I. Introduction

The purpose of this policy is to set forth the requirements and processes for determining the appropriate party (Medicare, research sponsor, institution, patient, or other) responsible for the costs of clinical services provided to human participants enrolled in clinical research studies. This Policy relies upon the rules, regulations, and policies of the Centers for Medicare and Medicaid (“CMS”) to determine the coverage of costs by Medicare.

Clinical research is a study, funded by an industry, nonprofit foundation, governmental agency, or other source, which is designed to answer a specific question about the safety and/or efficacy of drugs, devices, treatments, diagnostics, preventive measures or interventions in human subjects.

Billing for clinical services provided to patients enrolled in research studies is complex because often more than one entity may be responsible for the costs incurred in a clinical trial. The protocol for a research study, for example, may include routine medical treatment/usual care or standard of care (“SOC”) for a condition which the patient would receive whether or not the patient is enrolled in the trial. Generally, these routine costs may be billed to the patient or the patient’s insurer. In cases where a sponsor provides funding for items that are normally considered standard of care, the patient or his or her insurer may not be billed for these services.
Protocols for clinical research may include services, drugs, devices, or treatments that are solely for research purposes. As a general rule, these costs are paid by the sponsor and may not be billed to the patient or insurer.

Costs related to complications caused by participation in a research study may be the responsibility of the sponsor, the patient, or the patient’s insurer. The investigator/sponsor contract and the informed consent signed by the research subject should clearly reflect who will bear these costs.

All human subject research conducted by or under the auspices of University at Buffalo will be performed in accordance with Title 45 Code of Federal Regulations, Parts 46, 106 and 164 and Title 21 Code of Federal Regulations Parts 50, 56, 312 and 812. In addition, University at Buffalo will also conform to all applicable federal (Food and Drug Administration, National Institutes of Health, Office for Human Research Protections, etc.), state, and local laws and regulations. The following research billing policy applies to all clinical research studies including but not limited to those studies administered through the State University of New York at Buffalo ("University") that utilize Kaleida and ECMC hospital services.

II. Communication and Responsibility
This policy will be administered by the University at Buffalo Clinical Research Office.

III. Scope of Practice
Medical staff, hospital and nursing home staff including employees, students, interns, fellows, residents and volunteers. Consultants, contractors and vendors of University at Buffalo, as applicable.

IV. Policy
A. Definitions

1. **Centers for Medicare and Medicaid Services ("CMS")**: The agency within the Department of Health and Human Services ("HHS"). CMS has authority over the two largest federal health care programs, Medicare and Medicaid, under unified leadership.

2. **Clinical Trial**: A carefully planned study that evaluates the benefits and risks of treatments and screening tests on humans. Well-designed clinical trials are the fastest and safest way to find treatments that work in people. Clinical trials are also called research studies or medical research. Clinical trials are conducted in a series of steps called phases and each phase is designed to answer a separate research question.
   a. **Phase I**: Researchers test a new drug or treatment in a small group of people for the first time to evaluate its safety, determine a safe dosage range, and identify side effects.
   b. **Phase II**: The drug or treatment is given to a larger group of people to see if it is effective and to further evaluate its safety.
c. **Phase III:** The drug or treatment is given to large groups of people to confirm its effectiveness, monitor side effects, compare it to commonly used treatments, and collect information that will allow the drug or treatment to be used safely.

d. **Phase IV:** Studies are done after the drug or treatment has been marketed to gather information on the drug’s effect in various populations and any side effects associated with long-term use.

3. **Clinical Trial Agreement:** The written agreement or contract between the study sponsor (or Contract Research Organization working on behalf of the sponsor) and the Partners affiliated institution. This document contains information (exhibits or attachments) including the study budget. It may include the study protocol.

4. **Food and Drug Administration (“FDA”):** The federal agency responsible for protecting the public health by assuring the safety, efficacy and security of human and veterinary drugs, biological products, medical devices, our nation’s food supply, cosmetics, and products that emit radiation.

5. **Humanitarian Device Exemption (“HDE”):** Application to the FDA that is similar to a premarket approval application, but exempt from the effectiveness requirements of sections 524 and 515 of the act. FDA approval of an HDE allows a manufacturer to market the HUD.

6. **Humanitarian Use Device (“HUD”):** As defined in 21 CFR § 814.3(n), a “Medical Device intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year.”

7. **Informed Consent Document (“IC”):** The approved Institutional Review Board document provided to a potential research participant to describe the clinical research study’s purpose, objectives, investigational products, procedures, costs, risks, benefits, and relevant contacts.

8. **Institutional Review Board (“IRB”):** The federally mandated committee charged with reviewing all proposed protocols involving human subject research to protect the rights and welfare of the research participants.

9. **Investigational Device Exemption (“IDE”):** Approval by FDA to allow the investigational device to be used in a clinical study to collect safety and effectiveness data required to support a Pre-market Approval application or a Premarket Notification [510(k)] submission to FDA.

10. **Investigational New Drug (“IND”):** Application required by the US FDA before clinical trials of a new drug or new biological agent may be initiated.
11. **Coverage Analysis ("CA")**: A systematic, objective review of study related documents to determine which items or services are billable to the Insurer, Sponsor, or Patient.

12. **National Clinical Trial Number**: A unique 8-digit number preceded by NCT and assigned to the clinical trial/registry and is also known as the ClinicalTrials.gov identifier.

13. **New Drug Application ("NDA")**: Vehicle through which drug sponsor formally proposes that the FDA approve a new pharmaceutical for sale and marketing in the U.S. Data gathered during animal studies and human clinical trials of an Investigational New Drug become part of the NDA.

14. **Notice of Award**: Legally binding document that notifies a grantee and others that a federal grant has been funded; contains or references all terms and conditions of an award and documents the obligation of federal funds.

15. **Principal Investigator ("PI")**: The individual(s) responsible for the scientific, technical, and administrative aspects of the project (e.g., for NIH-funded research, the person named at Item 3a, Form PHS 398).

16. **Protocol Billing Grid ("PBG")**: A budget tool utilized listing all study related services to be provided to the Research Subject during the course of the Clinical Trial or study which is developed using the Protocol, Informed Consent, and Clinical Trial Agreement to identify the payment source for each service.

17. **Research**: Research includes any systematic investigation (including research development, testing, and evaluation) that has as its primary purpose the development of or contribution to generalizable knowledge. This includes the development of research repositories and databases for research.

18. **Research Care**: Items and services provided solely to satisfy data collection and analysis needs and that are not used in the direct clinical management of the patient (e.g., monthly CT scans for a condition usually requiring only a single scan).

19. **Standard of Care ("SOC")**: Sometimes referred to as usual care or conventional care. For the purpose of this policy SOC is defined as clinical procedures or services that would be performed in the normal course of care for a patient absent participation in a clinical trial, including “routine costs.”

20. **Routine Costs**: Routine costs in a clinical trial include all items and services that are otherwise generally available to Medicare beneficiaries (i.e. there exists a benefit category, it is not statutorily excluded, and there is not a national non-coverage decision).
It is the policy of Kaleida Health, ECMC and the UBMD practice plans to bill Medicare or other third party payors for Routine Costs of clinical services provided to research subjects participating in clinical research studies only as allowed by CMS through the Medical Device Coverage Policy (1995) and the National Coverage Decision (2007). No research subject may be enrolled in a clinical research study that may involve billing of third-party payers for Routine Costs of clinical services at a University at Buffalo Facility until: (a) it has been determined, through the completion of a Coverage Analysis (“CA”) which clinical services are Routine and can be billed to Medicare or other third party payor, and (b) a budget for the research-related costs for a study has been developed. In addition, no research subject may be enrolled in a clinical research study at a Kaleida Health, or ECMC facility involving an investigational medical device being studied under an Investigational Drug Exemption (“IDE”) until (1) the Medicare Administrative Contractor National Government Services (“NGS”) or central CMS office\(^1\) has approved the proposed clinical research study for invoicing, or (2) an alternative funding source has been identified for expenses related to the clinical research project. The final billing grid resulting from the CA is provided to and used by study, billing, and compliance personnel to determine the appropriate party to be billed and to monitor clinical research study expenses.

This policy is designed to ensure compliance with all federal and state regulations regarding claims for reimbursement by healthcare providers as they relate to research subjects. As such, this policy shall govern the billing function associated with any service or procedure performed for a research subject at any facility for which Kaleida, ECMC and the Practice Plan generates a claim for reimbursement. Therefore, it is mandatory that research subjects being treated at any of these facilities be identified as such to the University at Buffalo Clinical Research Office. Claims for research services shall be processed in conjunction with the language included in the sponsor contract and budget; informed consent form “cost” paragraph; protocol treatment guidelines, and coverage analysis to ensure compliance. Any research related billing must be coded and charged based on actual services rendered; must be allowable by regulations governing medical billing practices; and must be consistent with the informed consent signed by the research subject.

University at Buffalo requires all Principal Investigator(s) (“PIs”) or researchers, who use hospital services, to complete a CA to ensure that clinical research services or expenses are charged to the appropriate study, the correct rates are applied, and that third party payers are not billed for services for which the study sponsor is responsible. The CA will be used by the University at Buffalo Clinical Research Office as a tool to guide the billing for all items that are listed in the protocol, Informed Consent form and final budget. University at Buffalo Research Office charges a reasonable fee to corporate sponsors for the review and implementation of a coverage analysis and billing grid.

The PI together with the study sponsor is responsible for the terms and conditions of the research project, related budget, and CA. PIs must understand and comply with all rules for

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\(^1\) Effective January 1, 2015, interested parties (such as study sponsors) that wish to seek Medicare coverage related to Category A or B IDE studies, will have a centralized point of contact for submission, review and determination of Medicare coverage IDE study requests. 78 Fed. Reg. 74230, 74432. To seek coverage, submit requests via email to clinicalstudynotification@cms.hhs.gov or via hard copy to the following address: Centers for Medicare and Medicaid Services; Center for Clinical Standards and Quality; Director, Coverage and Analysis Group; ATTN: Clinical Study Certification; Mail Stop S3-02-01; 7500 Security Blvd.; Baltimore, MD 21244.

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billing Medicare, Medicaid, and third party insurers for services provided in the context of clinical research. Additionally, the PI is responsible for identifying which services are billable to insurance and which services will be covered by the study or grant. PIs must send a copy of the final protocol, Clinical Trial Agreement, IRB approved Informed Consent, and CA to the University at Buffalo Clinical Research Office projects for review and approval. The PI is responsible for all aspects of the clinical trial.

B. Process

a. Pre-Study Procedures

Prior to IRB submission, the PI must furnish to the University at Buffalo Clinical Research Office a copy of the Protocol, Informed Consent document, CA, Clinical Trial agreement with Budget, and Protocol Billing Grid ("PBG") that has each service or procedure classified as either “SOC” = Standard of Care or “STUDY” = Research only. Items should only be classified as standard of care if they would be performed in the normal course of care for the patient absent participation in the clinical trial. The CA and Protocol Billing Grid must contain the printed name of the PI, signature of the PI, and date. The Principal Investigator or Study Coordinator is responsible for completing the PBG as a guide for all billing activities during the life of the study and must provide a copy to the Clinical Research Office prior to the commencement of the study.

C. Study Procedure Modifications

All research billing modifications which may occur with a change in Protocol shall be sent via e-mail to the University at Buffalo Clinical Research Office at UBCRO@buffalo.edu

D. Research Billing Compliance Risks

The following constitute research billing compliance problems and are not permitted:

1. Submitting a claim to a third party payer "in the hopes that they will pay" is not consistent with the National Coverage Determination. The sponsor’s responsibility is not contingent upon payer determination.
2. Waiving Medicare co-payments and/or deductibles.
3. Up-coding billable services to Medicare.
4. Inadequately documenting medical records.
5. Absence of Research Subject’s written consent in the Medical Record, or incomplete consent.
6. Billing Medicare for:
   a. Investigational, drug, devices or procedures;
   b. Research specific services (e.g. trial eligibility);
   c. Items or services provided for data collection;
   d. Routine care in non-qualifying trial;
   e. Routine care not covered by Medicare; and
   f. Services the sponsor pays for or provides free of charge.

E. Compliance
The University at Buffalo Clinical Research Office has full authority to review all research-related documents, financial records, contracts, patient records, and other information necessary to ensure compliance with regulatory requirements pertaining to research performed at Kaleida Health, ECMC, and UBMD Practice Plans. All research billing will be subject to compliance review.

**Records Management**

The PI should maintain the following records in accordance with sponsor requirements and will make these documents available to the University at Buffalo Clinical Research Office or designee upon request:

1. A copy of the IRB approved study protocol, informed consent and budget;
2. A copy of the IRB approval letter;
3. The study/protocol account number as assigned by the University at Buffalo Office of Research and Sponsored Projects;
4. A list of the subjects enrolled in the study including first, middle and last name, and Medical Record Number (MRN) and/or Patient Financial Services account number;
5. A description of the type and frequency of tests, treatments, procedures and services required by the study, that are considered to be funded by the Sponsor and those that are considered to be “Standard of Care” and therefore payable by the patient or third party payer (Protocol Billing Grid/patient log); and
6. Copies of the study registration and encounter forms, requisitions for ancillary services and other documentation completed for such subjects and patients, including case report forms.

**Keypoint:** Any questions or comments regarding this policy can be addressed to the University at Buffalo Clinical Research Office at UBCRO@buffalo.edu

**VII. Documentation**

Informed Consent Form  
Study Protocol  
List of enrolled subjects  
Study Budget  
The following are available via The Clinical Research Office at 888-4840 or 888-4841  
- Coverage Analysis Checklist  
- Protocol Billing Grid (PBG)

**VIII. REFERENCES:**

21 C.F.R. § 405.201  
Medicare Clinical Trial Policies - Overview  
http://www.cms.hhs.gov/ClinicalTrialPolicies/  
National Coverage Decision for Routine Costs in Clinical Trials (“NCD”) – N310.1  
Medical Devices

- *Internet-Only Manual* 100-2 – Medicare Benefit Policy Manual, Chapter 14
- Medicare Claims Processing Manual, Chapter 32, § 68
- Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices
  September 15, 1995 (D95-2)

University at Buffalo developed these policies and procedures in conjunction with administrative and clinical departments. These documents were designed to aid the qualified health care team in making clinical decisions about patient care. These policies and procedures should not be construed as dictating exclusive courses of treatment and/or procedures. No health care team member should view these documents and their bibliographic references as a final authority on patient care. Variations of these policies and procedures in practice may be warranted based on individual patient characteristics and unique clinical circumstances. Please contact the print shop regarding any associated forms.

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