

## Medicare Medical Education (IME/GME) Issues

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## Regulations

- Final rules published May 11, 2007 in Federal Register at 72 FR 26,948-26,995.
- For CRPs beginning before 7/1/07, time residents spend in nonprovider settings with approved programs may be included in number of FTE residents if:
  - (1) resident spends his/her time in patient care activities



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## Regulations

- CRP beginning before 7/1/07 - cont'd
  - (2) Hospital must incur all or substantially all of costs of training program in nonhospital settings
    - 42 CFR 413.75(b): “All or substantially all of the costs for the training program in the nonhospital setting” means the residents’ salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians’ salaries and fringe benefits attributable to direct graduate medical education (GME).



## Regulations

- CRP beginning before 7/1/07 - cont'd
  - (3) Hospital must comply with either:
    - (i) Pay all or substantially all costs of training program in nonhospital setting attributable to training that occurs during a month by end of third month following month in which training in nonhospital site occurred; or



## Regulations

- CRP beginning before 7/1/07 - cont'd
  - (ii) Written agreement between hospital and nonhospital site stating hospital will incur cost of resident's salary & fringe benefits while resident is training in nonhospital site, & hospital is providing reasonable compensation to nonhospital site for supervisory teaching activities.
    - Agreement must indicate compensation hospital is providing to nonhospital site for supervisory teaching activities.



## Regulations

- For CRPs beginning on or after 7/1/07, time residents spend in nonprovider settings may be included in number of FTE residents if:
  - Conditions (1) & (2) above are met
  - Condition (3) was revised.
    - Option (i) remains same
    - Option (ii) (written agreement) was revised



## Regulations

- New option (3)(ii) [42 CFR 413.78(f).]
  - Written agreement
    - Between hospital & nonhospital site
    - Before training begins
  - States hospital will incur at least 90% of total costs of resident's salary & fringe benefits (& travel & lodging where applicable)
    - While resident is training in nonhospital site



## Regulations

- New option (3)(ii) - cont'd
  - States portion of cost of teaching physician's salary attributable to nonpatient care direct GME activities
  - Must specify:
    - Total cost of training program at nonhospital site
    - Amount hospital will incur (at least 90% of total)
    - Portion of amount hospital will incur that reflects residents' salaries & fringe benefits (& travel & lodging where applicable)



## Regulations

- New option (3)(ii) - cont'd
  - Portion of this amount that reflects teaching physician compensation
  - Hospital may modify amounts in written agreement by end of academic year (6/30) to reflect that at least 90% of costs of training program in nonhospital site has been incurred



## Issues

- There are many questions and issues raised by the regulations.
- Physician volunteers vs. salaried physicians
- Three situations:
  - First: Solo practitioner
    - Only one physician in practice
    - Compensation is based solely and directly on number of patients treated and for which physician bills



## Issues

- Three situations (cont'd)
  - Second: Group practice, where each physician operates as a solo practitioner
    - Compensation of each physician is based solely and directly on number of patients treated and for which physician bills
  - Third: Group practice, where compensation of each physician is based on a predetermined payment amount (salary)



## Issues

- Timing of new agreements
  - 90% approach applies to CRPs beginning on or after 7/1/07
  - What to do if new agreements were not adopted before later of CRP beginning on or after 7/1/07 and start of training
  - Modifications may be made up to end of training period to reflect actual data



## Issues

- Use of proxies for physician compensation
  - American Medical Group Assn’s Medical Group Compensation & Financial Survey;
  - Median salary figure
  - Permitted to use actual salary data



## Issues

- Proxies (cont'd)
  - Use of 3 hour per week proxy for time each teaching physician spends in direct GME activities
    - Permitted to use actual hours
  - Number of hours nonprovider site is open per week
  - Number of teaching physicians is subject to maximum 1:1 resident to teaching physician ratio



## Issues

- Regulations do not provide forms of contracts
- One approach:
  - Master contract between site and hospital
  - Attachments containing each year's financial calculations and payment arrangements
    - Must be signed and comply with timing requirements



## Issues

- Master contract
  - One form applies in all three situations
  - Identifies parties
  - Contains general contractual agreements
  - Term and termination provisions





## Issues

- Attachment to master contract
  - Identifies teaching physician(s), specialty, other site-specific data
  - Contains sufficient data to satisfy intermediary in Situations 1 and 2 that no payment is necessary (no cost is incurred for teaching at the site)



## Issues

- Attachment to master contract
  - Where payment to the site is required (teaching physicians are “salaried”), contains data required by regulations
- Calculation:
  - A: Hours per week in teaching (3 hour presumption)
  - B: Hours per week site is open
  - C: Percentage of time spent by physician in teaching (A/B)



## Issues

- Calculation (cont'd)
  - D: National average salary for each physician
  - E: Cost of physician's teaching time (CxD)
  - F: Costs of residents (salary & fringes)
  - G: GME costs at site: (E+F)
  - H: Divide F by G (F/G)
  - I: Must make payment to site if  $H < 90\%$ .  
Minimum payment =  $(G \times 90\%) - F$ .



## Issues

- Calculation (cont'd)
  - Caveat – this is only an example, in summary form
  - Actual wording in agreement must be more precise than this presentation



## Issues

- Use of medical education consortium
  - Proper parties to agreement (are site and provider parties?)
  - One hospital must bear all or substantially all costs (90%)
    - Sites where more than one hospital pay for teaching
    - Determined by site, or by training program?
  - Documentation



## Issues

- Medical education consortium (cont'd)
  - Allocation of cost methodology
  - Payment of resident salaries
  - Allocation of residents among hospitals for Medicare purposes



## Issues

- Hospital and site are under same corporate umbrella
  - Written agreement is still required
  - Less detail is required regarding payment amounts
  - Must state hospital incurred all or substantially all costs
  - Have auditable documentation



## Issues

- Content of written agreement – 4 numbers are required
  - 100 % of costs based on apportioned FTE time
  - 90% of that cost
  - Portion of cost attributable to resident salaries & fringes
  - Amount attributable to teaching physician costs at site



## Issues

- Does “three month” payment rule apply to the 90% approach?
  - Generally applies only to the older “all or substantially all” test
- Residents doing research as opposed to direct patient care



## Recent Cases

- IME/GME:
  - Rhode Island Hospital v. Leavitt (C.A. No. 06-05T), D.C.R.I., 8/9/07.
- DSH/SSI
  - Saint Mary’s Mercy Medical Center v. BlueCross BlueShield Assn, PRRB Dec. No. 2007-D63 (8/24/07).



## Recent Cases

- Medicare bad debts
  - Battle Creek Health System v. Leavitt, (No. 06-1775), 6<sup>th</sup> Cir. 8/14/07
- PRRB jurisdiction
  - Loma Linda University Medical Center v. Leavitt, (No. 05-56341), 9<sup>th</sup> Cir., 7/9/07

