

GME FTE Resident Counts Found Subject to Revision without Reopening of the 1996 Cost Report

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In *Kaiser Foundation Hospitals v. Sebelius*, No. 11-92 (D.D.C. Dec. 12, 2011), the U.S. District Court for the District of Columbia held that despite the passing of the three-year limitation period prohibiting the reopening of a Medicare cost report, providers may challenge their number of 1996 full-time equivalent (FTE) residents for purposes of their direct and indirect graduate medical education (collectively, GME) reimbursement calculation in a later open year.

By way of background, Medicare reimburses teaching hospitals for the costs associated with providing GME. Medicare calculates this reimbursement based in part on the number of FTE residents participating in a particular hospital's teaching program. In 1997, Congress limited GME reimbursement by indefinitely capping the number of FTE residents that a hospital could claim in future years at the number of FTE residents that the hospital listed in its final Medicare cost report for the 1996 fiscal year.

The plaintiff-hospitals in *Kaiser Foundation Hospitals* sought additional GME reimbursement for fiscal years 1999 through 2004 on the ground that their 1996 FTE resident caps did not reflect their actual resident count at that time. The hospitals' fiscal intermediary conceded that the hospitals' 1996 resident counts were deflated, but argued that to adjust the hospitals' GME FTE rates based on revisions to their 1996 resident caps would constitute an impermissible reopening of the hospitals' 1996 cost reports in violation of the three-year limitation period imposed by federal regulation.

The district court disagreed, remanding the case with instructions that federal officials reconsider the 1996 cost reports underlying the hospitals' FTE resident caps for the purpose of determining the hospitals' entitlement to additional GME FTE reimbursement between 1999 and 2004. In so holding, the court stated that as long as "hospitals do not seek adjusted reimbursement for closed years," then "changing predicate facts" in the cost reports from such closed years "does not constitute a reopening" in violation of the three-year limitation period.

This case, if not reversed on appeal, would modify Medicare practice and give providers an opportunity to claim that their 1996 resident counts were understated and need to be revised to assure appropriate GME FTE payment in current, open years. Providers are urged to review their 1996 FTE count and the final cost report of their 1996 fiscal year to determine if they are potentially entitled to relief.

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- **Edward S. Kornreich**