



April 15, 2005

**Association of
American Medical Colleges**
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Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services (CMS)
Hubert Humphrey Building
Suite 314 G
200 Independence Ave., SW
Washington, DC 20201

Dear Dr. McClellan:

On behalf of the Association of American Medical Colleges (AAMC), I am responding to the Q and A document on Medicare payments for residency training in nonhospital sites that the Agency posed on its web site on April 8, 2005. The AAMC represents approximately 320 major non-federal teaching hospitals and health systems; all 125 accredited U.S. allopathic medical schools; 96 professional and academic societies; and the nation's medical students and residents.

We recognize and appreciate the efforts by CMS staff to develop the Q and A document. However, as described briefly below, and in more detail in the attached appendix, we believe the document raises many more questions than it answers. In addition, it may well result in fewer nonprovider sites being willing to train residents, and raises issues of fairness should the requirements articulated be applied retroactively. We urge the Agency to withdraw the Q and A document and issue a moratorium on the nonhospital site regulations immediately to allow for further understanding, more discussion with the affected community, and the issuance of revised clarifications or regulations.

As we have stated in the past, most recently in our February 18 letter to you, we strongly support nonhospital ambulatory training for medical residents. Congress clearly is in agreement with this stance, as it has shown through changes to the Social Security Act. We believe the pre-1999 regulations fully complied with the "all or substantially all" statutory requirement associated with Medicare payments for nonhospital site training. Nonetheless, we accept the 1999 regulatory change that requires hospital that wish to receive DGME and IME payments for residents training in nonhospital sites to pay the supervisory costs, if any, incurred by the nonhospital sites. We continue to believe strongly that if the nonhospital site states that there are no supervisory costs because the supervising physician is volunteering his or her time, then the hospital need not make any supervisory payments. The parties involved--the hospital and nonhospital site--are in the best position to determine whether or not supervisory costs exist.

In addition to believing that CMS's position on volunteer physicians is ill-advised on a policy level, we think that the Q and A document raises more questions than it answers. As a result, rather than providing "clarity [which] will open more opportunities for academic medical centers to conduct nonhospital training" as you state in your accompanying statement, we believe the complexity and administrative burden of the requirements as set forth in the document have the potential to impede ambulatory training at nonhospital ambulatory sites. The attached document contains specific questions and observations we have on each of the Questions and Answers. In particular, four issues should be briefly highlighted:

- CMS's attempt to determine a physician's ability to volunteer on the basis of whether or not the physician is salaried is misguided. The CMS justification is that a solo practitioner can volunteer as a supervisor because his compensation is based solely on the number of patients seen but when a physician in a group practice is paid a salary there is automatically a cost to the nonhospital site for supervisory activities. This rests on the assumption that once a physician in a group practice volunteers as a resident's supervisor, some portion of that physician's salary must have been intended for resident supervision. The result is the creation of a paradigm that seems to make it impossible for any salaried physician in a group practice to be recognized as a volunteer because CMS insists that a cost be attached to resident supervision activity.
- Contrary to previous Agency pronouncements, in those cases where supervisory costs exist, CMS's current position seems to be that a physician's salary can be the only basis for determining the amount of supervisory costs. We believe that such a mandate will have a significant chilling effect on ambulatory training because many physicians believe their salaries are, and should be, a private matter, particularly when they consider themselves to be engaging in an activity as a volunteer.
- According to the document, a hospital must compensate the nonhospital site for teaching physician activities *other* than resident supervision that occurs while furnishing billable patient care services. This requirement would seemingly require extremely detailed physician time studies. Again, for busy practitioners, this likely will be so burdensome as to impose a barrier to participating in educational activities.
- The documentation and other administrative requirements that will be required to comply with the policies set forth in the Q and A document are so onerous and intrusive as to likely result in a major reduction in nonhospital training, which would be completely contrary to the stated desires of both Congress and CMS to expand residency training to more nonhospital sites.

We understand that fiscal intermediaries currently are relying on guidance from the central CMS office to exclude nonhospital residency training time that occurred in prior years. As the December 8, 2004 OIG report noted, and as reaffirmed by the publication of this document, there has been immense confusion and ambiguity regarding the nonhospital site regulatory requirements. We believe retroactive application of policies that are only now being enunciated

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is patently unfair and likely illegal. We urge CMS to instruct its fiscal intermediaries to cease excluding nonhospital resident counts for prior years for which the exclusion is related to a supervisory cost requirement.

We share with CMS a common desire to increase residency training in nonhospital settings. By working with the affected community, we believe the Agency can fulfill its statutory and fiduciary obligations to the Medicare program without imposing an undue and onerous administrative burden on teaching hospitals and teaching physicians in nonhospital settings. We believe that a moratorium must be implemented immediately to allow this constructive process to occur.

If you have questions, please feel free to contact me. You may also contact Robert Dickler, Senior Vice President or Karen Fisher, Senior Associate Vice President. They both may be reached at 202-828-0490.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Jordan J. Cohen". The signature is fluid and cursive, with the first name "Jordan" being the most prominent.

Jordan J. Cohen, M.D.
President

cc: Tzvi Hefter, CMS
Herb Kuhn, CMS
Robert Dickler, AAMC
Karen Fisher, AAMC

Attachment