**Recent Developments in Medicare Reimbursement for Nursing & Allied Health Programs Directly Applicable to ACPE CPE Residencies in Acute Care Hospitals**

**Court Reverses Pharmacy Residency Program Disallowance**

On March 29, 2021, the U.S. District Court of South Carolina granted the Medical University of South Carolina’s motion for summary judgment against the U.S. Department of Health & Human Services (HHS) for HHS’s disallowance of its postgraduate year one (PGY1) pharmacy residency costs.

Based on a reinterpretation of program regulations made without notice to stakeholders or an opportunity to comment, the Centers for Medicare & Medicaid Services (CMS) disallowed two years of pass-through funding. The court remanded the case to HHS, directing the agency to reimburse MUSC for its residency costs with interest. ASHP lacked standing to intervene in the case, but we submitted an [amicus brief](https://www.ashp.org/-/media/assets/advocacy-issues/docs/GRD-ASHP-Amicus-Brief.ashx?la=en&hash=8A7439067B27720F37F9C15E3FF8419620BBB788) in support of MUSC, outlining the failure of CMS to provide meaningful regulatory guidance to residency programs.

The MUSC lawsuit was a precursor to the recent spate of residency program disallowances based on a reinterpretation of program regulations following publication of the [2018 Transmittal for Medicare Administrative Contractors](https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2018Downloads/R2133OTN.pdf) (MACs). In December 2019, ASHP had a [preliminary meeting with CMS](https://www.ashp.org/Advocacy-and-Issues/Key-Issues/Other-Issues/Letter-Improving-Pharmacy-Residency-Program-Oversight?loginreturnUrl=SSOCheckOnly) to discuss residency program audits and the MACs’ application of new and inconsistent interpretations of residency program regulations. Since then, ASHP has followed up several times with the agency. We are still hoping to work with CMS to resolve the issue fully and to safeguard residency program funding.

The MUSC win is good news for residency programs facing disallowances following MAC program audits. While the facts of MUSC’s case may differ from other cases, the court’s finding that CMS’s disallowance was “arbitrary and capricious” will likely extend to similarly situated programs facing disallowances. At a minimum, the MUSC decision should force CMS to develop guidance for residency programs, as ASHP has previously requested.

ASHP will submit a letter to the agency requesting that, on the basis of the court’s decision, they reverse outstanding disallowances based on the agency’s erroneous interpretation of program regulations and issue compliance guidance outlining CMS’s expectations for PGY1 program operations.

You can help by [sending an email](http://www.mmsend84.com/link.cfm?r=dQB3_YgmSnO2Y1ywq_rdRg~~&pe=mQKLCf5FECjADZhqxi6erwmtofYE5N7R2vAr4Eopx4hu6BisTOPs0DKEIhg9zCRdiXcyj-3o5Pfj5GXtdS-4GQ~~&t=bKFt8Hw8s5jHBvF-XJA0sw~~) to members of Congress asking them to protect pharmacy residency programs.

**ASHP Requests for Improvements to Pharmacy Residency Program Oversight**

Seema Verma   
Administrator  
U.S. Centers for Medicare & Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244

RE: Improving Pharmacy Residency Program Oversight.

Dear Administrator Verma,

It has come to ASHP’s attention that a number of recent audits of pharmacy residency programs have resulted in significant cost disallowances, some over a number of years and in amounts that threaten program viability. Many of these cases involve arbitrary and inconsistent application of cost-reporting requirements as well as substandard and poorly organized audit processes.

To remedy the problem, we request that Centers for Medicare & Medicaid Services (CMS) cease disallowances until program technical assistance (TA) has been provided and audit processes have been standardized. Specifically, we ask that the agency strengthen auditor training and provide TA specific to pharmacy residency programs, including a comprehensive overview of what CMS deems to be optimal cost accounting processes and procedures.

ASHP has received troubling communications from a number of programs undergoing audit this year. Programs noted arbitrary and inconsistent cost disallowances on the basis of cost accounting procedures that had been acceptable in previous years and to different auditors. Programs were cited for violating cost accounting standards that are subjective at best. Specifically, on the basis of the “direct control” requirement (42 C.F.R. §413.85), Medicare Administrative Contractors (MACs) disallowed costs on the basis of everything from off-site rotations (a staple of residency programs) to the name on a program’s diploma or certificate. Based on these audit findings, it appears CMS has very specific interpretations for residency program compliance but has failed to communicate those standards to residency programs through guidance or TA. As a result, pharmacy residency programs are effectively left to crowdsource best practices among themselves and hope CMS agrees with their methods — or face stiff financial penalties.

Programs also reported disorganized and unprepared auditors. Regarding audit protocols and procedures, programs noted that audits were conducted arbitrarily, with no clear timelines, and that document requests varied from auditor to auditor and by MAC region. In some instances, rather than requesting a set of documents at the outset, which would allow programs to prepare efficiently and effectively, auditors requested new documents on a daily basis with very short turnaround times (24-48 hours). This approach was unnecessarily disruptive, needlessly stressful, and inefficient for program directors and staff, consuming hours that could have been devoted to residents. Moreover, some auditors appeared unprepared, questioning basic tenets of residency programs, such as why tuition is not charged. Because audits are generally collaborative, programs anticipate the need to provide limited auditor education, but auditors should be equipped with a reasonable baseline knowledge of the programs they are reviewing.

Pharmacy residency programs feed a vital patient care pipeline. Damaging them will threaten care quality, patient access, and established interprofessional care delivery models. ASHP accredits pharmacy residency programs, ensuring they meet the highest competency standards. Due to scientific advancements and the evolution of care delivery models, pharmacy residencies are now essential to performing certain patient care services. In fact, residencies are prerequisites for positions within specialties such as solid organ transplantation, clinical pharmacogenomics, psychiatry, infectious diseases, critical care, cardiology, oncology, and pediatrics, among others.

At present, there are 1,328 PGY1 programs eligible for CMS pass-through funding. In 2018, three-quarters of the jobs filled by PGY1 program graduates required PGY1 training — that amounts to 3,500 positions annually. Almost 1,300 of these PGY1 graduates go on to PGY2 positions in a variety of specialized practice areas. Any decrease or weakening of pharmacy residency programs risks severely limiting the number of pharmacists available to fill positions, resulting in provider shortages and curtailing patient access to care.

Pharmacy residency programs want to comply with CMS standards, but they simply cannot without knowing what those standards are. CMS has not provided residency programs with guidance regarding its interpretations of program requirements, nor has it offered any tools for compliance success. Further, CMS has failed to standardize audit protocols and procedures. At minimum, auditors should arrive with basic knowledge of residency program operations and clearly communicate timeline and documentation expectations to program directors at the beginning of the audit. Until CMS remedies the foregoing concerns, we request that CMS suspend all cost disallowances related to this issue.

ASHP would welcome an opportunity to discuss this in greater detail with CMS and to assist CMS in providing meaningful TA to residency programs. We look forward to working with CMS to enhance pharmacy residency training programs and improve patient care. Please direct any questions or requests for information to Jillanne Schulte Wall, Director of Federal Regulatory Affairs, at [jschulte@ashp.org](mailto:jschulte@ashp.org?subject=Improving%20Pharmacy%20Residency%20Program%20Oversight) or (301) 664-8698.

Sincerely,

Tom Kraus  
VP, Government Relations