Graduate Medical Education Bootcamp
Webinar Series, Part V: Fellows (Advanced)

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Overview of Topics to be Discussed

1. Reimbursement Implications Associated with Residents/Fellows, Unapproved Fellowships and Moonlighting Services
2. Issues AMCs Must Address Internally: ACGME, Moonlighting, Visas, Key Policies
3. The AMC's Relationship with External Entities: State Licensure and The Joint Commission

Fellows: Reimbursement Implications

Presenter:

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Agenda

- Core Principles of GME Payment Methodologies
- Medicare Part A vs. Part B Payments for Residents
- How CMS Defines “Resident” and an “Approved” Program
- What About Reimbursement for Training/Fellowship Programs That Are Not Approved?
- Whether and How Medicare Pays for Moonlighting Services
- Flowchart: Practical Application of Medicare Reimbursement Rules

Graduate Medical Education: Core Principles

- Medicare regulates payment/flow of funds, not operations of residency programs
  - ACGME governs operations
- GME payments have been available to teaching hospitals since 1965 and used to be cost-based; it is now prospective
- Medicare views residents more like nurses than doctors → reimbursement is under Medicare Part A (hospitals), not Part B (physicians)
- Teaching physicians can include resident services in their own Part B billing in certain circumstances

How Teaching Hospitals Are Paid For Residents

- Two distinct categories of payment streams: (1) GME and (2) Teaching Supervision

1. **<u>GME Payments</u> (Part A)**: Social Security Act excludes costs of approved educational activities from operating costs of hospital inpatient services → 2 payment methodologies are used to compensate hospitals for the direct and indirect costs of approved GME programs

How Teaching Hospitals Are Paid For Residents (cont'd)

a) Direct graduate medical education ("DGME") payments:
   - **Formula**
     - FTE count x per resident amount x Medicare patient load
       - ✓ For FTE count, can count FTEs in all areas of hospital and hospital complex *and* in non-hospital sites that meet statutory/CMS requirements
     - GME payments are made through the Medicare cost report
   - **Goal**
     - Payment is to compensate AMCs for direct costs (e.g., residents' salaries, teaching physician time, overhead, etc)

How Teaching Hospitals Are Paid For Residents (cont'd)

b) Indirect graduate medical education ("IME") payments
   - "Add-on" payment provided under the PPS paid on a per-claim basis
   - **Formula**
     - A multiplier (set by Congress);
     - A logarithmic equation; and
     - Interns/residents-to-beds ratio
       - ✓ In counting residents for ratio, can get payment for training that occurs in acute care part of hospital and the outpatient department, as well as certain non-hospital sites
   - **Goal**
     - Based on a hospital's number of residents (in part), but payment is not given for services furnished
     - IME payments are intended to compensate AMCs for the higher operating costs they incur as a class

How Teaching Hospitals Are Paid For Residents (cont'd)

2. **<u>Teaching Supervision Payments</u> (Part B)**: services furnished in teaching settings are paid through the Medicare Physician Fee Schedule (MPFS) if the services are:
   - Personally furnished by a physician (NOT a resident); **or**
   - Furnished by a resident when a teaching physician is physically present during the critical/key portions of the service; **or**
   - Furnished by a resident under a primary care exception within an approved GME program

- <u>Note</u>: specific documentation guidelines must be met by the teaching physicians <u>and</u> residents in order for claims to be paid by Medicare

Who Exactly Is A Resident??

- Answer: it can depend on which payment stream you're talking about!
  - For inclusion in DGME and IME FTE counts, CMS has issued a new definition (42 CFR 413.75(b)):
    - For cost reporting periods beginning on or after 10/1/10, "resident" means an intern, resident, or fellow who is formally accepted, enrolled, and participating in an approved medical residency program, including programs in osteopathy, dentistry, and podiatry, as required in order to become certified by the appropriate specialty board
      - ✓ Mere participation in an approved program is insufficient; must also need the training for certification requirements in the specialty
      - ✓ Revised definition carries specific documentation requirements

Who Exactly Is A Resident?? (cont'd)

- For payment under Part B for physician services in teaching settings, a resident is defined (42 CFR 415.152) as:
  - An individual who participates in an approved GME program or a physician who is not in an approved GME program but who is authorized to practice only in a hospital setting
    - The term resident "is synonymous with terms intern and fellow"
    - According to the relevant guidelines, receiving a staff/faculty appointment, participating in a fellowship, or the hospital's inclusion of a physician in its FTE count does **not**, in and of itself, alter the individual's status as a "resident"

Who Exactly Is A Resident?? (cont'd)

- What constitutes an approved program?
  - For DGME/IME payment purposes, an "approved medical residency program" is (413.75(b); 412.105(f)(i)):
    1. Approved by ACGME, American Osteopathic Assoc., Commission on Dental Accreditation, or Council on Podiatric Medical Education;
    2. May count toward certification in a specialty/subspecialty listed in (i) The Directory of Graduate Medical Education Programs or (ii) The Annual Report and Reference Handbook;
    3. Is approved by ACGME as a fellowship program in geriatric medicine;
    4. Is a program that would be approved except for the accrediting agency's reliance on the standard that requires the performance of induced abortions/training in the performance of induced abortions

What About "Unapproved" Fellowships?

- ACGME approves 8888 programs in 130 specialties and subspecialties involving over 100,000 residents
- Many residency programs, whether core or subspecialty programs, are both accredited *and* lead toward board certification through an explicit board examination for that field
- Although there is no similar registry for unapproved fellowships, most AMCs offer both

What About "Unapproved" Fellowships? (cont'd)

- Per CMS, licensed physicians who are training in a program that is neither accredited (by ACGME/AOA) nor has an explicit board certification, must bill under the MPFS
  - Hospitals can report the costs of residents in unapproved fellowships (Line 70, Worksheets A & B) and receive Part B payment up to 80% of the reasonable cost of services (e.g., residents' salaries and fringe benefits but NOT faculty compensation costs) (42 CFR 415.202)
  - In commentary, CMS suggests 415.202 payment may only apply where trainee is not fully licensed (72 Fed. Reg. at 50291)
  - CAUTION! CMS claims to be considering revisions to *not* allow 415.202 payment for individuals who have already completed one residency program, regardless of licensure status

Training During Establishment of ACGME Accreditation Standards

- Some certifying boards may "grandfather" training that was received prior to existence of a board certification in that subspecialty
- CMS position: for DGME/IME purposes, if, *at the time of training*, there was neither ACGME accreditation nor a board certificate in the subspecialty, the individual could not be considered as a resident during the training, nor could the hospital reopen its cost reports after the fact
  - Because the American Board of Obstetrics and Gynecology offers an explicit board certification, trainees in OB/GYN subspecialties *are* considered residents in an "approved medical residency training program" (75 Fed. Reg. at 50297)

Moonlighting Services by Residents/Fellows

- What are moonlighting services?
  - Generally, all activities of a resident are presumed to be part of the approved GME program
  - Moonlighting services = voluntary services that licensed residents perform that are outside the scope of an approved GME program (42 CFR 415.208)

Medicare Reimbursement of Moonlighting Services

- Payment methodology depends on setting in which moonlighting services are provided
  - Services to hospital's inpatients → payable under DGME
  - Services to hospital's outpatients/ED → payable under MPFS if:
    1. The services are identifiable physician services and meet the conditions for payment set forth in Section 415.102(a); and
    2. The resident is fully licensed to practice medicine, osteopathy, dentistry or podiatry by the State in which services are performed; and
    3. The services performed can be separately identified from those services that are required as part of the approved GME program.
    - Onus is on carrier to ensure compliance with these requirements

Medicare Reimbursement of Moonlighting Services (cont'd)

- If services are provided in a *different* hospital or other setting that does not participate in the approved GME program → payable under MPFS
  - Services must be separately identifiable from the services performed as part of resident's approved GME program
    - No CMS guidance on how to satisfy this requirement

Application of Medicare Rules

1. Is the individual formally participating in an organized program **and** does the individual need the training?
   - NO (on either) → can't include time in resident counts for DGME/IME but can bill under Part B if the individual is licensed
   - YES (on both) → Go to 2
2. Is the program approved?

   2a. Is the program accredited?
   - YES → Go to 3
   - NO → Go to 2b

   2b. May participation in the program count toward certification in a recognized specialty or subspecialty?
   - YES → Go to 3
   - NO → can't include time for DGME/IME, but hospital may be paid on a cost basis under Part B

Application of Medicare Rules (cont'd)

3. Are the services furnished within the scope of the approved GME program?
   - YES → time may be included in DGME/IME resident counts, but can't bill services as physician services
   - NO → time may not count toward DGME/IME counts → go to 4

Application of Medicare Rules (cont'd)

4. Are the services furnished in a hospital that participates in the approved GME program?
   - NO → services may be billed as Part B physician services if the individual is licensed
   - YES → services may be billed as physician services if:
     i. The services are furnished in the outpatient department or ED of the hospital;
     ii. The physician is licensed; and
     iii. The services can be differentiated from services that are a required part of the approved program

Institutional & Operational Considerations of Moonlighting

Presenter:

Jamie S. Padmore
Corporate Vice President, Academic Affairs MedStar Health
Associate Dean for GME, Georgetown University Medical Center

Why have an institutional policy on moonlighting?

- Many institutional "experts" on the topic
  - Broad interpretation of requirements and restrictions by various leaders
- Multi-faceted issues and implications
  - Most stakeholders don't appreciate all aspects of various issues
- An institutional policy can delineate all aspects and be an important guide for leaders and other stakeholders

Institutional Policy

- Should cover all aspects of moonlighting
  - Eligibility
  - Approval process/contracting
  - Credentialing, licensure
  - Billing, Cost Reports
  - GME compliance (duty hours, oversight)
  - Work authorization / visa issues
  - Pay practices
  - Risk management
- Should be clear and understandable

Accredited vs. Non-Accredited Programs

- Accredited Programs:
  - Programs accredited by the ACGME or other agency (CPME, ADA, etc..)
  - Appears in the ABMS list of approved programs (e.g., Transplant, Maternal-Fetal Medicine)
- Non-Accredited Programs:
  - Programs not accredited by ACGME or other agencies; nor is any accreditation for that specialty available

ACGME Terminology

- **Resident:** Any physician enrolled in an accredited graduate medical education program, including interns, residents and fellows

  - **Intern:** Historically, a designation for individuals in the first year of GME. The term is no longer used by the ACGME.

  - **Fellow:** A physician enrolled in a graduate medical education program accredited by ACGME who has completed the requirements for eligibility for first board certification in the specialty. The term "Subspecialty Residents" is also applied to such physicians. Other uses of the term "fellow" require modifiers for precision and clarity, e.g., "research fellow".

ACGME *Glossary of Terms*, June 28, 2011
http://www.acgme.org/acgmeweb/Portals/0/PFAssets/ProgramRequirements/ab_ACGMEglossary.pdf

Internal vs. External Moonlighting

- Internal:
  - Voluntary, compensated, medically-related work (not related to the training requirements) performed within the institution in which the resident is in training or at any of its related participating sites
- External:
  - Voluntary, compensated, medically-related work performed outside the institution in which the resident is in training or at any of its related participating sites

ACGME *Glossary of Terms*, June 28, 2011
http://www.acgme.org/acgmeweb/Portals/0/PFAssets/ProgramRequirements/ab_ACGMEglossary.pdf

ACGME Considerations

- Institutional Requirements & Oversight
  - The sponsoring institution must have a written policy that addresses moonlighting. (IR II.D.4.j) The policy must:
    - (a) Specify resident must not be required to engage in moonlighting
    - (b) Require a prospective, written statement of permission from the program director that is included in the resident's file; and
    - (c) State the residents' performance will be monitored for the effect of these activities and that adverse effects may lead to withdrawal of permission.
  - Sponsoring Institutions and program directors must closely monitor all moonlighting activities (IR II.D.4.j)

ACGME Considerations

- Institutional Oversight
  - Each sponsoring institution must implement policies and procedures consistent with the institutional and program requirements for resident duty hours and the working environment, **including moonlighting**. (C.R. II.A.4.j(1-4).
  - Program directors and the institution must…ensure a culture of professionalism that supports patient safety… Residents and faculty must demonstrate an understanding of their personal role in
    - Management of time before, during and after clinical assignments (C.R. VI.A.5.d)

ACGME Considerations

- Institutional Oversight
  - Moonlighting
    - Must not interfere with the ability of the resident to achieve the goals and objectives of the educational program (C.R. VI.G.2.a)
    - Time spent by residents in both internal and external moonlighting must be counted toward the 80-hour maximum weekly hour limit. (C.R. VI.G.2.b)
    - The program director and the institution must ensure a culture of professionalism that supports patient safety and personal responsibility….
    - PGY-1 residents are not permitted to moonlight (C.R. VI.G.2.b)

ACGME: Duty Hour Requirements

- Duty hours must be limited to 80 hours per week, averaged over a four-week period, inclusive of all in-house call activities ***and all moonlighting***." (CR VI.G.1)
- Time spent by residents in internal and external moonlighting must be counted toward the 80-hour maximum weekly hour limit (CR VI.G.2.a)
- No other duty hour requirements apply

ACGME 2011 Duty Hour Standards

- Moonlighting Task Force Comments…
  - *The task force reviewed the benefits and drawbacks of moonlighting, including the IOM position and the legal and logistic dimensions of inclusion of external moonlighting in the maximum hours per-week calculation. It concluded that external moonlighting had a similar impact on resident fatigue as hours spent in the training program and for this reason all moonlighting hours must be included in the calculation of weekly duty hours…*

“Separate and Distinguishable” Services

- Moonlighting services performed must be distinguishable from those services that are part of the training program. This includes, but is not limited to
  - Working on the same unit during moonlighting activities as the training program?
  - Seeing the same patients during moonlighting and during the training program?
  - Performing work which would require supervision if performed during the regularly scheduled hours of the program
  - Will resident be evaluated for moonlighting activities as part of the academic process?
  - Will resident use any of the patients seen during moonlighting as case studies for program papers or presentations?

Work Authorization

- J1 visa holders (exchange visitors) are prohibited from moonlighting.
- H1-B visa holders generally cannot moonlight based on the LCA issued for the residency program.
  - A separate LCA would need to be applied for and approved to cover the moonlighting services
    - Contract, fair market value of pay (prevailing wage)

Cost Reports & Moonlighting

- Residency Management Software (New Innovations, eValue, etc..)
  - Used to track duty hours
  - Data used to populate Medicare cost report for GME
- Careful attention must be paid to assure any moonlighting activities are separated from educational/clinical activities of the program

Separate Contracts & Pay

- Eligibility for professional fee billing requires:
  - Contract which specifies
    - Services permitted to provide independently
    - That these services are not part of the residency (fellowship) program
    - Separate salary that will be paid at fair market value
  - Professional credentialing

Professional Liability Coverage

- Many hospitals are self-insured
- Coverage for residents and fellows does not automatically extend for work outside of the residency or fellowship
- Risk Management departments need to know when and where residents are moonlighting in order to determine if coverage can be extended for these additional services

So who CAN moonlight… and where?

- Residents in non-Accredited programs
  - Unrestricted medical license
  - Credentialed by medical staff office
  - Professional liability insurance obtained
  - Separate contract for distinguishable services
  - No visa issues
  - Internally…. Within any department
  - Externally… No restrictions

So who CAN moonlight… and where?

- Residents in Accredited Programs
  - Unrestricted medical license
  - Credentialed by medical staff office
  - Professional liability insurance obtained
  - Separate contract for distinguishable services
  - No visa issues
  - Advance approval of program director
  - Duty Hours and fatigue are monitored
  - Internally…. Outpatient or ED units only
  - Externally… In any qualified department

An Institution's Relationship with External Entities

Presenter:

Michael R. Callahan
Partner, Katten Muchin Rosenman, LLP

Accreditation Considerations: The Joint Commission

- Standard MS.04.01.01
  - In hospitals participating in a professional graduate education program(s), the organized medical staff has a defined process for supervision by a licensed independent practitioner with appropriate clinical privileges of each member in the program in carrying out his or her patient care responsibilities.
- Elements of Performance
  - The organized medical staff has a defined process for supervision by a licensed independent practitioner with appropriate clinical privileges of each participant in the program in carrying out patient care responsibilities.

Accreditation Considerations: The Joint Commission

- Written descriptions of the roles, responsibilities, and patient care activities of the participants of graduate education programs are provided to the organized medical staff and hospital staff.
- The descriptions include identification of mechanisms by which the supervisor(s) and graduate education program director make decisions about each participant's progressive involvement and independence in specific patient care activities.
- Organized medical staff rules and regulations and policies delineate participants in professional education programs who may write patient care orders, and circumstances under which

Accreditation Considerations: The Joint Commission

they may do so (without prohibiting licensed independent practitioners from writing orders), and what entries, if any, mush be countersigned by a supervising licensed independent practitioner.

- There is a mechanism for effective communication between the committee(s) responsible for professional graduate education and the organized medical staff and the governing body.
- There is responsibility for effective communication (whether training occurs at the organization that is responsible for the professional graduate education program or in a participating local or community organization or hospital).

Accreditation Considerations: The Joint Commission

- The professional graduate medical education committee(s) (GMEC) must communicate with the medical staff and governing body about the safety and quality of patient care, treatment, and services provided by, and the related educational and supervisory needs of, the participants in professional graduate education programs.
- If the graduate medical education program uses a community or local participating hospital or organization, the person(s) responsible for overseeing the participants from the program communicates to the organized medical staff and its governing body about the patient care, treatment, and services provided by, and the related educational and supervisory needs of, its participants in the professional graduate education programs.

Accreditation Considerations: The Joint Commission

- There is a mechanism for an appropriate person from the community or local hospital or organization to communicate information to the GMEC about the quality of care, treatment, and services and educational needs of the participants.
- Information about the quality of care, treatment, and services and educational needs is included in the communication that the GMEC has with the governing board of the sponsoring hospital.
- The medical staff demonstrates compliance with residency review committee citations.

Accreditation Considerations: The Joint Commission

- Joint Commission Notes
  - The GMEC can represent one or multiple graduate programs depending on the number of specialty graduate programs within the organization.
  - Graduate medical education programs accredited by the Accreditation Council on Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), or the American Dental Association's Commission on Dental Accreditation are expected to be in compliance with the above requirements; the hospital should be able to demonstrate compliance with any postgraduate education review committee citations related to this standard.

Licensure Considerations

Requirements for licensure as a physician and surgeon in Illinois

- Professional Education
  - 6 year post secondary course of study consisting of:
    - 2 academic years in a college or university;
    - 4 academic years of medical education consisting of 2 years of basic medical sciences and 2 years in the clinical sciences; or
    - graduated from a medical or osteopathic college accredited by the Liaison Committee on Medical Education or the American Osteopathic Bureau on Professional Education.

Licensure Considerations

- Experience Requirements
  - Satisfactory completion of 12 calendar months of training from an approved residency program (certification required) if entered program before 12/31/87; 24 months if after.
  - Licensure application has section on “specialized training”.
- Illinois and other states surveyed do not make a distinction between residents and fellows for purposes of licensure.

Legal Issues Involving Fellows

- Credentialing and privileging if services provided as an independent contractor
  - Corporate negligence
  - Apparent agency
  - Respondeat Superior
- Compliance with licensure and accreditation standards by unaffiliated provider

Legal Issues Involving Fellows

- FMV for services rendered
- Locum tenens issues
- Malpractice coverages
- Reimbursement and billing
- Supervision issues

Questions?

Hypothetical Cases

- Can an endocrinology fellow moonlight in the emergency department of the sponsoring institution?
  - Yes
- Could the same fellow take call from an endocrinology attending in the sponsoring institution?
  - No. The activities could not be readily distinguished from the activities of the fellowship

Hypothetical Cases

- Can an internal medicine resident in an approved program moonlight in the sponsoring institution's hospitalist service?
  - No. When a house officer in an approved program wishes to moonlight internally, the moonlighting activities must take place in the emergency department or in an outpatient setting.
  - If that criterion is not met, there can be no reimbursement for the moonlighting activities under Medicare Parts A or B. It is not possible to separate out the costs associated with the moonlighting and not include them on the cost report related to residency training.

Hypothetical Cases

- Can a Maternal-Fetal Medicine fellow provide call coverage internally on the OB/Gyn service?
  - No. The activities could not be readily distinguished from the activities that are part of the fellow's training program.
- Can a MFM fellow provide call coverage for the OB/Gyn service of an affiliated institution?
  - No. The activities could not be readily distinguished from the activities that are part of the fellow's training program.

Hypothetical Cases

- Can a Maternal-Fetal Medicine fellow provide call coverage externally (not at sponsor or affiliate site)?
  - Yes, if the fellow is fully licensed and credentialed by the facility where the moonlighting is to occur, the fellow has obtained professional liability coverage at his/her own expense, and the Program Director gives written permission and monitors all duty hours.