

A new subdivision (e) of section 329-1.3 of Title 12 NYCRR is hereby added to read as follows:

(e) Residents and fellows may provide services under the supervision of authorized physicians. The services provided must be in the context of an Accreditation Council for Graduate Medical Education (ACGME) accredited residency or fellowship program and cannot be part of any activities that are external to the program. Residents and fellows may not provide services or bill for services independently, and the supervising physician may not bill separately for the supervision of residents and/or fellows but rather, only for the specific clinical services performed.

(1) When billing for non-surgical services provided by residents or fellows, supervising physicians must bill using the Official New York Workers' Compensation Medical Fee Schedule and use the modifier 1R. Services billed using the modifier 1R must be billed and paid at the same amount payable for such services had they been performed directly by the supervising, authorized, billing physician.

(2) When billing for services performed by a resident or fellow functioning as an assistant at surgery, supervising physicians must bill using the Official New York Workers' Compensation Medical Fee Schedule and use the modifier 84. Codes billed with modifier 84 must accurately represent work performed by the resident or fellow and be documented appropriately in the surgical report. Resident/fellow surgical services billed using modifier 84 must be billed and paid at 16% of the physician code fee or fees, and only for the procedure or procedures in which the resident or fellow assisted.

(i) The supervising surgeon may bill for no more than one resident or fellow (even if more than one resident or fellow assisted) for any procedure or portion of a procedure for which the resident(s) or fellow(s) provided assistance, unless the length, complexity or number of the procedure(s) require multiple resident(s) or fellow(s) to assist, in which case the use of more than one resident or fellow as assistants must be clearly documented contemporaneously at the time of the procedure and in the medical narrative at the time of billing.

(ii) If different resident(s) or fellow(s) provide assistance on different procedures or portions of procedures, then the supervising surgeon may bill for the surgical assistant services for each such procedure or portion of a procedure, but only for one such assistant for each procedure or portion of a procedure.

(iii) If other physicians, physician assistants or nurse practitioners are also utilized as assistants at surgery in conjunction with residents or fellows, the supervising surgeon may bill for no more than one assistant, unless the length, complexity or number of the procedure(s) require multiple assistants, in which case the use of more than one assistant must be clearly documented contemporaneously at the time of the procedure and in the medical narrative at the time of billing.

(iv) Surgical services billed for resident and/or fellow surgical assistants using modifier 84 must be billed on the same bill as the underlying surgery. For non-surgical services using modifier 1R, a single bill reflecting the services and/or level of service provided to the patient on any given day or at any given appointment must be submitted, and supervising physicians cannot submit two separate bills for resident and/or fellow services and supervising physician services on the same date of service, unless the bills are for demonstrably different services, and designating services as “resident and/or fellow services” versus “supervising physician services” shall not be considered demonstrably different services.

(v) Nothing about this subdivision shall change the rules or application thereof related to the billing for “Co-Surgeons” or “Assistant Surgeons” or “Minimum Assistant Surgeons” or “Surgical Teams”, nor shall it apply to inpatient hospital billing, as these terms are outlined and addressed elsewhere in the Official New York Workers’ Compensation Medical Fee Schedules, and not specifically pertaining to residents and fellows, except that this subdivision shall supersede the provision in Surgery Ground Rule 12(B) of the Official New York Workers’ Compensation Medical Fee Schedule that states “Assistants’ fees are not payable when the hospital provides intern or resident staff to assist at surgery.”

(3) Medical narratives, clinical notes, procedure notes, and/or operative reports must clearly state the name of the resident or fellow, as well as the name of the supervising physician, and the program or institution where the services are being performed.

(4) The ability of residents and fellows to provide services under NYS Workers’ Compensation, and for supervising physicians to submit bills for said services, shall in no way expand or otherwise change the scope of practice or permissible activities for residents and fellows by statute, and/or any applicable regulations promulgated by the New York State Education Department, New York State Department of Health, or the New York State Workers' Compensation Board.