Application Due Soon for Two New Rounds of Residency Slot Redistribution

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PROFESSIONAL

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On April 24, 2018, the Centers for Medicare & Medicaid Services (CMS) issued its Hospital Inpatient Prospective Payment Systems (IPPS) proposed rule for Fiscal Year 2019 (Proposed Rule). Contained within the Proposed Rule was a notice from CMS of the closure of two teaching hospitals and the opportunity for hospitals to apply for the newly available graduate medical education resident slots under Section 5506 of the Affordable Care Act (ACA).

BACKGROUND AND BALANCED BUDGET ACT OF 1997

In 1997, in an effort to limit the cost of health care, in part related to the cost of training physicians, Congress passed the Balanced Budget Act of 1997 (BBA '97). BBA '97 instituted a cap on the number of allopathic and osteopathic residents for which Medicare would reimburse. The cap was limited to the number of full-time equivalent (FTE) residents training at a hospital in 1996. The cap is difficult to grow; although there are certain exceptions. Still, the residency cap has significantly impacted direct graduate medical education (DGME) and indirect medical education (IME) reimbursement to teaching hospitals and academic medical centers in the United States.

AFFORDABLE CARE ACT CHANGES TO RESIDENCY SLOT REDISTRIBUTION

Despite the residency cap, in the years following BBA '97, teaching hospitals continued to grow residency programs and training opportunities to fill community needs. Due to the cap, unless fitting in an exception, the training of these residents would not be paid for by Medicare. As a result, teaching hospitals sought ways to capture additional residency slots.

Leading up to the enactment of the ACA, two ways in which this recapturing of slots issue presented itself was if (1) a teaching hospital was not using all of its slots or (2) a teaching hospital closed and the slots were "lost." The ACA addressed these two situations under Sections 5503 and 5506. Under Section 5503 of the ACA, 42 U.S.C. § 1395ww(d)(5)(B)(v) was amended and subsection (h)(8) was added to provide for the reduction in FTE resident caps for IME and DGME, respectively, for certain hospitals training fewer residents than their caps and to authorize the redistribution of those slots to other qualified hospitals.

Section 5506 of the ACA amended 42 U.S.C. § 1395ww(h)(4)(H) to add new clause (vi), instructing the Secretary to establish a process by regulation, to redistribute residency slots after a teaching hospital closes. This process established a way for the Secretary to permanently increase the FTE resident caps for certain hospitals,

so that the closed hospitals' resident slots would no longer be "lost." By statute, the process for distributing the residency slots prioritizes hospitals in certain geographic areas, and also provides that a preference be given within each priority category to hospitals that are members of the same affiliated group with the closed hospital. The priority order is: first, to hospitals located in the same, or a contiguous, core-based statistical area (CBSA) to the closed hospital; second, to a hospital located in the same state as the closed hospital; third, to a hospital located in the same region as the closed hospital; and fourth, if slots still have not been distributed under the first three categories, to qualifying hospitals in accordance with the criteria established under Section 5503 of the ACA, paragraph 8, concerning the distribution of additional residency positions.

Moreover, as described within the Federal Register concerning the implementation of Section 5506, CMS articulated a Ranking Criteria, whereby within each of the first three statutory priority categories (that is, same or contiguous CBSAs, same state, and same region), CMS would assign slots first to hospitals that fall within the first ranking category, before assigning slots to those hospitals that fall within the second ranking category, and then to those hospitals that fall within the third ranking category. See 75 Fed. Reg. 71799, 72216 (Nov. 24, 2010); 77 Fed. Reg. 53258, 53434 (Aug. 31, 2012); 79 Fed. Reg. 50122-50134 (Aug. 22, 2014).

The Ranking Criteria currently contains eight Ranking Criterion. The Ranking Criteria prioritize: assumption of and continued operation of an entire program from the closed hospital (One); use of slots received as part of the most recent affiliation agreement with the closed hospital to continue to train at least those residents it was training (Two); and where the hospital took in displaced residents and will use those slots to continue training the displaced residents until they complete their training, as well as will maintain those slots to continue training others in the same programs as the displaced residents (Three).

For the remaining five criteria, the Ranking Criteria prioritize the planned use of the new slots for primary care or otherwise prioritized residency programs over nonprimary care programs: geriatrics residency program (Four); if located in a Health Professional Shortage Area (HPSA), primary care or general surgery residency program (Five); if not located in a HPSA, primary care or general surgery residency program (Six); some used for a primary care or general surgery program, but the program does not meet Ranking Criterion 5 or 6 because the hospital is also separately applying under Ranking Criterion 8 for slots to establish or expand a nonprimary care or non-general surgery program (Seven); and the hospital will use the slots to establish or expand a nonprimary care or a nongeneral surgery program (Eight).

In addition to considering the ranking categories and criteria, Section 5506 requires CMS to only award slots to hospitals where the Secretary "determines the hospital has demonstrated a likelihood of filling the positions made available under [42 U.S.C. § 1395ww(h)(4)(H)(vi)] within 3 years."

SECTION 5506 – ROUNDS 11 AND 12

As noticed in the Proposed Rule, CMS learned of the closure of two teaching hospitals: Affinity Medical Center, located in Massillon, OH – 22.36 IME and 22.48 DGME cap slots available (Round 11) and Baylor Scott & White Medical Center—Garland, located in Garland, TX – 12.52 IME and 13.53 DGME cap slots available (Round 12), and is seeking applications in order to redistribute the residency slots. The application period for each of these hospitals is 90 days following the Proposed Rule issuance date of April 24, 2018. As such, applications are due no later than July 23, 2018.

A separate application is required for each closure, should a hospital wish to apply for slots from Rounds 11 and 12. The applications must be received in hard copy by the CMS Central office no later than July 23, 2018, as postmarking by this date is not sufficient. Applicants are also strongly encouraged to email CMS a specific message as set forth in the Proposed Rule, notifying CMS that the application is on the way and providing applicant contact information.

If you are interested in applying for Rounds 11 and/or 12, or would like further guidance or information, please contact David Vernon or Marty Corry in Washington, D.C. at 202.580.7700, or John Hellow in Los Angeles at 310.551.8100.

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