

**PROVIDER REIMBURSEMENT REVIEW BOARD  
DECISION**

2026-D13

**PROVIDER –**  
St. Charles Bend

**RECORD HEARING DATE–**  
November 7, 2024

**PROVIDER NO. –** 38-0047

**FISCAL YEAR END –** Dec. 31, 2022

**vs.**

**MEDICARE CONTRACTOR –**  
Noridian Healthcare Solutions

**CASE NO. –** 23-0056

**INDEX**

<b>ISSUE STATEMENT:</b> .....	<b>2</b>
<b>DECISION:</b> .....	<b>2</b>
<b>INTRODUCTION AND PROCEDURAL HISTORY:</b> .....	<b>2</b>
<b>STATEMENT OF FACTS:</b> .....	<b>3</b>
<b>STATEMENT OF RELEVANT LAW:</b> .....	<b>7</b>
<b>DISCUSSION, FINDING OF FACTS, AND CONCLUSIONS OF LAW.....</b>	<b>12</b>
<b>DECISION:</b> .....	<b>19</b>

**ISSUE STATEMENT:**

Whether CMS' denial of St. Charles Bend's ("Provider" or "St. Charles Bend") original application for Sole Community Hospital ("SCH") status and rural reclassification effective February 15, 2022 was proper.<sup>1</sup>

**DECISION:**

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Provider Reimbursement Review Board ("Board") finds that CMS properly denied the Provider's February 15, 2022 applications for SCH status and rural reclassification.

**INTRODUCTION AND PROCEDURAL HISTORY:**

St. Charles Bend is a general acute-care hospital located in Bend, Oregon.<sup>2</sup> The Medicare contractor<sup>3</sup> assigned to St. Charles Bend for this appeal is Noridian Healthcare Solutions, LLC ("Medicare Contractor").

On February 15, 2022, the Provider submitted an application to the Medicare Contractor and CMS seeking SCH status pursuant to 42 C.F.R. § 412.92 and requesting rural reclassification pursuant to 42 C.F.R. § 412.103.<sup>4</sup> On April 15, 2022, CMS denied the request for SCH status, finding that St. Charles Bend did not meet the criteria for SCH status because another like hospital, St. Charles Redmond, was 17.8 miles away. CMS recognized the Provider's statement regarding a change of ownership "to effectuate a provider-number acquisition and merger with SCMCB accepting automatic assignment of St. Charles Redmond's provider agreement."<sup>5</sup> The denial letter continued, noting, "[h]owever, CMS staff has not received the complete application from the State Agency and will not be able to issue a final determination until all documents are reviewed."<sup>6</sup> As part of the denial, CMS instructed the Provider to resubmit their application to the Medicare Contractor, including the documentation confirming approval of the merger.<sup>7</sup> Additionally, on April 15, 2022, CMS denied the request to reclassify St. Charles Bend from urban to rural status because Provider did not qualify as an SCH, based on the criteria set forth in 42 CFR §412.103 (a)(3).<sup>8</sup>

On October 11, 2022, St. Charles Bend appealed the final determinations and claiming an amount in controversy of \$4,642,434, the total impact calculated as the variance in reimbursement between St. Charles Bend's Inpatient Prospective Payment System ("IPPS") reimbursement and the reimbursement it calculated using the Rural Oregon wage index and

---

<sup>1</sup> Medicare Contractor's Final Position Paper (hereinafter, "Medicare Contractor's FPP") at 2 (September 19, 2024). See Provider's Individual Appeal Request, Statement of Issue.

<sup>2</sup> Provider's Final Position Paper (hereinafter, "Provider's FPP") at 1 (Aug. 20, 2024).

<sup>3</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>4</sup> See Exhibit (hereinafter, "Ex.") P-10 (Application for Sole Community Hospital Status and Rural Reclassification).

<sup>5</sup> Ex. P-13 at SCBFPP0143 (CMS Letter to Medicare Contractor Denying SCH Status).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Ex. P-14 at SCBFPP0145 (CMS Letter to Provider Denying Urban to Rural Reclassification Based on Denial of SCH Status).

payment adjustments made for hospitals which have Rural SCH status (i.e., the result of the denial of the Original Application).<sup>9</sup> St. Charles Bend met all jurisdictional requirements for a hearing before the Board.

On March 20, 2023, in accordance with its standard procedures, the Board set deadlines for the parties in this appeal. As a result of the proposed rulemaking on May 1, 2023,<sup>10</sup> which addressed amendments to 42 C.F.R § 412.92 (the regulation at the core of this appeal), the Provider requested an extension of four months to its position paper deadlines, which the Board granted on May 16, 2023.<sup>11</sup>

Three months after both parties had filed Preliminary Position Papers, on April 12, 2024, St. Charles Bend requested an accelerated hearing, stating that there were no outstanding discovery requests.<sup>12</sup> The Board replied on April 15, 2024, setting the hearing for November 19, 2024 and setting deadlines for the parties' Final Position Papers and Optional Responses.<sup>13</sup> The parties timely filed their submissions.<sup>14</sup> Additionally, on October 21, 2024, less than a month before the scheduled live hearing date, the parties requested a record hearing.

The Board granted the Provider's request for a record hearing on November 7, 2024, and the parties were given time to supplement the record as they deemed necessary before the record was closed on December 19, 2024. St. Charles Bend was represented by Daniel F. Miller, Esq. of Hall, Render, Killian, Heath & Lyman, P.C. The Medicare Contractor was represented by Jerrod Olszewski, Esq. of Federal Specialized Services.

## **STATEMENT OF FACTS:**

### ***A. Brief Background on Rural Hospitals and Sole Community Hospitals***

Medicare pays hospitals for their inpatient operating costs under the Inpatient Prospective Payment System ("IPPS"), using predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups ("DRGs"). The base payment rate is comprised of a standardized amount for all hospitals that are paid in accordance with 42 U.S.C. § 1395ww(d), or IPPS, (known as "subsection (d) hospitals"), taking into account whether they are located in "urban" or "rural" labor market areas.<sup>15</sup> These standardized amounts are adjusted by a "wage index" based on the specific geographic area where a hospital is

---

<sup>9</sup> See Ex. P-1 at SCBFPP0021 (Notice of Appeal and Request for Hearing), Ex. P-2 at SCBFPP0039 (Request for Additional Final Determination); *for the Provider's recounting of the procedural history, see also, Provider's FPP at 1 – 2.*

<sup>10</sup> 88 Fed Reg. 26658, 27007-27008, 27305 (May 1, 2023).

<sup>11</sup> See Ex. P-4 at SCBFPP0047 (Provider's Request for Extension to Submit Preliminary Position Paper and Supporting Documentation) and Ex. P-5 at SCBFPP0054 (Board Determination on Extension for Submission of Preliminary Position Papers).

<sup>12</sup> See Ex. P-8 at SCBFPP0061 (Uncontested Rule 31 Request for Accelerated Hearing).

<sup>13</sup> See Ex. P-9 at SCBFPP0065 (PRRB Notice of Hearing and Critical Due Dates Letter).

<sup>14</sup> Note that October 20, 2024 was a Sunday. Thus, per Board Rule 4.4.3 (Due Date Exceptions), the Provider's filing of its Optional Responsive Brief on October 21, the following business day, was timely.

<sup>15</sup> See 42 U.S.C. § 1395ww(d)(2)(A)-(D) ("The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge [...] and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region [...] Each such rate shall be determined for hospitals located in urban or rural areas [...]") (the version of 42 U.S.C. § 1395ww effective Mar. 11, 2021 to Sept. 29, 2022 is cited throughout, unless otherwise indicated).

located.<sup>16</sup> The Secretary defines hospital geographic areas (labor market areas) based on the definitions of Core-Based Statistical Areas (“CBSAs”) established by the Office of Management and Budget.

Historically, providers with lower wage indexes have faced staffing challenges when located near a CBSA with a higher wage index that could pay higher wages.<sup>17</sup> To address this problem, Congress instituted a system that allows hospitals to be geographically reclassified to a different labor market area.<sup>18</sup> Beginning in 2000, hospitals located in urban areas are permitted to apply for reclassification as rural.<sup>19</sup> One way a hospital can qualify for rural reclassification is by demonstrating it would qualify as a Sole Community Hospital (“SCH”) if it were located in a rural area.<sup>20</sup>

Hospitals designated as SCHs receive enhanced IPPS payments from CMS compared to standard acute care providers. When the IPPS was established, Congress was concerned about communities with only one hospital, in part because beneficiaries would have no opportunity to choose a less expensive institution and/or competitive cost data for the area was lacking.<sup>21</sup> Thus, in 1983, Congress:

[E]stablished a separate and more generous reimbursement formula for ‘sole community hospital[s],’ which are statutorily defined as ‘hospital[s] that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), [are] the sole source of inpatient hospital services reasonably available to individuals in a geographical area who are entitled to benefits under [Medicare] part A.’<sup>22</sup>

### ***B. St. Charles Bend’s Application for SCH Status and Rural Reclassification***

<sup>16</sup> See 42 U.S.C. § 1395ww(d)(3)(E) (Adjusting for different area wage levels).

<sup>17</sup> See *Geisinger Comm. Med. Ctr. v. Sec. of Dept. of HHS*, 794 F.3d 383, 387 (3<sup>rd</sup> Cir. 2015) (“IPPS may yield inequitable results where, for instance, a rural hospital’s lower wage index does not accurately reflect its labor costs because it competes for the same labor pool as hospitals in a nearby but higher wage-index urban area.”).

<sup>18</sup> See 42 U.S.C. §§ 1395ww(d)(8)(B)(i) (“the Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute”) and 1395ww(d)(10) (establishing the Medicare Geographic Classification Review Board).

<sup>19</sup> See 42 C.F.R. § 412.103 (Special treatment: Hospitals located in urban areas that apply for reclassification as rural). For a historical overview, see Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106-113 § 401(a), 113 Stat. 1501A-321, 1501A-369 (Nov. 29, 1999); 65 Fed. Reg. 47026, 47029-47030 (Aug. 1, 2020). See also 42 U.S.C. § 1395ww(d)(8)(E) (sets forth criteria for a hospital located in an urban area to qualify as rural).

<sup>20</sup> See 42 U.S.C. § 1395ww(d)(8)(E)(ii)(III):

(ii) For purposes of clause (i), a subsection (d) hospital described in this clause is a subsection (d) hospital that is located in an urban area (as defined in paragraph (2)(D)) and satisfies any of the following criteria: [...] (III) The hospital would qualify as a rural, regional, or national referral center under paragraph (5)(C) or as a sole community hospital under paragraph (5)(D) if the hospital were located in a rural area.

<sup>21</sup> See *AnMed Health v. Becerra*, 628 F.Supp.3d 219, 222 (D.D.C. 2022) (quoting S. Rep. No. 92-1230, at 188 (1972); H.R. Rep. No. 92-231, at 84 (1971)).

<sup>22</sup> *Id.* at 223 (quoting Pub. L. No. 98-21 § 601(e), 97 Stat. 158).

St. Charles Health System operated two separate acute hospitals: St. Charles Bend (CMS Certification Number (“CCN”) 38-0047) and St. Charles Redmond (CCN 38-0040).<sup>23</sup> The hospitals are situated 17.8 miles apart.<sup>24</sup> Both hospitals are unincorporated divisions of St. Charles Health System, Inc. (“SCHS”).<sup>25</sup> Both hospitals were enrolled in Medicare under the legal entity and EIN of SCHS.<sup>26</sup>

On **December 16, 2021**, the St. Charles Health System, Inc. Board of Directors, which was the governing body for both St. Charles Medical Center, Bend, Oregon (“SCMC – Bend”) and St. Charles Medical Center, Redmond, Oregon (“SCMC-Redmond”), passed a resolution regarding a “Plan of Merger” which stated:

[T]he effective date in the Plan of Merger shall occur upon the determination by the Chief Executive Officer, or designee, that the transfer and assignment of SCMC-Redmond’s Medicare provider agreement, including SCMC-Redmond’s Medicare attributes, assets and liabilities, can and should occur, taking into account applicable Medicare and other legal considerations.<sup>27</sup>

The actual Plan of Merger dictated that:

Effective February 15, 2022, at 12:01 a.m. (the “Effective Date”), SCMC-Redmond shall combine with St. Charles Medical Center’s Medicare provider agreement and St. Charles Medical Center will accept the transfer and assignment of SCMC-Redmond’s Medicare provider agreement, including SCMC-Redmond’s Medicare attributes, assets and liabilities.<sup>28</sup>

Also on **February 15, 2022**, St. Charles Bend filed applications for rural reclassification and designation as an SCH (the “Original Application”).<sup>29</sup> Note, the parties stipulated that the Original Application *included* the “SCHS Plan of Merger and the 855 filings needed to implement the automatic assignment and CCN combination.”<sup>30</sup> Additionally, the Statement of Issue, filed as part of the original appeal, stated that:

[T]he supporting information included the Plan of Merger and the 855 filings *to be completed*, and that in mergers of entities under common ownership, there is no change of ownership and there is

<sup>23</sup> See Stipulations in Support of Joint Request for Record Hearing (hereinafter, “Stip.”) at ¶¶ 1-2 (Oct. 21, 2024).

<sup>24</sup> See Ex. P-13 at SCBFPP0143.

<sup>25</sup> Stip. at ¶ 3.

<sup>26</sup> Stip. at ¶ 4.

<sup>27</sup> Ex. P-10 at SCBFPP0090 (Board Resolution #2021-9 Resolution of the St. Charles Health System Board of Directors RE: Plan of Merger).

<sup>28</sup> *Id.* at SCBFPP0092 – 93. The date the Plan of Merger was executed is not discernable from the exhibits provided, although based on the Board Resolution #2021-9, *see id.* at SCBFPP0090, it occurred on or after December 16, 2021 and before March 9, 2022.

<sup>29</sup> See Ex. P-10 at SCBFPP0067.

<sup>30</sup> Stip. at ¶ 10. This reference is related to Form CMS-855A Medicare Enrollment Application which is required to enroll in the Medicare program and receive a Medicare billing number. See <https://www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms855a.pdf> (last accessed 03/27/2026).

an automatic assignment of the Medicare agreement under 42 CFR § 489.18(c) (“Original Application”).<sup>31</sup>

Finally, the Original Application letter filed on February 15, 2022 indicates that St. Charles Bend and St. Charles Redmond “*will file* the appropriate Medicare enrollment updates on Form 855A (or via PECOS) . . . within 30 days as required by 42 C.F.R. § 424.516.”<sup>32</sup>

On **March 9, 2022**, St. Charles Bend and St. Charles Redmond filed Medicare enrollment updates via PECOS.<sup>33</sup> This filing was to “effectuate a provider-number acquisition via merger with [St. Charles Bend] accepting automatic assignment of the Redmond Hospital provider agreement [...] on March 9, 2022 (*i.e.*, within 30 days as required by 42 C.F.R. § 424.516).”<sup>34</sup>

On **March 17, 2022**, the Medicare Contractor reviewed this request and made its recommendation to CMS, stating:

[The Medicare Contractor] has reviewed the provider’s sole community hospital application and *upon the CMS approval of the merger/acquisition* of 38-0040 into 38-0047, concurs with the provider that the provider does meet the sole community hospital requirements as specified in the above citation. Therefore, [the Medicare Contractor] is recommending to the CMS Innovation & Financial Management Group - San Francisco that St. Charles Medical Center’s sole community hospital application be approved.<sup>35</sup>

On **April 15, 2022**, CMS denied Provider’s SCH application stating “CMS staff has not received the complete application from the State Agency and will not be able to issue a final determination until all documents are reviewed.”<sup>36</sup>

**Also on April 15, 2022**, CMS denied the rural reclassification request because Provider “did not meet the reclassification eligibility requirements of 42 C.F.R. § 412.103(a)(3)” (*i.e.*, it was not designated as an SCH).<sup>37</sup>

---

<sup>31</sup> Statement of Issue at 1 (*italics emphasis added*).

<sup>32</sup> Ex. P-10 at SCBFPP0069.

<sup>33</sup> See Ex. P-17 at SCBFPP0180 (Application for Sole Community Hospital Status and Rural Reclassification (Resubmission)). See also Ex. P-16 at SCBFPP0158 (Ex. P-16 consists of a May 10, 2022 email from the Oregon Health Authority (“OHA”) Health Facility Survey & Certification Program Manager to counsel for St. Charles Bend indicating that the packet OHA sent to CMS for processing is attached. The subsequent pages include: Form CMS-1539 dated May 10, 2022; a March 17, 2022 letter from Noridian; Board Resolution #2021-9; Plan of Merger; and an “Application Data Report” that indicates a received date of March 9, 2022 (This is a print version of the PECOS 855A data submitted, with a web address that begins <https://portal.cms.emsnet>.) See also Ex. P-20 at SCBFPP0293, “SCHS filed the [Change of Information] on 3/9/22 reporting the merger in PECOS. On 3/17/22 Noridian provided the attached notice that it had approved the filing effective 2/15/22 and had forwarded it to CMS-RO for final review.”

<sup>34</sup> Ex. P-17 at SCBFPP0180. Note: 42 C.F.R. § 424.516(e) specifies that providers must report “a change of ownership or control, including changes in authorized official(s) or delegated official(s)” within 30 days.

<sup>35</sup> Ex. C-4 (Medicare Contractor’s SCH Recommendation to CMS) (*italics emphasis added*).

<sup>36</sup> Ex. P-13 at SCBFPP0143.

<sup>37</sup> Ex. P-14 at SCBFPP0145.

On **May 11, 2022**, Provider submitted a second application for SCH designation and rural reclassification (the “Second Application”).<sup>38</sup> The Second Application included the Medicare Contractor’s March 17, 2022 notification that the Original Application had been sent to CMS Seattle Regional Office for a final Review,<sup>39</sup> and the State Agency’s completed CMS Form 1539, signed on May 10, 2022, certifying that St. Charles Redmond was to be a remote location of St. Charles Bend and that the St. Charles Redmond CCN would cease to be used, retroactively effective to February 15, 2022.<sup>40</sup>

On **June 2, 2022**, CMS approved St. Charles Bend’s request to reclassify from urban to rural with an effective date of May 11, 2022 (the filing date of the Second Application).<sup>41</sup> Additionally, also on June 2, 2022, CMS approved St. Charles Bend as a sole community hospital with an effective date of May 12, 2022.<sup>42</sup>

In the June 2, 2022 correspondence, CMS explains:

Our regulations at 42 CFR 412.92 require that, ‘sole community hospital status is effective as of the date the **MAC receives the complete application**, except as provided in paragraph (b)(2)(v) of this section.’ In this particular case, the date that the MAC received the complete application is the date on which it received notification that the merger was finalized, May 12, 2022. Therefore, the SCH effective date for St. Charles Medical Center Bend is May 12, 2022.<sup>43</sup>

## **STATEMENT OF RELEVANT LAW:**

### ***A. Sole Community Hospital (“SCH”) Defined***

The statute 42 U.S.C. § 1395ww(d)(5)(D)(iii) defines an SCH as any hospital:

- (I) that the Secretary determines is located more than 35 road miles from another hospital,
- (II) that, by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (in accordance with standards promulgated by the Secretary), location, weather conditions, travel conditions, or absence of other like hospitals (as determined by the Secretary), 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
- (III) that is located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i-4(i)(1) of this title as in effect on September 30, 1997.

<sup>38</sup> See Ex. P-17.

<sup>39</sup> *Id.* at SCBFPP0261-SCBFPP0262.

<sup>40</sup> *Id.* at SCBFPP0260.

<sup>41</sup> See Ex. P-18 at SCBFPP0289 (CMS Letter to Provider Approving Rural Reclassification).

<sup>42</sup> See Ex. P-19 at SCBFPP0290 (CMS Letter to Medicare Contractor Approving Sole Community Hospital Status)

<sup>43</sup> *Id.* (emphasis in original).

The corresponding regulations at 42 C.F.R. § 412.92(a) (2020) set the criteria for a hospital to be considered an SCH:

(a) Criteria for classification as a sole community hospital. CMS classifies a hospital as a sole community hospital if it is located more than 35 miles from other like hospitals, or it is located in a rural area (as defined in § 412.64) and meets one of the following conditions:

(1) 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;

(ii) The hospital has fewer than 50 beds and the MAC certifies that the hospital would have met the criteria in paragraph (a)(1)(i) of this section were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital; or

(iii) Because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least 30 days in each 2 out of 3 years.

(2) The hospital is located between 15 and 25 miles from other like hospitals but because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least 30 days in each 2 out of 3 years.

(3) Because of distance, posted speed limits, and predictable weather conditions, the travel time between the hospital and the nearest like hospital is at least 45 minutes.

(4) For a hospital with a main campus and one or more remote locations under a single provider agreement where services are provided and billed under the inpatient hospital prospective payment system and that meets the provider-based criteria at § 413.65 of this chapter as a main campus and a remote location of a hospital, combined data from the main campus and its remote location(s) are required to demonstrate that the criteria specified in paragraphs (a)(1)(i) and (ii) of this section are met. For the mileage and rural location criteria in paragraph (a) of this section and the mileage, accessibility, and travel time criteria specified in

paragraphs (a)(1) through (3) of this section, the hospital must demonstrate that the main campus and its remote location(s) each independently satisfy those requirements.<sup>44</sup>

**B. SCH Application Process**

At the time of St. Charles Bend's Original Application for SCH status, 42 C.F.R. § 412.92(b) (2020) set forth the classification procedures for its application and its effective date:

- (1) Request for classification as sole community hospital.
  - (i) The hospital must make its request to the MAC.
  - (ii) [this provision concerns a hospital is seeking sole community hospital classification under paragraph (a)(1)(i) or (a)(1)(ii) of this section]
  - (iii) [this provision concerns an applicant who cannot obtain information required in (ii), above]
  - (iv) The MAC reviews the request and send the request, with its recommendation, to CMS.
  - (v) CMS reviews the request and the MAC's recommendation and forward its approval or disapproval to the MAC.
  
- (2) Effective dates for classification.
  - (i) For applications received on or before September 30, 2018, sole community hospital status is effective 30 days after the date of CMS' written notification of approval, except as provided in paragraph (b)(2)(v) of this section. **For applications received on or after October 1, 2018, sole community hospital status is effective as of the date the MAC receives the complete application**, except as provided in paragraph (b)(2)(v) of this section.
  - (ii) [concerns effective dates when a court or the PRRB reverses a CMS denial of SCH status]
  - (iii) [concerns terminating retroactive SCH designation]
  - (iv) For applications received on or before September 30, 2018, a hospital classified as a sole community hospital receives a payment adjustment, as described in paragraph (d) of this section, effective with discharges occurring on or after 30 days after the date of CMS' approval of the classification. For applications received on or after October 1, 2018, a hospital classified as a sole community hospital receives a payment adjustment, as described in paragraph (d) of this section,

---

<sup>44</sup> 42 C.F.R. § 412.92(a) (2020) is the version of the regulation in effect at the time of the Original Application for SCH status and is the version cited unless otherwise indicated; *available at* Ex. P-25 (42 C.F.R. § 412.92 (Effective: October 1, 2020 to September 30, 2023)).

- effective with discharges occurring on or after the date the MAC receives the complete application.
- (v) If a hospital that is classified as an MDH under §412.108 applies for classification as a sole community hospital because its status under the MDH program expires with the expiration of the MDH program, and that hospital's sole community hospital status is approved, the effective date of approval of sole community hospital status is the day following the expiration date of the MDH program if the hospital—
- (A) Applies for classification as a sole community hospital prior to 30 days before the expiration of the MDH program; and
- (B) Requests that sole community hospital status be effective with the expiration of the MDH program.<sup>45</sup>

Not specific to SCH status, but nonetheless applicable, 42 C.F.R. § 424.516(e) (2019) specifies that providers:

[M]ust report to CMS the following information within the specified timeframes:

- (1) Within 30 days for a change of ownership or control, including changes in authorized official(s) or delegated official(s)

### *C. Additional Guidance*

When establishing these criteria, the Secretary discussed what constitutes a “complete” application for SCH status:

**A complete application includes a request and all supporting documentation needed to demonstrate that the hospital meets criteria for SCH status as of the date of application**, which includes documentation of rural reclassification in the case of a geographically urban hospital. We stated in the proposed rule that for an application to be complete, all criteria must be met as of the date CMS receives the SCH application, but, similar to above, we are clarifying in this final rule and revising this preamble discussion to reflect that **all criteria must be met as of the date the MAC receives the SCH application**, because the MAC, and not CMS, receives SCH applications.

\*\*\*

**In the interest of a clear and consistent policy, we proposed that this change in the SCH effective date would also apply for hospitals not reclassifying as rural under § 412.103**, such as geographically rural hospitals obtaining SCH status. We stated that we believe these proposals to update the regulations at § 412.92 to

<sup>45</sup> (Bold and underline emphasis added). The Board observes that the classification procedures for St. Charles Bend's Second Application and its effective date are outlined in the same version of 42 C.F.R. § 412.92(b) (2020).

provide an effective date for SCH status that is consistent with the effective date for rural reclassification under § 412.103 would benefit hospitals by minimizing any payment disadvantage caused by the lag between the effective date of rural reclassification and the effective date of SCH status. We also stated that we believe this proposal to align the SCH effective date with the § 412.103 effective date supports agency efforts to reduce regulatory burden because it would provide for a more uniform policy.

\*\*\*

After consideration of the public comments we received, we are finalizing our proposed changes to § 412.92(b)(2)(i) and (b)(2)(iv), with modification, so that for applications received on or after October 1, 2018, the effective date for SCH classification and for the payment adjustment is the date that the MAC, rather than CMS, receives the complete SCH application.<sup>46</sup>

Section 2810 of the Provider Reimbursement Manual Part 1 (“PRM 15-1”) provides guidance on approval of SCH classification:

C. Approval of SCH Classification.--The contractor reviews the documentation submitted by the requesting hospital. If the request is incomplete, the contractor contacts the hospital to obtain additional information. Once all the necessary data have been obtained, the contractor forwards the completed package to the appropriate CMS Regional Office with its recommendation for further action.

The CMS Regional Office makes the final determination on the hospital’s request and responds in writing to the contractor. The hospital receives notification of the decision from its contractor. For applications received on or before September 30, 2018, SCH status becomes effective for discharges occurring 30 days after the date of CMS approval except as provided in 42 CFR 412.92(b)(2)(v). **For applications received on or after October 1, 2018, SCH status is effective as of the date the MAC receives the complete application**, except as provided in 42 CFR 412.92(b)(2)(v). **There are no retroactive effective dates on SCH designations** other than requests granted by a court order or PRRB decision.

Once a hospital has been designated as an SCH, it retains that classification indefinitely unless there is a change in the circumstances under which the classification was approved suggesting a need for reevaluation or the hospital requests its SCH classification be cancelled.<sup>47</sup>

<sup>46</sup> 83 Fed. Reg. 41144 at 41430-41431 (Aug. 17, 2018) (emphasis added).

<sup>47</sup> PRM 15-1 § 2810 (2018) (copy at Ex. P-22 (Excerpt from Provider Reimbursement Manual Section 2810 A-C (2018))). (Emphasis added).

#### ***D. Burden of Proof and Standard of Review***

A Board decision must include findings of fact and conclusions of law that “the provider carried its burden of production of evidence and burden of proof by establishing, by a preponderance of the evidence, that the provider is entitled to relief on the merits of the matter at issue.”<sup>48</sup> Additionally, “[a] decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the [Medicare contractor] and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole.”<sup>49</sup> In *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 230 (1938), the U.S. Supreme Court held, “[s]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>50</sup> Accordingly, in an appeal before the Board, a provider must prove by a preponderance of substantial, relevant evidence that it is entitled to the relief sought. And, while the provider has the burden of proof, the Medicare contractor must “[e]nsure that the evidence it considered in making its determination . . . is included in the record.”<sup>51</sup> Further the “Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.”<sup>52</sup>

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

Pursuant to 42 C.F.R. § 412.92(b), the proper steps for a hospital to apply for SCH status and rural reclassification are: 1) the hospital submits a request for reclassification to the MAC; 2) the MAC reviews the request and makes recommendations to CMS; and 3) CMS reviews the request and recommendations and communicates its decision to the MAC. The date the MAC receives the *complete application* is the date a reclassification is effective.<sup>53</sup>

St. Charles Bend submitted its request for reclassification (the Original Application) to the Medicare Contractor on February 15, 2022. The Medicare Contractor reviewed the Original Application and on March 17, 2022 made its recommendation to CMS that “upon the CMS approval of the merger/acquisition of 38-0040 into 38-0047,” St. Charles Bend would meet the SCH requirements and should be approved.<sup>54</sup> The Medicare Contractor’s findings in its review of the request include a statement that the merger/acquisition 855 application was filed on March 9,

<sup>48</sup> 42 C.F.R. § 405.1871(a)(3).

<sup>49</sup> 42 U.S.C. § 1395oo(d). This statutory provision further confirms that: “[t]he Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.” *See also* 42 C.F.R. § 405.1869(a).

<sup>50</sup> *See also Pomona Valley Hosp. Med. Ctr. v. Becerra*, 82 F.4th 1252, 1258-59 (D.C. Cir. 2023).

<sup>51</sup> 42 C.F.R. § 405.1853(a)(3).

<sup>52</sup> 42 C.F.R. § 405.1867.

<sup>53</sup> *See also* 83 Fed. Reg. 41430. “[B]ecause the MAC receives SCH applications and not CMS, we are clarifying in this final rule that under our policy, as finalized below, ***the effective date is the date that the MAC receives the complete application***. We have revised our finalized regulatory text and this preamble throughout to reflect that the MAC, and not CMS, receives the SCH application. ***A complete application includes a request and all supporting documentation*** needed to demonstrate that the hospital meets criteria for SCH status ***as of the date of application***, which includes documentation of rural reclassification in the case of a geographically urban hospital. [...] For example, a hospital applying for SCH status on the basis of a § 412.103 rural reclassification must submit its § 412.103 application no later than its SCH application in order to be considered rural as of the date the MAC receives the SCH application.” (emphasis added).

<sup>54</sup> Ex. C-4.

2022 and “[o]nce approved, the expected effective date will be 2/15/22.”<sup>55</sup> The Conclusion of the review states that “[t]he SCH status review relies on the formal authorization of the Merger/Acquisition of 38-0040 into 38-0047, *which is currently pending.*”<sup>56</sup>

### **1. The Original Application Was Not Complete**

CMS reviewed the request and recommendation and, on April 15, 2022, denied SCH status. CMS made its decision because it had not received a complete application from the State Agency.<sup>57</sup> Furthermore, CMS denied the rural reclassification because the hospital did not meet the reclassification eligibility requirements of 42 C.F.R. § 412.103(a)(3), that is, qualification as an SCH if the hospital were located in a rural area.<sup>58</sup>

St. Charles Bend argues that CMS’ “interpretation that Provider’s original SCH application was not complete” was “erroneous.”<sup>59</sup> St. Charles Bend also argues that the merger of St. Charles Health System’s facilities did not constitute a Medicare-defined change of ownership (CHOW), did not need third-party approval, and implying that the Plan of Merger and 855 filings were sufficient documentation.<sup>60</sup> Believing the missing CMS Form 1539 to be the basis for denial, St. Charles Bend maintains it was neither authorized nor required to obtain CMS Form 1539 from the Oregon Health Authority (“OHA”), and argues that “CMS’ 2021 Program Memorandum assigns all Form 1539-related obligations to CMS, the MAC and the State Agency, not the Provider.”<sup>61</sup> The Medicare Contractor counters that it was St. Charles Bend’s responsibility to submit a **complete** application, which requires a provider to provide adequate documentation – such as Form 1539 – to support its application for SCH status.<sup>62</sup> Additionally, the Medicare Contractor argues that a complete application “includes documentation of rural reclassification in the case of a geographically urban hospital.”<sup>63</sup> The Medicare Contractor further argues, and the Board agrees, that the cited 2021 Program Memorandum *was not applicable to hospitals* at the time in question:

The SOP identifies processing instructions and highlights the applicability of all providers/suppliers impacted which will be transitioned, **this process will commence with Skilled Nursing Facilities (SNFs) on January 3, 2022, and the remaining providers/suppliers at a later time in 2022.** The SOP also includes the SNF addendum which offers additional guidance for the transition actions specifically related to SNFs. This guidance

---

<sup>55</sup> Ex. C-4 at C0017.

<sup>56</sup> *Id.*

<sup>57</sup> See Ex. P-13 at SCBFPP0143 (CMS Letter to Medicare Contractor Denying SCH Status).

<sup>58</sup> See Ex. P-14 (CMS Letter to Provider Denying Urban to Rural Reclassification).

<sup>59</sup> Provider’s FPP at SCBFPP0004.

<sup>60</sup> See *Id.* at SCBFPP0006, SCBFPP0012, and the Statement of Issue included in Ex. P-1.

<sup>61</sup> *Id.* at SCBFPP0012 referring to Ex. P-21 (CMS Program Memorandum 22-02-ALL).

<sup>62</sup> Medicare Contractor’s FPP at 8-10.

<sup>63</sup> *Id.* at 9, *citing* 42 C.F.R. §§ 413.24(c) (“Adequate cost information must be obtained from the provider’s records to support payments made for services furnished to beneficiaries.”) and 412.103(b) (requiring rural reclassification applications to be complete, meaning “it contains an explanation of how the hospital meets the condition that constitutes the basis of the request for reclassification . . . including data and documentation necessary to support the request.”).

<sup>63</sup> 83 Fed. Reg. 41144 at 41430 (Aug. 17, 2018).

applies to applications received or recommendations for approval or denials made on or after January 3, 2022.<sup>64</sup>

CMS did not make these processing instructions applicable to hospitals until November 7, 2022.<sup>65</sup> St. Charles Bend argues that the Form 1539 merely documented “the State Agency’s processing of the Provider’s 855A filings that effectuated the CCN combination.”<sup>66</sup> However; the Original Application shows that St. Charles Redmond had not, *at the time of the application*, actually effectuated the assignment of its provider agreement to St. Charles Bend. The Original Application states:

The Hospital (38-0047) and Redmond Hospital (38-0040) **will file** the appropriate Medicare enrollment updates on Form 855A (or via PECOS) **to effectuate a provider-number acquisition via merger** with the Hospital accepting automatic assignment of the Redmond Hospital provider agreement, as described above, within 30 days as required by 42 C.F.R. § 424.516. . . . Excerpts of the Form 855A forms **that will be filed** are attached as Exhibit 8.<sup>67</sup>

In making its argument, St. Charles Bend overlooks that its 855A filings were not submitted via the PECOS system until **March 9, 2022**, which was three weeks after the Original Application was filed with the Medicare Contractor on February 15, 2022.<sup>68</sup> Submitting 855A forms that have not been filed in PECOS to the Medicare Contractor, or to CMS, as part of a separate SCH status application is not the appropriate manner in which those forms must be filed. There was no guarantee that the actual filing, in PECOS, would be what was shown on the “Excerpts” included with the SCH application. As such, the Board finds that the Original Application was not a *complete application*.

## **2. The 2023 Rulemaking Does Not Apply**

St. Charles Bend also argues that in CMS’ 2023 rulemaking, it acknowledged “the injustice of delaying SCH status while an application is being processed following CMS’ approval of a merger” and implemented regulations to remedy the issue.<sup>69</sup> St. Charles Bend states that its original SCH and Rural Reclassification applications complied with these new regulations, but “CMS refused to apply the amended regulation . . . to applications submitted prior to October 1, 2023.”<sup>70</sup>

One year after St. Charles Bend submitted its SCH application, CMS amended 42 C.F.R. § 412.92(b) in the Final Rule effective October 1, 2023, changing the effective date for SCH

<sup>64</sup> Ex. P-21 at SCBFPP0296 (emphasis in original). *See also id.* at SCBFPP0301 (“The first segment will commence on January 3, 2022, for Skilled Nursing Facilities (SHFs). CMS will release subsequent provider/supplier types addendums at a later time.”).

<sup>65</sup> *See* “REVISED: Transitioning Certification Functions for Changes of Ownership, Administrative Changes, and Initial Enrollment Performed by the SOG Locations” at 2, available at <https://www.cms.gov/files/document/admin-info-24-22-all-revised-8-23-24.pdf> (last accessed March 27, 2026).

<sup>66</sup> Provider FPP at SCBFPP0012.

<sup>67</sup> Ex. P-10 at SCBFPP0069 (emphasis added).

<sup>68</sup> *See* Ex. P-17 at SCBFPP0180, discussed *supra* at footnote 33.

<sup>69</sup> Provider FPP at SCBFPP011.

<sup>70</sup> *Id.* at SCBFPP0016.

applications that depend on a merger. Specifically, the Secretary added 42 C.F.R. § 412.92(b)(2)(vi), which reads:

(vi) *For applications received on or after October 1, 2023*, where eligibility for sole community hospital classification is dependent on the hospital's merger with another hospital, sole community hospital status is effective as of the effective date of the approved merger if, and only if, the date that the Medicare administrative contractor (MAC) receives the complete application is within 90 days of CMS' written notification to the hospital of the approval of the merger.<sup>71</sup>

When updating the regulation, the Secretary recognized that, [f]or some hospitals, eligibility for SCH classification may depend on the hospital's merger with a nearby 'like hospital' as defined in § 412.92(c)(2) and meeting other criteria at § 412.92(a). The merger allows the two hospitals involved to operate under a single provider agreement.<sup>72</sup>

The Secretary also describes a scenario similar to the instant case, where the applicant hospital was not eligible for SCH classification due to its proximity to a nearby like hospital. When the applicant hospital subsequently merges with the nearby like hospital, it is potentially eligible for SCH classification.<sup>73</sup>

In reference to such a scenario, the Secretary indicated:

If an SCH application is approved, **under current policy**, the effective date of the SCH classification is the date the MAC receives the complete application. In situations where SCH classification is contingent on a merger, **a hospital is not considered to have submitted a complete application to the MAC unless the application contains the notification that the merger was approved**.<sup>74</sup>

The Secretary specifically acknowledged the issue presented in this appeal when the current [pre-2023] policy's approval criteria and effective dates were applied:

We have heard concerns that in these situations the time difference between the effective date of the hospital merger, which may be retroactive, and the effective date of the SCH status, which is based on the date the complete application is received by the MAC, including the merger approval, may be problematic for hospitals because they cannot benefit from the special payment

---

<sup>71</sup> (Bold and italics emphasis added).

<sup>72</sup> 88 Fed. Reg. 58640, 59038 (Aug. 28, 2023) (footnotes omitted).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* (Bold and underline emphasis added).

protections that are afforded to SCHs until the effective date of the SCH classification.<sup>75</sup>

As a result of the 2023 Final Rule, for applications received on or after October 1, 2023, SCH status is “effective as of the effective date of the approved merger if the MAC receives the complete application within 90 days of CMS’ written notification to the hospital of the approval of the merger.”<sup>76</sup> The Secretary notes that this timeframe “provide[s] sufficient time for a hospital to submit a complete SCH application, while addressing the concerns, as previously discussed, that merger approval may be delayed for reasons beyond a hospital’s control.”<sup>77</sup> The Secretary did not modify any SCH classification requirements or what constitutes a “complete application” for SCH classification, which still requires documentation of the hospital’s merger approval.<sup>78</sup> The Secretary reiterated that this requirement conformed with their previous policy, stating:

[W]e continue to believe that our current approach in determining the effective date for SCH classification where the SCH application is contingent on a hospital merger is reasonable.<sup>79</sup>

Some commenters requested that CMS apply this new provision retroactively or to “similar situations for which the parties have preserved appeal rights over the effective date determination for an SCH approval.”<sup>80</sup> However, the Secretary specifically rejected the request, stating:

We appreciate the commenters’ ideas and suggestions. However, we do not agree that we should apply our proposed changes retroactively. The IPPS is a prospective system and, we generally make changes to IPPS regulations effective prospectively based on the date of discharge or the start of a cost reporting period within a certain Federal fiscal year. Under that approach, we believe that applying this change for a merger that already took place may constitute retroactive rulemaking—and would be a departure from our usual practice in IPPS—regardless of whether there’s a pending administrative appeal. We believe that following our usual approach and adopting the new effective date policies for SCH and rural reclassification applications where SCH eligibility is dependent on a hospital merger that are received on or after October 1, 2023 will allow for the most equitable application

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *See Id.*, (“The SCH application must, therefore, include all required documentation that would constitute a “complete application” including documentation of the hospital’s merger approval.”)

<sup>79</sup> *Id.* (Bold and underline emphasis added).

<sup>80</sup> “Comments On The Hospital Inpatient Prospective Payment Systems...” Hall Render Killian Heath & Lyman (June 7, 2023) at 2, available at <https://www.regulations.gov/comment/CMS-2023-0057-1897> (last accessed Mar. 27, 2026). See also, “RE: CMS-1785-P, Medicare Program...” Ohio Hospital Association (June 9, 2023) at 17, available at <https://www.regulations.gov/comment/CMS-2023-0057-2949> (last accessed Mar. 27, 2026), stating “we ask that CMS also apply this proposal for those SCHs who were seeking their status during the COVID-19 pandemic and were impacted by this time difference.”

among all IPPS providers seeking to qualify for SCH classification and rural reclassification (as applicable).<sup>81</sup>

The Secretary also responded to requests for clarification on what constitutes a “complete application” for SCH reclassification.<sup>82</sup> The Secretary reiterated that this definition had not changed, and directed the commenters to Chapter 28 of the PRM, § 2810.B for guidance, stating:

In addition to the documentation list in the PRM, for an SCH application where eligibility for SCH classification is dependent on a hospital merger, that documentation **must include confirmation that the merger has been approved by CMS** (for example, a CMS tie-in notice recognizing the two CCNs as merged).<sup>83</sup>

The 2023 revised regulation does not apply because CMS received the Original Application *before* October 1, 2023. Although St. Charles Bend claims compliance with the new regulations, it was not eligible for SCH status at the time the application was submitted, as its hospital merger was not yet approved. The Board finds that, even if the 2023 regulation were applicable, St. Charles Bend would not qualify for SCH status as of February 15, 2022.

### **3. Loper Bright Does Not Apply**

Finally, St. Charles Bend contends that even if the Board finds CMS’ interpretation of 42 C.F.R. § 412.92(b)(2)(ii)(C) to require the Form 1539 was reasonable, reasonableness is not sufficient since *Loper Bright Enterprises v. Raimondo* requires the “best meaning” of a statute to be applied.<sup>84</sup> St. Charles Bend views the October 1, 2023 regulatory change as illustrative of a concession that CMS’ prior interpretation of the law was not the “best meaning” and avers the new regulation should be applied in the instant case.<sup>85</sup> The Medicare Contractor argues that *Loper Bright* is not relevant to this appeal by stating:

The principle, known as *Chevron* deference, gave the benefit of the doubt to the Agency as long as its interpretation had a rational basis. *Loper Bright* challenged Courts in the future to identify the best possible interpretation. *Loper Bright* did not remotely involve a Medicare reimbursement problem. To the [Medicare Contractor’s] knowledge, no Federal Court has issued an opinion applying the *Loper Bright* decision to a reimbursement dispute between a MAC and a Medicare provider. The Board taking *Loper Bright* into account in its decision in this appeal would represent a usurpation of the role of the Federal Courts in disputes such as this.

<sup>81</sup> 88 Fed. Reg. at 59039.

<sup>82</sup> See, e.g., “RE: CMS-1785-P, Medicare Program...” Ohio Hospital Association (June 9, 2023) at 17, available at <https://www.regulations.gov/comment/CMS-2023-0057-2949> (last accessed 03/09/2026), stating “We also ask that in finalizing the proposal, the agency clarifies its current policy of ‘complete’ applications in accordance to the regulation for cases contingent on a merger.”

<sup>83</sup> 88 Fed. Reg. at 59039. (Bold and underline emphasis added).

<sup>84</sup> See Provider’s Final Position Paper at SCBFPP0010 - SCBFPP0011, citing *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244, 603 U.S. 369, 2024 WL 3208360 (U.S. Dist.Col., 2024).

<sup>85</sup> *Id.* at SCBFPP0011. See also *id.* at SCBFPP0014-0017.

The Board is respectfully requested to ignore the Provider's *Loper Bright* argument.<sup>86</sup>

The Board finds that St. Charles Bend's *Loper Bright* argument is misplaced, but not for the reason cited by the Medicare Contractor: the applicable law is unambiguous and needs no interpretation. The plain language of the regulation is clear. To meet the criteria for SCH status, St. Charles Bend was required to demonstrate, ***as of the date the Medicare Contractor received the SCH application***, that there were no like hospitals within 35 miles.<sup>87</sup> It is undisputed that prior to the merger of St. Charles Bend and St. Charles Redmond the two hospitals were "like" hospitals that were only 17.8 miles apart.<sup>88</sup>

Moreover, pursuant to 42 C.F.R. § 405.1867, the Board "must comply with all the provisions of Title XVIII of the Act and regulations issued thereunder, as well as CMS Rulings issued under the authority of the Administrator . . . the Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS."<sup>89</sup> CMS' denial of St. Charles Bend's Original SCH Application was based upon the law in effect at that time. St. Charles Bend's request that the Board apply the new regulation, retroactively, is outside of the Board's scope of authority.<sup>90</sup>

\* \* \*

In summary, the original SCH application submitted on February 15, 2022, was required to be complete and include evidence that, ***as of that date***, there were no like hospitals within 35 miles of St. Charles Bend. The parties have agreed that the combination of St. Charles Bend and St. Charles Redmond's provider numbers took effect on February 15, 2022.<sup>91</sup> However, as previously noted, the Medicare enrollment updates required to effectuate a provider-number acquisition via merger were not filed until **March 9, 2022**.<sup>92</sup> Therefore, as of February 15, 2022, St. Charles Bend *had not* finalized its acquisition of St. Charles Redmond's provider number. As a result, ***at the time the Medicare Contractor received the original SCH application***, there

---

<sup>86</sup> Medicare Contractor's FPP at 10-11, *referencing Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 104 S.Ct. 2778, 467 U.S. 837 (U.S. Dist. Col., 1984).

<sup>87</sup> 42 U.S.C. § 1395ww(d)(5)(D)(iii)(I); 42 C.F.R. § 412.92(a).

<sup>88</sup> See Ex. P-13 at SCBFPP0143.

<sup>89</sup> When taking an appealed matter under consideration, the Board must comply with applicable regulations in effect at the time of the actions taken by the parties and the agency. In this case, the regulations applicable to St. Charles Bend's Original Application were those in effect as of February 15, 2022, which went into effect on October 1, 2020.

<sup>90</sup> Even if the Board had authority to retroactively apply the regulation, St. Charles Bend still would not have qualified for SCH status at the time of its Original Application. The fact remains that, at the time of its Original Application on February 15, 2022, the merger *had not been approved* and *was not approved* until nearly three months later. (See discussion *supra* at page 13, The Original Application Was Not Complete.) The new regulation (42 C.F.R. § 412.92(b)(vi)) allows for SCH status designation effective on the date of the merger "if, and only if," the Medicare contractor receives a complete application within 90 days of the approved merger. St. Charles Bend is attempting to construe the "within 90 days" timeframe to go backwards to capture its February 15, 2022 application, still ignoring the fact that the merger approval is a condition precedent for a complete application.

<sup>91</sup> Stip. at ¶ 8.

<sup>92</sup> See Ex. P-17 at SCBFPP0180. See also Ex. P-16 at SCBFPP0158 and Ex. P-10 at SCBFPP0069 ("The Hospital (38-0047) and Redmond Hospital (38-0040) **will file** the appropriate Medicare enrollment updates on Form 855A (or via PECOS) **to effectuate a provider-number acquisition via merger** with the Hospital accepting automatic assignment of the Redmond Hospital provider agreement, as described above, within 30 days . . . ") (Bold and underline emphasis added).

remained two “like hospitals” with unique provider numbers within 35 miles of each other. Indeed, the Medicare Contractor’s recommendation to approve St. Charles Bend’s SCH status was dependent upon CMS authorizing its merger with St. Charles Redmond, which was still pending.<sup>93</sup> While the Medicare Contractor is responsible for recommending approval for SCH status, CMS conducts an independent review of an application and has the ultimate authority to approve or disapprove.<sup>94</sup> CMS did not approve the merger until **May 12, 2022**.<sup>95</sup> Regardless of CMS’ subsequent approval of the combination, the regulations establish SCH eligibility based on the date a complete application is received by the Medicare Contractor, which is unaffected by a retroactive effective date of a merger or provider number acquisition.<sup>96</sup> St. Charles Bend has not proven by a preponderance of substantial, relevant evidence that it is entitled to the relief sought.

Based on the foregoing, the Board finds the denial of SCH status was appropriate. Furthermore, the Board finds that St. Charles Bend was not an SCH as of February 15, 2022 and therefore, CMS’ denial of the Provider’s rural reclassification request was proper.

**DECISION:**

After considering Medicare law and regulations, the arguments presented, and the evidence admitted, the Board finds that CMS properly denied the Provider’s February 15, 2022 applications for SCH status and rural reclassification.

**BOARD MEMBERS PARTICIPATING:**

Kevin D. Smith, CPA  
Ratina Kelly, CPA  
Nicole E. Musgrave, Esq.

**FOR THE BOARD:**

4/8/2026

**X** Kevin D. Smith, CPA

---

Kevin D. Smith, CPA  
Board Chair  
Signed by: Kevin D. Smith -A

<sup>93</sup> Ex. P-12 at SCBFPP0142 (“The SCH status review relies on the formal CMS authorization of the Merger/Acquisition of 38-0040 into 38-0047, which is currently pending.”).

<sup>94</sup> 42 C.F.R. § 412.92(b)(1)(iv)-(v).

<sup>95</sup> See Ex. P-19 at SCBFPP0290.

<sup>96</sup> See also PRM 15-1, § 2810(C) (“For applications received on or after October 1, 2018, SCH status is effective as of the date the MAC receives the complete application . . . There are no retroactive effective dates on SCH designations other than requests granted by a court order or PRRB decision.”).