PUBLICATION

CMS Revises Definition of Displaced Residents Counted for Temporary Transfers of GME Cap Slots

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In the fiscal year (FY) 2021 inpatient prospective payment systems (IPPS) final rule, CMS finalized policies to define more accurately "displaced residents" from closing hospitals and programs. By revising this definition, CMS changed its position on residents that may be counted when determining the number of direct graduate medical education (DGME) and indirect graduate medical education (IME) full time equivalent (FTE) resident cap slots (GME cap slots) a closing hospital or program may temporarily transfer to other hospitals that are willing to accept and train the "displaced residents." 85 Fed. Reg. 58432 (Sept. 18, 2021) (FY 2021 IPPS Final Rule).

CMS revised its policies to resolve concerns that residents were being excluded from being considered displaced residents simply because they were not physically present training on the last or next-to-last day before the closure of the hospital or its residency program. CMS also made modifications to the required information that must be submitted to a receiving hospital's Medicare Administrative Contractor (MAC) to request a temporary GME cap increase to train displaced residents.

Background

CMS has longstanding policies permitting the temporary transfer of GME cap slots to incentivize other teaching hospitals to accept residents who have been "displaced" from a residency program or teaching hospital that closes. In this context, CMS defines "closure of a hospital" as a situation in which the hospital terminates its Medicare agreement. 42 C.F.R. § 413.79(h)(1)(i). CMS regulations allow a hospital that assumes the responsibility of training residents who formerly trained at the closing hospital to receive a temporary increase to its GME caps to reflect the additional displaced residents the receiving hospital has agreed to train. To be eligible for such an increase, the receiving hospital must contact its MAC within 60 days after it starts to train the displaced residents to make a request for a temporary GME cap adjustment. In this letter to the MAC, the receiving hospital also has to provide specific information identifying the displaced residents who are coming from the closing hospital, the amount the receiving hospital will exceed its GME caps by training the displaced residents, and the length of time the adjustment is needed (based on the amount of time the receiving hospital will be training the displaced residents to complete their residency programs). 42 C.F.R. § 413.79(h)(2)(ii).

When a closing hospital terminates its Medicare provider number, its IME and DGME caps terminate. As a result, there are no resident FTE caps for a closing hospital to voluntarily agree to reduce. This eliminates the need for a closing hospital to submit a statement agreeing to reduce its caps to facilitate a GME cap slot transfer for displaced residents (this stands in contrast to the requirements for hospitals closing programs, which are explained in more detail below). Ultimately, hospitals that close will have their GME cap slots redistributed through the Section 5506 Closed Hospital Slot Redistribution Program. 42 U.S.C. 1395ww(h)(4)(H)(vi). Training displaced residents from a closing hospital is one among several factors that can help increase other teaching hospitals' likelihood of being awarded redistributed slots.

Teaching hospitals can close programs without the hospital closing. In such circumstances, CMS defines "closure of a hospital residency program" to mean that the hospital ceases to offer training for residents in a particular approved medical residency training program. 42 C.F.R. § 413.79(h)(1)(i). CMS regulations also

allow temporary GME cap slot transfers to hospitals that accept residents displaced from a closing program. In the context of transferring GME cap slots for displaced residents, the main distinction between a hospital closure and a program closure is that a hospital that remains open but closes a program retains its full IME and DGME FTE resident caps. When such a hospital closes a program, it must voluntarily choose to reduce its GME caps to temporarily loan FTE cap slots to another teaching hospital that decides to accept the displaced residents from the closing program for the duration of their training. 42 C.F.R. § 413.79(h)(3). To memorialize that it made this choice, the hospital closing the program must submit an FTE reduction statement to its MAC to reduce its GME caps in order to transfer cap slots to a receiving hospital that accepts the displaced residents for training. *Id.* at § 413.79(h)(3)(i)(B).

Closure of a program or hospital does not authorize CMS to fund additional residency slots in excess of the originating hospital's caps. Therefore, if a closing hospital or program is training above its GME FTE caps, it may not have enough GME cap slots for all its displaced residents. In these circumstances, the closing hospital gets to determine how to apportion the available cap slots. The originating hospital has a choice of whether to transfer an available GME cap slot at all. Moreover, the originating hospital and/or the program sponsor can decide how much of an available cap slot (FTEs) should be transferred with any particular resident. If a receiving hospital is training under its GME caps, it is ineligible for a GME cap increase to train displaced residents. Rather, that receiving hospital would cover the costs of training any displaced residents with its existing GME cap slots.

CMS's Prior Definition of a "Displaced Resident"

In the past, CMS policy required residents to be physically present for training on the last or next-to-last day before the closure of the hospital or its residency program in order to be considered "displaced residents" for purposes of temporary transferring GME FTE cap slots to hospitals that assume responsibility for the remainder of their training. This same policy applied to counting displaced resident FTEs to determine whether a permanent slot award could be made for that resident under ranking criteria 1 and 3 of the Section 5506 application for applicant hospitals that have committed to taking over all or a portion of the closed program.

While CMS's prior policy had a narrow exception to count residents who were on approved leave at the time of the closure, it prevented certain resident FTEs from being counted as displaced residents in several standard circumstances, such as when residents:

- Transferred before closure while the hospital was winding down;
- Were assigned to and trained in a planned rotation at another hospital; or
- Were accepted into a program that closes before they start training.

CMS recognized that it creates a disincentive for other teaching hospitals to train all of the displaced residents from a closing hospital or program if the GME cap slots available to be transferred to train these residents excludes residents who were not present at the hospital for the standard operational reasons listed above.

CMS's New Definition of a Displaced Resident

To resolve this, in the FY 2021 IPPS Final Rule, CMS finalized the following new definition of displaced resident:

Displaced resident means a resident who:

Leaves a program after the hospital or program closure is publicly announced, but before the actual hospital or program closure;

Is assigned to and training at planned rotations at another hospital who will be unable to return to his/her rotation at the closing hospital or program;

Is accepted into a GME program at the closing hospital or program, but has not yet started training at the closing hospital or program;

Is physically training in the hospital on the day prior to or day of program or hospital closure; or

Is on approved leave at the time of the announcement of closure or actual closure, and therefore, cannot return to his/her rotation at the closing hospital or program.

42 C.F.R. § 413.79(h)(1)(iii).

IME regulations at 42 CFR 412.105(f)(1)(ix) cross-reference the DGME regulations at 42 C.F.R. § 413.79(h), and CMS made minor conforming changes to ensure that the new policy on displaced residents applies to temporary transfers of IME cap slots.

By revising the definition of displaced resident, CMS changed its prior policy to ensure that the following resident FTEs will be counted as displaced residents for purposes of determining temporary GME cap slots that may be transferred:

1. Residents who are present on the day that the closure is publicly announced (even if these residents are not present at the hospital that is closing the program on the last or next-to-the-last day of the program).
2. Residents who are: a) in planned-out rotations, but intend to return to the closing hospital for training, and b) residents who matched into a program, but have not yet started training when the program closes.
3. Residents who are "accepted" into an approved residency program outside of one of the commonly used match platforms (e.g., the National Resident Matching Program (NRMP) or Supplemental Offer and Acceptance Program (SOAP)).)

Changes to the Information Submitted to the MAC to Request a Temporary GME Cap Adjustment to Train Displaced Residents

CMS also made changes to the policies governing the information that receiving hospitals are required to submit to their MACs within 60 days of beginning to train displaced residents to request a temporary increase to their DGME and IME caps. CMS will no longer request full social security numbers of the displaced residents. Instead, CMS will now only request either: (1) the last 4 digits of the social security number of a displaced resident, or (2) the NPI of the displaced resident.

The FY 2021 IPPS Final Rule changes to GME policies pertaining to the temporary transfer of GME cap slots to hospitals training displaced residents from closing hospitals and programs took effect October 1, 2020.

For more information, please contact Allison Cohen or any member of the Baker Donelson Reimbursement Team.