups

Provider Nos.: Various  
See Appendix A

vs.

**MEDICARE CONTRACTOR –**

Noridian Healthcare Solutions

**HEARING DATE –**

April 12, 2017

Cost Reporting Periods Ended –  
September 30, 2012, December 31, 2012

**CASE NOS. –**

12-0404G, 12-0450G, 12-0456GC,  
12-0457GC, 12-0449GC, 12-0454GC

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## **ISSUE STATEMENT**

Whether the Federal Fiscal Year (“FFY”) 2012 wage index factor and capital geographic adjustment factor<sup>1</sup> for Core Based Statistical Area (“CBSA”) No. 40900 used in the calculation of Medicare inpatient and outpatient prospective payments is properly stated.<sup>2</sup>

## **DECISION**

After considering Medicare law and regulations, arguments presented, and evidence admitted, the Provider Reimbursement Review Board (“Board”) finds that the Medicare Contractor improperly adjusted University of California Medical Center at Davis’ (“U.C. Davis” or “Provider”) Average Hourly Wage (“AHW”) to the lower of the current or prior year. The Board remands this case to the Medicare Contractor to revise and correct U.C. Davis’ wage index using the data in Exhibit P-4 at Attachment B. Additionally, the Board finds that the Centers for Medicare & Medicaid Services (“CMS”) incorrectly calculated the FFY 2012 wage index for CBSA No. 40900 by using the incorrect data for U.C. Davis. Accordingly, the Board also remands this case to CMS for the recalculation of the wage index for CBSA 40900 based on the corrected wage data for U.C. Davis.

## **INTRODUCTION**

This case is a consolidation of six group appeals. The fifteen hospitals (the “Hospitals”) within these six groups appealed from CMS’ final determination of the computation of the FFY 2012 wage index and geographic adjustment factor for the Sacramento-Arden-Arcade-Roseville, California (“Sacramento”) CBSA. The wage index values for FFY 2012 were published in the final rule for the Inpatient Prospective Payment System (“IPPS”) on August 18, 2011.<sup>3</sup> Those same wage index values apply to the FFY 2012 Outpatient Prospective Payment System (“OPPS”) as published in the final rule on November 30, 2011.<sup>4</sup>

The Hospitals dispute the methodology used in calculating the average hourly rate for one hospital in one of the groups, specifically U.C. Davis, Provider No. 05-0599, fiscal year ending June 30, 2009. The Hospitals contend that the Medicare Contractor’s<sup>5</sup> adjustment to the wage

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<sup>1</sup> The Board recognizes that: (1) the issue statement in this case refers to the capital geographic adjustment factor which is part of the capital prospective payment system pursuant to 42 C.F.R. § 412.316; (2) the wage index is used in calculating the geographic adjustment factor; and (3) the Board’s decision necessarily affects the geographic adjustment factor for FY 2012 as the Board’s decision on the wage index is favorable to the Hospitals. However, the scope of the Board’s authority to review the wage index is specified in the preamble to certain final rules and they do not address review of the geographic adjustment factor. *See* 76 Fed. Reg. 51476, 51602-51604 (Aug. 18, 2011); 64 Fed. Reg. 41490, 41512-41513 (July 30, 1999). As such, the Board does not address the geographic adjustment factor in its decision.

<sup>2</sup> Transcript (“Tr”) at 7:7-19.

<sup>3</sup> 76 Fed. Reg. 51476 (Aug. 18, 2011).

<sup>4</sup> 76 Fed. Reg. 74122 (Nov. 30, 2011).

<sup>5</sup> CMS’ payment and audit functions under the Medicare program were historically contracted to organizations known as fiscal intermediaries (“FIs”) and these functions are now contracted with organizations known as Medicare administrative contractors (“MACs”). The term “Medicare contractor” refers to both FIs and MACs as appropriate. Noridian Healthcare Solutions, LLC (“Noridian”) succeeded Palmetto GBA, the assigned Medicare

index data for U.C. Davis, was improper and negatively impacted the IPPS and OPSS payments for all hospitals within the CBSA.

The Hospitals timely appealed to the Board and met the jurisdictional requirements for a hearing.<sup>6</sup> The Board conducted a live hearing on April 12, 2017. The Hospitals were represented by Christopher Keough, Esq. of Akin Gump Strauss Hauer & Feld LLP. The Medicare Contractor was represented by Scott Berends, Esq. of Federal Specialized Services.

### **STATEMENT OF FACTS**

In general, Medicare pays hospitals for inpatient services through the IPPS.<sup>7</sup> The IPPS provides Medicare payments for hospital inpatient operating and capital related costs at predetermined, specific rates for each hospital discharge.<sup>8</sup> The rates are based on average costs that consist of a labor related portion and a non-labor related portion.<sup>9</sup> The labor related portion is adjusted by the wage index applicable to the geographic area where the hospital is located.<sup>10</sup> The wage index is intended to reflect the relative hospital wage level in that geographic area, as compared to the national average hospital wage level.<sup>11</sup> It is calculated by dividing the average hourly wage (“AHW”) in each CBSA area by the national average hourly hospital wage.<sup>12</sup> Medicare pays hospitals for outpatient services under the OPSS. The OPSS has consistently adopted the IPPS wage index for adjusting the OPSS standard payment amounts for labor market differences.<sup>13</sup>

CMS is required to update the wage index annually and bases the annual update on a survey of wage-related costs taken from cost reports filed by each hospital paid under the IPPS.<sup>14</sup> The 2009 cost report data is used for the FFY 2012 wage index.<sup>15</sup> CMS publishes the wage data at intermittent intervals so that hospitals can review it for accuracy. If the hospital disagrees with the accuracy of the data, a hospital may-- request that the data be corrected and the wage index recomputed. A hospital requesting a correction must do so within a specified time limit and must provide relevant documentation to support the correction.<sup>16</sup>

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contractor during the period in dispute. Providers’ Consolidated Final Position Paper at n.1. Noridian and Palmetto GBA are referred to collectively as the “Medicare Contractor.”

<sup>6</sup> It is undisputed that U.C. Davis met all of the procedural deadlines in order to have an opportunity to submit wage index corrections and dispute the decisions of the Medicare Contractor and CMS with respect to the requested wage index changes. *See* Medicare Contractor’s Post-Hearing Brief at 2-3 and generally.

<sup>7</sup> *See* 42 U.S.C. § 1395ww(d).

<sup>8</sup> *Id.*

<sup>9</sup> 42 C.F.R. § 412.64(h).

<sup>10</sup> *Id.*

<sup>11</sup> 42 U.S.C. § 1395ww(d).

<sup>12</sup> 42 C.F.R. § 412.64(h).

<sup>13</sup> 76 Fed. Reg. 74122, 74191-74192 (Nov. 30, 2011).

<sup>14</sup> 42 U.S.C. § 1395ww(d)(3)(E).

<sup>15</sup> 76 Fed Reg. 51476, 51586 (Aug. 18, 2011).

<sup>16</sup> *See id.* at 51602-51604.

On October 4, 2010, CMS posted the Preliminary FFY 2012 Public Use File (“PUF”) online.<sup>17</sup> U.C. Davis requested several corrections to this posted wage index data through a letter to the Medicare Contractor dated December 6, 2010.<sup>18</sup> This request was timely as it was received on the deadline date for such requests.<sup>19</sup> In its request for correction, U.C. Davis asked for a revision to its paid hours “to remove hours that should not be counted for wage index such as hours associated with on-call pay as well as to correctly reflect hours associated with salary reclassifications made.”<sup>20</sup>

On December 20, 2010,<sup>21</sup> the Medicare Contractor sent an information request to U.C. Davis asking for written explanations and supporting source documentation because of variances that were outside the expected range when comparing current year to prior year wage index data and average salary amounts. The variances identified by the Medicare Contractor were:

- Excluded Average Hourly Wage (worksheet (“W/S”) S-3, Pt II, Lines 8 & 8.01) decreased 10.93 percent.
- Wage Related Costs (W/S S-3, Pt. II, Sum of Lines 13 & 14) increased by 13.20 percent.
- Total Average Hourly Wage (W/S S-3 Part III Line 6 Col. 5) increased by 10.46 percent.
- Contract labor Average Hourly Wage (W/S S-3, Part II, Line 9 Col. 5) of \$106.96 is outside CMS expected range.
- Home Office Physician Part A Average Hourly Wage (W/S S-3, Part II, Line 12, Col 5) of \$153.40 is outside CMS expected range.<sup>22</sup>

U.C. Davis provided the requested documentation between January 3, 2011 and the agreed upon deadline of January 26, 2011.<sup>23</sup>

The Medicare Contractor completed its review of the supplemental materials and sent a letter dated February 7, 2011 to U.C. Davis, along with a revised W/S S-3, Parts II and III and a copy of their workpapers.<sup>24</sup> The Medicare Contractor incorporated some of the revisions requested by

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<sup>17</sup> Available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/Inpatient2012.html>. See also *id.* at 51602.

<sup>18</sup> Exhibit P-2.

<sup>19</sup> Exhibit I-6.

<sup>20</sup> Exhibit P-2 at 2.

<sup>21</sup> Tr. at 63:1-6; Exhibit P-23; Exhibit I-14 at 1.

<sup>22</sup> Exhibit P-23.

<sup>23</sup> Medicare Contractor’s Consolidated Final Position Paper at 16. The Medicare Contractor initially requested documentation responsive to its December 20, 2010 request be submitted within 14 days - by January 3, 2011. On or about December 20, 2010, the Providers requested and the Medicare Contractor granted a one week extension of time to submit the requested documentation (until January 10, 2011). The Providers submitted responsive documentation to the Medicare Contractor on January 3, 2011, on January 4, 2011, on January 5, 2011 and on January 7, 2011. On January 10, 2011, the Medicare Contractor granted an extension to the Providers until January 26, 2011 to respond to the December 20, 2010 letter. On January 26, 2011, the Providers submitted additional documentation the Medicare Contractor for review. Exhibit I-14 at 1.

<sup>24</sup> Exhibit I-2.

U.C. Davis in its December 6, 2010 request for correction, but rejected the U.C. Davis' request for a revision to its paid hours. In rejecting that request, the Medicare Contractor stated:

Provider did not submit sufficient documentation for the hours. The provider's support says that the source is payroll download, however, the hours don't tie but the dollars do. Since the cost is supposed to be found on the G/L per cost reporting instructions, this document does not appear to be a proper payroll download report. Therefore, pending the receipt of a payroll download showing the hours, including any non-productive time, the auditor will reduce the AHW to the PY [*i.e.*, prior year] by increasing the hours.<sup>25</sup>

The Medicare Contractor reduced U.C. Davis' AHW to the lower of prior year or current year for all salaried cost centers, but indicated that this adjustment was "pending the receipt of a payroll download showing the hours, including any non-productive time."<sup>26</sup> This resulted in the following revisions to W/S S-3, Part II, Line 1:<sup>27</sup>

- Total Paid Hours: 14,348,946
- Total Salaries: \$490,877,457
- Average Hourly Wage: \$34.21

On March 3, 2011, U.C. Davis responded to the Medicare Contractor submitting a payroll download, referred to as Attachment A, and W/S S-3, Part II, Line 1 detail, referred to as Attachment B.<sup>28</sup> Attachment A was an electronic Excel spreadsheet download of the hours in the payroll register. Importantly, this payroll download included an embedded calculation that permitted the Medicare Contractor to remove on-call and other "premium" hours<sup>29</sup> from the wage index calculation.<sup>30</sup> Attachment B contained an embedded calculation that adjusted the hours on the payroll register to the accrual basis of accounting to correspond with the salaries on the cost report.<sup>31</sup> The Medicare Contractor received U.C. Davis' March 3, 2011 response and accompanying supporting documentation on March 7, 2011, the deadline for responding.<sup>32</sup>

On April 11, 2011 the Medicare Contractor informed U.C. Davis that, based on a review of the documentation submitted on March 3, 2011, "[t]he auditor cannot make an accurate determination as to what the actual hours [are] that should be used. Therefore, the auditor's original adjustment to adjust the average hourly to the PY [*i.e.*, prior year] will remain."<sup>33</sup> This

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<sup>25</sup> Exhibit P-3 at 4; Exhibit I-2 at 4.

<sup>26</sup> Exhibit I-2 at 4-5.

<sup>27</sup> Exhibit P-22 at 1.

<sup>28</sup> See Provider's Consolidated Final Position Paper at 6; electronic copies of Exhibit P-4.

<sup>29</sup> Hours not included in the wage index.

<sup>30</sup> Exhibit P-4 at 6-7 (see column labelled "Include Hrs?").

<sup>31</sup> Exhibit P-4 at 9-10.

<sup>32</sup> Exhibit I-6 at 2.

<sup>33</sup> Exhibit I-4 at 2.

decision was based, at least in part, on a determination that the discrepancy in paid hours was the result of U.C. Davis “imputing hours for the salaries,” which the Medicare Contractor determined resulted in using “an estimate” rather than “actual hours” for U.C. Davis’ wage index.<sup>34</sup>

U.C. Davis immediately responded to the Medicare Contractor in a letter dated April 12, 2011 to disagree with the Medicare Contractor’s proposed adjustment to adjust the wage index hours to the prior year.<sup>35</sup> In that response, U.C. Davis also disagreed with the Medicare Contractor’s positions that the methodology used by U.C. Davis on Attachment B to adjust hours to the accrual basis was not correct and that they should have reported payroll hours on Worksheet S-3 Part II.<sup>36</sup> In an attachment to the April 12, 2011 letter, U.C. Davis resubmitted Worksheet S-3 Part II based on the payroll data incorporating the cost report reclassifications.<sup>37</sup> However, in a letter dated April 13, 2011, the Medicare Contractor rejected U.C. Davis’ request for consideration of the resubmitted payroll hours data, stating that the March 7, 2011 deadline for requesting such revisions and submitting supporting documentation had passed.<sup>38</sup>

The FFY 2012 Hospital Wage Index Development Timetable set April 20, 2011 as the deadline for hospitals to appeal Medicare Contractor determinations and request CMS’ intervention in cases where the hospital disagrees with the Medicare Contractor’s determination.<sup>39</sup> The Timetable notes that, during this review, CMS does not consider issues such as the adequacy of a hospital’s supporting documentation, as CMS believes that the Medicare contractors are in the best position to make evaluations regarding the appropriateness of these types of issues.<sup>40</sup> U.C. Davis submitted such an appeal in a letter to CMS dated April 18, 2011.<sup>41</sup>

CMS denied U.C. Davis’ appeal in a letter dated August 24, 2011.<sup>42</sup> CMS set forth three reasons for its denial decision. First, all supporting documentation should have been submitted to the Medicare Contractor by the March 7, 2011 deadline in the FFY 2012 Wage Index Development Timetable.<sup>43</sup> Second, CMS stated that using the prior year’s verified rates (*i.e.*, historical data) in an instance of lack of documentation is permissible if it is the best available data for the hospital, thereby upholding the Medicare Contractor’s methodology of adjusting U.C. Davis’ paid hours.<sup>44</sup> Third, CMS restated that its Medicare Contractors are in the best position to evaluate and determine matters regarding the adequacy of supporting documentation.<sup>45</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> Exhibit P-6.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 3.

<sup>38</sup> Exhibit I-7.

<sup>39</sup> Exhibit I-6 at 2-3.

<sup>40</sup> *Id.*

<sup>41</sup> Exhibit P-9.

<sup>42</sup> Exhibit P-10.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

**DISCUSSION. FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

The Hospitals disagree with the Medicare Contractor's adjustment to U.C. Davis' paid hours and contend that U.C. Davis timely submitted documentation with its March 3, 2011 letter that fully supports its requested wage index correction.<sup>46</sup> The Hospitals further assert that U.C. Davis' use of accrued hours was fully consistent with U.C. Davis' prior wage index practices, and was a common practice by hospitals at that time.<sup>47</sup> U.C. Davis explained its methodology to the Medicare Contractor, writing that its adjusted paid hours were identifiable by dividing the payroll AHW by department into the accrued General Ledger salaries by Department.<sup>48</sup> The Hospitals contend that the Medicare Contractor should not have needed any additional information to reconcile U.C. Davis' wage index data with its requested correction.<sup>49</sup> U.C. Davis reached out to the Medicare Contractor on more than one occasion to expressly confirm whether the Medicare Contractor had any questions or needed any clarification concerning the payroll download submitted by U.C. Davis, but the Medicare Contractor did not respond.<sup>50</sup>

The Hospitals further argue that, if the Medicare Contractor believed U.C. Davis' data submissions did not support the requested corrections, the Medicare Contractor had other alternatives available, all of which could have been put in place based on the information that the Medicare Contractor had in its possession on the March 7, 2011 deadline.<sup>51</sup> For example, the Medicare Contractor could have used the hospital's payroll hours and salaries to calculate an AHW.<sup>52</sup> If the Medicare Contractor had used this payroll report, along with the reclassification information that it already had in hand, the result would have been far more accurate for U.C. Davis, and all Sacramento area hospitals.<sup>53</sup> The Medicare Contractor also could have denied U.C. Davis' correction request, and not adjusted the wage index data from the preliminary public use file.<sup>54</sup> Finally, the Medicare Contractor could have removed U.C. Davis' wage index data from the area wage index calculation by zeroing out the hospital's hours and salaries.<sup>55</sup> The Hospitals assert the Medicare Contractor's adjustment is not based on the "best available" data, because the adjustment is not actually based on any hours data for 2009.<sup>56</sup>

Finally, the Hospitals explain that the Medicare Contractor did not simply reject the current year data and rely exclusively on prior year data. Instead, the Medicare Contractor decided to use the current or prior year AHW on a line by line basis, depending on which AHW was more harmful to U.C. Davis. The Hospitals assert that the Medicare Contractor has not explained, and cannot point to any policy from CMS that explains why it was appropriate to reject U.C. Davis' reported

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<sup>46</sup> Providers' Consolidated Final Position Paper at 10-11.

<sup>47</sup> Providers' Post-Hearing Brief at 16.

<sup>48</sup> *Id.* at 14, 30; Exhibit P-4 at 1.

<sup>49</sup> Providers' Post-Hearing Brief at 16.

<sup>50</sup> Providers' Post-Hearing Brief at 30-31.

<sup>51</sup> *Id.* at 32.

<sup>52</sup> *Id.* at 26-27.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 27.

<sup>55</sup> *Id.*

<sup>56</sup> Providers' Post-Hearing Brief at 33. *See also* Tr. at 344-47.

AHW for 2009 for one line when it was favorable to U.C. Davis, and simultaneously use the 2009 AHW for another line when it hurts U.C. Davis. Accordingly, the Hospitals argue that the Medicare Contractor's decision to treat each line of U.C. Davis' 2009 wage data differently is plainly arbitrary and capricious.<sup>57</sup>

The Medicare Contractor argues that the documentation that U.C. Davis submitted on March 7, 2011 was not adequate to support its requested wage index hours.<sup>58</sup> The Medicare Contractor asserts that the submitted "Wage Index Detail" document (Attachment B) includes a column labeled "ADJ HRS" that reflects U.C. Davis' total claimed accrued hours of 13,557,525.<sup>59</sup> The Medicare Contractor submits that U.C. Davis did not offer any explanation of how it developed the "Wage Index Detail" report and that the report does not show how the hours in the column entitled "ADJ HRS" were calculated, or its relationship to the cash basis payroll hours reported on Attachment A.<sup>60</sup>

The Medicare Contractor alleges that it was unable to determine how the hours on this report were derived or whether the hours were somehow supported by any source document, such as the payroll download report.<sup>61</sup> The Medicare Contractor claims that U.C. Davis failed to provide a reconciliation of how the payroll download document supports U.C. Davis' "Wage Index Detail" report<sup>62</sup> and that the "Wage Index Detail" report was not adequate support for U.C. Davis' accrual basis hours as it was not a source document and no reconciliation to a source document was provided.<sup>63</sup>

The dispute in these group appeals centers on the adequacy of the documentation supplied in support of U.C. Davis' wage index hours. The record shows that, on March 7, 2011, the Medicare Contractor was supplied with an electronic file<sup>64</sup> consisting of Attachments A and B, along with an explanation of the Attachment B calculations.<sup>65</sup> However, the record also shows that the Medicare Contractor's April 11, 2011 work papers state that "[t]he auditor cannot make an accurate determination as to what the actual hours [are] that should be used. Therefore, the auditor's original adjustment to adjust the average hourly to the PY [prior year] will remain."<sup>66</sup>

The Board reviewed the electronic files in Attachments A and B,<sup>67</sup> and finds that, contrary to the Medicare Contractor's assertion, the methodology used by U.C. Davis to adjust hours on Attachments A and B was both understandable and auditable, and could be applied to its wage

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<sup>57</sup> Providers' Post-Hearing Brief at 34-35.

<sup>58</sup> Medicare Contractor's Final Position Paper at 8.

<sup>59</sup> *Id.* at 14.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 15.

<sup>63</sup> *Id.*

<sup>64</sup> Tr. at 305. The Medicare Contractor states in their workpapers which were sent to U.C. Davis on April 11, 2011 that they had sorted the list on Attachment B. Exhibit P-5 at 2. Attachment B could not have been sorted without the electronic file.

<sup>65</sup> Exhibit P-4 at 1.

<sup>66</sup> Exhibit P-5 at 2.

<sup>67</sup> Tr. at 417, 418; the electronic version of Exhibit P-4 Attachments A and B.

index hours.<sup>68</sup> Attachment A contains a download of the payroll register and identifies what payroll codes should be included in productive hours.<sup>69</sup> The salary and productive hours<sup>70</sup> from Attachment A are transferred to Attachment B. The payroll salaries by cost center are divided by the productive hours by cost center to obtain an AHW for each cost center. The accrued salaries reported on the cost report by cost center<sup>71</sup> are then divided by this AHW for that cost center to calculate hours. U.C. Davis explained its calculation as follows in its March 3, 2011 letter:

To resolve the audit adjustment, please refer to the Payroll Download (Attachment A) and W/S S-3, Part II, Line 1 Detail (Attachment B). Salary expense on our General Ledger is recorded in a single sub-account 1100 – Salaries and Wages and are not broken out by employee type. The payroll tool takes the average hourly rate by department from the payroll download and applies that average hourly rate to the General Ledger salaries by department to come up with the equivalent hours, which ensures that the overall average hourly rate by department remain unchanged. The payroll download reflects non-productive hours and were incorporated in the Wage Index data.<sup>72</sup>

The Board finds that the information submitted by U.C. Davis on March 3, 2011<sup>73</sup> adequately supports its request for a correction to its wage index. Additionally, the Board finds that U.C. Davis has used this *same* calculation in past audits and that the Medicare Contractor accepted it<sup>74</sup> as an approved alternate methodology<sup>75</sup> to calculate hours for U.C. Davis. Further, U.C. Davis' consultant, Toyon, testified that it has used this calculation for 50 to 80 other hospitals,<sup>76</sup> and that Medicare contractors serving those hospitals have accepted the calculation.<sup>77</sup>

The Board points out that the Medicare Contractor had the payroll download and the hour adjustments by cost center and did not request any additional information, provide any feedback, or ask any questions from U.C. Davis between March 7, 2011 and April 7, 2011.<sup>78</sup> Rather, the Medicare Contractor simply upheld its February 7, 2011 adjustment to increase the hours to the

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<sup>68</sup> Tr. at 249.

<sup>69</sup> Exhibit P-21.

<sup>70</sup> *Id.* Sum of salary by cost center and sum of productive hours by cost center is transferred to Attachment B at Column M entitled "Payroll salaries" and at Column L entitled "Payroll Hrs." The "Productive salaries" are identified by "Yes" in the Column O on Attachment A which is entitled "Include Hrs."

<sup>71</sup> *See* Exhibit P-4 at Attachment B. Salaries in General Ledger accounts are reflected in the cost report cost center where the salaries reside after the A-6 reclassifications.

<sup>72</sup> Exhibit P-4 at 1.

<sup>73</sup> Tr. 303, 304.

<sup>74</sup> Providers' Post-Hearing Brief at 16; Tr. at 155-57, 246-47.

<sup>75</sup> Provider Reimbursement Manual, Part II, § 4005.2 states Paid Hours are to be included on S-3 Part II but states under the notes section that "[t]he above methodology is recommended by CMS but does not preclude using a different approach that would produce a more accurate finding for purposes of the wage index. A hospital must obtain approval from its contractor to use a different methodology."

<sup>76</sup> Tr. at 221.

<sup>77</sup> Tr. at 246-47.

<sup>78</sup> Providers' Post-Hearing Brief at 19.

lesser of the AHW for the current or prior period stating that it appears U.C. Davis is imputing hours and there appears to be a material variance in hours between the auditor's estimations and U.C. Davis' reported hours.<sup>79</sup>

In its position paper, the Medicare Contractor provides the following explanation for its adjustment:

The apparent inaccuracy becomes more obvious when one looks at the accrual adjustment itself. The difference between the cash basis payroll salaries of \$493,649,691 and the accrual basis salaries of \$490,877,457 is a reduction of \$2,772,234. The Provider then computed accrual basis hours of 13,557,525, which when compared to the cash basis hours of 13,798,586 represents a reduction in the hours of 241,061. The Provider is stating that the adjustment to the accrual basis removed \$2,772,234 salaries, so it also removed a computed corresponding 241,061 hours. This equates to an average salary per hour for the accrual period of \$11.50. There is no reasonable explanation as to why the average salary per hour for the accrual period salaries would be only \$11.50, when the overall annual average salary per hour for the payroll year was \$35.775.<sup>80</sup>

However, the record shows the reason for the difference between the payroll AHW of \$35.775 and accrual AHW of \$11.50 is a change in bonus payments.<sup>81</sup> Specifically U.C. Davis paid approximately \$1.7 million of FY 2008 bonuses in 2009 while approximately \$7.3 million of FY 2009 bonuses were not paid until 2010.<sup>82</sup> Bonus payments have no associated hours and are often accrued in one year and paid in the next year.<sup>83</sup> If the bonuses are removed from U.C. Davis' accrual the AHW for the accrual is \$34.54,<sup>84</sup> not the \$11.50 determined by the Medicare Contractor. Additionally, if these bonuses are removed from both the General Ledger and the payroll register, the AHW is \$35.67 based on the General Ledger (accrual basis) and \$35.65 based on the payroll register (cash basis). These are certainly comparable amounts.<sup>85</sup>

The Board finds that the documentation supplied by U.C. Davis and received by the Medicare Contractor on March 7, 2011, provided the information requested by the Medicare Contractor in the December 20, 2010 and February 7, 2011 letters and supported U.C. Davis' wage index calculations.<sup>86</sup> If the Medicare Contractor was confused by the calculations, there was more than ample time from March 7, 2011 to April 7, 2011 for the Medicare Contractor to obtain any

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<sup>79</sup> Exhibit P-5 at 3.

<sup>80</sup> Medicare Administrator's Final Position paper at 18.

<sup>81</sup> Providers' Post-Hearing Brief at 24 n.9.

<sup>82</sup> *Id.* See also Providers' Post-Hearing Brief at Appendix B at 5 (showing bonuses for Department 893).

<sup>83</sup> Providers' Post Hearing Brief at 24.

<sup>84</sup> *Id.* at Appendix B at 6.

<sup>85</sup> *Id.* The Board notes that the increase in AHW appears reasonable. See Exhibit P-22 at 7.

<sup>86</sup> Tr. 303-04.

clarification it needed to properly determine the U.C. Davis' wage index. The Board concludes that adjusting U.C. Davis' AHW to the lower of the current or prior year was improper and harmful to the Hospitals in the Sacramento CBSA as it resulted in incorrect calculation of the wage index factor for CBSA 40900.

### **DECISION AND ORDER**

After considering Medicare law and regulations, arguments presented, and evidence admitted, the Board finds that the Medicare Contractor improperly adjusted U.C. Davis' AHW to the lower of the current or prior year. The Board remands this case to the Medicare Contractor to revise and correct U.C. Davis' wage index using the data in Exhibit P-4 Attachment B. Additionally, the Board finds that the CMS incorrectly calculated the FFY 2012 wage index for CBSA No. 40900 by using incorrect data for U.C. Davis. The Board also remands this case to CMS for the recalculation of the wage index for CBSA 40900 based on the corrected wage data for U.C. Davis.

### **BOARD MEMBERS PARTICIPATING:**

Clayton J. Nix, Esq.  
Charlotte F. Benson, CPA  
Gregory H. Ziegler, CPA, CPC-A  
Robert A. Evarts, Esq.  
Susan A. Turner, Esq.

### **FOR THE BOARD:**

12/21/2018

**X** Clayton J. Nix

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Clayton J. Nix, Esq.

Chair

Signed by: Clayton J. Nix -A

**APPENDIX A****CASE NO. 12-0404G**

	<b>Provider No.</b>	<b>Provider Name</b>	<b>FYE</b>
1	05-0352	Barton Memorial Hospital	9/30/2012
2	05-0524	Marshall Medical Center	9/30/2012
3	05-0599	UC Davis Medical Center	9/30/2012

**CASE NO. 12-0450G**

	<b>Provider No.</b>	<b>Provider Name</b>	<b>FYE</b>
1	05-0352	Barton Memorial Hospital	12/31/2012
2	05-0524	Marshall Medical Center	12/31/2012
3	05-0599	UC Davis Medical Center	12/31/2012

**CASE NO. 12-0456GC**

	<b>Provider No.</b>	<b>Provider Name</b>	<b>FYE</b>
1	05-0017	Mercy General Hospital	12/31/2012
2	05-0414	Mercy Hospital of Folsom	12/31/2012
3	05-0516	Mercy San Juan Hospital	12/31/2012
4	05-0590	Methodist Hospital of Sacramento	12/31/2012
5	05-0150	Sierra Nevada Memorial Hospital	12/31/2012
6	05-0084	St. Joseph's Medical Center	12/31/2012
7	05-0127	Woodland Memorial Hospital	12/31/2012

**CASE NO. 12-0457GC**

	<b>Provider No.</b>	<b>Provider Name</b>	<b>FYE</b>
1	05-0017	Mercy General Hospital	9/30/2012
2	05-0414	Mercy Hospital of Folsom	9/30/2012
3	05-0516	Mercy San Juan Hospital	9/30/2012
4	05-0590	Methodist Hospital of Sacramento	9/30/2012
5	05-0150	Sierra Nevada Memorial Hospital	9/30/2012
6	05-0084	St. Joseph's Medical Center	9/30/2012
7	05-0127	Woodland Memorial Hospital	9/30/2012

**CASE NO. 12-0449GC**

	<b>Provider No.</b>	<b>Provider Name</b>	<b>FYE</b>
1	05-0014	Sutter Amador Hospital	9/30/2012
2	05-0498	Sutter Auburn Faith Hospital	9/30/2012
3	05-0537	Sutter Davis Hospital	9/30/2012
4	05-0108	Sutter Medical Center - Sacramento	9/30/2012
5	05-0309	Sutter Roseville Medical Center	9/30/2012

**CASE NO. 12-0454GC**

	<b>Provider No.</b>	<b>Provider Name</b>	<b>FYE</b>
1	05-0014	Sutter Amador Hospital	12/31/2012
2	05-0498	Sutter Auburn Faith Hospital	12/31/2012
3	05-0537	Sutter Davis Hospital	12/31/2012
4	05-0108	Sutter Medical Center - Sacramento	12/31/2012
5	05-0309	Sutter Roseville Medical Center	12/31/2012