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

Decision of the Administrator

IN THE CASE OF:	*	**MGCRB Case No. 23C0220**
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Nash General Hospital	*	
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Provider No. 34-0147	*	**Date: January 24, 2022**
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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 90-day period in § 1886(d)(10) of the Social Security Act (Act), as amended. 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 request to reclassify to the urban Raleigh-Cary, North Carolina (NC) 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 (FFYs) 2023 through 2025. The MGCRB found that the Hospital was not a sole community hospital (SCH) or a rural referral center (RRC) as of the date of the MGCRB's review in order to be redesignated under 42 C.F.R. § 412.230(a)(3).

HOSPITAL'S COMMENTS

The Hospital commented, requesting review by the Administrator. The Hospital noted that there is a clearly stated exception to having RRC status as of the date of the MGCRB review, specifically, if a hospital lost RRC status due to a change in the OMB treatment. The Hospital stated that it is located in Nash County, NC, and that the county's designation from rural NC to urban was why the Hospital lost RRC status. As the OMG changed that status of the hospital's area from rural to urban with the addition of the Rocky Mount, NC urban area, the Hospital argued that the correct treatment was to treat them as an RRC for proximity and wage comparisons. The Hospital pointed to 42 C.F.R. § 412.230(a)(3)(iii), which states that if a SCH or RRC loses its special status as a result of redesignation, the hospital is considered to retain its special status for the purpose of applicability of the special rules in 412.230(a)(3). The Hospital further argued that the MGCRB didn't take into consideration the fact that it was previously an RRC, and thus should be exempt from the 106/108 percent of the AHW of hospital in the area in which the hospital is located criteria, and only has to meet the 82 percent of the AHW of hospitals in the area to which it seeks redesignation criteria. Finally, the Hospital noted that it has been approved for

reclassification to the Raleigh-Cary, NC CBSA for every year since FFY 2005, and is not aware of any change of circumstance that would cause them to not continue to qualify under the regulations.

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) of the Act provides for the MGCRB to consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year its wage index. Further, § 1886(d)(10)(D)(i)(I) requires the Secretary to publish guidelines for comparing wages, taking into account to the extent the Secretary determines appropriate, occupational mix in the area in which the hospital is classified and the area in which the hospital is applying to be classified."

With respect to MGCRB reclassification, the Medicare regulations at 42 C.F.R. § 412.230 *et seq*., set forth the criteria an individual hospital seeking redesignation to another rural or urban area must meet for purposes of using that area's wage index. Except for sole community hospitals and rural referral centers, which have the option of applying under special access rules, an individual hospital must meet the proximity criteria at 42 C.F.R. § 412.230(a)(2), which states:

> *Proximity*. Except as provided in paragraph (a)(3) of this section, to be redesignated to another rural area or an urban area, a hospital must demonstrate a close proximity to the area to which it seeks redesignation by meeting the criteria in paragraph (b) of this section, and submitting data requested under paragraph (c) of this section..

The regulation at 42 C.F.R. § 412.230(a)(3) provides special access rules for sole community hospitals and rural referral centers, stating:

> *Special rules for sole community hospitals and rural referral centers.* To be redesignated under the special rules in this paragraph, a hospital must be approved as a sole community hospital or a rural referral center as of the date of the MGCRB's review.
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> (i) A hospital that is approved as a rural referral center or a sole community hospital, or both, does not have to demonstrate a close proximity to the area to which it seeks redesignation.
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> (ii) If a hospital that is approved as a rural referral center or a sole community hospital, or both, qualifies for urban redesignation, it is redesignated to the urban area that is closest to the hospital or to the hospital's geographic home area. If the hospital is closer to another rural area than to any urban area, it may seek redesignation to either the closest rural area or the closest urban area.

> (iii) If a sole community hospital or rural referral center loses its special status as a result of redesignation, the hospital is considered to retain its special status for the purpose of applicability of the special rules in paragraph (a)(3) of this section.

The proximity criteria at 42 C.F.R. § 412.230(b) provides that:

> A hospital demonstrates a close proximity with the area to which it seeks redesignation if one of the following conditions applies:
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> (1) The distance from the hospital to the area is no more than 15 miles for an urban hospital and no more than 35 miles for a rural hospital.
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> (2) At least 50 percent of the hospital's employees reside in the area.

In order to demonstrate proximity, 42 C.F.R. § 412.230(c) requires that a hospital submit appropriate data relating to its proximity to an area. To demonstrate proximity to the area, the hospital must provide evidence of the shortest route over improved roads to the area and the distance of that route.

In addition, hospitals must meet certain wage criteria at 42 C.F.R. § 412.230(d)(1) supported by wage data that is consistent 42 C.F.R. § 412.230(d)(2)(ii) in order to be redesignated.

42 C.F.R. § 412.230(d) sets forth the wage criteria which must be met, stating:

> d) *Use of urban or other rural area's wage index*—(1) *Criteria for use of area's wage index.* Except as provided in paragraphs (d)(3) and (d)(4) of this section, to use an area's wage index, a hospital must demonstrate the following:
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> (i) The hospital's incurred wage costs are comparable to hospital wage costs in an urban or other rural area;
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> (ii) The hospital has the necessary geographic relationship as specified in paragraphs (a) and (b) of this section;
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> (iii) One of the following conditions apply:
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> (C) With respect to redesignations for Federal fiscal year 2006 and subsequent years, the hospital's average hourly wage is, in the case of a hospital located in a rural area, at least 106 percent and in the case of a hospital located in an urban area, at least 108 percent of the average hourly wage of all other hospitals in the area in which the hospital is located;
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> iv) One of the following conditions apply:

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(E) With respect to redesignations for fiscal year 2011 and later fiscal years, the hospital's average hourly wage is equal to, in the case of a hospital located in a rural area, at least 82 percent, and in the case of a hospital located in an urban area, at least 84 percent of the average hourly wage of hospitals in the area to which it seeks redesignation.

(2) *Appropriate wage data*. For a wage index change, the hospital must submit appropriate wage data as follows:

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(ii) For redesignations effective beginning FY 2003:

(A) For hospital-specific data, the hospital must provide a weighted 3-year average of its average hourly wages using data from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes. However, for the limited purpose of qualifying for geographic reclassification based on wage data from cost reporting periods beginning prior to FY 2000, a hospital may request that its wage data be revised if the hospital is in an urban area that was subject to the rural floor for the period during which the wage data the hospital wishes to revise were used to calculate its wage index.

(B) For data for other hospitals, the hospital must provide a weighted 3-year average of the average hourly wage in the area in which the hospital is located and a weighted 3-year average of the average hourly wage in the area to which the hospital seeks reclassification. The wage data are taken from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes.

The regulation at 42 C.F.R. § 412.230(d)(3) provides that an exception for hospitals that were "ever" an RRC:

(3) *Rural referral center exceptions.* (i) If a hospital was ever approved as a rural referral center, it does not have to demonstrate that it meets the average hourly wage criterion set forth in paragraph (d)(1)(iii) of this section.

(ii) If a hospital was ever approved as a rural referral center, it is required to meet only the criterion that applies to rural hospitals under paragraph (d)(1)(iv) of this section, regardless of its actual location in an urban or rural area.

Thus, a hospital that was "ever" approved as an RRC does not have to meet the 106/108 percent of the AHW of hospital in the area in which the hospital is located, and only has to meet the 82 percent of the AHW of hospitals in the area to which it seeks redesignation.

In this case, the Hospital is geographically located in Nash County, NC which is part of the urban Rocky Mount, NC CBSA. Prior to 1991, Nash County was part of rural NC. CMS has noted that "we will permit hospitals that previously qualified as an RRC and lost their status due to OMB redesignation of the county in which they are located from rural to urban to be reinstated as an RRC."[1] The Hospital was previously approved as an RRC in 1984. The MGCRB found that the Hospital met all of the criteria for reclassification, except that it was not a SCH or RRC as of the date of the MGCRB's review in order to be redesignated under 42 C.F.R. § 412.230(a)(3).

Th provisions of 42 C.F.R. § 412.230(a)(3) exempt a hospital from certain proximity criteria. The record shows that the Hospital, located in an urban area, requested redesignation under the special access rules. The record shows that the Hospital was grandfathered as an RRC at the time of a letter dated August 31, 2018.[2] The August 21, 2018 letter from the Hospital's Medicare Administrative Contractor stated that:

> I am writing to confirm your hospital was granted Rural Referral Center (RRC) status by the Health Care Financing Administration in 1984. This RRC status continued through 1991. The status changed at a later date when Rocky Mount became classified as an urban area. As the hospital was reinstated as RRC based on the grandfather provision noted below, the hospital is considered to be a RRC. For purposes of the Medicare Geographic Classification Review Board (MGCRB) process Nash Hospital is considered "grandfathered" with RRC status. This was addressed in the Federal Register dated August 1, 2000. Page 47089 of the Federal Register, states "… we will permit hospitals that previously qualified as an RRC and lost their status due to OMB redesignation of the county in which they are located from rural to urban to be reinstated as an RRC" (emphasis added).
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> This grandfathering of RRC status for the Medicare Geographic Classification Review Board process is also addressed in the MGCRB regulation at 42 CFR 412.230(d)(3)(ii). The section entitled "Rural referral center exceptions" states: If a hospital was ever a rural referral center, it is required to meet only the criterion that applies to rural hospitals under paragraph (d) (1) (IV) of this section, regardless of its actual location in an urban or rural area.[3]

The foregoing letter explains that the Hospital had been granted RRC status in 1984. The letter explains that the Hospital lost RRC status due to OMB redesignation of its area to urban. However, the Hospital had been grandfathered as an RRC pursuant to the 2000 rule. The letter does not explicitly state that the Hospital subsequently lost RRC status as a result of MGCRB reclassification. The Hospital explained that it has been reclassified since 2005 to the requested area, which is after the date of the August 1, 2000 *Federal Register* and its grandfathering of RRC status. However, further confusing the matter, is that the Hospital answered no, as to whether it

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[1] 65 Fed. Reg. 47,054, 47,089 (Aug. 1, 2000).
[2] The Hospital was grandfathered in under 42 C.F.R. § 412.230(a)(3)(iii).
[3] *See* Attachment B of the Hospital's Request for Administrator Review.

lost RRC status due to reclassification. This negative answer may have been due to the Hospital conflating that it had also lost (and later reacquired RRC status) because of OMB changes and legislation verses losing RRC status due to the MGCRB reclassification.

In order to have the benefit of the special access rules, a hospital that is no longer an RRC must have lost its RRC status through MGCRB reclassification for example to another urban area. In reviewing this case, the Administrator considered the law and policy for hospitals that reacquire RRC status through grandfathering; the fact this hospital had acquired RRC status in 1985 and lost it due to OMB designations, that the Hospital had been granted grandfathered status by law and that the Hospital subsequently has been reclassified since 2005 to the requested area. Finally, the Hospital is no longer an RRC. While the Medicare contractor letter could have more clearly articulated the Hospital's status, as a former RRC that lost its status both due to OMB changes and due to MGCRB reclassification, the foregoing facts can allow one to reach the conclusion that its reacquired RRC status was lost due to MGCRB reclassification. However, the MGCRB has to process 100s of applications and the Hospital has a responsibility going forward to accurately answer all questions and provide to the MGCRB clear contemporaneous documentation from the Medicare contractor as to its RRC status and, if it is no longer an RRC, the accurately explained reason for the change in status. An updated, contemporaneous Medicare contractor letter must demonstrate that the Hospital meets both the special access exemption and the 106/108 exemption, if the Hospital is choosing to apply under those exemptions. Failure to do so in future applications may lead to the denial of the application. Accordingly, based on the record, the Hospital may be reclassified to the closest area, as provided by 42 C.F.R. § 412.230(a)(3). In addition, because the Hospital was "ever" an RRC, it is exempted from the wage criteria requirement of 412.230(d)(3).

In light of the foregoing and based on the record presented by the Hospital for this reclassification period, the Administrator reverses the MGCRB's decision. Thus, the Hospital qualifies for redesignation to the urban Raleigh-Cary, NC CBSA, for purposes of using that area's wage index to determine its payment rate under the Medicare IPPS for FFYs 2023 through 2025.

DECISION

The Administrator reverses the MGCRB's decision in this case.

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

Date: April 22, 2022

/s/
Jonathan Blum
Principal Deputy Administrator
Centers for Medicare & Medicaid Services