

(b) The services are furnished by a resident in the presence of a teaching physician except as provided in §415.172 (concerning physician fee schedule payment for services of teaching physicians), §415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), §415.176 (concerning renal dialysis services), and §415.184 (concerning psychiatric services), as applicable.

§415.172 Physician fee schedule payment for services of teaching physicians.

(a) *General rule.* If a resident participates in a service furnished in a teaching setting, physician fee schedule payment is made only if a teaching physician is present during the key portion of any service or procedure for which payment is sought. In residency training sites that are located outside a metropolitan statistical area, physician fee schedule payment may also be made if a teaching physician is present during the key portion of the service, including for Medicare telehealth services, through audio/video real-time communications technology for any service or procedure for which payment is sought. For all teaching settings during the Public Health Emergency, as defined in §400.200 of this chapter, for the COVID-19 pandemic, if a resident participates in a service furnished in a teaching setting, physician fee schedule payment is made if a teaching physician is present during the key portion of the service including for Medicare telehealth services, through audio/video real-time communications technology for any service or procedure for which payment is sought.

(1) In the case of surgical, high-risk, or other complex procedures, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure.

(i) In the case of surgery, the teaching physician's presence is not required during opening and closing of the surgical field.

(ii) In the case of procedures performed through an endoscope, the

teaching physician must be present during the entire viewing.

(2) In the case of evaluation and management services, except as otherwise provided in this paragraph (a)(2), the teaching physician must be present in person during the portion of the service that determines the level of service billed. (However, in the case of evaluation and management services furnished in hospital outpatient departments and certain other ambulatory settings, the requirements of §415.174 apply.)

(i) In residency training sites that are located outside of a metropolitan statistical area, the teaching physician may be present through audio/video real-time communications technology during the portion of the service that determines the level of service billed. (However, in the case of evaluation and management services furnished in hospital outpatient departments and certain other ambulatory settings, the requirements of §415.174 apply.)

(ii) For all teaching settings during the Public Health Emergency, as defined in §400.200 of this chapter, for the COVID-19 pandemic, the teaching physician may be present through audio/video real-time communications technology during the portion of the service that determines the level of service billed. (However, in the case of evaluation and management services furnished in hospital outpatient departments and certain other ambulatory settings, the requirements of §415.174 apply.)

(b) *Documentation.* Except as otherwise provided in this paragraph (b), except for services furnished as set forth in §§415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), §§415.176 (concerning renal dialysis services), and 415.184 (concerning psychiatric services), the medical records must document that the teaching physician was present at the time the service (including a Medicare telehealth service) is furnished. 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 the physician or as provided in §410.20(e) of this chapter.

§ 415.174

42 CFR Ch. IV (10–1–23 Edition)

(1) In residency training sites that are located outside of a metropolitan statistical area only, except for services furnished as set forth in §§ 415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), 415.176 (concerning renal dialysis services), and 415.184 (concerning psychiatric services), the medical records must document whether the teaching physician was physically present or present through audio/video real-time communications technology at the time the service (including a Medicare telehealth service) is furnished. The medical records must contain a notation describing the specific portion(s) of the service for which the teaching physician was present through audio/video real-time communications technology. 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 the physician or as provided in § 410.20(e) of this chapter.

(2) For all teaching settings during the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, except for services furnished as set forth in §§ 415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), 415.176 (concerning renal dialysis services), and 415.184 (concerning psychiatric services), the medical records must document whether the teaching physician was physically present or present through audio/video real-time communications technology at the time the service (including a Medicare telehealth service) is furnished. The medical records must contain a notation describing the specific portion(s) of the service for which the teaching physician was present through audio/video real-time communications technology. 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 the physician or as provided in § 410.20(e) of this chapter.

(c) *Payment level.* In the case of services such as evaluation and management for which there are several levels

of service codes available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service when fully furnished by the teaching physician.

[60 FR 63178, Dec. 8, 1995, as amended at 83 FR 60091, Nov. 23, 2018; 84 FR 63201, Nov. 15, 2019; 85 FR 19288, Apr. 6, 2020; 85 FR 27623, May 8, 2020; 85 FR 85036, Dec. 28, 2020]

§ 415.174 Exception: Evaluation and management services furnished in certain centers.

(a) In the case of certain evaluation and management codes of lower and mid-level complexity (as specified by CMS in program instructions), carriers may make physician fee schedule payment for a service furnished by a resident without the presence of a teaching physician. For the exception to apply, all of the following conditions must be met:

(1) The services must be furnished in a center that is located in an outpatient department of a hospital or another ambulatory care entity in which the time spent by residents in patient care activities is included in determining intermediary payments to a hospital under §§ 413.75 through 413.83.

(2) Any resident furnishing the service without the presence of a teaching physician must have completed more than 6 months of an approved residency program.

(3) The teaching physician must not direct the care of more than four residents at any given time and must direct the care from such proximity as to constitute immediate availability. The teaching physician must—

(i) Have no other responsibilities at the time;

(ii) Assume management responsibility for those beneficiaries seen by the residents;

(iii) Ensure that the services furnished are appropriate; and

(iv) Review with each resident during or immediately after each visit, the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies.

(4) The range of services furnished by residents in the center includes all of the following: