

July XX, 2005

The Honorable Mark McClellan, M.D., Ph.D.
Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator McClellan:

We are writing to express our continued concern regarding actions by the Centers for Medicare and Medicaid Services (CMS) that are compromising the use of non-hospital settings in graduate medical education training.

Since 1987, hospitals have been allowed to count the time residents spend in non-hospital settings for the purpose of direct graduate medical education (DGME) payments, subject to agreements between the hospital and the non-hospital site where training occurred as long as the teaching hospital incurred "all or substantially all" of the costs. Congress expanded this policy to include payment for indirect medical education (IME) in the Balanced Budget Act (BBA) of 1997.

Under the CMS regulations in effect through 1998, this requirement was met if the hospital paid the residents' stipends and benefits. Effective January 1, 1999 CMS administratively changed its regulatory definition of "all or substantially all" to require hospitals to also incur "the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education."

Despite the fact that CMS (then HCFA) has specified twice in regulation and once in a program memorandum that physician faculty were permitted to volunteer their resident supervisory services in ambulatory settings, fiscal intermediaries began denying, sometimes through retroactive audits, payments for the time residents spent in non-hospital settings where teaching physicians were freely volunteering their time to supervise resident training. We believe this undermines efforts to encourage non-hospital, especially rural, training and jeopardizes carefully negotiated agreements among teaching hospitals, residency programs, physicians, clinics and community health centers.

In direct response to CMS' actions, Section 713 of the Medicare Modernization Act (MMA) called for a one-year moratorium that expired in December 2004 on payment denials. Likewise, the Office of the Inspector General (OIG) of the Department of Health and Human Services was required to conduct a study on residency training in non-hospital settings and to issue a report identifying alternative payment methodologies for the costs of training residents in those settings. The OIG report found that teaching hospitals work with an extraordinary number of non-hospital facilities and that most teaching physicians in non-hospital ambulatory settings willfully volunteer their time to train residents.

With the expiration of the moratorium, CMS has resumed its activities denying teaching hospitals payments. Furthermore, CMS has caused even greater confusion as a result of recent guidance included in the April 8 frequently asked question (FAQ) document titled "Medicare Policy Qualifications on Graduate Medical Education Payments for Residents Training in Non-Hospital Settings." While we appreciate CMS's efforts to try to lend clarity to a difficult and complicated

policy, we are concerned that this new guidance has raised more questions than it has answered and may impose undue regulatory burdens.

Rather than looking at a physician's ability to train residents, this document focuses solely on a physician's employment status and compensation as the necessary criteria. It also places volunteer physicians who receive a pre-determined salary at a disadvantage in comparison to their counterparts who derive income from billable services. Of even greater concern are the inherent disincentives built into CMS's proposals to require hospitals to pay non-hospital sites a percent of the supervisory physician's salary based on time spent in this alternate setting.

This system of reimbursement would have a chilling effect on ambulatory training because many physicians believe their salary arrangements and determinations are strictly a private matter. Also, extrapolating a percentage of supervisory time that does not involve patient care to determine the hospital's financial obligation would be administratively burdensome. We anticipate that this will lead to a decline in the number of physicians choosing to assume this important role in the graduate medical education system. Through their willingness to train residents, future physicians gain valuable experiences in practice settings similar to those in which they ultimately will practice.

In their report, the OIG recommended that CMS work with Congress to extend the moratorium. In keeping with this recommendation, we urge CMS to act, through its inherent regulatory authority, to promptly extend and expand the moratorium established by Section 713 of the MMA. In addition, we urge you to suspend the Q & A document. Such actions would allow Congress and CMS to further study and work together toward a clear and appropriate policy that will define "all or substantially all" of the costs associated with training residents in non-hospital settings and encourage this valuable service.

Thank you in advance for your attention to this matter. We look forward to receiving a timely response.

Sincerely,