"Incident To" Services

MEDICARE PART B

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

TrailBlazer
HEALTH ENTERPRISES, LLC℠

A CMS CONTRACTED INTERMEDIARY AND CARRIER

☆☆IMPORTANT☆☆

The information provided in this handbook was current as of April 2005. Any changes or new information superseding the information in this book are provided in the Medicare Part B newsletters with publication dates after April 2005. Medicare Part B newsletters are available at: www.trailblazerhealth.com

☆☆IMPORTANT☆☆

TABLE OF CONTENTS

"INCIDENT TO" SERVICES

"Incident to" services are defined as services and supplies commonly furnished in a physician's office, which are "incident to" the professional services of a physician or an NPP and provided by auxiliary personnel. This is limited to situations in which there is direct physician/non-physician personal supervision. This applies to auxiliary personnel under the supervision of the physician/non-physician, which includes, but is not limited to, nurses, technicians, therapists, NPPs, etc.

For purposes of this section, physician means physician or other practitioner (i.e., PA, NP, CNS, nurse midwife, and clinical psychologist) authorized by the Act to receive payment for services "incident to" his own services.

REQUIREMENTS

Requirements for "incident to" are:

- The services are commonly furnished in a physician's office.
- The physician must have initially seen the patient.
- There is direct personal supervision by the physician of auxiliary personnel, regardless of whether the individual is an employee, leased employee, or independent contractor of the physician.
- The physician has an active part in the ongoing care of the patient.

Direct supervision in the office setting does not mean that the physician/ non-physician must be present in the same room with his aide. However, the physician must be present in the office suite and immediately available to provide assistance and direction while the aide is performing services.

COVERAGE CRITERIA

For certain services to be covered under the "incident to" provision, conditions must be met in addition to the standard coverage criteria that are applicable.

The services must be:

- An integral, although incidental, part of a professional service of a physician.
- Commonly rendered without charge or included in the physician's bill.
- Of a type that is commonly furnished in physicians' offices or clinics.
- Furnished by the physician or by auxiliary personnel under the physician's direct supervision.

Note: Some "incident to" services to homebound patients may be allowed under a physician's general supervision.

"INCIDENT TO" SERVICES

"INCIDENT TO" A PHYSICIAN'S PROFESSIONAL SERVICES

"Incident to" a physician's professional services means the services or supplies are furnished as an integral, although incidental, part of the physician's personal professional services in the course of diagnosis or treatment of an injury or illness.

Medicare pays for services and supplies (including drugs and biologicals that are not usually self-administered) that are:

- Furnished "incident to" a physician's or other practitioner's services.
- Commonly included in the physician's or practitioner's bills.
- For which payment is not made under a separate benefit category listed in Section 1861(s) of the Act.

Medicare will not apply "incident to" requirements to services having their own benefit category. Rather, these services should meet the requirements of their own benefit category.

Example: Diagnostic tests are covered under Section 1861(s)(3) of the Act and are subject to the physician supervision level coverage requirements. Depending on the particular tests, the supervision requirement may be more or less stringent than that discussed within the "incident to" criteria.

Note: Pneumococcal, influenza, and hepatitis B vaccines are covered under Section1861(s)(10) of the Act and need not also meet "incident to" requirements.

PAs, NPs, CNSs, certified nurse midwives, clinical psychologists, clinical social workers, physical therapists and occupational therapists all have their own benefit categories and may provide services without direct physician supervision and bill directly for these services. When their services are provided as auxiliary personnel and under direct physician supervision, they may be covered as "incident to" services, in which case, the "incident to" requirements would apply.

Certain hospital services may also be covered as "incident to" a physician's service under Section 1861(s)(2)(B) of the Act. Payment for these services is made under Part B to a hospital by the hospital's intermediary and these services are not subject to the same requirements as services covered under Section 1861(s)(2)(A). **These services are not billable to the Part B carrier.**

"INCIDENT TO" SERVICES

DIRECT PERSONAL SERVICES

Coverage of services and supplies "incident to" the professional services of a physician in private practice is limited to situations in which there is direct physician supervision of auxiliary personnel.

Auxiliary personnel means any individual who is acting under the supervision of a physician, **regardless of whether the individual is an employee, leased employee or independent contractor of the physician,** or of the legal entity that employs or contracts with the physician. Likewise, the supervising physician may be an employee, leased employee or independent contractor of the legal entity billing and receiving payment for the services or supplies.

However, the physician personally furnishing the services or supplies or supervising the auxiliary personnel furnishing the services or supplies must have a relationship with the legal entity billing and receiving payment for the services or supplies, which satisfies the requirements for valid reassignment. As with the physician's personal professional services, the patient's financial liability for the "incident to" services or supplies is to the physician or other legal entity billing and receiving payment for the services or supplies. Therefore, the "incident to" services or supplies must represent an expense incurred by the physician or legal entity billing for the services or supplies.

When a physician supervises auxiliary personnel who assist him in rendering services to patients and includes the charges for their services in his own bills, the services of such personnel are considered "incident to" the physician's service if there is a physician's service rendered to which the services of such personnel are an incidental part and there is direct supervision by the physician.

This does not mean, however, that to be considered "incident to," that each occasion of service by auxiliary personnel (or the furnishing of a supply) need also always be the occasion of the actual rendering of a personal professional service by the physician. Such a service or supply could be considered to be "incident to" when furnished **during a course of treatment** where the physician performs an initial service and subsequent services at a frequency that reflects his active participation in and management of the course of treatment. (However, the direct supervision requirement must still be met with respect to every non-physician service.)

Direct supervision in the office setting does not mean the physician must be present in the same room with his aide. However, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the aide is performing services.

"INCIDENT TO" SERVICES

AUXILIARY PERSONNEL

If auxiliary personnel perform services outside the office setting, e.g., in a patient's home or in an institution (other than hospital or Skilled Nursing Facility (SNF)), their services are covered "incident to" a physician's service only if there is direct supervision by the physician.

Example If a nurse accompanied the physician on house calls and administered an injection, the nurse's services are covered. If the same nurse made the calls alone and administered the injection, the nurse's services are not covered (even when billed by the physician) since the physician is not providing direct supervision.

Services provided by auxiliary personnel in an institution (e.g., nursing, or convalescent home) present a special problem in determining whether direct physician supervision exists. The availability of the physician by telephone and the presence of the physician somewhere in the institution do not constitute direct supervision.

TrailBlazer considers "incident to" within an institution (e.g., nursing, or convalescent home) to be met when the physician is in the same wing and on the same floor as the auxiliary personnel.

Note: "Incident to" services by physician-employed personnel for hospital patients and for SNF patients who are in a Medicare covered stay are not covered.

NON-PHYSICIAN PRACTITIONERS

Furnished "Incident to" a Physician's Services

In addition to coverage being available for the services of such auxiliary personnel as nurses, technicians and therapists when furnished "incident to" the professional services of a physician, a physician may also have the services of certain non-physician practitioners covered as services "incident to" a physician's professional services.

These NPPs, who are being licensed by the states under various programs to assist or act in the place of the physician, include, for example, certified nurse midwives, clinical psychologists, clinical social workers, PAs, NPs and CNSs.

Services performed by these NPPs "incident to" a physician's professional services include not only services ordinarily rendered by a physician's office staff person (e.g., medical services such as taking blood pressures and temperatures, giving injections, and changing dressings) but also services ordinarily performed by the physician himself such as minor surgery, setting casts or simple fractures, reading X-rays, and other activities that involve evaluation or treatment of a patient's condition.

"INCIDENT TO" SERVICES

For services of an NPP to be covered as "incident to" the services of a physician, the services must meet all the requirements for coverage specified within the "incident to" criteria. For example, the services must be an integral, although incidental, part of the physician's personal professional services and they must be performed under the physician's direct supervision.

An NPP such as a PA or an NP may be licensed under state law to perform a specific medical procedure and may be able to perform the procedure without physician supervision and have the service separately covered and paid by Medicare as a PA's or nurse practitioner's service. However, to have that same service covered as "incident to" the services of a physician, it must be performed under the direct supervision of the physician as an integral part of the physician's personal in-office service.

This does not mean that each occasion of an incidental service performed by an NPP must always be the occasion of a service actually rendered by the physician.

It does mean there must have been a direct, personal, professional service furnished by the physician to initiate the course of treatment of which the service being performed by the NPP is an incidental part, and there must be subsequent services by the physician of a frequency that reflects his continuing active participation in and management of the course of treatment.

In addition, the physician must be physically present in the same office suite and be immediately available to render assistance if that becomes necessary.

Note: A physician might render a physician's service that can be covered even though another service furnished by an NPP as "incident to" the physician's service might not be covered. For example, an office visit during which the physician diagnoses a medical problem and established a course of treatment could be covered even if, during the same visit, an NPP performs a non-covered service such as acupuncture.

"INCIDENT TO" SERVICES

"INCIDENT TO" A PHYSICIAN'S SERVICE IN CLINIC

Services and supplies "incident to" a physician's services in a physician-directed

clinic or group association are generally the same as those described above.

A physician-directed clinic is one where:

- A physician (or a number of physicians) is present to perform medical (rather than administrative) services at all times the clinic is open.
- Each patient is under the care of a clinic physician.
- The non-physician services are under medical supervision.

DEPARTMENTALIZED CLINICS

In highly organized clinics, particularly those that are departmentalized, direct physician supervision may be the responsibility of several physicians as opposed to an individual attending physician. In this situation, medical management of all services provided in the clinic is assured. The physician ordering a particular service need not be the physician who is supervising the service. Therefore, services performed by auxiliary personnel are covered even though they are performed in another department of the clinic.

Supplies provided by the clinic during the course of treatment are also covered. When the auxiliary personnel perform services outside the clinic premises, the services are covered only if performed under the direct supervision of a clinic physician. If the clinic refers a patient for auxiliary services performed by personnel who are not supervised by clinic physicians, such services are not "incident to" a physician's service.

HOSPITAL SETTING

Services performed by auxiliary personnel in an inpatient or outpatient hospital setting are not covered as "incident to" services, and services provided by auxiliary personnel not in the employ of the physician, even if provided on the physician's order, are not covered as "incident to" services.

FINANCIAL LIABILITY

The law requires that the services be those most commonly furnished in a physician's office. As with the physician's personal professional service, the patient's financial liability for the incidental service is to the physician. Therefore, the incidental service must represent an expense incurred by the physician in his professional practice.

"INCIDENT TO" SERVICES

BILLING REQUIREMENTS

"Incident to" services are services performed by auxiliary personnel supervised by a physician or NPP, but are billed on the claim as if the billing physician or non-physician provider had provided the service.

OFFICE/CLINIC SETTING

In the office/clinic setting when the physician performs the Evaluation and Management (E/M) service, the service must be reported using the physician's Unique Physician Identification Number (UPIN)/PIN. When an E/M service is a shared/split encounter between a physician and a non-physician practitioner (NP, PA, CNS or Certified Nurse Midwife), the service is considered to have been performed "incident to" if the requirements for "incident to" are met and the patient is an established patient. If "incident to" requirements are not met for the shared/split E/M service, the service must be billed under the NPP's UPIN/PIN, and payment will be made at the appropriate physician fee schedule payment.

"INCIDENT TO" SERVICES

HOSPITAL INPATIENT/OUTPATIENT/EMERGENCY DEPARTMENT SETTING

When a hospital inpatient/hospital outpatient or emergency department E/M service is shared between a physician and an NPP from the same group practice, and the physician provides any face-to-face portion of the E/M encounter with the patient, the service may be billed under either the physician's or the NPP's provider number.

However, if there was no face-to-face encounter between the patient and the physician (e.g., even if the physician participated in the service by only reviewing the patient's medical record), the service may only be billed under the NPP's provider number.

Payment will be made at the appropriate physician fee schedule rate based on the provider number entered on the claim.

Examples of Shared Visits:

- If the NPP sees a **hospital inpatient** in the morning and the physician follows with a later face-to-face visit with the patient on the same day, the physician or the NPP may report the service.
- In an office setting, the NPP performs a portion of an E/M encounter and the physician completes the E/M service. If the "incident to" requirements are met, the physician reports the service. If the "incident to" requirements are not met, the service must be reported using the NPP's UPIN/PIN.

"INCIDENT TO" SERVICES

DOCUMENTATION FOR "INCIDENT TO" SERVICES

The billing of services **other than** Evaluation and Management (E/M) performed by persons other than the billing physician as services that are "incident to," is also permissible for persons other than NPs, PAs, and CNSs. Allied health professionals who are qualified under state law governing medical practice to perform the specified medical service may be reimbursed by Medicare for services provided "incident to" a physician's service. Such services are reimbursed under the physician's fee schedule as if the physician actually performed them.

Report these services with the employing/supervising physician's PIN in Item 33 of the CMS-1500 claim form.

The only non-physician practitioners who may bill E/M services (above the level of 99211) under the "incident to" criteria are NPs, CNSs, PAs and nurse midwives.

To ensure proper reimbursement according to the fee schedule, Medicare requires that documentation submitted to support billing "incident to" services must clearly link the services of the non-physician practitioner to the services of the supervising physician.

For "incident to" services that are billed and undergoing medical review, documentation sent in response to the carrier's request should clearly show the link.

Evidence of the link may include:

- Co-signature or legible identity and credentials (i.e., MD, DO, NP, PA, etc.) of both the practitioner who provided the service and the supervising physician on documentation entries.
- Some indication of the supervising physician's involvement with the patient's care. This indication could be satisfied by:
  - Notation of supervising physician's involvement (the degree of which must be consistent with clinical circumstances of the care) within the text of the associated medical record entry.
    Or,
  - Documentation from other dates of service (e.g., initial visit, etc.) other than those requested, establishing the link between the two providers.

Failure to provide such information may result in denial of the claim for lack of documentation from the billing provider.