Distribution of Additional Residency Positions

**Summary:** Beginning July 1, 2011, directs the Secretary to redistribute residency positions that have been unfilled for the prior three cost reports and directs those slots for training of primary care and general surgery physicians. In distributing the residency slots under this section, special preference will be given to programs located in States with a low physician resident to general population ratio and to programs located in States with the highest ratio of population living in a health professional shortage area (HPSA) relative to the general population or in a rural area.

**Status update:** On December 15, 2010, the President signed H.R. 4994, the "Medicare and Medicaid Extenders Act of 2010" (PL 111-309), which among other things clarified residency calculations as it applied to affiliated hospitals.

**Next steps:**
- July 2, 2010 – CMS issues proposed rule for GME
- August 31, 2010 – Comments due on proposed rule for GME
- November 1, 2010 – CMS issues final rule for GME
- December 15, 2010 -- the President signed H.R. 4994, the “Medicare and Medicaid Extenders Act of 2010” (PL 111-309), which among other things clarified residency calculations as it applied to affiliated hospitals.
- July 1, 2011 – Redistribution to occur on or after July 1, 2011

**Additional information:**
- Information regarding PL 111-309 -- http://hdl.loc.gov/loc.uscongress/legislation.111hr4994
- July 2 proposed rule -- http://www.ofr.gov/OFRUpload/OFRData/2010-16043_PI.pdf
- Association of American Medical Colleges (AAMC) background on Medicare support of Graduate Medical Education (GME) -- http://www.aamc.org/advocacy/library/gme/gme0001.htm
- Centers for Medicare and Medicaid Services (CMS) background on GME -- http://www.cms.gov/AcutelnpatientPPS/06_dgme.asp

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1 SEC. 203. CLARIFICATION FOR AFFILIATED HOSPITALS FOR DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS. Effective as if included in the enactment of section 5503(a) of Public Law 111-148, section 1886(h)(8) of the Social Security Act (42 U.S.C. 1395ww(h)(8)), as added by such section 5503(a), is amended by adding at the end the following new subparagraph: '(I) AFFILIATION- The provisions of this paragraph shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) and the reference resident level for each such hospital shall be the reference resident level with respect to the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.'
Long summary:

Sec. 5503. Distribution of additional residency positions.

Reduction. Reduces the authorized residency level by 65% of the difference between the actual and authorized level if a certain hospital’s actual residency level for any of the 3 most recent reporting periods is less than its authorized level. Reduction does not affect rural teaching hospitals and certain other teaching hospitals.

Redistribution. For those residency slots made available through the reduction mentioned above, the Secretary may increase the total number of residency slots at qualifying hospitals if the hospital submits an application and agrees to ensure that the number of primary care residencies during the 5-year period beginning on the date of the increase is not less than the average over the preceding three years and that at least 75% of the new residency slots are in primary care or general surgery. Failure to maintain requirements results in loss of the additional slots for the hospital and redistribution of those slots to other qualified hospitals.

Consideration. In determining which hospitals will receive an increase in the number of residency slots, the Secretary shall take into account (1) the likelihood of the hospital filling the positions made available under this paragraph within the first 3 cost reporting periods beginning on or after July 1, 2011, and (2) whether the hospital has an accredited rural training track.

Priority. Sets priority in awarding increased slots: 70% for hospitals in lowest quartile of resident-to-population ratios, and 30% for hospitals in high health professional shortage areas or rural areas. Additional residency slots from the redistribution may not exceed 75 per hospital.

Indirect Medical Education (IME). The indirect medical education (IME) payment adjustment for the increased slots is calculated in the same manner as for the existing positions.

Summary of the Regulations:
The health care reform legislation included a number of changes to the way CMS pays for graduate medical education (GME) under the Inpatient Prospective Payment System (IPPS). CMS is including its proposals to implement the GME provision in the proposed rule released on July 2, 2010. The changes would affect how CMS counts time spent by residents furnishing care in nonprovider settings, as well as resident time spent in didactic and scholarly activities, as well as other activities not directly relating to patient care. The health care reform legislation also provides for the redistribution of residency positions from hospitals training fewer residents than they may have under their caps and also redistributes the resident cap positions from closed hospitals.

Legislative text:

SEC. 5503. DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (4)(F)(i), by striking “paragraph (7)” and inserting “paragraphs (7) and (8)”;

(2) in paragraph (4)(H)(i), by striking “paragraph (7)” and inserting “paragraphs (7) and (8)”;

(3) in paragraph (7)(E), by inserting “or paragraph (8)” before the period at the end; and

(4) by adding at the end the following new paragraph:

“(8) DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.—

(A) REDUCTIONS IN LIMIT BASED ON UNUSED POSITIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), if a hospital’s reference resident level (as defined in subparagraph (H)(i)) is less than the otherwise applicable resident limit (as defined in subparagraph (H)(iii)), effective for portions of cost reporting periods occurring on or after July 1, 2011, the otherwise applicable resident limit shall be reduced by 65 percent of the difference between such otherwise applicable resident limit and such reference resident level.
(iii) EXCEPTIONS.—This subparagraph shall not apply to—

(I) a hospital located in a rural area (as defined in subsection (d)(2)(D)(ii)) with fewer than 250 acute care inpatient beds;

(II) a hospital that was part of a qualifying entity which had a voluntary residency reduction plan approved under paragraph (6)(B) or under the authority of section 402 of Public Law 90–248, if the hospital demonstrates to the Secretary that it has a specified plan in place for filling the unused positions by not later than 2 years after the date of enactment of this paragraph; or

(III) a hospital described in paragraph (4)(H)(v).

(B) DISTRIBUTION.—

(i) IN GENERAL.—The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2011. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the aggregate reduction in such limits attributable to subparagraph (A) (as estimated by the Secretary).

(ii) REQUIREMENTS.—Subject to clause (iii), a hospital that receives an increase in the otherwise applicable resident limit under this subparagraph shall ensure, during the 5-year period beginning on the date of such increase, that—

(I) the number of full-time equivalent primary care residents, as defined in paragraph (5)(H) (as determined by the Secretary), excluding any additional positions under subclause (II), is not less than the average number of full-time equivalent primary care residents (as so determined) during the 3 most recent cost reporting periods ending prior to the date of enactment of this paragraph; and

(ii) REDISTRIBUTION OF POSITIONS IF HOSPITAL NO LONGER MEETS CERTAIN REQUIREMENTS.—In the case where the Secretary determines that a hospital described in clause (ii) does not meet either of the requirements under subclause (I) or (II) of such clause, the Secretary shall—

(I) reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this paragraph; and

(ii) provide for the distribution of positions attributable to such reduction in accordance with the requirements of this paragraph.

(C) CONSIDERATIONS IN REDISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B), the Secretary shall take into account—

(I) the demonstration likelihood of the hospital filling the positions made available under this paragraph within the first 3 cost reporting periods beginning on or after July 1, 2011, as determined by the Secretary; and

(ii) whether the hospital has an accredited rural training track (as described in paragraph (4)(H)(iv)).

(D) PRIORITY FOR CERTAIN AREAS.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B), subject to subparagraph (E), the Secretary shall distribute the increase to hospitals based on the following factors:

(I) Whether the hospital is located in a State with a resident-to-population ratio in the lowest quartile (as determined by the Secretary).

(ii) Whether the hospital is located in a State, a territory of the United States, or the District of Columbia that is among the top 10 States, territories, or Districts in terms of the ratio of—

(I) the total population of the State, territory, or District living in an area designated (under such section 332(a)(1)(A)) as a health professional shortage area (as of the date of enactment of this paragraph); to

(II) the total population of the State, territory, or District (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census).

(iii) Whether the hospital is located in a rural area (as defined in subsection (d)(2)(D)(ii)).

(E) RESERVATION OF POSITIONS FOR CERTAIN HOSPITALS.

(i) IN GENERAL.—Subject to clause (ii), the Secretary shall reserve the positions available for distribution under this paragraph as follows:

(I) 70 percent of such positions for distribution to hospitals described in clause (I) of subparagraph (D). 

(II) 30 percent of such positions for distribution to hospitals described in clause (ii) and (iii) of such subparagraph.

(ii) EXCEPTION IF POSITIONS NOT REDISTRIBUTED BY JULY 1, 2011.—In the case where the Secretary does not distribute positions to hospitals in accordance with clause (I) by July 1, 2011, the Secretary shall distribute such positions to other hospitals in accordance with the considerations described in subparagraph (C) and the priority described in subparagraph (D).

(F) LIMITATION.—A hospital may not receive more than 75 full-time equivalent additional residency positions under this paragraph.

(G) APPLICATION OF PER RESIDENT AMOUNTS FOR PRIMARY CARE AND NON PRIMARY CARE.—With respect to additional residency positions in a hospital attributable to the increase provided under this paragraph, the approved FTE per resident amounts are deemed to be equal to the hospital per resident amounts for primary care and non-primary care computed under paragraph (2)(D) for that hospital.

(H) DEFINITIONS.—In this paragraph:

(I) REFERENCE RESIDENT LEVEL.—The term ‘reference resident level’ means, with respect to a hospital, the highest resident level for any of the 3 most recent cost reporting periods (ending before the date of the enactment of this paragraph) of the hospital for which a cost report has been settled (or, if not, submitted [subject to audit]), as determined by the Secretary.

(ii) RESIDENT LEVEL.—The term ‘resident level’ has the meaning given such term in paragraph (7)(C)(i).

(iii) OTHERWISE APPLICABLE RESIDENT LIMIT.—The term ‘otherwise applicable resident limit’ means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(j) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph but taking into account paragraph (7)(A).

(I) AFFILIATION- The provisions of this paragraph shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) and the reference resident level for each such hospital shall be the reference resident level with respect to the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.2

2 Changes indicated (with new language in bold) due to modifications within PL 111-309, the “Medicare and Medicaid Extenders Act of 2010.”
(b) IME.—
(1) IN GENERAL.—Section 1886(d)(5)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second sentence, is amended—

(A) by striking “subsection (h)(7)” and inserting “sub-sections (h)(7) and (h)(8)”;

(B) by striking “it applies” and inserting “they apply”.

(2) CONFORMING AMENDMENT.—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by adding at the end the following clause: "(x) For discharges occurring on or after July 1, 2011, insofar as an additional payment amount under this subparagraph is attributable to resident positions distributed to a hospital under subsection (h)(8)(B), the indirect teaching adjustment factor shall be computed in the same manner as provided under clause (ii) with respect to such resident positions.”.

(c) CONFORMING AMENDMENT.—Section 422(b)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) is amended by striking “section 1886(h)(7)” and all that follows and inserting “paragraphs (7) and (8) of subsection (b) of section 1886 of the Social Security Act”.

Updated January 6, 2011