

HEALTH INDUSTRY ALERT

MEDICARE GME PAYMENT UPDATE: CMS ISSUES NEW PROPOSED AND FINAL RULES



PROPOSED FY 2008 HOSPITAL INPATIENT PPS RULE

The Medicare Act provides that hospitals with approved graduate medical education (GME) programs are eligible for Medicare payments to compensate them for costs directly and indirectly related to the training of residents. Direct costs of GME programs include the residents' salaries and fringe benefits and the salaries and fringe benefits of the teaching physicians who supervise the instruction of the residents. In addition to providing these direct GME payments, Medicare provides teaching hospitals payments to reflect their higher indirect patient care costs relative to non-teaching hospitals. This payment, known as the indirect medical education (IME) adjustment, is based, in part, on the ratio of full-time equivalent (FTE) residents to the number of beds in the hospital. In the recently released Proposed 2008 Hospital Inpatient PPS Rule, 72 Fed. Reg. 24,680, 24,812-15 (May 3, 2007), CMS proposes to exclude the time spent by residents on vacation or sick leave in the FTE counts for both IME and GME purposes. In addition, CMS also proposes to amend the definition of "patient care activities" to include the time spent by residents participating in "orientation activities" in the FTE counts.

Vacation and Sick Time

In order for a hospital to be eligible for an IME adjustment, a hospital's residents must be spending time in "patient care activities," or activities related to the care and treatment of particular patients. Patient care activities are distinguished from "nonpatient care activities," which although not defined, are generally considered activities related to the residents' medical education that do not involve direct interaction with patients, including research, seminars, conferences and lectures.

Historically, time spent by residents on vacation or sick leave, and in initial orientation activities, has been included in the FTE resident counts for IME and GME purposes. Citing questions from the teaching hospital community as the impetus for the Proposed Rule, CMS notes that vacation time and sick leave are not appropriately categorized as patient care activities. Although most residents are entitled to vacation and sick leave as fringe benefits, CMS states that this time is not part of a resident's training time in an approved residency program. CMS believes such time does not fall within either patient care time or nonpatient care time, but rather falls within a distinct third category of time. Therefore, CMS is proposing to

remove all time spent by residents on vacation or sick leave from both the IME and GME FTE counts effective with cost reporting periods beginning on or after October 1, 2007.

Orientation Activities

In contrast to CMS' proposed new treatment of vacation and sick leave time, the Proposed Rule contemplates continuing to include the time that residents spend in orientation activities, including basic informational sessions in which all new hospital employees must participate, to calculate the number of FTE residents for both IME and GME purposes. Because orientation activities are often a necessary prerequisite for the residents as they commence or continue their training program and may often be required as a term of employment, CMS deems such activities essential to the provision of patient care by residents. Therefore, CMS proposes to amend the definition of "patient care activities" to include "orientation activities." In addition, CMS proposes "orientation activities" as a new defined term that means "activities that are principally designed to prepare an individual for employment as a resident in a particular setting, or for participation in a particular specialty program and patient care activities associated with that particular specialty program."

There is likely to be significant reaction from the industry to these proposals. CMS will be accepting comments on this Proposed Rule until June 12, 2007. The Final Rule will be published later this summer.

FINAL LONG-TERM CARE HOSPITAL RULE: CHANGES TO HOSPITAL GME AND IME PAYMENT POLICY

On May 11, 2007, CMS issued a Final Rule implementing revisions to the prospective payment system for long-term care hospitals. *See* 72 Fed. Reg. 26,870, 26,948-76. In addition to the long-term care hospital payment changes, the Final Rule included significant revisions to Medicare's policies regarding IME and GME payments to a teaching hospital when its residents are being trained in a nonhospital setting.

The Medicare Act provides that time spent by residents in an approved training program at a site that is not part of the hospital shall be included in the IME and GME FTE counts if the teaching hospital "incurs all, or substantially all, of the costs for the training program in the nonhospital setting." The Final Rule, for the first time, defines "all or substantially all" of the costs to mean at least 90 percent of the total of the costs of the residents' salaries and fringe benefits, including travel and lodging, where applicable, and the portion of the cost of teaching physicians' salaries attributable to direct GME at the nonhospital site. Consequently, if a hospital can show that it has incurred at least 90 percent of the costs of training at the nonhospital site through the payment of the residents' salaries and fringe benefits, the hospital will be able to claim all of the resident time in its FTE counts without having to provide additional payments to the nonhospital site for the costs associated with the supervising physicians.

Under the new rule, to calculate the costs of direct GME activities in a nonhospital setting, hospitals must utilize the following formula:

$$\text{Residents' Salaries and Fringe Benefits} + \left[\text{Teaching Physician's Salary} \times \frac{\text{Hours Teaching Physician Spent on Direct GME Activities per Week}}{\text{Hours Nonhospital Site Open per Week}} \right]$$

As indicated above, four variables are considered in calculating the costs of the residency program at a nonhospital setting: (1) residents' salaries and fringe benefits, (2) the teaching physicians' salaries, (3) the number of hours per week that teaching physicians spend in direct GME and (4) the number of hours per week the nonhospital site is open.

In addition to revising the definition of "all or substantially all" of the costs of training programs at nonhospital sites, the Final Rule also introduces specified proxies in place of actual cost data in order to reduce the administrative burden of documenting these costs. Significantly, however, for each of the proxies established by CMS, hospitals may choose to disregard the proxy amounts and instead calculate the actual amount such proxy is meant to approximate if the hospital can document such amount.

CMS did not create a proxy for calculating the costs of residents' salaries and fringe benefits because salaries and fringe benefits for most residents are paid by hospitals and, thus, the identification and calculation of these costs are straightforward. Hospitals must use the actual costs of each FTE resident's salary and fringe benefits in calculating the 90 percent threshold.

As a proxy for calculating the teaching physicians' salaries, which are often difficult to ascertain, the Final Rule allows hospitals to use physician compensation survey data by physician specialty published by the American Medical Group Association (AMGA). The specialty of the teaching physician is the relevant criterion, not the specialty of the residents receiving the training. For each national specialty, only one national average salary proxy amount will be utilized and such average will not be adjusted for geographic variation. In addition, CMS requires hospitals to utilize the median physician salary amount for the required specialty to avoid the influence of outlier salary data. If there is no data for a teaching physician's subspecialty, the hospital must use the immediately less specialized national salary amount. Additionally, if the teaching physician is board-certified in more than one specialty, the hospital should use the specialty data for the specialty in which the physician is training the residents. To ensure that hospitals making these calculations have access to the national averages, CMS has agreed to make the AMGA specialty salary survey data available on the CMS Web site.

The Final Rule allows hospitals to apply a maximum of a 1:1 resident-to-teaching-physician ratio limit in determining the costs of direct GME activities at a nonhospital setting. For example, if at the nonhospital site there are two teaching physicians and one FTE resident, the hospital may determine 90 percent of the total costs of the program using a 1:1 resident-to-teaching-physician ratio, not a 1:2 resident-to-teaching-physician ratio. Accordingly, the 90 percent threshold would be based on the total cost of one FTE resident's salary and fringe benefits and one teaching physician (the national average salary for his or her specialty multiplied by the percentage of time spent in nonpatient care direct GME activities). If there are multiple teaching physicians with different specialties, CMS still limits the resident-to-teaching-physician ratio. The hospital may, however, determine the national average salaries for the specialties of all of the teaching physicians and average the mix of specialties in the practice, weighted accordingly. Notably, this 1:1 cap does not apply to the number of residents. For example, if a nonhospital site has three FTE residents and one teaching physician, the hospital would calculate the costs using one teaching physician's salary and all three of the residents' salaries and fringe benefits.

To calculate the percentage of time that teaching physicians spend on direct GME activities, a hospital must calculate a ratio, which is equal to the number of hours a teaching physician spends on direct GME activities per week divided by the number of hours the nonhospital site is open per week. In the Final Rule, CMS sets three hours as the proxy for the number of hours a single teaching physician spends on direct GME activities per week despite a number of comments suggesting that this proxy amount is too high. CMS, however, did state that it may reevaluate this proxy amount in later

rulemakings. In addition, the Final Rule clarifies that the number of hours the nonhospital site is open per week means the “posted” or advertised hours. Finally, in response to commenters’ concerns, the Final Rule institutes a cap of 7.5 percent on this teaching physician cost ratio, such that the hospital need not use more than 7.5 percent of the teaching physicians’ salaries in calculating the amount of payment necessary to meet the 90 percent threshold.

In calculating the costs of direct GME activities at nonhospital settings, the Final Rule also allows hospitals to prorate the residents’ salaries and fringe benefits as well as the teaching physicians’ costs to reflect the FTE time spent by the residents at each nonhospital site.

The Final Rule becomes effective for cost reporting periods beginning on or after July 1, 2007. Current regulations require hospitals receiving payments for GME activities conducted at nonhospital sites (1) to have written agreements with the nonhospital sites in place prior to the beginning of such training stating that the hospital will incur all or substantially all of the costs of training in the nonhospital setting, or (2) to pay concurrently for the cost of training at the nonhospital setting. If the hospital enters into a written agreement with the nonhospital site, this written agreement must indicate the amount of compensation provided by the hospital to the nonhospital site for supervisory teaching activities. Noting the difficulties many hospitals may have implementing the provisions of the Final Rule regarding the 90 percent threshold cost calculations necessary to indicate the compensation amounts in these written agreements, CMS is allowing hospitals to modify their written agreements by the end of the applicable academic year (June 30) to reflect that the hospital is meeting the requirement to incur at least 90 percent of the costs associated with the actual training program rotations.

CONTACT INFORMATION

If you have questions regarding either of these Rulemakings, would like assistance with the submission of comments, or have other questions regarding the count of residents for IME and GME purposes, please contact:

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