Published on *The National Law Review* https://natlawreview.com

CMS Final Rule Expands Flexibility for Sharing FTE Slots

Article By:

Emily J. Cook

Drew Elizabeth McCormick

Summary

The Centers for Medicare & Medicaid Services (CMS) has historically prohibited "new" teaching hospitals from sharing graduate medical education (GME) full time equivalent (FTE) slots with another hospital under a GME affiliation agreement.

In the fiscal year (FY) 2019 inpatient prospective payment system (IPPS) proposed rule, CMS proposed to allow new urban teaching hospitals to share GME FTE slots with other new teaching hospitals, whereas in the FY 2019 IPPS final rule, CMS expanded this proposal to allow new urban teaching hospitals to share GME FTE slots with *existing* teaching hospitals beginning five years after having their FTE caps are set. This final rule may create new opportunities for teaching hospitals that have exceeded their FTE caps for slot sharing affiliations.

In Depth

Full-time equivalent (FTE) resident caps for teaching hospitals set the maximum number of residents for which the hospital is eligible to receive graduate medical education (GME) reimbursement from Medicare. Historically, FTE caps have been permanent, with adjustment only under limited circumstances. For example, under current rules, a "new" teaching hospital (that is, a hospital that established permanent FTE caps after 1996) could *receive* additional FTE slots under a Medicare GME affiliation agreement with other teaching hospitals, but could not *give* FTE slots to another teaching hospital. In theory, this policy was intended to prevent the owners of existing teaching hospitals from acquiring hospitals without residency programs and then establishing new teaching hospitals with the intent of transferring the new FTE slots to the existing teaching hospital.

On August 2, 2018, CMS released its fiscal year 2019 IPPS final rule (the Final Rule), which now allows new *urban* teaching hospitals to enter into Medicare GME affiliation agreements to share FTE slots to accommodate the cross-training of residents.

Specifically, beginning on July 1, 2019, a new urban teaching hospital may enter into a Medicare GME affiliated group consisting of two or more new urban teaching hospitals and receive a decrease to its FTE caps. In addition, beginning on July 1, 2018, new urban teaching hospital(s) may enter into

a Medicare GME affiliated group with existing teaching hospital(s) (that is, hospital(s) with 1996 FTE caps) and receive a decrease to its FTE caps, as long as the new urban teaching hospital's caps have been in effect for five or more years. That is, once a new urban teaching hospital's caps are effective, after a cap-building period, the new urban teaching hospital can participate in a Medicare GME affiliation agreement with an existing teaching hospital and receive a decrease to its FTE caps after an additional five-year waiting period.

An "affiliated group" is a group of two or more hospitals that are located in the same geographic area, jointly listed as the sponsor, primary clinical site, or major participating institution for one or more programs by the Accreditation Council for Graduate Medical Education, or under common ownership.

Because Medicare GME affiliation agreements are effective consistent with the residency training year (*i.e.*, July 1 through June 30), under the policy finalized in the Final Rule, the new urban teaching hospital will be able to participate in an affiliation agreement with an existing teaching hospital and receive a decrease to its FTE caps effective with the July 1 date that begins at least five years after the new urban teaching hospital's caps are effective. Applying existing CMS policy related to the effective date for FTE caps and the five-year waiting period under the Final Rule, a new urban teaching hospital can lend FTE cap slots to an existing teaching hospital as of July 1 in the year that is at least five years after the start of the hospital's cost reporting period following the start of the sixth program year of the first new program. Illustrative examples of cap-sharing from the preamble to the Final Rule are included in the table below.

Example 1

Assume Hospital A's (a new urban teaching hospital that did not train residents in 1996) cost reporting period is from July 1 to June 30. Hospital A started training residents in its first new program effective July 1, 2014. Hospital A's five-year cap-building period lasts through June 30, 2019, and its caps are effective July 1, 2019. Hospital A would be able to participate in a Medicare GME affiliation agreement with an existing teaching hospital and receive a decrease to its FTE caps beginning with the July 1 date (the residency training year) that is at least five years after July 1, 2019 (the start of the cost reporting period in which the permanent FTE caps are effective). Therefore, Hospital A would be able to receive a decrease to its FTE caps effective July 1, 2024.

Example 2

Assume Hospital B (a new urban teaching hospital that did not train residents in 1996) has a cost reporting period that is from January 1 to December 31. Hospital B also started training residents in its first new program effective July 1, 2014. Hospital B's five-year cap building period lasts through June 30, 2019, and its caps are effective January 1, 2020. Hospital B would be able to participate in a Medicare GME affiliation agreement with an existing teaching hospital and receive a decrease to its FTE caps beginning with the July 1 date (the residency training year) that is at least five years after January 1, 2020 (the start of the cost reporting period in which the permanent FTE caps are effective). Therefore, Hospital B would be able to receive a decrease to its FTE caps effective July 1, 2025.

Example 3

Assume Hospital C (a new urban teaching hospital that did not train residents in 1996) has a cost reporting period that is from October 1 to September 30. Hospital C, like Hospitals A and B, started training residents in its first new program effective July 1, 2014. Hospital C's five-year cap building period lasts through June 30, 2019, and its caps are effective October 1, 2019. Hospital C would be able to participate in a Medicare GME affiliation agreement with an existing teaching hospital and receive a decrease to its FTE caps beginning with the July 1 date (the residency training year) that is

at least five years after October 1, 2019 (the start of the cost reporting period in which the permanent FTE caps are effective). Therefore, Hospital C would be able to receive a decrease to its FTE caps effective July 1, 2025.

As noted above, in the FY 2019 IPPS proposed rule (the Proposed Rule), CMS proposed to permit new urban teaching hospitals to loan slots to other new urban teaching hospitals beginning July 1, 2019, while still prohibiting these hospitals from loaning their cap slots to other existing teaching hospitals. As such, the Final Rule was a surprising further expansion in flexibility for sharing FTE slots. Explaining this policy shift in the preamble, CMS stated that requiring a new urban teaching hospital to wait a certain period of time prior to lending its cap slots to an existing teaching hospital would demonstrate that the new teaching hospital is, in fact, establishing and expanding its own new residency training programs rather than serving as a means for an existing teaching hospital to receive additional FTE slots. CMS also expressed its belief that a time-limited approach is a more equitable way of providing new urban teaching hospitals with the opportunity to decrease their FTE caps than using a percentage of slots or determining whether a new urban teaching hospital falls under the same corporate structure as an existing teaching hospital, both of which were suggested in comments in response to the Proposed Rule.

National Law Review, Volume VIII, Number 233