
GENERAL COUNSEL NOTE

February 2009

There are a variety of situations in which a hospital department or physician group finds itself short staffed and needs the assistance of another physician to help meet the needs of it's the hospital, the group, and/or its patients. One possibility for filling a staffing need could be the use of a ***locum tenens* physician**. Before a *locum tenens* physician can be engaged, however, the hospital or physician group must understand the specific guidelines and restrictions under applicable Medicare billing regulations for use of such type of physician in order to bill for the services of such physicians. This note is meant as a helpful guide to assist administrators and employers in determining whether a *locum tenens* physician arrangement will work for their particular situation.

Locum Tenens Defined

A *locum tenens* physician is a physician who serves temporarily as a substitute (or a “placeholder”) for a regular physician who is absent, most commonly due to illness, pregnancy, vacation, or continuing medical education, but occasionally for a physician who has left a physician group or an employer. Typically, the *locum tenens* physician has no practice of his/her own and moves from area to area as needed to provide these temporary services. The bulk of restrictions regarding the use of a *locum tenens* physician are provided under applicable Medicare billing guidelines for when and how one can bill Medicare for the services provided by a *locum tenens* physician to Medicare beneficiaries. In addition to certain billing rules, however, one must also be conscious of (a) the licensure status of the physician (must have an unrestricted license to practice in the state in which the services will be provided); (b) treatment of the physician under applicable Internal Revenue Services regulations regarding employees versus independent contractors; and (c) any restrictions or constraints that may be present in any medical staff bylaws for hospitals at which the *locum tenens* physician may be providing services. This note will focus on a situation in which the provider in question needs to replace a physician whose patients include Medicare beneficiaries.

Given the temporary nature of the services of a *locum tenens* physician and the manner in which they are provided, a *locum tenens* physician is presumed to be for purposes of billing an independent contractor and not an employee. There are two common contractual arrangements for *locum tenens* physicians: (a) physicians who are employed by or contract with a *locum tenens* or staffing company and are supplied by such agency to fill in for absences; and (b) a solo practitioner who serves as an independent contractor and contracts with the physician group or hospital or other facility (as the case may be) directly to provide the services. (As mentioned above, there may be tax implications for option (b) above and Vanderbilt staff should consult an attorney if considering hiring a *locum tenens* physician who is not employed by or contracts with a *locum tenens* or staffing company.). A *locum tenens* physician is typically paid a fixed amount per diem for each day that the physician provides substitute services and is in almost all scenarios required to maintain his or her own malpractice insurance for all services rendered as a substitute.

Use of a *Locum Tenens* Physician

As the name implies, a *locum tenens* physician should be a temporary “substitute” for a regular physician. In order to bill for the services of a *locum tenens* physician, one would submit a claim under the provider number of the regular physician, but add a modifier to the claim (-Q6) for billed services that are provided by a *locum tenens* physician instead of the regular physician. Therefore, since the services are billed under the actual provider number of the regular physician, it follows that the physician who is absent must not be providing medical care in another setting during his/her absence. For example, if Hospital A permits Dr. Smith (Hospital A employee) to take a leave of absence to provide services at a hospital that was recently ravaged by a flood and Hospital A, through Dr. Smith, is going to bill for Dr. Smith’s services to the extent possible, Hospital A cannot engage a *locum tenens* physician to work at the hospital in Dr. Smith’s place because Dr. Smith will continue to bill for his services. Likewise, a *locum tenens* physician cannot be engaged to assist in providing coverage during a seasonal volume increase or due to other staffing issues that do not involve the unavailability of a specific physician for whom the *locum tenens* physician serves as a temporary substitute. This is due to the fact that a *locum tenens* physician cannot bill under the provider number of a regular physician who is available and providing services to patients. Additionally, if one is utilizing the services of more than one *locum tenens* physician as a substitute for only one regular physician who is unavailable (i.e., Locum X provides services on behalf of Dr. Brown Monday-Wednesday and Locum Y provides services on behalf of Dr. Brown Thursday-Sunday), only one *locum tenens* physician can bill as a substitute for the regular physician at any given moment. For example, Locum X cannot provide services under Regular Physician A’s provider number at the hospital, while Locum Y provides services under Regular Physician A’s provider number at a physician office at the same time. Lastly, a *locum tenens* physician must cover only one regular physician at a time, as the *locum tenens* physician must specifically stand in the shoes of the physician who is absent and provide services to that physician’s patients and only that physician’s patients, as if the *locum tenens* physician was the regular physician. This is not to say that the same *locum tenens* physician cannot provide services for different physicians who are each absent at different times, so long as at any one time the *locum tenens* physician is only filling in for one absent physician. For example, if Dr. White is on maternity leave and Dr. Jacobs is away at a CME, the same *locum tenens* physician could cover for Dr. White on Monday and Wednesday and then cover for Dr. Jacobs on Tuesday, Thursday, and Friday, but the *locum tenens* physician can only cover one physician at a time.

Most medical staff bylaws include “*locum tenens*” as a staff position on its medical staff with certain restrictions for the duration of the staff appointment. The staff privileges are typically granted for a period not to exceed sixty (60) days. The time period limitation is due to the fact that Medicare only permits a *locum tenens* physician to bill for services for a period not to exceed sixty (60) consecutive days. For example, if Dr. Jones goes out on medical leave on March 1, a *locum tenens* physician may be engaged to provide services to Dr. Jones’ patients and bill under her provider number (with a modifier) for only a sixty (60) day period. Assuming the *locum tenens* physician begins providing services on March 1, the services of the *locum tenens* physician may only be billed through April 30. After April 30, Dr. Jones would have to return to work and begin seeing patients again before a *locum tenens* physician could be used in the future

as a substitute for Dr. Jones. This sixty (60) day period runs consecutively. Therefore, even if Dr. Jones was part time and only worked Tuesdays and Thursdays (and the *locum tenens* physician only provided services every Tuesday and Thursday), the maximum time period is still only sixty (60) consecutive days, regardless of whether the *locum tenens* physician only spent twenty (20) days of those sixty (60) days providing services.

As mentioned briefly above, there are occasions when a medical group can use a *locum tenens* physician in order to provide coverage for a physician who has left the group. The same restrictions apply as with a substitute for a regular physician, except that once the sixty (60) day period is over, the group can no longer bill under the former physician's provider number.

Medicare Rules and Regulations

The Medicare rules and regulations regarding billing for the services of a *locum tenens* physician can be found in the Medicare Manuals (§ 30.2.11). While other third party payors may or may not have the same requirements, if any of the patients seen by the regular physician are Medicare beneficiaries, then one must follow these rules for purposes of billing. The narrative above summarizes many of these points, but in order to succinctly clarify the rule, it is important to note the specifics of the rule; one may not bill for services performed by a *locum tenens* physician unless all of the following criteria are met:

1. The regular physician must be unavailable to provide the services (i.e., sick, vacation, business travel, etc.).
2. The locum tenens physician must be compensated on a per diem or similar fee-for-time basis.
3. The regular physician or other billing provider (as the case may be) cannot bill for the services of a locum tenens physician for a continuous period of longer than sixty (60) days.
 - i. For example, a locum tenens physician providing coverage three days a week beginning on June 1 can only provide services through July 31
 - ii. This applies even if several different physicians are used as locum tenens physicians during the 60-day period; the limitation is tied to the billing of the modifier, not to the length of service of any specific locum tenens physician. A new sixty (60) day period for billing does not commence as a result of a break in service of the locum tenens physician.
 - iii. After the regular physician returns to work and provides services, a locum tenens physician can provide services as a substitute for that regular physician again in the future, if necessary, for a maximum of sixty (60) days.
4. All claims submitted for services provided by the locum tenens physician while the regular physician is unavailable must contain the appropriate modifier indicating that a substitute physician provided the services.

Note that these are not federal regulations; rather these are the rules and requirements for billing for services provided to Medicare beneficiaries as published by the Centers for Medicare and Medicaid Services (“CMS”). Therefore, if one does not use a *locum tenens* physician in the manner in which this note describes, the services being provided are not necessarily illegal, but the services just cannot be billed to Medicare because they do not comply with applicable billing and reimbursement rules.

Conclusion

Use of a *locum tenens* physician can be very useful and helpful for hospital and physician groups faced with certain temporary staffing issues caused by the absence of a physician. Assuming that the hospital or group bills for services provided to Medicare beneficiary and wants to continue to do so, the hospital or physician group must follow the very specific billing requirements as set forth by CMS in its manuals. If all of the criteria are followed, the hospital and/or group is able to bill as if the regular physician was not even absent. If the hospital or group needs coverage in excess of sixty (60) days or coverage for more than one specific physician, then the *locum tenens* physician model might not be best. Each particular situation must be analyzed to determine the best staffing model for that situation.

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