



MEMORANDUM #96-12

March 10, 1996

# ADVISORY

**TO:** council of Deans  
Council of Teaching Hospitals and Health Systems  
Council of Academic Societies

**FROM:** Jordan J. Cohen, M.D.

**RE:** Billing for Clinical Fellows in Their Own Name

Medicare's final **rule** on the billing for services of teaching physicians when those services involve residents (60 Federal Register 63124) also applies to the billing for services of teaching physicians when those services involve clinical fellows. The AAMC has always believed that the billing for services of a clinical fellow in his/her own name when the fellow is in an approved GME program generally is not permitted under current IL-372 Guidelines. The new rule governing teaching physician **payment**, effective July 1, clearly **confirms** this policy. This memorandum addresses the very limited exceptions to this rule and supersedes all previous communications and newsletter articles distributed to the membership on this topic.

The **final** rule states that in general, in order to bill the teaching physician must be physically present **for the** key portion of a service provided by a resident or clinical fellow---whether the service be **a visit, consultation,** or major surgical procedure. For **scopies**, the teaching physician must be present during the "viewing" portion of the procedure. The outpatient exception to **the physical** presence requirement for certain primary care programs and low level outpatient visit codes also applies to fellows.

Many members have been **led** to believe that billing for a clinical fellow is allowable if the teaching hospital does not include the fellow in the resident count for the Direct Medical Education (**DME**) payment under Medicare Part A and that the teaching hospital has the option to count clinical fellows for payment purposes under the **DME** formula. The fact that some teaching hospitals do not elect to count fellows for **DME payment purposes**, however, does not make it allowable to bill a professional fee for the services of **clinical fellows in their own name** underpart B. Not **claiming the fellow** underpart A does not **automatically** make **billing** under Part B allowable.

The only situations that would allow the billing for the services of a clinical fellow in **his/her** own name under Part B areas **follows**:

1. **Fellows Not in Approved Programs.** If the **clinical** fellow is **not in** an approved program certified by the Accreditation Council for Graduate Medical Education (**ACGME**) and/or where a certificate by a member board of the American Board of Medical Specialties (**ABMS**) is **not** available, the fellow may bill for services in **his/her** own name in any provider setting, provided that the fellow is **a duly licensed** physician in the state. **Often**, the fellow **may be in** a program that provides additional clinical experience or research in a specialty, or be in a "**chief resident**" year. **In**

this **situation**, it is best to distinguish these physicians from **other** fellows who are in approved programs at the institution by giving them **a** different status, such as that of a junior faculty member.

**2. Moonlighting Arrangements.** If the **clinical** fellow is in an approved **training program certified** by the **ACGME and/or** for which an ABMS member organization **offers** a certificate, the fellow may bill for services under a moonlighting arrangement either in his/her “home” institution or other institution. The fellow **must have** a separate contract for moonlighting that clearly states the services to be provided are outside the scope of the training program. As with residents, if moonlighting occurs at the home institution where the fellow trains, the services provided may only be outpatient services, i.e. in the outpatient or emergency departments **and not** inpatient. There is no inpatient restriction **if moonlighting** occurs away from the home institution. **The** contract must indicate a separate salary will be paid **for** these services.

Further, when the fellow is in an approved **program**, billing is **not** allowable in **his/her** own name regardless of the specialty in which the service is rendered unless a moonlighting arrangement is in place. For example, a fellow in vascular surgery **may not** bill for services **in** general **surgery**, etc. unless these services are provided as part **of a bona fide** moonlighting contract. With regard to obstetrics and pediatric services, if the state Medicaid program follows Medicare rules, this rule may **also be** applied to those **specialty services** not typically provided to Medicare patients. For **pie**, a fellow in **neonatology/high-risk** obstetrics may not bill for routine deliveries and OB care in **his/her** own name in many states. Members are advised to determine **what rule** their state Medicaid program has adopted for teaching physicians.

**3. Fellows in Non-provider Settings.** A fellow (or resident) in an approved program, that is duly licensed in the state to practice medicine, osteopathy, **dentistry** or podiatry, may bill for services in **his/her** own name, regardless of whether the fellow is **functioning** within the scope of his/her GME **program**, if: a) the fellow is in a non-provider setting, such as an independent outpatient center, private physician’s office, clinic, or health maintenance organization% and b) the hospital does not count the fellow’s time spent in the non-provider setting for direct GME payment purposes. **In** some instances where fellows and residents are spending time in non-provider settings, the medical school, hospital, GME **consortium**, or other program sponsor may or may not have a formal affiliation agreement for training purposes with the non-provider entity.

Members are advised that for purposes of Medicare direct GME reimbursement, hospitals may count fellows in approved programs during the time they are in a non-provider setting such **as** those mentioned above if: a) the fellow spends **his/her** time inpatient care, and b) the hospital has a written agreement with the non-provider setting that states the hospital is paying the fellow’s salary during the time spent in that setting. In this case, the fellow **may not** bill for services **in his/her own name**.

The **final** rule addresses this situation under section 415.206 “Services of Residents in Non-provider Settings” (see Attachment 1). It is sometimes **difficult to** determine if a site of service is **a non-**provider setting or part of the hospital. For this purpose, HCFA has developed guidelines (see Attachment 2) to assist providers in making this determination.

Members are advised to check with their hospital chief financial **officer** to ensure that **all** residents and fellows in approved training programs have been included in the resident count for the direct GME payment. It should be noted that even residents and fellows in training programs that do not provide Medicare-covered **services**, for example, obstetrical and pediatric services, are included in the direct GME resident **count**. In

**services**, for example, obstetrical and pediatric services, are included in the direct **GME** resident **count**. In **general, a hospital may also count** a VA resident or fellow while **he/she** is on-site at the non-VA hospital.

The **AAMC** advises that **all** deans, hospital **CEOs**, program directors and practice plan **administrators** review their **current** billing practices for clinical fellows in conjunction with their general practices for the billing of services that include residents. Also, as stated above, members are advised to determine **if the** state's Medicaid program follows Medicare rules for teaching physician billing. The **AAMC** recommends that the provisions **of the final rule be** implemented as soon as possible in advance of the official July 1 implementation **deadline**.

For more **information** on this issue, please contact Robert **D'Antuono**, Assistant Vice **President**, Division of Health Care **Affairs** 202-828-0490, **internet:grdantuono@aamc.org** or Ivy Baer, **Regulatory** Counsel, Division of Health Care **Affairs** at 202-828-0499, **internet:ibaer@aamc.org**.

**Attachments:**

1. Final Rule Section 415.206 "Services of Residents in Non-provider Settings"
2. **Regional HCFA Office Instructions** on the **Certification** of Non-Provider Settings

**cc:** **Group on Faculty Practice**  
Principal Business **Officers**  
**Section on Resident Education**  
Medical School and Teaching Hospital Government Relations Representatives  
COTH Medical Directors  
COTH Chief Financial Officers  
COTH Practice Plan Representatives