Compliance for Teaching Physicians: What Have We Learned?

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Presented by

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In actual practice, how much of a compliance problem are the teaching physician guidelines for most attending physicians?

No problem at all

Minor problem

Moderate problem

Major problem

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University of Missouri

Department of Justice

U.S. Attorney's Office

Western District of Missouri

SHARE

FOR IMMEDIATE RELEASE — Thursday, June 30, 2016

University of Missouri-Columbia Agrees to Pay United States $2.2 Million to Settle Alleged False Claims Act Violations

KANSAS CITY, Mo. – Tammy Dickinson, United States Attorney for the Western District of Missouri, announced that the University of Missouri-Columbia has agreed to pay the United States $2.2 million to settle allegations that it violated the False Claims Act by submitting claims for radiology services to federal programs such as Medicare, Medicaid, and TRICARE. The United States alleged that certain attending physicians certified that they had reviewed the images associated with interpretative reports prepared by resident physicians when, in fact, they had not reviewed those images.

Vanderbilt University Medical Center

MyVUMC

VANDERBILT UNIVERSITY MEDICAL CENTER

July 26, 2017

VUMC settles longstanding lawsuit

Vanderbilt University Medical Center (VUMC) has agreed to settle a longstanding lawsuit, filed under the False Claims Act, accusing VUMC of submitting false or fraudulent claims to Medicare and Medicaid from 2003-2011.

The Department of Justice and relevant States Attorney Generals' Offices thoroughly investigated the allegations, brought by three former VUMC clinicians, in order to decide whether to intervene in – effectively, take over – the conduct of the case. VUMC cooperated fully in the government's investigation, and the Government chose not to intervene. Nonetheless, individuals who file lawsuits of this nature have the right to continue on their own if the Government does not intervene, which in this case extended the lawsuit several more years.

"Although we continue to strongly dispute the allegations in the lawsuit, to avoid the cost and distraction associated with further litigation we have agreed to settle. As part of the settlement, all parties agree that the allegations in the lawsuit have neither been proven nor disproven," said Michael Regler, J.D., General Counsel & Secretary for VUMC. "While the plaintiffs and federal government found no evidence of wrongdoing, litigating these types of cases is very expensive and time consuming. After six years, we determined it to be in the best interests of VUMC to end the litigation through a settlement."

The settlement terms include a $6.5 million payment to the United States, most of which will be retained by the Medicare program, and a portion of which will be shared with relevant States. Also, as part of the settlement a payment will be made to the plaintiffs and their attorneys. The amount of the settlement is not

Medical College of Wisconsin

United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT of WISCONSIN

HOME ABOUT NEWS U.S. ATTORNEY DIVISIONS PROGRAMS

FOR IMMEDIATE RELEASE Friday, January 9, 2015

Medical College of Wisconsin, Inc. Pays $840,000 to Settle Alleged False Claims for Neurosurgeries

United States Attorney James L. Santelle of the Eastern District of Wisconsin announced today that the Medical College of Wisconsin, Inc. (MCW) has paid the federal government $840,000 to resolve allegations that it violated the False Claims Act. MCW is alleged to have knowingly billed federal healthcare programs for neurosurgeries involving residents who did not receive the required level of supervision from teaching physicians.

Billing Company

THE UNITED STATES DEPARTMENT of JUSTICE

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JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE Thursday, September 1, 2011

California Medical Billing Company Agrees to Pay U.S. $4.6 Million to Resolve Allegations of False Claims to Federal Health Care Programs

WASHINGTON – Janzen, Johnston & Rockwell Emergency Medicine Management Services Inc. (JJ&R), a provider of

Dartmouth-Hitchcock

Dartmouth-Hitchcock to pay $2.2 million in False Claims settlements

By **Joe Carlson** | April 26, 2011

Dartmouth-Hitchcock Medical Center in Lebanon, Vt., has agreed to pay $2.2 million to resolve whistle-blower allegations that it overbilled federal healthcare programs for anesthesia and radiology services between 2001 and 2007.

The medical center did not admit liability in the settlement with the U.S. attorney's office in Vermont, and hospital spokesman Dave Evancich said the organization will not be subject to a corporate integrity agreement. "We have in place what a corporate integrity agreement is designed to get you to. We were credited with

Podiatry Residency

UNITED STATES OF AMERICA and NEW YORK STATE, ex rel. IRINA GELMAN, DPM, Plaintiffs,
v.
GLENN J. DONOVAN, DPM, NEW YORK CITY HEALTH and HOSPITALS CORPORATION, and PHYSICIAN AFFILIATE GROUP OF NEW YORK, PC, Defendants.

Over the last 20 years, how has physician compliance with the teaching physician rules progressed?

It's gotten worse

Stayed the same or very little change

It's gotten better

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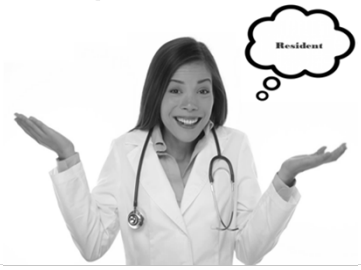
Who am I working with??



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Who am I working with??

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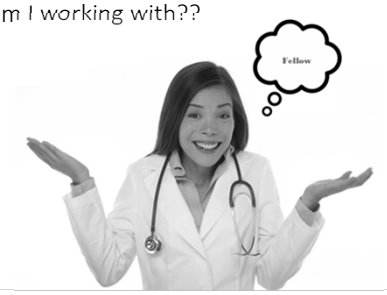

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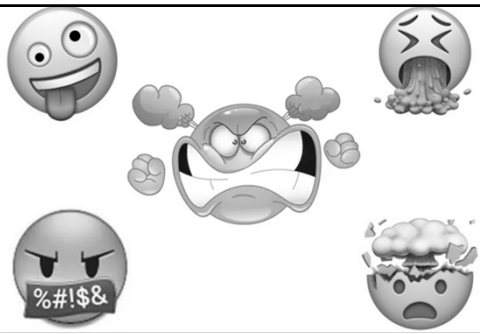

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As a Compliance Professional how can I help?

When working with a Resident/Fellow/Med Student

- Is the service Inpatient or Outpatient
  - If Outpatient, does the Primary Care Exception apply?
- E/M vs. Procedure
- What level of Supervision is required?
- What does the Attending Physician have to document?

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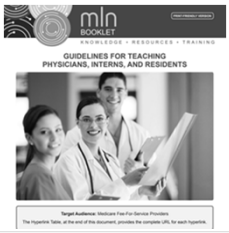
Medicare Teaching Physician Guidelines



CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-04 Medicare Claims Processing	Centers for Medicare & Medicaid Services (CMS)
Transmittal 2303	Date: September 14, 2011
	Change Request 7378

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E/M – Resident/Fellow

For purposes of payment, E/M services billed by teaching physicians require that they personally document at least the following:

- That they performed the service or were physically present during the key or critical portions of the service when performed by the resident; and
- The participation of the teaching physician in the management of the patient.

When assigning codes to services billed by teaching physicians, reviewers will combine the documentation of both the resident and the teaching physician.

Documentation by the resident of the presence and participation of the teaching physician is not sufficient to establish the presence and participation of the teaching physician.

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TPA – Teaching Physician Attestation

Minimally Acceptable documentation examples:

"I saw and evaluated the patient. I agree with the findings and the plan of care as documented in the resident's note."

"I was present with the resident during the history and exam. I have discussed the case with the resident and agree with the findings and plan as documented in the resident's note."

"I saw the patient with the resident and agree with the resident's findings and plan."

"I saw and examined the patient. I agree with the resident's note except the heart murmur is louder, so I will obtain an echo to evaluate."

Presence and Participation

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E/M – Medical Student

Any contribution and participation of a student to the performance of a billable service (other than the review of systems and/or past family/social history which are not separately billable, but are taken as part of an E/M service) must be performed in the physical presence of a teaching physician or physical presence of a resident in a service meeting the requirements set forth in this section for teaching physician billing.

Students may document services in the medical record. However, the documentation of an E/M service by a student that may be referred to by the teaching physician is limited to documentation related to the review of systems and/or past family/social history. The teaching physician may not refer to a student's documentation of physical exam findings or medical decision making in his or her personal note. If the medical student documents E/M services, the teaching physician must verify and redocument the history of present illness as well as perform and redocument the physical exam and medical decision making activities of the service.

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Does your organization allow Medical Student documentation to support a billing level?

Yes

No

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E/M – Medical Student

- CMS has provided no further guidance on this issue.
  - Do we need another attestation for the Med Student's work?
- No other third party payer, including TX Medicaid, has adopted this rule!
- Clinical work flow - Will this really be more efficient??

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Something to Consider!

https://www.meddata.com/blog/2018/02/09/cms-change-medical-student-documentation-allowance-effective-march-5-2018/

Our recommended approach

We asked Lindsey Baldwin at CMS what TP documentation is required. Her response is below:

> There is no additional sub-regulatory guidance at this time beyond what is stated in the revised manual guidance. You may want to reach out to your local Medicare Administrative Contractor (MAC) for additional guidance.

MedData recommends continuing with the CMS 2017 guidance (the medical student is only allowed to document the PFSH and ROS) until CMS issues further clarification on requirements.

Initially, the potential benefit is that the provider is not required to re-document services already provided. However, combining the Medical Student, Resident, APP and Teaching Physician documentation, as well as defining who is to attest to what part of the documentation and what documentation from the TP is required for different levels of providers, is problematic. There are obvious risks, particularly medical/legal, when accepting a medical student's documentation into your chart.

We will provide additional recommendations when CMS clarifies their position.

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Primary Care Exception

Teaching physicians providing E/M services with a GME program granted a primary care exception may bill Medicare for lower and mid-level E/M services provided by residents. For the E/M codes listed below, teaching physicians may submit claims for services furnished by residents in the absence of a teaching physician:

New Patient	Established Patient
99201	99211
99202	99212
99203	99213

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Primary Care Exception

Teaching physicians submitting claims under this exception **MUST**:

- Not have any other responsibilities (including the supervision of other personnel) at the time the service was provided by the resident;
- Have the primary medical responsibility for the patients cared for by the resident;
- Ensure that the care provided was reasonable and necessary;
- Review the care provided by the resident during or immediately after each visit. This must include a review of the patient's medical history, the resident's findings on physical examination, the patient's diagnosis, and treatment plan; and
- Document the extent of his/her own participation in the review and direction of the services furnished to each patient.

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Primary Care Exception

Specialties that qualify for the Primary Care Exception:

- Family Medicine
- General Internal Medicine
- Pediatrics
- Obstetrics & Gynecology
- Geriatrics
- Psychiatry**

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The attending surgeon has a scheduled OR procedure, but has been delayed in clinic. The clinic is not located in the same building as the OR suite, so she calls her 3 year resident and tells him to proceed with the opening portion of the procedure because she is "on her way as quickly as possible" and will "be there in 5 minutes". Is this level of supervision appropriate?

When poll is active, respond at **PollEv.com/scce** Text **SCCE** to **22333** once to join

Answers to this poll are anonymous

Yes

No

Maybe

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Surgical Procedures

The teaching surgeon is responsible for the preoperative, operative, and postoperative care of the beneficiary. The teaching physician's presence is not required during the opening and closing of the surgical field unless these activities are considered to the critical or key portions of the procedure.

During non-critical or non-key portions of the surgery, if the teaching surgeon is not physically present, he/she must be immediately available to return to the procedure.

If circumstances prevent a teaching physician from being immediately available, then he/she must arrange for another qualified surgeon to be immediately available to assist the procedure, if needed.

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Single Surgery

When the teaching surgeon is present for the entire surgery, his or her presence may be demonstrated by note in the medical records made by the physician, resident, or operating room nurse.

There is no required information that the teaching surgeon must enter into the medical record.

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Two Overlapping Surgeries

The teaching surgeon must be present during the critical or key portions of both operations.

The critical or key portions may not take place at the same time.

The teaching surgeon must personally document in the medical record that he/she was physically present during the critical or key portion(s) of both procedures.

When the teaching physician is not present during non-critical or non-key portions of the procedure, he/she must arrange for another qualified surgeon to be immediately available.

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A 4th year resident has prepped a patient for a Lumbar Puncture procedure. The attending physician is really busy today and knows the resident has preformed this procedure often. In between patient encounters, the attending physician pops his head in the room and asks the resident, "you got this, right?". Without hesitation, the resident responds, "I'm good. I've done hundreds of these before." Is this the appropriate level of supervision for this encounter?

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Minor Procedures

For procedures that only take a few minutes (five minutes or less) to complete, e.g., simple suture, and involve relatively little decision making, the teaching surgeon must be present for the entire procedure in order to bill for the procedure.

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Endoscopy Procedures

To bill for endoscopic procedures the teaching physician must be present during the entire viewing.

The entire viewing starts at the time of insertion of the endoscope and ends at the time of removal of the endoscope.

Viewing of the entire procedure through a monitor in another room does not meet then teaching physician presence requirements.

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Anesthesia

Medicare will pay for these procedures under the Medicare PFS if the teaching anesthesiologist is involved in one of the following:

- The training of a resident in a single anesthesia case
- Two concurrent anesthesia cases involving residents, or
- A single anesthesia case involving a resident that is concurrent to another case that meets the requirements for payment at the medically directed rate

All of these requirements must be met to qualify for payment:

- The teaching anesthesiologist or different anesthesiologist(s) in the same group must be present during all critical or key portions of the anesthesia service or procedure, and
- The teaching anesthesiologist or another anesthesiologist with whom he/she has entered into an arrangement must be immediately to provide anesthesia services during the entire procedure.

Anesthesia

The patient's medical record must document all of these:

- The teaching anesthesiologist's presence during all critical or key portions of the anesthesia procedure
- The immediate availability of another teaching anesthesiologist as necessary.

Radiology

Medicare pay for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed by or reviewed with a teaching physician.

If the teaching physician's signature is the only signature on the interpretation, Medicare assumes that he/she is indicating that he/she personally performed the interpretation.

If a resident prepares and signs the interpretation, the teaching physician must indicate that he/she has personally reviewed the image and the resident's interpretation and either agrees with it or edits the findings.

Medicare **does not pay** for an interpretation if the teaching physician only countersigns the resident's interpretation.

2019 Proposed Rule

Jay McVean, CPC, OHCC
Director, Medical School Healthcare billing compliance

Teaching Physician Documentation

"…the revised paragraph would specify that the presence of the teaching physician during procedures and evaluation and management services may be demonstrated by the notes in the medical records made by a physician, resident, or nurse.

…the medical record must document the extent of the teaching physician's participation in the review and direction of services furnished to each beneficiary, and that the extent of the teaching physician's participation may be demonstrated by the notes in the medical records made by a physician, resident, or nurse."

If adopted, what do you think the primary outcome of the proposed changes to the teaching physician guidelines will be:

- More confusion
- Better compliance
- Freeing up time for patient care
- Other

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Resources

CMS Transmittal 2303:
https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R2303CP.pdf

Medicare Learning Network (MLN) Booklet:
https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Teaching-Physicians-Fact-Sheet-ICN006437.pdf

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Healthicity

Thank You.

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