

National Coverage Provision

Incident to a Physician's Professional Service in the Office or Clinic

Contractor's Determination Number

PHYS-004

Contractor Number

00951, 00952, 00953, 00954
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Contractor Type

Carrier B
Fiscal Intermediary A
MAC A
MAC B

Primary Geographic Jurisdiction

Carrier B: Wisconsin, Illinois, Michigan, Minnesota

Fiscal Intermediary A: Alaska, Alabama, Arizona, Arkansas, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Vermont, Washington, Wisconsin, West Virginia, Wyoming, U.S. Virgin Islands

MAC A/B: Iowa, Missouri, Nebraska, Kansas

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CMS National Coverage Policy

§1861 (s) of the Social Security Act.

42CFR410.26

Fed Reg., November 1, 2001

Medicare Benefit Policy Manual Chapter 6 - Hospital Services Covered Under Part B

20.5 - Outpatient Therapeutic Services

(Rev. 82; Issued: 02-08-08; Effective: 01-01-08; Implementation: 03-10-08)

Sources: 42 CFR 410.27; 65 FR 18536, April 7, 2000

20.5.2 - Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2010

(Rev. 143, Issued: 04-29-11, Effective: 05-31-11, Implementation: 05-31-11)

Medicare Benefit Manual Chapter 15

60.1 - Incident To Physician's Professional Services

- 60.2 - Services of Nonphysician Personnel Furnished Incident To Physician's Services
- 60.3 - Incident To Physician's Services in Clinic
- 60.4 - Services Incident to a Physician's Service to Homebound Patients Under General Physician Supervision
- 60.4.1 - Definition of Homebound Patient Under the Medicare Home Health (HH) Benefit

Medicare Claims Processing Manual Chapter 26, 10.4 - Items 14-33 - Provider of Service or Supplier Information (Rev. 148, 04-23-04)

Formerly

MCM Transmittal No. 1463, 1794, Section 2050.2, 2050.3, 2050.4; MCM 2050, 2050.1(updated August,2002); 2070, 2390; 3060
IL CIC7, 11/04/96

Additional information not addressed in this document:

Medicare Benefit Policy Manual Chapter 6 - Hospital Services Covered Under Part B

20.5.1 Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After August 1, 2000, and Before January 1, 2010 (Rev. 128, Issued: 05-28-10, Effective: 07-01-10, Implementation: 07-06-10)

Description:

Incident to a physician's professional services means that 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.

I. Incident to services in an office or clinic

- A. *Medicare pays for services and supplies, (including drug and biologicals which are not usually self-administered) that are furnished incident to a physician's or other practitioner's services, are commonly included in the physician's or practitioner's bills, and for which payment is not made under a separate benefit category. Examples of other benefit categories include Flu vaccines and diagnostic tests.*
Physician assistants, nurse practitioners, clinical nurse specialists, 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 under direct physician supervision, they may be covered as incident to services, in which case the incident to requirements would apply.
- B. *Services and supplies (including drugs and biologicals which are not usually self-administered) are those furnished "incident to" a physician's or other practitioner's service. To be covered incident to the services of a physician, services and supplies must be:*
 - 1. *An integral, although incidental, part of the physician's professional service;*
 - 2. *Commonly rendered without charge or included in the physician's bill;*
 - 3. *Of the type that are commonly furnished in physicians offices or clinics;*
 - 4. *Furnished by the physician or by auxiliary personnel under the physician's direct supervision.*
- C. *Commonly Furnished in Physician's Offices:*
Services and supplies commonly furnished in physicians' offices are covered under the incident to

provision.

1. *Where supplies are clearly of a type a physician is not expected to have on hand in his/her office, or where services are of a type not considered medically appropriate to provide in the office setting, they would not be covered under the incident to provision.*
2. *Supplies usually furnished by the physician in the course of performing his/her services, e.g., gauze, ointments, bandages, and oxygen, are also covered. Charges for such services and supplies must be included in the physician's bills.*
3. *To be covered supplies, including drugs and biologicals must be an expense to the physician or legal entity billing for the services or supplies. For example, where a patient purchases a drug and the physician administers it, the cost of the drug is not covered.*

D. Direct Personal Supervision:

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.

1. *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 that 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.

Thus, where a physician supervises auxiliary personnel to assist him/her in rendering services to patients, and includes the charges for their services in his/her 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.

2. *This does not mean, however, that to be considered incident to, each occasion of service by auxiliary personnel (or the furnishing of a supply) need always be the occasion of the actual rendition 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 of a frequency which reflect his/her active participation in and management of the course of treatment. (However, the direct personal supervision requirement must still be met with respect to every nonphysician service.)*
3. *Direct supervision in the office setting means the physician must be present in the office suite and immediately available and able to provide assistance and direction throughout the time the service is performed. Direct supervision does not mean that the physician must be present in the same room with his or her aide.*

4. *If auxiliary personnel perform services outside the office setting, e.g., in a patient's home or in an institution (other than a hospital or SNF), their services are covered incident to a physician's service only if there is direct personal supervision by the physician. For 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 services are not covered (even when billed by the physician) since the physician is not providing direct personal supervision.*
5. *Services provided by auxiliary personnel in an institution (e.g., skilled nursing facility, 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 does not constitute direct personal supervision. For hospital patients and for SNF patients who are in a Medicare covered stay, there is no Medicare coverage of the services of physician-employed auxiliary personnel as services incident to physicians' services. Such services can be covered only under the hospital or SNF benefit and payment for such services can be made to only the hospital or SNF by a Medicare intermediary*

E. Services of Non-physician Personnel:

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 nonphysician practitioners covered as services incident to a physician's professional services.

1. *Nonphysician practitioners are licensed by the States under various programs to assist to act in the place of the physician, include, for example, certified nurse midwives, certified registered nurse anesthetists, clinical psychologists, clinical social workers, physician assistants, nurse practitioners, and clinical nurse specialists.*
2. *Services provided by nonphysician practitioners 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 temperature, giving injections, and changing dressings),; but also services ordinarily performed by the physician himself/herself (e.g., minor surgery, setting casts or simple fractures, reading x-rays, and other activities that involve evaluation or treatment of a patient's condition).*
3. *All incident to requirements must be met for licensed nonphysician coverage under the incident to provision (e.g., integral to the physician, direct supervision, employment relationship).*
4. *Practitioners may perform incident to services ordinarily performed by the physician himself when it is in the scope of his/her practice as defined by the state in which they practice and under the direct supervision of the physician as an integral part of the physician's personal in-office service. The practitioner may be able to perform a procedure without physician supervision and have the service separately covered. However, for incident to coverage, supervision is required. For specific rules governing coverage of individual non-physician practitioners, see appropriate policy.*
5. *Direct supervision as it relates to non-physician practitioners does not mean that each occasion of an incident services must always be the occasion of a service rendered by the physician. It does mean:*
 - a. *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 non-physician is an incidental part; and*
 - b. *There must be subsequent services by the physician of a frequency that reflects his or her continuing active participation in and management of the course of*

- treatment; and*
- c. *The physician must be physically present in the same office suite and be immediately available to render assistance if that becomes necessary.*

F. *Incident to Physicians' Service in a Clinic:*

1. *A physician-directed clinic is one where all of the following criteria are met:*
 - a. *A physician (or a number of physicians) is present to perform medical (rather than administrative) services at all times the clinic is open;*
 - b. *Each patient is under the care of a clinic physician; and*
 - c. *The non-physician services are under medical supervision.*
2. *In highly organized clinics, particularly those which are departmentalized, direct personal 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.*
 - a. *The physician ordering a particular service need not be the physician who is supervising the service.*
 - b. *Therefore, services performed by auxiliary personnel and other aides are covered even though they are performed in another department of the clinic, as long as the contractor determines the situation allows the supervisor to be present in the clinic and immediately available and able to provide assistance and direction throughout the service. However, the requirement for direct supervision is not satisfied unless there is a specific physician responsible for the supervision of the billed service. The clinic may meet this requirement, e.g., by assigning one supervisor for the day or by assigning individual supervisors for specific services. In the case where a long service requires more than one supervisor, the physician who had the responsibility for the major part of the service should be identified on the claim. The supervisor's identification is provided on the claim as described in Section 60.1.*
3. *When auxiliary personnel perform services outside the clinic premises, the services are covered only if performed under the direct personal supervision of a clinic physician. If a 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.*

G. *Services Provided to Hospital Inpatients or Hospital Outpatients:*

1. *Physician's professional services provided to hospital patients (inpatients or outpatients) are covered only when all of the following criteria are met:*
 - a. *The service is personally furnished to an individual patient by the physician.*
 - *Many services provided by non-physicians that would be covered under incident to in a non-hospital setting, are not payable for a hospital patient.*
 - *Even when the employment and supervision requirements of the incident to rules are met for hospital patient, no Part B payment can be made to the supervising practitioner for such services.*

Example: When a patient is seen in the hospital emergency department, only the services provided by the emergency physician are separately covered by the Part B carrier. The services provided by the physician's PA (physician assistant) are not covered under incident to. They are considered bundled into the hospital charges.

Example: When a physician sends his/her nurse to visit hospital patients, no professional service has been rendered. The services the physician's nurse provides is not billable.

- b. *The service must contribute directly to the diagnosis or treatment of an individual patient.*
 - c. *The service must ordinarily require performance by a physician.*
2. *Payment for most nonphysician services to hospital patients is considered bundled. When a practitioner supervises either his/her own staff or hospital staff in the performance of a service, no practitioner payment can be made by the carrier, instead the services are covered and paid for only as bundled services (i.e., they must be billed to intermediaries through the hospital). It is important to note that in these circumstances, no practitioner service has occurred (If the practitioner's own staff provides the services, the practitioner would need to provide such services "under arrangements" with the hospital, and seek payment from the hospital). Therefore, separate payment is prohibited unless the services are:*
- a. *Furnished directly by the hospital; or*
 - b. *Under arrangements which ensure that only the hospital can bill for them. In either situation, payment is made through the intermediary.*
3. *Specific exceptions to the bundling rule are provided for the professional services of physician, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse midwives, certified registered nurse anesthetists, and qualified psychologist services. In certain underserved areas, the employer of a nonphysician practitioner, whether it be the hospital or the physician, can bill for professional services personally furnished by the practitioner, under the specific practitioner benefit.*
4. *Services furnished incident to those of a physician or other practitioners are not excluded from bundling and cannot be paid by carriers.*
5. *Beneficiaries are not liable for such services when billed to carriers.*
6. *For diagnostic test services, incident to is not applicable for hospital patients. Regardless of who performs a diagnostic test for a hospital patient, such tests are bundled or merged into the hospital benefit.*

H. Exception to Direct Supervision:

Services to the homebound in medically underserved areas are subject to general physician supervision.

1. *Individual or intermittent services may be covered when performed by personnel (nurse, technician, etc.) meeting the pertinent state requirements where all of the following criteria are met:*
- a. *The patient is homebound (confined to home);*
 - b. *The service is an integral part of the physician's service to the patient and is performed by employees of the physician or clinic, under general supervision, and all other incident to criteria are met;*
 - c. *The service is included in the physician's bill and he must have incurred an expense for it; and*
 - d. *The services are medically necessary and reasonable.*
2. *General supervision is defined as: the physician need not be physically present at the patient's place of residence when the service is performed. But, the service must be ordered by the physician and performed under his overall supervision and control. The physician retains professional liability for the service.*
3. *Homebound criteria:*
- a. *A person is considered homebound if the condition due to illness or injury*

restricts his ability to leave the place of residence without considerable and taxing effort. Usually supportive devices are needed, e.g., care, crutches, walker, wheelchair. Absences from the home may occur to obtain medical care or for other reasons. These absences are infrequent and usually short in duration.

- b. Place of residence:
 - *The patient's "home" may be his own house or apartment, a relative's home, a rest home for the aged, CBRF, boarding home, domiciliary, custodial care facility, etc.**
 - c. Institutions, which may not be considered a patient's home, are those
 - *which meet the definition of a hospital or rehabilitation service*
 - *which meet the basic requirement of a Skilled Nursing Facility, Intermediate Care Facility, Long Term Care Facility, nursing facility or rehabilitation service.**
- 4. Services which are provided under general direction to the homebound patient:*
- a. Injections*
 - b. Venipuncture*
 - c. EKG's*
 - d. Therapeutic exercise*
 - e. Insertion and sterile irrigation of a urinary catheter*
 - f. Changing of catheters, collection of sterile specimen for urinalysis*
 - g. Dressing changes*
 - h. Replacement/insertion of Nasogastric tubes*
 - i. Removal of fecal impaction, including enemas*
 - j. Sputum Collection*
 - k. Paraffin bath therapy for hands/feet for Rheumatoid or Osteoarthritis*
 - m. Teaching and training the patient for:
 - *care of colostomy/ileostomy*
 - *care of permanent tracheostomy*
 - *testing urine and care of the feet (diabetic patient only)*
 - *blood pressure monitoring**

II. Coverage of Outpatient Therapeutic Services Incident to a Physician's Service

Therapeutic services and supplies which hospitals provide on an outpatient basis are those services and supplies (including the use of hospital facilities) which are incident to the services of physicians and practitioners in the treatment of patients. All hospital outpatient services that are not diagnostic are services that aid the physician or practitioner in the treatment of the patient. Such services include clinic services, emergency room services, and observation services. Policies for hospital services incident to physicians' services rendered to outpatients differ in some respects from policies that pertain to "incident to" services furnished in office and physician-directed clinic settings. See Chapter 15, "Covered Medical and Other Health Services," Section 60.

A To be covered as incident to physicians' services

- 1. The services and supplies must be furnished by the hospital or CAH or under arrangement made by the hospital or CAH (see section 20.1.1 of this chapter).*
- 2. The services and supplies must be furnished as an integral, although incidental, part of the physician or nonphysician practitioner's professional service in the course of treatment of an illness or injury.*

3. *The services and supplies must be furnished in the hospital or at a department of the hospital which has provider-based status in relation to the hospital under 42 CFR 413.65. For therapeutic services furnished during CY 2010, as specified at 42 CFR 410.27(g), "in the hospital or CAH" means areas in the main building(s) of the hospital or CAH that are under the ownership, financial, and administrative control of the hospital or CAH; that are operated as part of the hospital or CAH; and for which the hospital or CAH bills the services furnished under the hospital's or CAH's CMS Certification Number.*
4. *Therapeutic services and supplies must be furnished under the order of a physician or other practitioner practicing within the extent of the Act, the Code of Federal Regulations, and State law. .*

C. **Supervision**

1. *They must be furnished by hospital personnel under the appropriate supervision of a physician or nonphysician practitioner as required in this manual and by 42 CFR 410.27 and 482.12. This does not mean that each occasion of service by a nonphysician need also be the occasion of the actual rendition of a personal professional service by the physician responsible for care of the patient. However, during any course of treatment rendered by auxiliary personnel, the physician must personally see the patient periodically and sufficiently often to assess the course of treatment and the patient's progress and, where necessary, to change the treatment regimen. A hospital service or supply would not be considered incident to a physician's service if the attending physician merely wrote an order for the services or supplies and referred the patient to the hospital without being involved in the management of that course of treatment.*
2. *Beginning January 1, 2010, according to 42 CFR 410.27(a)(1)(iv), in addition to physicians and clinical psychologists, licensed clinical social workers, physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse-midwives may directly supervise therapeutic services that they may personally furnish in accordance with State law and all additional rules governing the provision of their nonphysician services, including those specified at 42 CFR Part 410. These practitioners are specified at 42 CFR 410.27(f).*
3. *CMS requires direct supervision in the provision of all therapeutic services to hospital outpatients, including CAH outpatients by an appropriate physician or non-physician practitioner. Effective January 1, 2011, hospitals may change to general supervision for portion of the non-surgical extended duration therapeutic services ("extended duration services") but only as specified in this manual for those services (see section 20.7). Pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation services require direct supervision which must be furnished by a doctor of medicine or osteopathy, as specified at 42 CFR 410.47 and 410.49, respectively.*
4. *Considering that hospitals furnish a wide array of very complex outpatient services and procedures, including surgical procedures, CMS would expect that hospitals already have the credentialing procedures, bylaws, and other policies in place to ensure that hospital outpatient services furnished to Medicare beneficiaries are being provided only by qualified practitioners in accordance with all applicable laws and regulations. For services not furnished directly by a physician or nonphysician practitioner, CMS would expect that these hospital bylaws and policies would ensure that the therapeutic services*

personal are being supervised in a manner commensurate with their complexity, including supervision where appropriate.

5. For therapeutic services furnished during CY 2010 in the hospital or CAH or in an on-campus outpatient department of the hospital or CAH, as defined at 42 CFR 413.65, “direct supervision” means that the physician or nonphysician practitioner must be present on the same campus where the services are being furnished. For services furnished in an off-campus provider based department as defined in 42CFR413.65, he or she must be present within the off-campus provider based department. The physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. The physician or nonphysician practitioner does not have to be present in the room when the procedure is performed.

6. For therapeutic services furnished during CY 2011 and following, whether in the hospital or in an on-campus or off-campus outpatient department of the hospital or CAH as defined at 42 CFR 413.65, “direct supervision” means that the physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. As discussed below, the physician is not required to be present in the room where the procedure is performed or within any other physical boundary as long as he or she is immediately available.

Immediate availability requires the immediate physical presence of the supervisory physician or nonphysician practitioner. CMS has not specifically defined the word “immediate” in terms of time or distance; however, an example of a lack of immediate availability would be situations where the supervisory physician or nonphysician practitioner is performing another procedure or service that he or she could not interrupt. Also, for services furnished on-campus, the supervisory physician or nonphysician practitioner may not be so physically far away on-campus from the hospital/CAH outpatient services are being furnished that he or she location where could not intervene right away. The hospital or supervisory practitioner must judge the supervisory practitioner’s relative location to ensure that he or she is immediately available.

7. For services furnished in CY 2011 and following, a supervisory practitioner may supervise from a physician office or other nonhospital space that is not officially part of the hospital campus where the services are being furnished as long as he or she remains immediately available. Similarly, as of CY 2011, an allowed practitioner can supervise from any location in or near an off-campus hospital building that houses multiple hospital provider-based departments where the services are being furnished as long as the supervisory practitioner is immediately available.

8. The supervisory practitioner need not be in the same department as the ordering physician. Notwithstanding, the supervisory physician or nonphysician practitioner must have, within his or her State scope of practice and hospital-granted privileges, the knowledge, skills, ability, and privileges to perform the service or procedure. Specially trained ancillary staff and technicians are the primary operators of some specialized therapeutic equipment, and while in such cases CMS does not expect the supervisory physician or nonphysician practitioner to operate this equipment instead of a technician, CMS does expect the physician or nonphysician practitioner to be knowledgeable about the therapeutic service and clinically appropriate to furnish the service.

9. *The supervisory responsibility is more than the capacity to respond to an emergency, and includes the ability to take over performance of a procedure or provide additional orders. CMS would not expect that the supervisory physician or nonphysician practitioner would make all decisions unilaterally without informing or consulting the patient's treating physician or nonphysician practitioner. In summary, the supervisory physician or nonphysician practitioner must be clinically appropriate to supervise the service or procedure.*

D. *If a hospital therapist, other than a physical, occupational or speech-language pathologist, goes to a patient's home to give treatment unaccompanied by a physician, the therapist's services would not be covered. See Chapter 15, "Covered Medical and Other Health Services," Sections 220 and 230 for outpatient physical therapy and speech-language pathology coverage conditions.*

E. **Documentation:**

1. The progress note must substantiate the service performed and be signed by the person performing it.
2. When the physician is involved with a particular service, his or her contribution to the care must be documented. This will assist in substantiating his or her continued involvement in the patient's care.
3. The extent of physician involvement should reflect the patient's condition, increasing with instability and uncertainty of the situation.
4. All documentation should support the level of care provided.

Coding Guidelines:

Part B

1. When billing incident to services, the claim should be submitted as if the physician personally performed the service.
2. *In some cases the physician or nonphysician practitioner who performed an initial service and ordered the service that is subsequently performed by auxiliary personnel is not the same person who is supervising the service. Then the supervising physician must be identified on the paper forms.*
 - a. *When the paper Form CMS 1500 is used, follow the instructions for completing the form, found in Pub 100-04, chapter 26, §10.4 :
When a service is incident to the service of a physician or non-physician practitioner, the name and assigned UPIN (the NPI shall be used when implemented) of the physician or non-physician practitioner who performs the initial service and orders the non-physician service must appear in items 17 and 17a.*
3. Do not list the name or position of the person performing the incident to service on the claim form.

Part A

See section I G above

Reasons for Non-Coverage:

Non-covered, Medical Necessity, Bundled

Dates and Revision History:

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|--------------------|----------------------|
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