

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

*Decision of the Administrator*

<b>IN THE CASE OF:</b>	*	
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<b>Nassau University Medical Center</b>	*	<b>MGCRB Case No. 25C0400</b>
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<b>Provider No. 33-0027</b>	*	<b>Dated: January 23, 20024</b>
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This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the decision entered by the Medicare Geographic Classification Review Board (MGCRB). The review is during the time period specified in 42 C.F.R. § 412.278. The Hospital requested that the Administrator reverse the MGCRB’s denial of its reclassification application. Accordingly, this case is now before the Administrator for final agency review.

ISSUE AND MGCRB DECISION

The issue involves whether the MGCRB properly denied the Hospital’s primary request to reclassify to New York – Jersey City – White Plains, (NY-NJ) Core Based Statistical Area (CBSA) for purposes of using the area’s wage index to determine its payment rate under the Medicare inpatient prospective payment system (IPPS) for the Federal Fiscal Years (FFY) 2025 through 2027. The MGCRB found that the Hospital is already reclassified for a 3-year period and submitted an application for reclassification to the same area for either the second or third year of the 3-year period (MGCRB case number 23C0442).

HOSPITAL’S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital stated it had requested reclassification to New York – Jersey City – White Plains, NY-NJ CBSA Code 35614 (NYC) because it had withdrawn its approval for MGCRB Case No. 23C0442. The Hospital further clarified that the MGCRB’s decision cited to case number 23C0442 which refers to the application that the Hospital submitted on August 31, 2021, to reclassify to NYC for the period spanning FYs 2023 through 2025. The Hospital argued that, while the MGCRB approved that application on January 24, 2022, the Hospital, in accordance with 42 C.F.R. §412.273(c)(1)(ii), timely requested to terminate its application on June 14, 2023. The MGCRB granted that request on June 16, 2023. Thus, the Hospital maintained that it did not in fact have an existing MGCRB reclassification and is not already reclassified to NYC. The Hospital contended that the MGCRB’s decision to deny its current application on the basis that it is already reclassified to NYC was in error, as the Hospital requested to terminate its prior application to reclassify to NYC.

The Hospital acknowledged in its comments that it was aware that the regulations at 42 C.F.R. §412.273(d)(1) provide that when a hospital has terminated an application for reclassification it

“may cancel a withdrawal or termination... in a subsequent year and request the MGCRB to reinstate the wage index reclassification for the remaining fiscal year(s) of the 3-year period.” However, the Hospital argued that there is no rule or regulation that prohibits a hospital from applying for reclassification to an area when it is otherwise eligible to cancel a previously withdrawn or termination application to the same area. The Hospital argued that if CMS interprets its regulations to mean that a hospital cannot apply for reclassification to an area for which it may otherwise cancel a previous withdrawal or termination, because it would be deemed an overlapping classification, the Hospital noted that it has not received fair notice of that interpretation. The Hospital contended that it could not have determined with ascertainable certainty that it was prohibited from applying for reclassification to NYC in lieu of canceling its termination application from the previous year. Moreover, the Hospital argued it could not have known that the only way it could reclassify to NYC in FY 2025 was to cancel its terminated application. It argued that the regulations permit a hospital to reinstate a previously terminated application for reclassification, but they do not prohibit hospitals from instead applying to reclassify to the same area.

The Hospital requested that the Administrator reverse the MGCRB’s decision denying the Hospital’s application for reclassification to NYC for FYs 2025 through 2027, as there is no rule or regulation that forbids hospitals from applying for reclassification to an area when it is otherwise eligible to cancel a previously terminated application to the same area. The Hospital also requested that should the Administrator uphold the MGCRB’s decision denying its application to reclassify to NYC for FYs 2025 through 2027, it should direct the MGCRB to regard the Hospital’s application as a request to cancel the termination of its previous application for FYs 2023 through 2025 (MGCRB case number 23C0442).

### DISCUSSION

The entire record furnished by the MGCRB has been examined, including any correspondence, position papers, exhibits, and subsequent submissions. All comments received timely are included in the record and have been considered.

Section 1886(d)(10)(C)(iii)(II) of the Social Security Act and the Medicare regulations at 42 C.F.R. § 412.278 provide for the CMS Administrator’s review of the MGCRB decisions. In exercising its authority under § 1886(d)(10) of the Act, the MGCRB must comply with all of the provisions of Title XVIII of the Act and the regulations issued there under, including the regulations at 42 C.F.R. § 412.230, *et seq.* Likewise, the regulations promulgated by the Secretary establishing procedures and criteria for the MGCRB are binding on the agency and on the Administrator in reviewing MGCRB decisions.

As a general matter, the regulation at 42 C.F.R. §412.230(a)(5) (iii) provides that:

Beginning with wage index reclassification applications for FY 2003, if a hospital is already reclassified to a given geographic area for wage index purposes for a 3-year period, and submits an application for reclassification to the same area for

either the second or third year of the 3-year period, that application will not be approved.

With respect to a request to cancel a withdrawal or terminate and reinstate the reclassification, 42 C.F.R. §412.273 states that the “MGCRB allows a hospital, or group of hospitals, *to withdraw its application* or to terminate an already existing 3-year reclassification.”

The regulations further outline the processes that allow for reapplications, cancellations, and withdrawals, as provided below:

(d) Reapplication within the approved 3-year period, cancellations of terminations and withdrawals, and prohibition on overlapping reclassification approvals –

- (1) **Cancellations or terminations or withdrawals.** Subject to the provisions of this section, a hospital (or group of hospitals) may cancel a withdrawal or termination in a subsequent year that request the MGCRB to reinstate the wage index reclassification for the remaining fiscal year(s) of the 3-year period. (Withdrawals may be cancelled only in cases where the MGCRB issued a decision on the geographic reclassification request.)
- (2) **Timing and process of cancellation request.** Cancellation requests must be received in writing by the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year, as specified in §412.256(a)(2).
- (3) **Reapplications.** A hospital may apply for reclassification to a different area (that is, an area different from the one to which it was originally reclassified for the 3-year period). If the application is approved, the reclassification will be effective for 3 years. Once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, regardless of whether the withdrawal or termination request is made within 3 years from the date of the withdrawal or termination.
- (4) **Termination of existing 3-year reclassification.** In the case in which a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be termination when a second 3-year wage index reclassification goes into effect for payments for discharge on or after the following October 1.

In reference to the reinstatement of a prior reclassification, the current MGCRB Rule 11.5 published on July 15, 2021 states:

### 11.5 Cancellations of Withdrawals and Terminations (Reinstatements)

A hospital (or group of hospitals) may cancel a withdrawal or termination in a subsequent year and request the MGCRB to reinstate the wage index reclassification for the remaining fiscal year(s) of the 3-year period. (Withdrawals may be cancelled only in cases where the MGCRB issued a decision on the geographic reclassification request.)

Reinstatement requests must be received by the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year, as specified in 42 C.F.R. §412.256(a)(2).

In this case the Hospital requested reclassification to New York – Jersey City – White Plains – NY-NJ CBSA No. 35614 for FFYs 2025 through 2027. The Hospital had an approved reclassified for a 3-year period for the same area for either the second or third year of the 3-year period. The Hospital had been reclassified with MGCRB Case No. 23C0442 for FFYs 2023 through 2025 by notice dated January 24, 2022. In accordance with the regulations at 42 C.F.R. §412.273(c)(1)(ii), the Hospital timely requested withdrawal or termination of this classification and it was approved on June 16, 2023. The Hospital did not request cancellation of MGCRB Case Number 23C0442. Instead, the Hospital submitted a new reclassification request for the remaining period of the 3-year period.

CMS has adopted a policy that prohibits overlapping reclassifications and explained in the inpatient prospective payment system final rule for FY 2002, an overlapping reclassification occurs when “a hospital that is reclassified to an area... subsequently applies for reclassification to the same area... for a fiscal year that would be within the 3-year period.”<sup>1</sup>

For example, if a hospital is reclassified for purposes of the wage index to Area A for FY 2002, is approved to receive Area A’s wage index for 3 years (FY 2002, 2003 and 2004), and reapplies to be reclassified to Area A for FY 2003, 2004, and 2005 (3 years) for purposes of the wage index the hospital would not be permitted to receive area A’s wage index for FY 2005 as a result of the reapplication.<sup>2</sup>

CMS explained that if the hospital wishes to extend the FY 2002 3-year reclassification for fiscal years beyond FY 2004, it would have to apply for reclassification for FY 2005. Moreover, later, CMS noted that “if a hospital applied for reclassification to Area A for purposes of the wage index for FY 2002, but wished to withdraws its application... such a withdrawal, if effective, means that the hospital would not be reclassified to Area A for purposes of the wage index for FY 2002 (and would not receive continued reclassifications for FYs 2003 and 2004), **unless the hospital subsequently cancels its withdrawal.**”<sup>3</sup> [Emphasis added].

CMS further clarified this same policy in the August 22, 2007 Federal Register, on reinstating reclassifications. It stated that under the regulations at §412.273(a) “once a withdrawal or termination has been made, the hospital or group of hospitals will not be reclassified for purpose

<sup>1</sup> 66 Fed. Reg. at 39887 (August 1, 2001).

<sup>2</sup> *Id.*

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

of the wage index to the same area for that year.”<sup>4</sup> It further noted that “the hospital also will not be reclassified to the withdrawn or terminated reclassification area in the subsequent fiscal years **unless the hospital subsequently cancels its withdrawal or termination.**”<sup>5</sup> [Emphasis added]. This clarification makes it clear that if a hospital wishes to be reclassified to the withdrawn or terminated reclassification area for the remaining fiscal years, it needed to cancel its withdrawal or termination to prevent overlapping reclassifications from occurring. CMS further clarified that “hospitals are permitted to apply to a **different** area than the previously approved reclassification but, as stated in §412.273(b)(2), once they accept a newly approved reclassification, a previously terminated and reinstated 3-year reclassification would be permanently terminated.”<sup>6</sup> Thus, until a Hospital applies for a different area, or for FFYs not covered by its initially terminated or withdrawn reclassification, the only way for it to be reclassified in the subsequent fiscal years is for the hospital to cancel its withdrawal or termination. Contrary to the Hospital’s claims, the policy and procedures are well established and have been successfully followed. Failure to do so in this case was due to the Hospital’s misinterpretation of the process.

After review of the record and the above law, regulations, and published notice, the Administrator finds that the MGCRB properly denied the Hospital’s request for reclassification to CBSA Code 35614 - New York – Jersey City – White Plains – NY-NJ for MGCRB Case No. 25C0400. However, the Administrator agrees to consider the timely application filing, made concurrent with the timeframe for cancellation of withdrawals and terminations, be treated as a request to cancel and reinstate the approval of the designation to CBSA Code 35614 - New York – Jersey City – White Plains – NY-NJ for MGCRB Case No. 23C0442. Therefore, the Administrator reinstates the approval of the designation to CBSA Code 35614 - New York – Jersey City – White Plains – NY-NJ for MGCRB Case No. 23C0442.

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<sup>4</sup> 72 Fed. Reg. at 47333 (August 22, 2007).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 47334.

DECISION

The Administrator affirms the MGCRB’s decision for MGCRB Case No. 25C0400 in this case and reinstates the decision of MGCRB Case No. 23C0442.

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

Date: April 19, 2024

/s/

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Jonathan Blum  
Principal Deputy Administrator  
Centers for Medicare & Medicaid Services