

Hospital & residency program closure implications FAQs

According to Medicare rules and regulations, the closure of a hospital is defined as the termination of a Medicare provider agreement under 42 CFR 489.52. The closure of a residency program is when the hospital ceases to offer training for residents in a particular approved medical residency training program.

My training hospital or program announced its closure, what now?

If you are faced with a hospital and/or program closure, you may encounter challenges including but not limited to: strain on personal finances, difficulty securing an alternative training program, an immediate need to sell a home or break an apartment lease, impact on the overall length of your training and/or future job prospects, and concern regarding medical malpractice tail coverage. It is important to take these factors into consideration when planning your next steps. This guide is designed to answer some of the frequently asked questions posed by residents and fellows faced with this situation.

My training institution declared bankruptcy. What does this mean?

U.S. bankruptcy law is a complicated area. There are six chapters and depending on the chapter filed, different results occur. You may be most familiar with Chapter 11. This chapter provides for reorganization, usually involving a corporation or partnership. A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. Chapter 7 bankruptcy, however, is a bankruptcy that doesn't require a repayment plan but does require liquidation or sale of nonexempt assets to pay back creditors.

In the context of a hospital closure, depending on the type of bankruptcy declared, hundreds of residents and fellows can be forcibly displaced from their training programs as was the case in 2019 with Hahnemann University Hospital which declared Chapter 11 bankruptcy. You will likely be in

search of an alternative program to continue your residency or fellowship.

If my hospital declared bankruptcy, how can I be sure my interests are represented?

It is highly advisable to attain legal counsel to ensure your interests are represented in the bankruptcy proceedings and any related court proceedings, specifically in relation to tail insurance. In the absence of a court-approved settlement, when the hospital's malpractice policy expires trainees will need tail insurance to prevent a coverage gap and exposure to liability.

The AMA acts as the physician's powerful ally in the courts. For the AMA Litigation Center to get involved in any case, it first must meet two criteria. First, the AMA Litigation Center position must be consistent with AMA policies. Second, the medical society of the state where the case is to be filed must support the AMA Litigation Center getting involved. If the case meets those two standards, members of the AMA Litigation Center Executive Committee then further examine the details and decide whether to provide assistance.

What type of malpractice insurance do I need?

A claims-made insurance policy is one that provides coverage for claims made or reported during the policy period (i.e., between the effective date and the expiration date or termination of the policy). Unless the incident was reported to the insurance company before the coverage ended, a claims-made policy will not cover a claim reported after the end of the policy period even if the claim resulted from something that happened (i.e., an incident) before the coverage ended. Upon termination of the claims-made policy, tail insurance (or its equivalent) is required to prevent a gap in coverage.

Affected residents and fellows need to proceed with steps to purchase tail coverage for themselves unless they have received assurances of tail coverage from their new institutions. Contact a broker or a medical professional liability insurance company to help you determine what coverage solution would work best for you and receive a quote. The process for obtaining a quote requires the completion of an application and submitting claims histories. The process is not complex, but once your completed application is submitted, it can take up to two weeks to get a premium quote from the carriers. Money that may be contributed by others toward the cost of insurance premiums will likely be in the form of future reimbursement, underscoring the need for residents and fellows to act immediately.

It is critical that physicians-in-training who are forced to find new training programs after their teaching hospital closes are not also responsible for the cost of the medical liability insurance tail coverage guaranteed by the defunct program. The AMA is committed to protecting residents and fellows affected by training program closures and we will continue to work with partners to mitigate the risk of these vulnerabilities for our colleagues in training.

How do I go about finding an alternative training position?

Under Medicare rules, residents are *not* geographically restricted and can go to any hospital willing to take them. The AMA's FREIDA database allows you to search for a residency or fellowship from more than 12,000 programs all accredited by the Accreditation Council for Graduate Medical Education (ACGME). Vacancies are also available on the Association of American Medical Colleges (AAMC) website. FindAResident is a year-round search tool designed to help you find open residency and fellowship positions, including non-ACGME openings. It is also advisable to contact your program director and/or state medical or national specialty society to see if they are aware of any available openings that you should consider.

What happens to my CMS and other additional or supplemental GME funding? Does it get redistributed?

In the event of a hospital closure, CMS funding follows the displaced trainee to his or her new program, but after the trainee has completed training, the funded training slot gets redistributed. By accepting a displaced resident, the accepting institution has the opportunity to gain a higher-ranking criterion in the redistribution of these limited-funded training slots through the process set forth in Section 5506 of the Affordable Care Act (PDF). However, it should be noted that while most Hahnemann residents received funding, a few did not. Residents who matched to Hahnemann for 2020 were not eligible for funding.

In the event of a program bankruptcy, the receiving hospital can increase their funding through a temporary CMS cap increase. The closing hospital is not entitled to retain the funding and CMS cannot be invoiced for resident effort when none is performed. This was a significant issue in the Hahnemann Hospital closure.

I may need to move to another city or state to start my new position. Do I have any options for getting out of my current

lease?

When dealing with real estate contracts, it is advisable to secure legal counsel to discuss your options. For example, there may be hardship clauses in your lease agreement that will discharge you of your contractual obligations if certain criteria are met.

What happens if I am in the U.S. on a visa? Will I lose my status and be forced to leave the country?

Physicians sponsored as Exchange Visitors for participation in accredited clinical programs or directly associated fellowship programs of graduate medical education or training are categorized as J-1 physicians. The Educational Commission on Foreign Medical Graduates (ECFMG) is the sole J-1 visa sponsor of foreign national physicians to participate in graduate medical education (GME) at U.S. hospitals. If your hospital or training program closes and you do not find a position with another GME training program within 30 days, current rules require you to leave the U.S.

There is a grace period that the U.S. Customs and Immigration Service (USCIS) allows for individuals upon completion of the J-1 Exchange Program before they must depart the U.S. The 30-days following the completion of a residents' J-1 program as indicated on their DS-2019 form is considered the grace period. Upon the end of the 30-days, a J-1 resident will no longer fall under J-1 status, but instead they will fall under the overall jurisdiction of the USCIS and may be deported. In addition, a J-1 resident may not continue to work on any exchange activities during the grace period and extensions and requests for additional time are generally only given under remarkable and exceptional situations.

While a J-1 visa holder's status can be terminated for a variety of reasons, you are being impacted by the abrupt termination of your training programs due to no fault of your own. During the impending Hahnemann closure in 2019, the AMA advocated for the Department of State (DoS) to work with the USCIS and ECFMG to ensure that the 30-day grace period requirement for these J-1 visa holding residents impacted by the bankruptcy filing and pending closure of their hospital was waived, and that they were given support to find an appropriate alternative training program to continue their education in the Exchange Visitor Program.

Once you secure a position with another GME training program, reinstatement becomes necessary. As a J-1 holder, there is no limit to the number of times you may transfer from one sponsoring organization to another, however, your transfer must be approved by your current host before you can make the switch. While consulting ECFMG, AMA, and the DoS resources, it is also advisable to consult an immigration attorney to ensure the correct processes are being followed.

What is AMA doing to address this issue overall?

At the 2019 Interim Meeting, the AMA House of Delegates passed Resolution 310 in response to the residents and fellows affected by the year's record-breaking closure of Philadelphia's Hahnemann University Hospital. It called upon the AMA to:

1. Study and provide recommendations on how the process of assisting displaced residents could be improved
2. Work with the federal Centers for Medicare and Medicaid Services (CMS) to adopt regulations to protect residents and fellows impacted by program or hospital closures
3. Work with colleague organizations to ensure that displaced residents and fellows be directly represented in legal and other proceedings related to a hospital or training program closure
4. Work with colleague organizations to develop a stepwise process to assist residents and fellows to obtain new training positions
5. Address the immediate problem of displaced physicians, residents and fellows not having professional liability tail coverage

AMA staff was to have reported back to the House of Delegates on the first four directives in June at our 2020 Annual meeting. With only a Special Meeting being held, the report was set to be presented at the November 2020 Special Meeting of the House of Delegates but due to another Special Meeting, is now slated for consideration at the 2021 Annual Meeting. The fifth directive, relating to malpractice was resolved on March 3, 2020. On this day, the federal bankruptcy judge handling the Hahnemann case approved a settlement with Hahnemann's owners to pay for long-tail coverage for all displaced physicians, residents, and fellows.

On July 9, 2020 the AMA wrote a comment letter to CMS concerning Fiscal Year (FY) 2021 Medicare Hospital Inpatient Prospective Payment System (IPPS) and Long-Term Acute Care Hospital (LTCH) Proposed Rule (CMS-1735-P). The AMA appreciates that this new proposed rule provides a new definition for a displaced resident that gives residents greater flexibility to transfer to new hospitals during the winding down phases of their current placements. Overall, the AMA supports the new definition of displaced resident and believes that this will help to ensure that all residents are included and supported during future hospital and program closures. Additionally, the AMA asked that CMS make temporary cap increases effective retroactively to 2015 in the final rule. Moreover, the AMA urged CMS to work with the Accreditation Council for Graduate Medical Education to establish regulations that protect residents and fellows impacted by sudden program or hospital closure.