

**PROVIDER REIMBURSEMENT REVIEW BOARD DECISION**

On the Record  
2026-D03

**PROVIDER-**

The Aroostook Medical Center, now known as  
Northern Light A.R. Gould Hospital

**RECORD HEARING DATE –**  
October 8, 2024

**Provider No.:** 20-0018

**Cost Reporting Period Ended –**  
09/27/2014

vs.

**MEDICARE CONTRACTOR –**  
National Government Services, Inc.

**CASE NO. –** 18-0835

**INDEX**

|  | <b>Page No.</b> |
|--|-----------------|
| <b>Issue Statement.....</b>  | <b>2</b>        |
| <b>Decision .....</b>  | <b>2</b>        |
| <b>Statement of Facts and Procedural History .....</b>             | <b>2</b>        |
| <b>Statutory and Regulatory Background.....</b>                    | <b>3</b>        |
| <b>Discussion, Findings of Facts, and Conclusions of Law .....</b> | <b>4</b>        |
| <b>Decision and Order .....</b>                                    | <b>4</b>        |

## **ISSUE STATEMENT**

Whether National Government Service, Inc. (the “Medicare Contractor”)<sup>1</sup> properly calculated the volume decrease adjustment (“VDA”) payment owed to The Aroostook Medical Center, now known as Northern Light A.R. Gould Hospital (“Aroostook” or the “Provider”) for the significant decrease in inpatient discharges that occurred in its cost reporting period ending September 27, 2014 (“FY 2014”).<sup>2</sup>

## **DECISION**

After considering the Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board (“Board”) finds that the Medicare Contractor improperly calculated the VDA payment for FY 2014 for Aroostook Medical Center, now known as Northern Light A.R. Gould Hospital. The Board remands the appeal to the Medicare Contractor to recalculate the Provider’s VDA consistent with *Lake Region Healthcare Corp. v. Becerra*<sup>3</sup> (“Lake Region”) and the methodology outlined in Provider Reimbursement Manual, Part 1 (PRM-1) § 2810.1.D.2.b (Rev. 479).<sup>4</sup>

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Aroostook is “an acute care hospital located in Presque Isle, Maine.”<sup>5</sup> Per the stipulations submitted by the parties (“Stipulations”), Aroostook was designated as a Medicare Dependent Hospital (“MDH”) during the time period at issue.<sup>6</sup> The Medicare contractor assigned to Aroostook for this appeal is National Government Services, Inc. (the “Medicare Contractor”).

On November 7, 2016, Aroostook filed a timely request for a VDA payment of \$669,352 for FY 2014 to compensate it for a decrease in inpatient discharges during FY 2014.<sup>7</sup> On May 5, 2017, the Medicare Contractor requested additional information to continue its review.<sup>8</sup> On December 27, 2017, the Medicare Contractor denied Aroostook’s VDA payment request determining that “the requirements of 42 CFR §412.92 and CMS Pub. 15-1 §2810 have not been met” (the “VDA Determination”).<sup>9</sup> Aroostook timely appealed the Medicare Contractor’s VDA Determination and met all jurisdictional requirements for a hearing before the Board.

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<sup>1</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 relevant law may refer to FIs and MACs interchangeably, and the Board will use the term “Medicare contractor” to refer to both FIs and MACs as appropriate and relevant.

<sup>2</sup> See Stipulations at ¶¶ 12, 13, 14 (July 24, 2024).

<sup>3</sup> 113 F.4th 1002 (D.C. Cir. 2024).

<sup>4</sup> The Board notes that these instructions pertain to “Cost Reporting Periods Beginning on or after October 1, 2017,” however, in the wake of the *Lake Region* decision, which used this methodology, and the Secretary’s declining to appeal that decision, the Board finds this to be the correct calculation for the instant appeal.

<sup>5</sup> Provider’s Final Position Paper (hereinafter “Provider’s FPP”) at 1 (July 9, 2024).

<sup>6</sup> Stipulations at ¶ 1.

<sup>7</sup> Stipulations at ¶ 7; see also Exhibit (hereinafter “Ex.”) P-2 at 0021 (Provider’s VDA Request).

<sup>8</sup> Provider’s Preliminary Position Paper, Ex. P-6 at 0001-0002 (MAC’s Original Supplemental Request).

<sup>9</sup> Ex. C-1 at 1. (MDH Volume Decrease Adjustment – Final Determination). The Board notes that Ex. C-1 erroneously cited to the Sole Community Hospital regulation when informing the provider that the MDH VDA

The Board approved a record hearing on October 8, 2024. Aroostook was represented by William H. Stiles, Esq. of Verrill Dana, LLP. The Medicare Contractor was represented by Scott Berends, Esq. of Federal Specialized Services.

## **STATUTORY AND REGULATORY BACKGROUND**

Medicare pays certain hospitals a predetermined, standardized amount per discharge under the inpatient prospective payment system (“IPPS”) based on the diagnosis-related group (“DRG”) assigned to the patient. These DRG payments are also subject to certain payment adjustments. One of these payment adjustments is referred to as a VDA payment and it is available to MDHs if, due to circumstances beyond their control, they incur a decrease of more than five percent (5%) in their total number of inpatient cases from one cost reporting period to the next.<sup>10</sup> VDA payments are designed “to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.”<sup>11</sup>

The regulation at 42 C.F.R. § 412.108(d) directs how the Medicare Contractor must determine the VDA once an MDH demonstrates that it experienced a qualifying decrease in total inpatient discharges. For cost reporting periods prior to FY 2018, CMS calculated the VDA as the difference between a hospital’s fixed costs and the total DRG payments.<sup>12</sup> In the FY 2018 IPPS/LTCH PPS final rule, effective for cost reporting periods beginning on or after October 1, 2017 (i.e., FY 2018 and beyond), CMS finalized prospective changes as to how the MACs would calculate the volume decrease adjustments.<sup>13</sup> This regulation requires “that the MACs compare estimated Medicare revenue for fixed costs to the hospital’s [Medicare] fixed costs to remove any conceivable possibility that a hospital that qualifies for the volume decrease adjustment could ever be less than fully compensated for fixed costs as a result of the application of the adjustment . . . [i]n order to estimate the fixed portion of the Medicare revenue, the MACs [would] apply the ratio of the hospital’s fixed costs to total costs in the cost reporting period when it experienced the volume decrease to the hospital’s total Medicare revenue in that same cost reporting period.”<sup>14</sup>

On September 3, 2024, in *Lake Region Healthcare Corp. v. Becerra*,<sup>15</sup> (hereafter *Lake Region*) the D.C. Circuit held that the agency’s and the Administrator’s longstanding approach for cost reporting periods prior to FY 2018 violated 42 U.S.C. § 1395ww(d)(5).

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request was denied. However, the parties have properly stipulated to 42 U.S.C. § 1395ww(d)(5)(G)(iii) and 42 C.F.R. § 412.108(d) (the MDH regulations). See Stip. at ¶¶ 3, 4.

<sup>10</sup> 42 U.S.C. § 1395ww(d)(5)(G)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> See 82 Fed. Reg. 37990, 38180 (Aug. 14, 2017).

<sup>13</sup> *Id.* at 38179-183.

<sup>14</sup> *Id.* at 38180.

<sup>15</sup> 113 F.4th 1002, 1008-09.

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

Pursuant to 42 C.F.R. § 412.108(d)(3)(iii), the Medicare Contractor's VDA "**determination** is subject to [Board] review under subpart R of Part 405 of this chapter."<sup>16</sup> Per the parties' Stipulations, it is undisputed that Aroostook experienced a decrease in discharges greater than five percent (5%) from FY 2013 to FY 2014 due to circumstances beyond Aroostook's control and that, as a result, Aroostook was eligible to have a VDA calculation performed for FY 2014.<sup>17</sup> In this appeal, the sole dispute to resolve is "the correct amount of the Provider's VDA payment under the applicable laws, regulations and program instructions."<sup>18</sup>

In *Lake Region*, the D.C. Circuit held that the agency's and the Administrator's longstanding approach for cost reporting periods prior to FY 2018 (under which the VDA is the difference between a hospital's fixed costs and the total DRG payments, which the Court called the "fixed-total method") violated 42 U.S.C. § 1395ww(d)(5).<sup>19</sup> Since that time, the Board has continued to issue VDA decisions applying the Board's long-standing "fixed-fixed"<sup>20</sup> methodology for cost reporting periods before October 1, 2017 (which also is the methodology CMS promulgated for cost reporting periods beginning on or after October 1, 2017).<sup>21</sup> In the appeals following the D.C. Circuit's *Lake Region* decision, the Administrator has declined review.<sup>22</sup> The Board finds that the "fixed-fixed" methodology is proper for the calculation of the FY 2014 VDA payment for Aroostook.

## **DECISION AND ORDER**

Based on the foregoing, the Board finds that the Medicare Contractor improperly calculated the FY 2014 VDA payment for Aroostook. Accordingly, pursuant to its authority under 42 C.F.R. § 405.1845(h), the Board hereby remands this appeal to the Medicare Contractor with instructions to calculate the Provider's FY 2014 VDA consistent with *Lake Region* and the methodology outlined in PRM-1, § 2810.1.D.2.b (Rev. 479).

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

<sup>17</sup> See Stipulations at ¶¶ 8, 12.

<sup>18</sup> *Id.* at ¶ 13.

<sup>19</sup> 113 F.4<sup>th</sup> 1002, 1008-09.

<sup>20</sup> *Id.* at 1005 (where the Court acknowledged that the Board "developed the fixed-fixed method in a series of adjudications beginning in 2015[]" and described it as "the difference between the hospital's *fixed* costs for treating Medicare beneficiaries and an estimate of what portion of its DRG payments afford compensation for those *fixed* costs.") The Board notes this may also be described as the difference between the Program inpatient operating fixed costs and the fixed cost portion of the total payment for inpatient operating costs.

<sup>21</sup> See *supra* at footnote 13.

<sup>22</sup> See, e.g., *Tennova Healthcare – Volunteer Martin v. WPS Government Health Administrators*, PRRB Dec. 2025-D06 (Dec. 17, 2024), Administrator declined review (Jan. 8, 2025).

**BOARD MEMBERS:**

Kevin D. Smith, CPA  
Ratina Kelly, CPA  
Nicole E. Musgrave, Esq.  
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**FOR THE BOARD:**

11/25/2025

**X** Kevin D. Smith, CPA

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Kevin D. Smith, CPA

Board Chair

Signed by: Kevin D. Smith -A