Policy Statement

The College of Medicine and the University of South Florida is committed to providing the highest quality work environment for physicians in training to master their chosen disciplines. Residency training is a full time educational experience. Residents and fellows appointed to a program are expected to achieve the goals and objectives of the educational program. Any professional, patient care or medical practice activities performed by residents outside of the educational program ("moonlighting") must not interfere with the residents or fellows achievement of the goals and objectives of the educational program or adversely affect patient safety. In accordance with the ACGME requirements, residents and fellows must not be required to engage in moonlighting and all internal and external moonlighting must be counted towards the 80-hour maximum weekly hour limit (defined by the ACGME as 80 hours per week, averaged over a four-week period, inclusive of all in-house call activities and all moonlighting). Oversight of duty hours and total work hours is the responsibility of the Graduate Medical Education Committee and the Office of Graduate Medical Education. In a limited number of circumstances and consistent with the provisions set forth below, resident and fellows may engage in moonlighting during their period of appointment.

1. Residents and fellows seeking approval to moonlight and who engage in moonlighting must be individually and fully licensed for the unsupervised medical practice in the state where the moonlighting occurs.

2. PGY-1 residents are not permitted to moonlight.

3. Residents/fellows holding a J-1 Visa are expressly prohibited from moonlighting under federal regulations.

4. Residents/fellows holding an O-1 Visa may moonlight only if his/her visa specifically grants permission to the resident/fellow to moonlight.

5. Residents/fellow must complete and sign an authorization to moonlight form each new academic year. The Program Director and Vice Dean of Graduate Medical Education must review, approve and sign the form before the resident begins moonlighting. A copy of the form will be placed in the resident’s/fellow’s program file.

6. Residents/fellow must be in good standing prior to seeking approval from their Program Director and Vice Dean of Graduate Medical Education to moonlight. Good standing is defined as: (a) satisfactory resident conference attendance as determined in the sole discretion of the Program Director and/or chief residents; and (b) satisfactory performance of daily resident responsibilities, including logging all duty hours on a bi-weekly basis.

7. Residents/fellows who have received informal discipline related to academic performance or any form of formal discipline for any reason are prohibited from engaging in any moonlighting activities during the period of remediation.

8. A Program Director or Vice Dean of Graduate Medical Education has the discretion to permit, prohibit, limit, or revoke permission to moonlight as s/he deems appropriate. The Program Director and Vice Dean of Graduate Medical Education’s decision concerning moonlighting is not subject to appeal.
9. Any approval by a Program Director and Vice Dean of Graduate Medical Education allowing a resident/fellow to moonlight is valid for the academic year in which it is granted, unless limited or revoked sooner. Each academic year, residents/fellows must seek approval from the Program Director and Vice Dean of Graduate Medical Education to moonlight. Approval of moonlighting requires that all hours worked in such employment combined with all USF training hours be in compliance with the duty hour limitations set forth by the ACGME, regardless of the accreditation status of the program. The resident/fellow is responsible for reporting and logging all hours worked, including all internal and external moonlighting hours, on a bi-weekly basis. Residents/fellows who are moonlighting and have been found to be in violation of the ACGME duty hour rules or fail to report any hours worked, whether regular duty hours or internal or external duty hours, will be deemed to have voluntarily relinquished their privilege to moonlight and may be subject to other disciplinary action up to and including termination.

10. Regardless of the total number of hours worked, recurring episodes of excessive fatigue, interference with the resident/fellow’s achievement of the goals and objectives of the educational program, or any adverse effect on patient safety shall trigger reevaluation of the approval to accept supplementary employment and may result in the rescission of approval to moonlight.

11. Residents/fellows may not moonlight during regular duty hours or while on call. Residents/fellows may not accept outside employment or engage in other outside activity that may interfere with the full and faithful performance of clinical duties.

12. Residents/fellows are not allowed to moonlight or do locum tenens activity during an approved leave of absence unless pre-approved by the Program Director and the Vice Dean of Graduate Medical Education.

13. USF does not cover the malpractice or professional liability by the USF Health Self Insurance Program of the trainee for any activity related to moonlighting or outside of the official training program. Any professional liability (malpractice) insurance for moonlighting, whether such moonlighting is internal or external, is the sole responsibility of the resident/fellow. Residents/fellows must either purchase sufficient malpractice insurance to cover his/her moonlighting activities or obtain written assurance from the hiring institution or entity that it will provide malpractice insurance and workers’ compensation coverage.

14. Use of an affiliate hospitals DEA number is not valid for activities outside the scope of the residency training program.

15. It is the responsibility of the institution or entity hiring a resident/fellow to moonlight to confirm whether the resident/fellow is individually and fully licensed for the unsupervised medical practice in the state where the moonlighting occurs and that the resident/fellow has obtained adequate liability coverage for professional or medical malpractice.

16. Violation of this moonlighting policy may include disciplinary action up to and including dismissal.

17. The majority of programs are not allowed to moonlight within their own specialty or sub-specialty of training. Check with your individual RRC to verify moonlighting limitations.
## Procedure

<table>
<thead>
<tr>
<th>Responsible Party</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>Resident/fellow</td>
<td>Requests written approval to moonlight. Has a full license to moonlight and ensures adequate professional (medical) malpractice liability coverage for such activities. If moonlighting will occur at an affiliate site, additional documentation of moonlighting hours may be required. If not completed in a timely fashion, moonlighting privileges may be rescinded.</td>
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| Program Director  | Notifies resident of approval or denial of moonlighting request and documents in writing that decision in the resident/fellows file. Ensure moonlighting will not interfere with residency training and that moonlighting, once approved, is counted in the total weekly duty hour limits for patient care activity as set forth by the ACGME. Monitors resident for any stress and fatigue or any other interference moonlighting has on training. Limits or revokes permission to moonlight as appropriate. |

| Vice Dean, GME    | Permits, prohibits, limits, or revokes permission to moonlight. |
| Resident/fellow    | Notifies program, Program Director and Office of Graduate Medical Education when moonlighting activity is terminated. Seeks approval to moonlight on an annual (academic year) basis. |

**APPROVED:**

![Signature]

Vice Dean, Graduate Medical Education

Reviewed, revised, reissued 6/05
Reviewed, approved 8/2008
Achieving the goals and objectives of the educational program must be the highest professional responsibility of the house officer. Moonlighting is not a right, many programs do not allow moonlighting, and any moonlighting must be voluntary. Trainees requesting permission to moonlight must be a PGY 2 or higher, and must be in good standing.

By completing this form, _______________________________ [Print name], ____________________ [Program] attest to the following:

- I have read and understand the GME policies and procedures relating to duty hours and moonlighting, including the moonlighting policy, GME-208-A, and the ACGME requirements relating to moonlighting and duty hours, including hours free of duty requirements.
- I have received approval by both my Program Director and the Designated Institution Official PRIOR to beginning any moonlighting activity. *If moonlighting will occur at an affiliate site, additional documentation of moonlighting hours may be required. If not completed in a timely fashion, moonlighting privileges may be rescinded.*
- I will record all moonlighting hours in New Innovations, also indicating the training location of the moonlighting.
- I will adhere to ACGME duty hours standards, including hours free of duty requirements, and I understand that both internal and external moonlighting count towards my overall limit of 80 hours per week averaged over a four-week period.
- I must request and receive annual approval to moonlight, and I will report all moonlighting sites to both my program and to the Graduate Medical Education office. I understand that despite receiving annual approval, my program director or the GME office may terminate my right to moonlight at any time.
- I agree that if I moonlight without express written approval or fail to comply with any GME policies and procedures or any ACGME duty hours standards, I will be subject to disciplinary action up to and including termination from the program.
- I agree to eliminate moonlighting if it interferes with my training, including education and/or patient care. I agree to stop all moonlighting activities if it contributes to undue fatigue.
- I understand that this activity is apart from my assignment and in no way related to my employment as a graduate medical student of the University of South Florida. I understand that the University of South Florida is not responsible for and does not provide medical professional liability coverage, disability insurance or workers’ compensation coverage for non-programmatic professional activity. I agree that the University of South Florida has no obligation, responsibility, or liability whatsoever for any injury or harm which I may incur or which may befall me during my performance of or a result of this outside activity. I hereby release, forever discharge, and waive any and all claims I may have now or in the future arising out of or connected with my outside employment activities against the University of South Florida and the State of Florida, and any all officers, agents, employees, underwriters and insurers, all individually and in their respective official capacities.

Moonlighting Employer: (One location/site per form)

Location: _______________________________________________________

Contact Person (Name/Phone/Email): _______________________________________________________

Full Medical License Number: _____________________ Expiration Date: _____________________

Signature of Trainee: ____________________________ Date: ____________________________

I certify that this trainee is in good standing. I will monitor this trainee to ensure moonlighting does not negatively impact his/her medical education and training.

Signature of Program Director: ____________________________ Date: ____________________________

Affiliate Hospital Acknowledgement (if applicable) ____________________________ Date: ____________________________

Signature of DIO: ____________________________ Date: ____________________________

(Once Trainee and PD have signed, Return signed form to Patti Taylor, GME via ptaylor@health.usf.edu or Fax at 813-250-2507)

PLEASE ALLOW 2-4 WEEKS FOR REVIEW/APPROVAL PROCESSING AFTER AFFILIATE ACKNOWLEDGEMENT
Medicare Resident Moonlighting Rules: Decision Tree

The following guide allows a hospital to complete a step-by-step analysis to determine the proper Medicare payment category for individual trainees who are engaged in patient care activities both within the scope of and apart from their residency training programs. Throughout this document, the term "resident" is used to describe an intern, resident, or fellow (consistent with the Medicare definition of the term).

Program Approval

Step 1: Is resident participating in an "approved" program?  
☐ YES, if the program is accredited by ACGME/AOA or has ABMS-approved specialty or subspecialty certification (see list [here](#)). Go to Step 2.  
☐ No, if not ACGME/AOA accredited or ABMS-approved certification. Go to Step 3.  

Note: Determination of whether resident is in an approved program is made at the time of the training and cannot be applied retroactively, even if an unapproved program is approved during a later cost reporting period.

Reimbursement Issues

Step 2: (Approved Programs)

2A. Is the resident engaged in activities that fall within the scope of the residency training program?  
☐ YES. Resident time must be counted for direct graduate medical education (DGME) and indirect medical education (IME) payment purposes. Resident may not bill under own name for services provided. Including time in FTE count for hospital cost reporting purposes is not optional (even if hospital is training in excess of Medicare DGME and IME caps).  

2A(i): Is the resident being supervised according to requirements at 42 C.F.R. §§ 415.170 - 415.172 (requiring teaching physician's presence during key or critical portion of the service or procedure) or under the primary care exception requirements at 42 C.F.R. § 415.172?  
- ☐ Yes. Only supervising physician may submit professional bill for payment under the physician fee schedule.  
- ☐ No. No professional bill may be submitted. Hospital should conduct fact-specific beneficiary inducement analysis, given that free services are potentially being provided to Medicare beneficiaries.  

☐ NO. Go to Step 2B.  

2B. Presuming the resident is engaged in activities that fall outside the scope of the residency training program, are the activities taking place in an inpatient setting (including an inpatient subprovider)?  
☐ YES.  

2B(i): Are the inpatient activities taking place in a hospital where the resident also engages in training as part of her/his residency program?  
- ☐ Yes. Resident may not bill under the physician fee schedule in her/his own name (i.e. "moonlighting" is not permitted). Hospital should conduct fact-specific beneficiary inducement analysis, if free services are potentially being provided to Medicare beneficiaries.
No. "Moonlighting" is permitted in the inpatient setting of a hospital where the resident is not engaged in training. Professional bill may be submitted in resident's name, if the following two requirements are met:

- (1) Services are identifiable physician services, the nature of which require performance by a physician in person and contribute to the diagnosis or treatment of the patient's condition; and
- (2) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed.

Note: time spent "moonlighting" does indeed count toward duty hour requirements.

No. Go to Step 2C.

2C. Presuming the resident is engaged in activities that fall outside the scope of the residency training program, are the activities taking place in a provider-based outpatient or emergency department setting?

Yes.

2C(i): Is the outpatient or emergency department where the resident is training provider-based to a hospital where the resident also engages in training as part of her/his residency program?

Yes.

2C(i)(A): Are all 3 of the following requirements met?

(1) Services are identifiable physician services, the nature of which require performance by a physician in person and contribute to the diagnosis or treatment of the patient's condition;
(2) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed; and
(3) The services can be separately identified from those services that are required as part of the training program.

Yes. "Moonlighting" is permitted, and professional bill may be submitted in resident's name. Hospital should document why activity is considered "separately identifiable" from residency training.

No. "Moonlighting" is not permitted, and professional bill may not be submitted in resident's name. Hospital should conduct fact-specific beneficiary inducement analysis, given that free services are potentially being provided to Medicare beneficiaries.

- Note, however, that if services cannot be separately identified from those required as part of the training program, CMS will assume that services are within the scope of the training program and time must be included in DGME/IME FTE count.

No.

2C(ii): Is the outpatient or emergency department where the resident is training provider-based to a hospital where the resident does not engage in training as part of her/his residency program?
Yes. "Moonlighting" is permitted in the outpatient or emergency department of a hospital where the resident is not engaged in training. Professional bill may be submitted in resident's name, if the following two requirements are met:

- Services are identifiable physician services, the nature of which require performance by a physician in person and contribute to the diagnosis or treatment of the patient's condition; and
- The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed.

No. [End of analysis; please provide examples of other scenarios if further analysis is desired.]

No. Go to Step 2D.

2D. Presuming the resident is engaged in activities that fall outside the scope of the residency training program, are the activities taking place in a clinical care setting that is NOT provider-based to any hospital?

Yes. "Moonlighting" is permitted, and professional bill may be submitted in resident's name, if the following two requirements are met:

1. Services are identifiable physician services, the nature of which require performance by a physician in person and contribute to the diagnosis or treatment of the patient's condition; and
2. The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed.

No. [End of analysis; please provide example of other setting if further analysis is desired.]

Step 3: (Unapproved Programs)

3A. Is resident fully licensed in the State where the resident is training?

Yes. Professional bill may be submitted in resident's name.

No. Professional bill may not be submitted in resident's name. Hospital should conduct fact-specific beneficiary inducement analysis, given that free services are potentially being provided to Medicare beneficiaries. Continue to 3A(i).

- 3A(i): Is the resident enrolled and participating in a formally organized, standardized, structured course of study that lasts at least one year in duration?

Yes. Hospital may receive Medicare Part B reasonable cost payment (under 42 C.F.R. § 415.202) by reporting costs for resident on Medicare Hospital Cost Report Form CMS-2552-10, WS A, line 100 and WS B, line 100, and completing Worksheet D-2 Part I.

- Hospital will receive Part B payment calculated as follows: (reasonable costs of services minus beneficiary deductible) X 80% of the remaining amount.
- What are the "reasonable costs of services"?
  - Resident salaries and fringe benefits? YES.
  - Faculty compensation costs? NO.
  - Other direct and indirect program expenses? NO.
- Applies equally to services furnished to hospital inpatients and outpatients.
- Payment made on biweekly basis with true up on settled cost report (like DGME payments).
- Notes:
  - If residency has been ongoing and costs were not previously incurred by the hospital, seek advice of counsel about implications of community
support / redistribution of cost rules before claiming residents on "unapproved programs" line of cost report.

- CMS stated (in 2010) that the agency was considering eliminating this payment option for any individual who has already completed one residency program, regardless of licensure status. CMS has not yet moved in this direction, though.

**No.** Hospital may not receive Medicare Part B reasonable cost payment by completing Worksheet D-2 Part I. No other Medicare reimbursement options remain.

Completed by (print name) ______________________ Completed by (signature) ____________________________

Completed by date: _____________________________

Approved by Cuc Mai, M.D., Sr. Associate Dean, GME, and DIO

Approved by (signature) ____________________________ Approved by date: ___________

Anytime a red box is checked, the form completion is at a stopping point. No further work needed.
Anytime a green box is checked, continue to next step as indicated.

RELEVANT CITATIONS

**CMS Regulations**

- 42 CFR § 415.170: Conditions for payment on a fee schedule basis for physician services in a teaching setting.
- 42 CFR § 415.172: Physician fee schedule payment for services of teaching physicians.
- 42 CFR § 415.202: Services of residents not in approved GME programs.
- 42 CFR § 415.208: Services of moonlighting residents.

**Federal Register Preamble Discussions**

- 54 Fed. Reg. 40286, 40295 (Sept. 29, 1989), "Identifying Approved Teaching Programs".

**Medicare Manual Provisions**

- Medicare Claims Processing Manual, Chapter 12, §100, Teaching Physician Services
- Medicare Claims Processing Manual, Chapter 4, § 10.10 - Biweekly Interim Payments for Certain Hospital Outpatient Items and Services that are Paid on a Cost Basis, and Direct Medical Education Payments, Not Included in the Hospital Outpatient Prospective Payment System