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# Medicare Emergency Affiliated Group Agreements: Helping Medical Residents in Disaster Areas Continue Their Training

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Hurricanes Harvey and Irma, which recently ravaged large portions of the southern United States and whose devastating effects are still being felt, remind us that natural disasters and other emergencies outside anyone's control may sometimes make it impossible for teaching hospitals to continue training their medical residents during a crisis.

In such situations, Medicare's emergency graduate medical education (GME) reimbursement rules, originally adopted in 2006 in response to Hurricane Katrina, allow a "home hospital" located in a presidentially declared emergency or disaster area to enter into an emergency Medicare GME affiliation agreement with a "host hospital." See 42 C.F.R. §413.79(f)(7).

Under such an agreement, the home hospital lends its full-time equivalent (FTE) resident cap slots to the host hospital, so the host may receive GME reimbursement for training the home hospital's displaced residents.

Through the Balanced Budget Act of 1997, Congress placed permanent limits or "caps" on the number of residency positions the Medicare program would help to fund at teaching hospitals. Thus, a teaching hospital's Medicare GME reimbursement amount normally is limited to funding for the number of residents the hospital trained during a 1996 base year.

Several narrow exceptions to the statutory caps enable hospitals to receive payments in excess of these base-year limits. One such exception is through a so-called Medicare GME affiliated group agreement.

This agreement is a mechanism enabling certain teaching hospitals to share their FTE caps with their neighbor, partner, and/or sibling hospitals who participate in a shared rotational arrangement, whereby residents rotate among the participating hospitals. Through these agreements, the parties contractually reapportion their collective FTE cap slots among themselves.

To enter into an ordinary Medicare GME affiliation agreement, the hospitals must be located in the same geographic area (neighbors); jointly listed as the sponsor, primary clinical site, or major participating institution for one or more programs (partners); or under common ownership (siblings).

Emergency Medicare GME affiliation agreements expand this narrow cap-sharing opportunity for hospitals located in emergency or disaster areas. Emergency Medicare GME affiliation agreements enable home hospitals to loan FTE cap slots to other hospitals, to support GME training of displaced residents at potentially distant and/or unrelated institutions that would not otherwise qualify to enter into an ordinary (i.e., nonemergency) Medicare GME affiliation agreement.

Participants in an emergency Medicare GME affiliation agreement also are exempt from the requirement, mentioned above, to have a shared rotational arrangement, as exists for non-emergency affiliation agreements. See 42 C.F.R. §413.79(f)(7)(iii).

These emergency agreements may be made effective beginning on or after the first day of a presidentially declared emergency period.

Each hospital participating in the emergency Medicare GME affiliated group must submit an agreement annually both to CMS and to the hospital's Medicare administrative contractor (MAC), with the first such agreement to be submitted within 180 days after the end of the academic year in which the emergency began. See 42 C.F.R. §413.79(f)(7)(ii)(C)(1). (For most teaching hospitals, with a June 30 academic year end, this would mean a deadline of December 27 following the academic year in which the emergency began.)

If the parties intend the agreement to be in effect for a second year, the agreement must again be filed by 180 days after the end of the next academic year (i.e., the one immediately after the academic year in which the emergency was declared). Id. at §413.79(f)(7)(ii)(C)(2). For subsequent years, the parties must submit agreements by July 1 of each academic year, and the entire arrangement must terminate within four academic years following the year in which the emergency began. Id. at § 413.79(f)(7)(ii)(C)(3).

Unsurprisingly, Medicare rules prescribe a number of specific drafting requirements. For example, the agreement must list each participating hospital, its provider number, whether it is the "home" or the "host" hospital, and the total adjustment to the hospital's direct graduate medical education and indirect medical education caps.

Participating hospitals must also attach all existing Medicare affiliated group agreements and emergency Medicare GME affiliation agreements that were already in place at the time of the emergency.

The regulations contain certain restrictions on out-of-state host hospitals as well. If an emergency Medicare GME affiliation agreement extends to the third or fourth academic year after which the emergency period began, an out-of-state host hospital may only receive an increase to its FTE caps for specific residents who were actually displaced from a home hospital immediately following the emergency.

In other words, the out-of-state host hospital is limited in the Medicare funding it can receive if it recruits residents who start their training at the host hospital, rather than the home hospital.

The availability of emergency Medicare GME affiliation agreements greatly enhances the flexibility and fluidity with which teaching hospitals in emergency areas are able to secure new training partners and venues to continue training their residents during emergency periods.

The Medicare rules are intended to offer relief and remove barriers to reimbursement that otherwise could make it difficult to place residents.

That said, hospital participants to emergency Medicare GME affiliated group agreements should take care to follow the detailed requirements of the regulations to ensure the Centers for Medicare & Medicaid Services will honor their cap-sharing arrangement.