ASAM Regulatory Summary:

Distribution of Additional Residency Positions Under the Provisions of Section 4122 of Subtitle C of the Consolidated Appropriations Act, 2023 (CAA, 2023)

As Proposed by the FY 2024 Hospital Inpatient Proposed Rule

Overview

The Consolidated Appropriations Act (CAA) of 2023 requires the Secretary of Health and Human Services (HHS) to initiate an application in FY 2026 to distribute 200 new residency positions. At least 100 of these residency positions must be allocated to psychiatry or psychiatry subspecialties – including addiction medicine. The HHS Secretary is required to notify hospitals of the number of residency slots distributed to them by January 31, 2026 and the increase is effective on July 1, 2026. CMS has proposed an application deadline for these new slots for March 31, 2025.[1]

Determinations Required for the Distribution of Residency Positions

There are several determinations CMS is proposing to make when considering how the new residency slots should be allocated, including:

1. "Demonstrated Likelihood" of filling the positions: Hospitals would submit information[2] when applying for new slots that the hospital doesn't have room under its existing full time equivalent (FTE) residency cap to either (1) accommodate a planned new program or (2) expand an existing program.
2. Determination that a hospital is located or is treated as being in a rural area (**Category 1**)
    a. Hospitals are considered rural or as being in an urban area but classified as rural under statute and CMS regulations. More information on this aspect is included in the proposed rule.
3. Determination of Hospitals for which the Reference Resident Level of the Hospital is Greater than the Otherwise Applicable Resident Limit (**Category 2**)
    a. The reference resident level of the hospital is greater than the otherwise applicable resident limit. More information on these definitions is included in the proposed rule.
4. Determination of hospitals located in States with New Medical Schools, or Additional Locations and Branch Campuses (**Category 3**)
    a. Hospitals located in States with new medical schools that received 'Candidate School' status from the Liaison Committee on Medical Education (LCME) or that received 'Pre-Accreditation' status from the American Osteopathic Association (AOA) Commission on Osteopathic College Accreditation (the COCA) on or after January 1, 2000, and that have achieved or continue to progress toward 'Full Accreditation' status (as such term is defined by the LCME) or toward 'Accreditation' status (as such term is defined by the COCA); or;
    b. Additional locations and branch campuses established on or after January 1, 2000, by medical schools with 'Full Accreditation' status (as such term is defined by LCME) or 'Accreditation' status (as such term is defined by the COCA).
    c. Hospitals located in the following 35 States and one territory, referred to as Category Three States, would be considered Category Three hospitals: Alabama,

ASAM Regulatory Summary:

Distribution of Additional Residency Positions Under the Provisions of Section 4122 of Subtitle C of the Consolidated Appropriations Act, 2023 (CAA, 2023)

As Proposed by the FY 2024 Hospital Inpatient Proposed Rule

Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

i. Hospitals in these states are eligible for consideration and do not need to meet the descriptions listed above for category 3.
ii. Hospitals that are in states not on this list can submit a formal comment on the proposal to make a change to the above list.

5. Determination of Hospitals that Serve Areas Designated as Health Professional Shortage Areas (HPSA) under Section 332(a)(1)(A) of the Public Health Service Act (**Category 4)**
    a. A hospital qualifies under this definition if it participates in training residents in a program that rotates for at least 50% of their training time to a site physically located in a primary care or mental-health-only HPSA. Programs qualifying under the mental health only HPSA must be psychiatry or psychiatry subspecialty programs.
6. Qualifying Hospital
    a. A hospital that meets one or more of the four categories of hospitals listed above.
    b. CMS is required to distribute at least 10% of the new slots to each of the 4 categories listed above.

Number of Residency Positions Made Available to Hospitals and Limitation on Individual Hospitals

1. Slots made available to psychiatry or psychiatry subspecialty residencies.
    a. CMS is proposing that at least 100, but no more than 200 slots would be distributed to hospitals applying for residency programs in psychiatry or psychiatry subspecialties.
    b. CMS is proposing to define psychiatry subspecialties via the list described on AGGME's website, currently: Addiction Medicine, Addiction Psychiatry, Brain Injury Medicine, Child and Adolescent Psychiatry, Consultation-Liaison Psychiatry, Forensic Psychiatry, Geriatric Psychiatry, Hospice, and Palliative Medicine, and Sleep Medicine.
    c. CMS notes that the list of psychiatry subspecialties included on ACGME's list at the time of application will guide CMS' determination of psychiatry subspecialties. The subspecialty would need to be accredited with psychiatry as a core specialty.
2. Pro rata distribution and limitation on individual hospitals
    a. Each qualifying hospital that submits a timely application will receive at least 1 FTE or a fraction of 1 FTE if there are more than 200 qualifying hospitals.
3. Prioritization of applications by HPSA score
    a. If there are any remaining slots after distributing up to 1 FTE to all qualifying applicants, CMS is proposing to use HPSA scores associated with the program to which the hospital is applying to prioritize the remaining slots.

   b. Each hospital's total award would be capped at 10 additional FTEs.
4. Requirement for rural hospitals to expand existing programs
   a. Rural hospitals qualifying under category 1 listed above would be required to use any new residency slots for existing residency programs and could not use them for new programs.

Hospital Attestation to National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (CLAS) Standards

In order to ensure that residents are educated and trained in culturally and linguistically appropriate policies and practices, all applicant hospitals for slots allocated under section 4122 of the CAA, 2023, would be required to attest that they meet the National CLAS Standards to ensure that the section 4122 distribution broadens the availability of quality care and services to all individuals, regardless of preferred language, cultures, and health beliefs.

Prohibition on Administrative and Judicial Review

The CAA 2023 that made these additional residency slots available, also amended the Social Security Act to add those slots to the list of residency slots that are not subject to administrative or judicial review. Therefore, CMS is proposing that its determinations and distribution of slots under this new program would be final and not subject to administrative or judicial review.

Application Process for Receiving Increases in FTE Resident Caps

CMS notes that all hospitals applying for an increase in their FTE resident caps must submit applications by March 31, 2025 using the Medicare Electronic Application Request Information System (MEARIST). CMS lists several items of information in the proposed rule they intend to collect as part of the application process.

More information

Additional information on this proposal can be found here.

Comments

Comments on this proposal are due by COB **June 10, 2024** to CMS.

---

[1] CMS is proposing that the deadline be March 31st of the prior fiscal year, consistent with the application process established for the 1,000 additional residency slots that were allocated under the CAA 2021.
[2] Worksheet E, Part A and Worksheet E-4 from the Medicare cost report (CMS-Form- 2552-10)