Payment Matters®
Update on Medicare and Medicaid Payment Issues

August 27, 2010

www.ober.com

IN THIS ISSUE

Editors: Leslie Demaree Goldsmith and Carel T. Hedlund

Is She a "Resident" or a "Billing Physician"? CMS Issues Needed Clarification

By: Thomas W. Coons

For years, a continuing source of confusion for academic medical centers has been whether particular individuals undertaking advanced training and labeled as "fellows" are considered to be "residents," paid for under the Medicare Direct Graduate Medical Education (DGME) and Indirect Medical Education (IME) formulae, or physicians whose services are reimbursed only through the Medicare Physician Fee Schedule. CMS has now provided substantial clarification to that issue, as part of the inpatient PPS final rule issued August 16, 2010. *See* 75 Fed. Reg. 50042, 50287-50299 (Aug. 16, 2010) [PDF].

In the August 16, 2010, Federal Register CMS pointed out that, under the statute, a person must be participating in an approved medical residency training program, that is, a program in which participation "may be counted towards certification in a specialty or subspecialty," in order to be considered a "resident." See 42 U.S.C. § 1395ww(h)(5)(A). Expanding on this definition, CMS has stated in the past that an approved graduate medical education program is a residency program approved by one of certain specified national organizations or one that leads toward board certification by the American Board of Medical Specialties. In this most recent clarification, CMS has stated that, in order to be a resident, the individual must actually "need" the training in order to meet board certification requirements in the particular specialty and must be "formally participating in an organized, standardized, structured course of study." This means, according to CMS, that there must be a planned, structured course of study with a curriculum based on national (rather than individual physician or hospital) standards with a standardized outcome based on standardized evaluations. Junior faculty or fellows working closely with senior faculty to gain specialized skills would not be considered to be participating in such a program. Rather, they are simply physicians who may bill for their services.

CMS has further clarified that, in order to be considered a resident, the individual must be "formally accepted and enrolled in a training program" and "fully participating in that training unless there is a documented arrangement for the resident to work part-time." CMS expects that, to be counted as a resident, the individual can point to an application and enrollment process that would include letters or other official notifications, and that there would be an employment contract with the sponsoring institution. CMS further expects that the hospital will be able to document the individual's participation in a particular course of training that represents a definitive, not hypothetical, path for that individual's certification, the satisfactory completion of which would fulfill all "required elements" necessary for the individual to qualify to take a specific board exam. According to CMS, training in a specialty or subspecialty that is not part of the generally applicable requirements for board certification, but is merely supplemental training to raise the skill level of the individual practitioner, is not considered to be participation in an approved program required in order to become board certified.

In its discussion, CMS also spent time addressing the position of chief resident, noting that in certain surgical specialties and in certain other hospital-based specialties, the last year of training by the resident is considered to be the "chief resident year," which is the final year of the ACGME-accredited program. In those instances, the chief resident would be participating in an approved medical residency training program and would be considered a "resident" for DGME and IME purposes. In other instances, however, such as internal medicine and pediatrics, acting as a chief resident is not a requirement for board certification. In those programs, there are only a few "chief residents" per program, which the chief resident participates in after the final year of the ACGME-accredited residency. In these instances, where the accredited program has already been completed and the minimum requirements for board certification already have been satisfied, individuals serving as chief resident will no longer be considered residents for IME and DGME purposes. Thus, effective October 1, 2010, CMS is clarifying that chief residents in internal medicine and pediatrics will not be considered residents for Medicare payment purposes.

Moreover, even if a training program at the particular hospital historically has extended beyond the minimum length necessary for accreditation by the ACGME, CMS's view, again effective October 1, 2010, is that any time spent beyond the minimum required for certification will not count. Stated another way, individuals training in a program that extends beyond the minimum accredited length set out by the accrediting organization will not be considered to be residents for payment purposes.

Ober|Kaler's Comments

CMS's Federal Register statements provide considerable clarification of how individuals participating in graduate medical education training will be treated, and particularly how individuals who are labeled fellows will be classified for purposes of Medicare payment. While some might disagree with CMS's "calls" on certain issues, that clarification is quite needed.