Reduction and Redistribution of Unused Resident Slots

The Medicare statute establishes caps on the number of residents for which Medicare will make direct and indirect graduate medical education payments to teaching hospitals. The Medicare Modernization Act of 2003 ("MMA") provides that a hospital with "unused" resident slots, i.e., a resident count less than its cap, will ordinarily lose 75% of those slots. The "lost" slots will be redistributed to other hospitals. Any hospital that wants Medicare to use its cost reporting period that includes July 1, 2003, for purposes of determining the number of unused resident slots, instead of the earlier cost reporting period that Medicare will otherwise use, must apply to its fiscal intermediary no later than June 4, 2004.

To implement the new provision, the Centers for Medicare & Medicaid Services ("CMS") will determine whether a hospital has unused slots by comparing its cap to its resident count as set forth in the most recent cost reporting period ending on or before June 30, 2002. If the hospital's cost report for that year has not been settled, the report as submitted will be used to establish the initial reduction, although that reduction is subject to revision based on a later audit.

Alternatively, if a hospital has added residents to its existing programs, it can elect to have Medicare use the cost reporting period that includes July 1, 2003. To assess whether residents have been added, a comparison will be made to the resident count in the most recent cost report that was settled by April 30, 2004. If a hospital's resident count in any subsequent cost reporting period is greater than that number (without the addition of new programs), the hospital may elect to use the cost reporting period that includes July 1, 2003. This election may potentially reduce or eliminate a cap reduction based on unused slots in the cost reporting period that would otherwise be used. This election must be made by June 4, 2004.

Additional rules apply if a hospital was a member of a Medicare GME affiliated group on July 1, 2003. The cap used to determine whether the hospital had unused resident slots will be the cap under its affiliated group agreement for July 1, 2003 - June 30, 2004. This cap will be compared to the resident count for the most recent cost reporting period ending on or before June 30, 2002, to determine whether there are unused resident slots. Given this potential mismatch, hospitals that are members of a Medicare GME group should seriously consider requesting - by June 4, 2004 - to use the resident count in its cost reporting period that includes July 1, 2003, if it qualifies under the criteria outlined above.

A hospital is also eligible to receive an adjustment in its resident count if it has added a new residency program that was accredited before January 1, 2002, but that was not in operation during the most recent cost reporting period ending on or before June 30, 2002. This adjustment would be made to the resident count for that period. Theoretically, a hospital could elect to use the cost reporting period that includes July 1, 2003, based on expansion of existing programs, as described above, and also adjust the resident count to reflect a new program, but this would be permitted only if the new program was accredited before January 1, 2002, and not in operation during the cost reporting period that includes July 1, 2003. Again, a request for an adjustment because of new programs must be submitted by June 4, 2004.

Finally, the MMA and proposed rules recently issued by CMS establish priorities for redistribution of the unused slots. In broad terms, hospitals in rural areas and metropolitan areas under a population of one million, and hospitals that currently operate or would be adding the only residency program in a state for a particular specialty, would be given priority. Other hospitals could obtain redistributed slots if the priority groups do not take them all. To establish priority within groups, CMS has proposed a scoring system based on preferred characteristics of the new residency programs.

Details about the reduction and redistribution are set forth in the CMS One-Time Notification Transmittal 77 (April 30, 2004) and in proposed rules published in the Federal Register on May 18, 2004. Each hospital may wish to consider whether it has a special situation that could be addressed by changes in the rules that would nevertheless be consistent with the statute.

Ropes & Gray lawyers are available to assist hospitals in analyzing application of the proposed rules to specific situations, preparing the election submission due June 4, 2004, and drafting comments to CMS on the proposed rules.