THE "INCIDENT TO" PROVISION OF MEDICARE

FACT SHEET

The term "incident to" refers to the services or supplies that are a key part of the physician's personal professional services in the course of diagnosis or treatment of an illness or injury. In plain language: under the "incident to" provision of Medicare, services are submitted under the physician's NPI but are performed by someone else. There are restrictions on the types of services that ancillary personnel may perform under this provision.

"Incident to" MUST to be based on a previously identified problem and a Plan of Care previously established by the treating/primary provider.

How Does "Incident to" Work?

"Incident to" is not applicable to some services. It applies only to services that do not have their own "benefit category" under Medicare. Benefit categories are defined by the Social Security Act (section 1861(s)). Under Medicare Part B, the following services have their own benefit categories and specific required levels of supervision:

- Diagnostic tests, including x-rays and clinical laboratory testsX-ray, radium, and radiation therapy, including isotopes
- Surgical dressings, splints, casts, and other materials used to treat fractures and dislocations
- Durable Medical Equipment (DME), prosthetics, and orthotics
- Ambulance services
- Pneumococcal vaccines
- Services provided by Certified Registered Nurse Anesthetists (CRNAs)
- Screening mammography and screening Pap smears
- Bone mass measurement

Direct physician supervision is required. This means the physician must be physically present in the office suite and immediately available while the service is being provided. (The physician is not required to be in the same room while the service is being provided.) For example, the physician cannot be across the street, three blocks away, or available via cell phone (but not in person). The issue of "immediate availability" is one of patient safety; for example, if the patient has an adverse reaction to an injection, or passes out during a routine venipuncture, the physician must be immediately available to provide care to the patient.

The services must be the kinds of services that are commonly provided in a physician's office. This includes some minor surgeries, many diagnostic tests, some injections and infusions, and other types of care that are routinely provided in an office setting. If the service is not normally done in your office, do not submit it under "incident to" provisions.

"Incident to" services cannot be rendered on the patient's first visit, or if a change to the plan of care occurs. ... Subsequent to the encounter during which the physician establishes a diagnosis and initiates the plan of care, an NPP may provide follow-up care under the "direct supervision" of a qualified provider.

Who May Provide Services "Incident to" a Physician?

Auxiliary personnel, such as registered nurses, technicians, or other qualified personnel, may perform a limited scope of office procedures, such as certain injections. Auxiliary personnel must be employed by the physician or the legal entity that employs or contracts with the physician.

Nonphysician practitioners (NPPs), including nurse practitioners and physician assistants. Although NPPs may provide services under their own NPIs and in accordance with state laws regarding scope of practice, NPPs may also provide services "incident to" a physician and submit these services under the physician's NPI, when all requirements for "incident to" are met. In these cases, payment is made at the physician rate, as if the physician personally performed the service.

This Fact Sheet is for informational purposes only and is not intended to guarantee payment for services, all services submitted to Medicare must meet Medical Necessity guidelines. The definition of "medically necessary" for Medicare purposes can be found in Section 1862(a)(1)(A) of the Social Security Act – Medical Necessity (http://www.ssa.gov/OP_Home/ssact/title18/1862.htm).

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Employment

Employment means that the auxiliary personnel are paid wages or salary by the physician/nonphysician practitioner practice, and the individual is employed for Social Security and Federal and State income tax purposes (e.g., contributions and income taxes are withheld). PA may be employed as independent contractors (1099 withholding). To be considered an employee, the nonphysician performing the "incident to" service may be a part-time, full-time, or a leased employee of the supervising physician/nonphysician practitioner, physician group practice, or of the legal entity that employs the physician (hereafter referred to collectively as the physician or other entity) who provides direct personal supervision (as described below).

A leased employee is a nonphysician working under a written employee leasing agreement, which provides that:

- The nonphysician, although employed by the leasing company, provides services as the leased employee of the physician or other entity; and
- The physician or other entity exercises control over all actions taken by the leased employee regarding the rendering of medical services to the same extent as the physician or other entity would exercise such control if the leased employee were directly employed by the physician or other entity.

Direct Supervision

Office Setting

- Direct supervision in an office setting does not mean that the physician, CP, NP, CNM, CNS, or in the case of the physician directed clinic, the PA (hereafter referred to collectively as the physician/nonphysician practitioner) be physically present in the same room as his/her/clinic employee. However, they must be present in the office suite and immediately available to provide assistance and direction throughout the time the employee is performing the services.
- In your office, qualifying "incident to" services must be provided by a caregiver qualified to provide the service, whom you directly supervise, and who represents a direct financial expense to you (such as a W-2 or leased employee, or an independent contractor)
- You do not have to be physically present in the treatment room while the service is being provided, but you must be present in the immediate office suite to render assistance if needed
- If you are a solo practitioner, you must directly supervise the care
- If you are in a group, any physician member of the group may be present in the office to supervise

In Patients' Homes

- In general, you must be present in the patient's home for the service to qualify as an "incident to" service
- Exceptions to this direct supervision requirement apply to homebound patients in medically underserved areas where there are no available home health services only for certain limited services found in Pub 100-02. Chapter 15 Section 60.4 (B)
- In this instance, you need not be physically present in the home when the service is performed, although general supervision of the service is required
- You must order the services, maintain contact with the nurse or other employee, and retain professional responsibility for the service
- All other "incident to" requirements must be met
- A second exception applies when the service at home is an individual or intermittent service performed by personnel meeting pertinent state requirements (e.g., nurse, technician, or physician extender), and is an integral part of the physician's services to the patient

Offices in Institutions

- In institutions including SNF, your office must be confined to a separately identifiable part of the facility and cannot be construed to extend throughout the entire facility
- Your staff may provide service "incident to" your service in the office to outpatients, to patients who are not in a Medicare covered stay or in a Medicare certified part of a SNF
- If your employee (or contractor) provides services outside of your 'office' area, these services would not qualify as "incident to" unless you are physically present where the service is being provided
- One exception is that certain chemotherapy "incident to" services are excluded from the bundled SNF payments and may be separately billable to the MAC

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Outside the Office

- If auxiliary personnel perform services outside the office (e.g., in a patient's home or in an institution), Medicare covers their services as "incident to" a physician's/nonphysician practitioner's service only if there is direct personal supervision by the physician/nonphysician practitioner. Services provided by auxiliary personnel in an institution (i.e., hospital, skilled nursing facility, nursing or convalescent home) present a special problem in determining whether direct physician/nonphysician practitioner supervision exists. The availability of the physician/nonphysician practitioner by telephone and the presence of the physician/nonphysician practitioner somewhere in the institution does not constitute direct supervision.
- Certain services may be covered under the "incident to" provision when provided in the setting by auxiliary personnel employed by the physician/nonphysician practitioner and working under his/her direct supervision. However, many of these same services may not be covered when they are provided to hospital patients or nursing facility residents because the services do not ordinarily require performance by a physician and they are typically provided by personnel who are not employed by the physician and/or under his/her supervision in the hospital or nursing facility settings. Services such as therapeutic injections, breathing treatments and chemotherapy administration fall into this category.

Homebound Patient

- The patient must be considered homebound.
- The service must be performed under direct personal supervision.
- The services must be included in the physician's/nonphysician practitioner's or physician directed clinic's bill.
- Homebound is defined as individuals considered confined to their home but are not necessarily bed ridden. However, the condition of these patients should be such that there exists a normal inability to leave home and, as a result, leaving their home would require a considerable and taxing effort. If the patients do in fact leave the home, the patients may nevertheless be considered homebound if the absences from the home are infrequent or for periods of relatively short duration. Therefore, beneficiaries will be considered homebound if they have a condition due to an illness or injury which restricts the individuals' ability to leave their place of residence except with the use of special transportation, or the assistance of another person or if they have a condition which is such that leaving their home would further endanger the patients' health or condition.
- Aged persons who do not often travel from their home because of feebleness and insecurity brought on by advanced age are not considered confined to their home. If the patients are not considered "homebound," Medicare cannot pay for the service(s).
- "Homebound" must appear in Item 19 on the CMS-1500 claim form or the electronic equivalent.

Note: This coverage should not be considered as an alternative to home health benefits where there is a participating home health agency in the area which could provide the needed services.

Physician Directed Clinics

In clinics, particularly those that are departmentalized, direct personal physician/nonphysician practitioner supervision may be the responsibility of several physicians/nonphysician practitioners, as opposed to an individual attending physician/nonphysician practitioner. In this situation, medical management of all services provided in the clinic is assured. The physician/nonphysician practitioner ordering a service need not be the physician/nonphysician practitioner who is supervising the service. Therefore, services performed by the therapist and other aides are covered even though they are performed in another department of the clinic. The service would be billed under the NPI of the supervising physician/nonphysician practitioner.

Hospital or SNF

- For inpatient or outpatient hospital services and services to residents in a Part A covered stay in a SNF the unbundling provision (1862)(a)(14) provides that payment for all services are made to the hospital or SNF by a Medicare intermediary (except for certain professional services personally performed by physicians and other allied health professionals)
- "Incident to" services are not separately billable to the MAC or payable under the physician fee schedule

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Billing

- Services rendered "incident to" a physician's service should be billed under the employing physician's NPI, or in the case of a physician directed clinic the supervising physician's NPI, and are reimbursed as if the physician performed the service (no modifier required). If the physician is non-participating, then the services can be billed as either assigned or non-assigned.
- Services rendered "incident to" a nonphysician practitioner's service should be billed under the employing practitioner's NPI, or in the case of a physician directed clinic the supervising practitioner's NPI and are reimbursed as if the practitioner performed the service.
- The following practitioners must accept assignment: PAs, NPs, CNSs, CP, CSWs, CRNAs, CNMs and Registered Dieticians. Since these practitioners must accept assignment, any services billed "incident to" these practitioners must be billed as assigned.
- "Incident to" billing is paid at 100% of the physician fee schedule, whereas the qualified practitioners billing under their own billing numbers are paid at 85% of the physician fee schedule. If service delivery does not meet all "incident to" criteria, but qualifies for billing by the practitioner, payment is made at 85% of physician fee schedule when billed by nonphysician practitioners or 100% of fee schedule when billed by therapists.

Situation	Performed by	Billing
Established patient with no new problems	NPP	If 'incident to' requirements have been met service may be billed under supervising physician's NPI
Established patient with new problem	NPP (only)	Must be billed under NPP's NPI
Established patient with new problem	NPP and Physician	May be billed under physician if "incident to" requirements have been met. Documentation must support a face-to-face occurred with physician (during encounter) and that he/she has initiated course of treatment. Physician must sign his/her entry

Signature Requirements

In an "incident to" scenario signatures may be appended in one of the following ways:

- The documentation should be signed by the supervising provider with a reference in the notes as to who performed the service
- Co-signed
- Signed by the NPP performing the service

References

CMS Internet Only Manual (IOM), Publication 100-02, Medicare Benefit Policy Manual, Chapter 15, Section 60: https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf

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