

# PHYSICIAN SUPERVISION CONUNDRUMS

Making sense of “incident to” services and diagnostic tests.

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One of the most challenging concepts in Medicare reimbursement is physician supervision when providing what are known as “incident to” services. Auxiliary personnel, such as physician assistants (PAs) and other nonphysician practitioners (NPPs), may bill for their own services without supervision.

When they are aiding the physician, however, their services require supervision and must be billed by the physician. When ancillary personnel assist the physician during the course of rendering a service, these services must be supervised and, because they are included in the physician's service, are not billable.

This month's column reviews the rather strict regulations that the Centers for Medicare and Medicaid Services (CMS) imposes for both types of services. In the final rule for 2016 published in the Federal Register there was a small section on proposed changes on “incident to” that was widely misinterpreted, causing some consternation.<sup>1</sup>

## WHAT IS AN “INCIDENT TO” SERVICE?

The term *incident to* causes confusion because it is used to describe two very different types of services: those that are incidental to the physician (eg, assisting at a minor procedure or applying a dressing) and those provided by and billed to Medicare by NPPs who are credentialed to do so (Table).

### Incidental Services

Chapter 15 of the Medicare Benefit Policy Manual defines incidental services as those provided by ancillary personnel who do not and cannot bill Medicare directly for their services.<sup>2</sup> Services are considered incidental when provided under the supervision of either a physician or an NPP. In the event the NPP is acting as ancillary personnel in assisting the physician, only the physician may bill for the service. CMS and the various Medicare Administrative Contractors (MACs) use the terms ancillary and auxiliary interchangeably.

Incidental services might typically include dressing changes, bandages, or performing the constitutional (blood

pressure, weight, pulse, etc.) element of an evaluation and management examination.

### “Incident to” Services

The 2016 final rule makes the following distinction: the person who is billing for the service (eg, physician or NPP) is furnishing it, whereas auxiliary personnel, or NPPs serving as auxiliary personnel in a given case, are performing incidental services.

“Incident to services are treated as if they were furnished by the billing physician or other practitioner for purposes of Medicare billing and payment. Consistent with this terminology, when referring in this discussion to the physician or other practitioner furnishing the service, we are referring to the physician or other practitioner who is billing for the incident to service. When we refer to the ‘auxiliary personnel’ or the person who ‘provides’ the service, we are referring to an individual who is personally performing the service or some aspect of it as distinguished from the physician or other practitioner who bills for the incident to service.”<sup>1</sup>

NPPs include the following categories of providers who may bill Medicare: physicians, clinical psychologists, PAs, nurse practitioners, clinical nurse specialists, clinical social workers, physical therapists, occupational therapists, and certified nurse midwives. Thus, services by physicians and NPPs as listed above may be billed to Medicare, may have their own benefit categories, and may be provided without direct supervision. However, remember this: If these same NPPs provide an incidental service under a physician's supervision and are acting as auxiliary personnel, then the service is billable only by the physician.

### Supervision of “Incident To” Services

When a physician provides a billable service, all incidental services rendered by auxiliary personnel (this applies to NPPs only when they are acting as auxiliary personnel) must be performed under “incident to” direct personal supervision, which is defined in Chapter 15, Section 60.1 B.<sup>2</sup>

**TABLE. MEDICARE “INCIDENT TO” SERVICES**

|                          | Auxiliary/Ancillary Personnel                                                                                                                                                                    | Physicians/NPPs                                                                                                                                                                                                                |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Type of Service</b>   | Incidental                                                                                                                                                                                       | Incidental and “incident to”                                                                                                                                                                                                   |
| <b>Type of Personnel</b> | Ophthalmic technicians, orthoptists, medical assistants, RNs, LPNs, aides                                                                                                                        | Physicians (by Medicare definition) and licensed NPPs                                                                                                                                                                          |
| <b>Licensing</b>         | May have certification but usually not state licensed and do not have an NPI number<br>NPPs when acting as ancillary personnel for incidental services do not require licensing or certification | Always state licensed<br>May also have national licenses<br>Possess Medicare NPI number in order to bill Medicare                                                                                                              |
| <b>Supervision</b>       | Direct supervision always required                                                                                                                                                               | NPPs may see some patients on their own and bill Medicare directly. The rules are extensive and practitioners must comply with state regulations. No supervision required for physicians/practitioners acting in this capacity |
| <b>Billing Medicare</b>  | Cannot bill Medicare for any services performed                                                                                                                                                  | May bill Medicare for services performed according to Medicare regulations                                                                                                                                                     |
| <b>Signature</b>         | Encounter or service must be signed by physician or practitioner                                                                                                                                 | Responsible for own signatures—must be signed by physician or practitioner                                                                                                                                                     |

Abbreviations: LPNs, licensed practical nurses; NPI, National Provider Identifier; NPPs, nonphysician practitioners; RNs, registered nurses

Direct supervision of auxiliary personnel requires the following:

- In an office setting, the physician/NPP must be present in the office suite and must be immediately available to provide assistance and direction throughout the time the employee is performing the service.
- Physical presence in the examination or treatment room while the service is being provided is not required; however, availability by phone does not count.
- If you are a solo practitioner, you must directly supervise the care.
- If you are in a group practice, any physician member of the group may be present in the office to provide supervision. The final rule states that the “incident to” section will be amended “to make clear that the physician (or other practitioner) directly supervising the auxiliary personnel need not be the same physician (or other practitioner) that is treating the patient more broadly, and adding a sentence to specify that only the physician (or other practitioner) that supervises the auxiliary personnel that provide incident to services may bill Medicare Part B for those incident to services.”<sup>1</sup>
- “Incident to” services provided by auxiliary personnel are not separately billable to the Medicare contractor or payable under the Medicare physician fee schedule.

## DIAGNOSTIC TESTING

Supervision requirements for “incident to” services often are confused with the supervision requirements for diagnostic testing, which are very different. Chapter 15,

Section 60.1 A elucidates:

“Carriers and intermediaries must not apply incident to requirements to services having their own benefit category. For example, diagnostic tests are covered under §1861(s)(3) of the Act and are subject to their own coverage requirements. Depending on the particular tests, the supervision requirement for diagnostic tests or other services may be more or less stringent than supervision requirements for services and supplies furnished incident to a physician’s or other practitioner’s services. Diagnostic tests need not also meet the incident to requirement in this section.”<sup>2</sup>

## LEVELS OF SUPERVISION

There are three levels of physician supervision for diagnostic tests in the office setting: general supervision, direct supervision, and personal supervision.

### General Supervision

The test is furnished under the physician’s overall direction and control, but the physician’s presence is not required during its performance. Under general supervision, the training of the technical personnel who actually perform the diagnostic procedure and the maintenance of the necessary equipment and supplies are continuing responsibilities of the physician.

### Direct Supervision

The physician must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not

mean that the physician must be present in the room when the procedure is performed.

### Personal Supervision

A physician must be in attendance in the room during the performance of the procedure. It does not mean that the physician is the one who must perform the test.

For 2016, the Medicare Physician Fee Schedule Database identifies the indicated supervision types for the ophthalmic diagnostic tests listed below. All tests require general supervision, with exceptions noted.

### Direct Supervision

|          |                                                                                                                     |
|----------|---------------------------------------------------------------------------------------------------------------------|
| 76510 TC | Ophthalmic ultrasound; diagnostic B-scan and quantitative A-scan performed during the same patient encounter        |
| 76511 TC | Ophthalmic ultrasound; quantitative A-scan only                                                                     |
| 76512 TC | Ophthalmic ultrasound; B-scan (with or without superimposed nonquantitative A-scan)                                 |
| 76513 TC | Ophthalmic ultrasound; anterior segment ultrasound, immersion (water bath) B-scan, or high-resolution biomicroscopy |
| 92235 TC | Fluorescein angiography (includes multiframe imaging)                                                               |
| 92240 TC | Indocyanine green angiography (includes multiframe imaging)                                                         |

### Personal Supervision

|          |                                                                                                                 |
|----------|-----------------------------------------------------------------------------------------------------------------|
| 92265 TC | Needle oculoelectromyography; one or more extraocular muscles, one or both eyes, with interpretation and report |
|----------|-----------------------------------------------------------------------------------------------------------------|

Most ophthalmic diagnostic tests (with the exception of extended ophthalmoscopy and gonioscopy) have a professional and technical component. The professional component (26 modifier) is the interpretation and report (I&R). The technical component (TC) applies to the performance of the test, maintenance of equipment, etc.

## SUMMARY

Although direct supervision has the same Medicare definition in the context of both “incident to” and diagnostic testing, the practical application and utilization vary. Furthermore, the two contexts are of different benefit categories for Medicare. Whereas “incident to” services always require the presence of the supervising physician/NPP on the premises and his or her immediate availability, the performance of almost all ophthalmic diagnostic tests does not (with the exceptions noted above).

Services involved in working up the patient do not serve

as the basis for ordering diagnostic tests until the physician examines the patient and establishes medical necessity for ordering the test. Even subspecialists cannot use standing orders for diagnostic tests before the physician examines the patient. Such testing would be considered a screening service and as such would not be eligible for payment.

### Pointers

- Incidental services (referred to as “incident to” by CMS) require that the billing physician be the supervising physician. Any physician/practitioner member of a practice who is properly credentialed can bill Medicare.
- The “incident to” section in the 2016 final rule does not apply to diagnostic tests.
- “Incident to” services cannot be billed to Medicare when provided by nonphysicians and non-Medicare-licensed personnel. This includes ophthalmic technical personnel, orthoptists, and NPPs when they are functioning as auxiliary personnel. The supervising physician must be the one billing the services, and the physician/practitioner must have performed the components of an examination (ie, history, physical examination, medical decision-making).
- For diagnostic tests, the treating physician/practitioner must be the ordering physician/practitioner.<sup>3</sup>
- For diagnostic tests performed in an office setting, the ordering/treating physician/practitioner generally is the one who performs the I&R. However, there is no Medicare mandate that the ordering physician be the interpreting physician. Furthermore, for patients who are referred in just for performance of test(s), and for whom only the TC portion is billed, this does not apply. Also, in certain settings and for certain tests that require special qualifications for performing the I&R (eg, electroretinography), the interpretation of the test results may be performed by another practitioner, who would be entitled to bill for that component. ■

1. CMS. Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2016/ Incident to Proposals: Billing Physician as the Supervision Physician and Ancillary Personnel Requirements. Federal Register 80 pp. 71065-71068. Published November 16, 2015. [www.gpo.gov/fdsys/pkg/FR-2015-11-16/pdf/2015-28005.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-11-16/pdf/2015-28005.pdf). Accessed March 28, 2016.

2. Medicare Benefit Policy Manual Chapter 15 – Covered Medical and Other Health Services §60.1-60.3. Services and Supplies, Furnished Incident To a Physician's/NPPs Professional Service (Rev. 1, 10-1-03) B-2050. [www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf](http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf). Accessed March 28, 2016.

3. Medicare Benefit Policy Manual Chapter 15 – Covered Medical and Other Health Services § 80.6.1. Requirements for Ordering and Following Orders for Diagnostic Tests, Definitions (Rev. 94, Issued: 08-29-08, Effective: 01-01-03, Implementation: 09-30-08). [www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf](http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf). Accessed March 28, 2016.

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