

Legal Regulations and Institutional Policies Underlying Parental Leave in Graduate Medical Education

Sashank Prasad, MD
Pavan A. Vaswani, MD, PhD
Joshua A. Budhu, MD
Sarah E. Conway, MD

Lauren R. Kett, MD, PhD
Silviya H.M. Eaton, MBA, MA, C-TAGME
Michael P. Bowley, MD, PhD

Parental leave policies have major effects on resident well-being, gender disparities in academic medicine,¹ and maternal, child, and family health.² The increasing occurrence of parenthood during residency training underscores the critical importance of policies that are clear and supportive. Recent surveys have shown that approximately 40% of respondents plan to have children during residency.³ A recent editorial in the *New England Journal of Medicine* recommended that parental leave during graduate medical education (GME) should include a minimum of 6 weeks of paid leave with the goal of increasing to 12 weeks, applicable to all trainees, without automatic extension of training.⁴ A policy statement from the American Board of Medical Specialties (ABMS) in July 2020 issued similar recommendations.⁵ Unfortunately, a majority of institutions lack consistent policies that meet these goals.⁶

The successful revision of a parental leave policy requires understanding of and compliance with the relevant laws and regulations in GME. Clear, concise resources summarizing this information are lacking. In order to facilitate the creation of modern parental leave policies at all institutions, we summarize the pertinent regulations in this article (TABLE). Specialty- and institution-specific factors are paramount. Accordingly, we use the field of neurology as an illustrative example for the creation of a residency program parental leave policy. However, most issues discussed here are relevant to all fields of medicine.

Historical Background and Current Practices

Prior to the 1970s, no literature had been published about parental leave policies during residency.⁷ Although unique programs had been piloted, such as residency programs specifically aimed toward physician mothers, these efforts were uncommon and short-lived.⁸ Following the Pregnancy

Discrimination Act of 1978, the Accreditation Council for Graduate Medical Education (ACGME) did not institute standardized policies or guidelines and each program developed individual approaches.⁷ For many years, residency programs remained poorly prepared for parental leaves.⁹ For example, a 1986 survey of Harvard-affiliated residency programs showed that approximately 40% of those who became pregnant during residency experienced hostility in their training environment.¹⁰

It was not until the late 1980s that residency programs started to formalize policies regarding parental leave.⁷ These policies initially focused only on maternity leave, with the first policy outlining leave for the non-childbearing parent appearing in 1995.⁷ By 2005, formal policies were instituted in approximately 90% of nonsurgical residency programs,^{11,12} but have remained less common in surgical specialties.^{7,13}

Legal Regulations and Policies

United States Family and Medical Leave Act of 1993 (FMLA)

The US FMLA legislation created minimum requirements for parental leave for all employees.¹⁴ This law mandates employers to provide eligible employees up to 12 weeks for parental leave with continuation of benefits and protection of the employment position.¹⁴ However, the law includes no stipulation regarding continuance of wages during the leave. In addition, it does not require maintenance of allocated vacation time outside of the parental leave.

The application of this law to GME has been controversial. In 2011, the Supreme Court issued a decision that trainees in GME programs are employees entitled to workplace rights, thus entitled to protection under FMLA. This case stemmed from legal proceedings in the 1990s when the federal government attempted to recover unpaid taxes from the University of Minnesota, which until then had considered its residents to be exempt from certain

DOI: <http://dx.doi.org/10.4300/JGME-D-20-01083.1>

TABLE

Organizations and Policies Governing Parental Leave in Graduate Medical Education

Organization	Law, Regulation, or Policy
US Legal Code	Family Medical Leave Act, 29 C.F.R. Part 825 ¹⁴
State Legal Code	Individual state laws ¹⁵⁻¹⁷
Centers for Medicare and Medicaid Services, HHS	Federal Register Vol 75 No 226 ¹⁸
Health Resources and Services Administration, HHS	45 C.F.R. Part 75.431 ¹⁹
Veterans Health Administration, Dept of Veterans Affairs	Disbursement Agreement Procedures for Physician and Dentist Residents, VHA Handbook 1400.05 ²⁰
National Institutes of Health	Grants Policy Statement ^{21,22}
Accreditation Council for Graduate Medical Education	Common program requirements, ²³ specialty-specific program requirements, ²⁴ FAQ documents
Institutional GME	Parental leave policy
American Board of Medical Specialties	Policy on Parental, Caregiver and Medical Leave During Training ⁵
Specialty-specific board	Board certification requirements (eg, ABPN ²⁵)

Abbreviations: HHS, Department of Health and Human Services; GME, graduate medical education.

taxes because they were considered students rather than employees.¹⁵

Although the legal precedent has been established that residents do qualify for FMLA, some aspects of their eligibility remain ambiguous. For example, the law stipulates that individuals must have worked for 12 months to be eligible for coverage through their employer, leaving training programs to decide how their parental leave policy will address first-year residents.

Individual States' Parental Leave Laws

While no substantive changes in federal law have occurred in the 25 years since the passage of the FMLA, several states have since passed laws to implement paid parental leave. State laws supporting paid parental leave now exist in California, Massachusetts, New Jersey, New York, Rhode Island, Washington, and the District of Columbia; similar laws in Colorado, Connecticut, and Oregon go into effect over the next several years.¹⁵⁻¹⁷ Protections and support offered by these state laws are variable: the duration of paid leave ranges from 4 weeks (Rhode Island) to 12 weeks (Connecticut, Colorado, New Jersey, New York, Massachusetts, Oregon, and Washington, when each state law fully takes effect). The amount of pay received during the leave ranges from 60% to 100% of the individual's wage up to an established maximum. State statutes regarding paid parental leave are rapidly evolving and should be reviewed when crafting a training program's policy.

ACGME Policies

The ACGME is a private, not-for-profit organization that establishes standards for GME and accredits sponsoring institutions and residency and fellowship

programs. The ACGME publishes Common Program Requirements that are applicable to all training programs.²³ The requirements relating to well-being, falling under the rubric of the "Learning and Work Environment," acknowledge that "there are circumstances in which residents may be unable to attend work, including . . . parental leave." The requirements state that "each program must allow an appropriate length of absence for residents unable to perform their patient care responsibilities," but do not specify what the duration of a parental leave should be, or outline how a leave should be created to balance the other activities constituting the training curriculum.

American Board of Medical Specialties

The American Board of Medical Specialties (ABMS) works with 24 specialty member board organizations to certify physicians.²⁷ Each member board establishes its requirements for training standards and certification. In July 2020, the ABMS announced new policies that will become effective in July 2021, applying to member boards with training programs that are 2 or more years in duration.⁵ This new policy will require member boards to adopt policies that allow a minimum of 6 weeks of parental leave for both childbearing and non-childbearing parents during training, without exhausting all other allowed time away from training, and without extension of training assuming clinical competency is achieved. The new ABMS policy also offers guidance (albeit not a formal requirement) that scheduling of a parental leave should ideally also preserve at least 2 weeks vacation separately in that year.

Local Institutional GME Policies

In addition to complying with federal and state regulations, residency programs must also ensure that

their approach to parental leave conforms to GME policies at their respective institutions. When we began the process of revising the parental leave policy for our residency program in 2018, our existing institutional GME policy allowed residents to request up to 12 weeks of parental leave, as mandated under FMLA. Our institutional policy at that time had several limitations, however. First, pay was not guaranteed during the parental leave, consistent with the minimum FMLA regulations. Second, the creation of a 12-week leave required that an individual use all scheduled vacation time for the year. Third, the policy created different standards for childbearing and non-childbearing parental leave.

In September 2018, our GME office revised our institution's parental leave policy for trainees in all programs. Parental leave became construed as a single entity, eliminating distinctions between maternity and paternity leave and between childbirth and adoption. In addition, the revised policy mandated 8 weeks of paid leave, exclusive of vacation scheduled in the remainder of the year. Under the policy, an individual could elect to use paid vacation time to extend the leave from 8 to 12 weeks. Finally, this new policy became the minimum standard across all residency programs at our institution, allowing individual programs to offer policies that surpassed these thresholds.

Medicare, Veterans Health Administration, and Other Sources of Funding for Residency Costs

The majority of funding for most residents' salaries and other costs related to their education typically comes from the federal Medicare program administered by the Centers for Medicare and Medicaid Services (CMS) under the Department of Health and Human Services (HHS).²⁸⁻³¹ Additional public GME funding often comes from Medicaid, also administered by CMS; the Veterans Health Administration (VHA), administered by the Department of Veterans' Affairs; and the Health Resources and Services Administration (HRSA), an agency of HHS.²⁹ In addition to federal sources of funding, institutions incur additional expenses for residency training programs once the total number of trainees exceeds the Medicare GME cap.³⁰ Administrative contractors regularly perform audits of the cost reports submitted annually by hospitals with Medicare-funded training programs.

Each of these funding agencies establishes policies related to family and other leave. CMS allows hospitals to count residents' approved leave time toward hospitals' direct and indirect GME costs, as long as the leave does not extend training.¹⁸ The

Department of Veterans' Affairs allows no more than 15 days of reimbursed sick leave taken during a VHA assignment.²⁰ The federal regulations related to grants from HHS, including HRSA, allow for funding of family-related leave if it is provided under written policies and equitably allocated among sources of funding.¹⁹

Funding regulations are complex and changing. When creating a parental leave policy, training programs should work closely with their reimbursement office to conform to federal GME funding policies. Close collaboration with departmental and hospital leadership is also often crucial to securing necessary financial support.

Regulations and Policies Specific to Neurology Training Programs

We review regulations specific to neurology residency training to illustrate details that affected the development of an updated parental leave policy for our program. Each training program will have to be cognizant of parallel regulations within their field.

ACGME Review Committee for Neurology

The ACGME has review committees that oversee and conduct program accreditation. These review committees publish specific requirements for accreditation of residency programs in each specialty.

In neurology, these requirements stipulate that the 3 years of neurology residency (following the first year of general internal medicine) must include a minimum of 18 months of adult neurology, 3 months of elective, 3 months in child neurology, 1 month in psychiatry, and 3 months of vacation.²⁴ The ACGME program requirements for neurology do not establish specific guidelines regarding parental leave. Thus, a 3-year neurology residency program can fulfill all training requirements while including a 12-week parental leave, without using vacation or mandating extension of training.

American Board of Psychiatry and Neurology Eligibility

Member boards in each specialty maintain standards for physician certification. For certification as a neurologist, the American Board of Psychiatry and Neurology (ABPN) requires that a candidate be a graduate of an accredited medical school, maintain a full, unrestricted medical license, and complete training in a US ACGME-accredited program or one approved by the ABPN.²⁵ In November 2020, the ABPN issued a policy stipulating that programs must allow a minimum of 6 weeks of parental leave

without exhausting other time away from training and without mandatory extension of training.

The new position of the ABPN contrasts to the requirements that have been stipulated to date by the specialty boards overseeing certification in most other specialties.³² Many boards have required extension of training for any leave that exceeds 4 to 6 weeks per year. Once the new ABMS policy goes into effect, medical certifying boards in all specialties will need to enact policies allowing parental leave of 6 or more weeks without automatic extension of training. This is an exciting era in which national regulations are promoting parental leave in GME, rather than constraining it.

National Institute of Neurological Disorders and Stroke R25 Research Education Grant Requirements

The National Institutes of Health offer career development (K), training (T), and research (R) grants, with requirements that may affect GME parental leave. In neurology, the National Institute of Neurological Disorders and Stroke (NINDS) offers the R25 Research Education Program to foster the development of independent clinician-scientists through funding of early-career educational research experiences.³³ Twenty-two academic institutions currently participate. Funding supports 80% protected research time for 6 contiguous months during neurology residency and extends for an additional 12 to 24 months during fellowship.

NIH policies have been revised to support consistently applied institutional parental leave policies.^{21,34} For career development awards, including the R25, a leave of absence up to 3 months that follows local institutional policies does not need separate NIH approval.²¹ For the Ruth L. Kirschstein National Research Service Awards, which are used for research fellowship years in some programs, trainees can receive stipends for up to 8 weeks.²²

Conclusions

Parental leave is a critical issue for all GME programs and at the core of key issues including equity, health, and well-being. We believe all training programs should recognize the importance of this issue and, wherever possible, enact the necessary changes to implement a 12-week paid leave, with preservation of vacation outside the leave and without mandatory extension of training. To achieve this goal, it is critical for training program leadership to possess accurate knowledge of the laws and regulations that govern parental leave policies in GME.

Federal regulations establish only minimum requirements for parental leave, without addressing several issues that are critical to a fair and equitable approach. FMLA provides no requirement for continuing salary or maintaining vacation time outside the leave. At present, state laws are also lacking—only 9 states require paid leave, which are of variable duration and salary support.

The ACGME, which indirectly determines many policies in training programs by virtue of its role in accreditation, has some specialty-specific requirements that allow for a fair and supportive policy but does not provide specific guidelines for parental leave policies across all specialties. The ABMS and NIH have policies that generally support expanded parental leave, and the ABMS has recently issued a new policy going into effect in 2021 that will require all medical boards to require a minimum 6-week parental leave without extension of training. The Centers for Medicare and Medicaid Services and Department of Health and Human Services also have reimbursement policies that, in general, allow for a robust parental leave.

There are other important factors to be considered when implementing an expanded parental leave policy, beyond the legal and regulatory requirements. Programs must ensure clinical competence of trainees, provide adequate educational and academic opportunities, maintain equity and wellness for other individuals in a training program, and secure the institutional support and financial resources needed for appropriate staffing of clinical services. It is essential, however, that these issues are not viewed as fixed barriers that prevent necessary changes; successful solutions to these challenges can and should be sought. Further advocacy will be critical to promote more uniform approaches toward expanded parental leaves across all specialties.

References

1. Edmunds LD, Ovseiko PV, Shepperd S, et al. Why do women choose or reject careers in academic medicine? A narrative review of empirical evidence. *Lancet*. 2016;388(10062):2948–2958. doi:10.1016/S0140-6736(15)01091-0
2. Burtle A, Bezruchka S. Population health and paid parental leave: what the United States can learn from two decades of research. *Healthcare (Basel)*. 2016;4(2):30. doi:10.3390/healthcare4020030
3. Blair JE, Mayer AP, Caubet SL, Norby SM, O'Connor MI, Hayes SN. Pregnancy and parental leave during graduate medical education. *Acad Med*. 2016;91(7):972–978. doi:10.1097/ACM.0000000000001006

4. Weinstein DF, Mangurian C, Jagsi R. Parenting during graduate medical training - practical policy solutions to promote change. *N Engl J Med*. 2019;381(11):995–997. doi:10.1056/NEJMp1904721
5. American Board of Medical Specialties. American Board of Medical Specialties Policy on Parental, Caregiver and Medical Leave During Training. <https://www.abms.org/policies/parental-leave/>. Accessed April 8, 2021.
6. Magudia K, Bick A, Cohen J, et al. Childbearing and family leave policies for resident physicians at top training institutions. *JAMA*. 2018;320(22):2373–2374. doi:10.1001/jama.2018.14414
7. Humphries LS, Lyon S, Garza R, Butz DR, Lemelman B, Park JE. Parental leave policies in graduate medical education: a systematic review. *Am J Surg*. 2017;214(4):634–639. doi:10.1016/j.amjsurg.2017.06.023
8. Kaplan HI, Kaplan HS, Freedman AM. Residency training in psychiatry for physician mothers. *JAMA*. 1964;189:11–14. doi:10.1001/jama.1964.03070010017003
9. Auchincloss EL. Conflict among psychiatric residents in response to pregnancy. *Am J Psychiatry*. 1982;139(6):818–821. doi:10.1176/ajp.139.6.818
10. Sayres M, Wyshak G, Denterlein G, Apfel R, Shore E, Federman D. Pregnancy during residency. *N Engl J Med*. 1986;314(7):418–423. doi:10.1056/NEJM198602133140705
11. Manaster BJ, Hulen R. Pregnancy and maternity policies in radiology residencies: the 1993 survey of the American Association for Women Radiologists. *Acad Radiol*. 1995;2(9):804–806. doi:10.1016/s1076-6332(05)80492-1
12. McPhillips HA, Burke AE, Sheppard K, Pallant A, Stapleton FB, Stanton B. Toward creating family-friendly work environments in pediatrics: baseline data from pediatric department chairs and pediatric program directors. *Pediatrics*. 2007;119(3):e596–e602. doi:10.1542/peds.2006-2397
13. Sandler BJ, Tackett JJ, Longo WE, Yoo PS. Pregnancy and parenthood among surgery residents: results of the first nationwide survey of general surgery residency program directors. *J Am Coll Surg*. 2016;222(6):1090–1096. doi:10.1016/j.jamcollsurg.2015.12.004
14. US Department of Labor. Family and Medical Leave Act. <https://www.dol.gov/agencies/whd/fmla>. Accessed March 15, 2021.
15. National Conference of State Legislatures. Paid Family Leave Resources. <https://www.ncsl.org/research/labor-and-employment/paid-family-leave-resources.aspx>. Accessed March 15, 2021.
16. National Conference of State Legislatures. State Family and Medical Leave Laws. <https://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>. Accessed March 15, 2021.
17. A Better Balance. Comparative Chart of Paid Family and Medical Leave Laws in the United States—A Better Balance. <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>. Accessed March 15, 2021.
18. Centers for Medicare and Medicaid Services. Medicare Program: Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates; Ambulatory Surgical Center Payment System and CY 2011 Payment Rates; Payments to Hospitals for Graduate Medical Education Costs; Physician Self-Referral Rules and. *Fed Regist*. 2010;75(226):71800–72580.
19. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. *45 Code Fed Regul*. 2014;§75.431. <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df3c54728d090168d3b2e780a6f6ca7c&ty=HTML&ch=L&mc=true&n=pt45.1.75&r=PART>. Accessed March 15, 2021.
20. Veterans Health Administration. *Disbursement Agreement Procedures for Physician and Dentist Residents*. Washington DC; 2015. <https://www.va.gov/oaa/handbooks.asp>. Accessed March 15, 2021.
21. National Institutes of Health Office of Extramural Research. NIH Grants Policy Statement. https://grants.nih.gov/grants/policy/nihgps/HTML5/section_12/12.1_1_leave.htm. Published 2019. Accessed March 15, 2021.
22. National Institutes of Health Office of Extramural Research. NIH Grants Policy Statement. 2019. https://grants.nih.gov/grants/policy/nihgps/HTML5/section_11/11.3.16_other_terms_and_conditions.htm?Highlight=parental. Accessed March 15, 2021.
23. Accreditation Council for Graduate Medical Education (ACGME). ACGME Common Program Requirements (Residency). <https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/CPRResidency2019.pdf>. Accessed March 15, 2021.
24. Accreditation Council for Graduate Medical Education (ACGME). ACGME Program Requirements for Graduate Medical Education in Neurology. <https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/CPRResidency2019.pdf>. Accessed March 15, 2021.
25. American Board of Psychiatry and Neurology (ABPN). General requirements. <https://www.abpn.com/become-certified/general-requirements/>. Accessed March 15, 2021.
26. Kesselheim AS, Austad KE. Residents: workers or students in the eyes of the law? *N Engl J Med*. 2011;364(8):697–699. doi:10.1056/NEJMp1100414
27. American Board of Medical Specialties (ABMS). About ABMS. <https://www.abms.org/about-abms/>. Accessed March 15, 2021.

28. Centers for Medicare and Medicaid Services. Direct Graduate Medical Education. <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/DGME>. 2020. Accessed March 15, 2021.
29. Institute of Medicine. *Graduate Medical Education That Meets the Nation's Health Needs*. Washington, DC; The National Academies Press; 2014. doi:<https://doi.org/10.17226/18754>
30. Heisler EJ, Mendez BHP, Mitchell A, Panangala SV, Villagrana MA, Service CR. *Federal Support for Graduate Medical Education: An Overview*. 2018. <https://crsreports.congress.gov>. Accessed March 15, 2021.
31. Centers for Medicare and Medicaid Services. Indirect Medical Education. <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Indirect-Medical-Education-IME>. Published 2014. Accessed March 15, 2021.
32. Varda BK, Glover M. Specialty board leave policies for resident physicians requesting parental leave. *JAMA*. 2018;320(22):2374–2377. doi:10.1001/jama.2018.15889
33. Department of Health and Human Services. NINDS Research Education Programs for Residents and Fellows in Neurological Disorders and Stroke (R25). <https://grants.nih.gov/grants/guide/pa-files/PAR-18-346.html>. Accessed March 15, 2021.
34. National Institutes of Health. Family-Friendly Initiatives: Funding Time Off for Family Needs. <https://grants.nih.gov/grants/policy/nih-family-friendly-initiative.htm>. 2019. Accessed March 15, 2021.



Sashank Prasad, MD, is Associate Professor of Neurology, Brigham and Women's Hospital, and Program Director, Mass General-Brigham Neurology Residency Program; at the time of writing, **Pavan A. Vaswani, MD, PhD**, was a Chief Resident, Mass General-Brigham Neurology Residency Program, and is now a Movement Disorders Fellow, University of Pennsylvania; at the time of writing, **Joshua A. Budhu, MD**, was a Chief Resident, Mass General-Brigham Neurology Residency Program, and is now a Neuro-Oncology Fellow, Dana-Farber Cancer Institute, Massachusetts General Hospital and Brigham and Women's Hospital; at the time of writing, **Sarah E. Conway, MD**, was a Chief Resident, Mass General-Brigham Neurology Residency Program, and is now a Multiple Sclerosis Fellow, Brigham and Women's Hospital; at the time of writing, **Lauren R. Kett, MD, PhD**, was a Chief Resident, Mass General-Brigham Neurology Residency Program, and is now a Neuromuscular Medicine Fellow, Brigham and Women's Hospital and Massachusetts General Hospital; **Silviya H.M. Eaton, MBA, MA, C-TAGME**, is Director of Education, Mass General-Brigham Neurology Residency Program; and **Michael P. Bowley, MD, PhD**, is an Instructor, Department of Neurology, Massachusetts General Hospital, and Associate Program Director, Mass General-Brigham Neurology Residency Program.

Corresponding author: Sashank Prasad, MD, Brigham and Women's Hospital, sprasad2@bwh.harvard.edu, Twitter @[prasad_sashank](https://twitter.com/prasad_sashank)