

Medicare & “Incident To” Billing for Mental Health Services

Under Medicare Part B, services may be provided by one healthcare practitioner “incident to” another Medicare-enrolled practitioner. This allows non-physician practitioners who do not have an assigned Medicare billing number to provide and bill for Medicare Part B services. Organizations that use this provision are able to expand the array of providers available to render services to Medicare and dually eligible Medicare/Medicaid beneficiaries, and, often, obtain reimbursement at a higher percentage of the fee schedule.

This fact sheet seeks to clarify the scope and limitations of the “incident to” provision as it pertains to mental health services, and includes:

- The definition of “incident to”
- Eligible rendering and billing providers
- Supervision requirements, including for LMSWs, and
- Reimbursement rate and claim submission information.

Please note that “incident to” is a specific term related to Medicare billing and has specific benefits and limitations. Some confusion arises in that many people use the phrase “incident to” to describe when billing for non-physician practitioners under the physician’s billing number for *private* insurers; some private insurers do not give non-physician practitioners billing numbers, and instruct the practices/clinics to bill for the non-physician practitioner services under the physician’s number. The scope of this fact sheet is limited to Medicare-covered services.

Don't confuse this!
"Incident To" is a Medicare term of art and applies only when billing Medicare.

Basics of “Incident To” Services

“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.¹

- Non-physician practitioners may provide certain services in the place of enrolled Medicare providers, and bill under the Medicare provider’s NPI number.
- Individuals who are performing services “incident to” a qualified Medicare practitioner are not required to be separately enrolled as an independent practitioner in Medicare.

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- The attending provider who orders the service and provides care plan oversight must see the patient first, though not on every occurrence.
- There must be continued active participation by the attending provider in the management of the course of the therapy, including documented review of the notes and brief direct contact with the patient to confirm the findings.
- The service must be “ordered” on a current and active treatment plan, signed by a physician.
- The “incident to” provision may also apply to coverage for psychological services furnished “incident to” the professional services of certain non-physician practitioners including clinical psychologists, nurse practitioners, and clinical nurse specialists.²
- The following types of practitioners are allowed under Medicare to **provide** psychological services under the “incident to” provision:
 - Doctorate or Masters level Clinical Psychologists
 - Doctor or Masters level Clinical Social Workers
 - Clinical Nurse Specialists
 - Nurse Practitioners
 - Other practitioners whose state scope of practice lists the service they are providing
- It does not matter to Medicare if the service being provided is in an Article 31 clinic or not; what matters is whether or not the billing provider is enrolled in Medicare and the place of service (must be 11 for “office” or 52 for a federally-defined “Community Mental Health Center”).

“Physician” Does Not Always Mean “Medical Doctor”

“Incident to” services may be supervised by certain non-physician practitioners such as physician assistants, nurse practitioners, clinical nurse specialists, or clinical psychologists. These services are subject to the same requirements as physician-supervised services.

Remember that “incident services” supervised by non-physician practitioners, except clinical psychologists, are reimbursed at 85% of the physician fee schedule. For clarity’s sake, **this fact sheet will refer to “physician” services as inclusive of non-physician practitioners.**

Billing Provider Requirements

- The billing provider must be the supervising provider for the service
- The billing provider must first evaluate the patient personally and then initiate the course of treatment. The appropriately trained therapists may then render psychological services to the patient under the billing provider's direct supervision.
- The following types of practitioners are allowed under Medicare to **supervise and bill** psychological services under the “incident to” provision:
 - Doctorate or Masters level Clinical Psychologists
 - Clinical Nurse Specialists
 - Nurse Practitioners

Rendering Provider Requirements

- Only the types of practitioners listed below, when they are performing within their scope of clinical practice as authorized under state law, are qualified under Medicare to perform the indicated diagnostic and/or therapeutic psychological services under the "incident to" provision.
 - Doctorate or Masters level Clinical Psychologist: 90785, 90832, 90833, 90834, 90836, 90837, 90838, 90846, 90847, 90849, 90853, 90880, 90899
 - Doctorate or Masters level Clinical Social Worker: 90785, 90832, 90833, 90834, 90836, 90837, 90838, 90846, 90847, 90849, 90853, 90899
 - Clinical Nurse Specialist: 90785, 90832, 90833, 90834, 90836, 90837, 90838, 90846, 90847, 90849, 90853, 90899 and certain medical services such as Evaluation and Management services and injections when supervised by another medical professional
 - Nurse Practitioner: 90785, 90832, 90833, 90834, 90836, 90837, 90838, 90846, 90847, 90849, 90853, 90899 and certain medical services such as Evaluation and Management services and injections when supervised by another medical professional
- For purposes of "incident to" provisions, the non-physician performing an "incident to" service is defined as 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 legal entity that employs or contracts with the physician.*³

Scope of Practice

- The service being billed for must be within the scope of practice of **both** the rendering and supervising provider.
- State scope of practice laws prevail over Medicare provider requirements; if the service is not within the provider's scope of practice defined by New York State, then it is not covered by Medicare.
- Psychological services may only be delegated to employees who qualify for one of the categories of individuals listed above.
 - Example:* A psychiatrist **may** hire a clinical social worker to perform services designated by the CPT codes listed above next to "Doctorate or Masters Level Clinical Social Worker".
- It is not permissible for the billing provider to hire and supervise a professional whose scope of practice is outside the provider's own scope of practice as authorized under State law⁴, or whose professional qualifications exceed those of the "supervising" provider.
 - Example:* A Clinical Psychologist **may not** hire a Nurse Practitioner and bill for that NP's medical services under the "incident to" provision, because a medical service by an NP is not integral to a psychologist's personal professional services, is not regularly included in the CP's bill, and is outside the CP's scope of service to provide medical services.

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.⁵

- Auxiliary personnel, i.e., the rendering provider, must be directly supervised by the billing/supervising provider.
- *Direct supervision* means that the billing provider is in the same office suite as the rendering provider. Additionally, the supervising provider:
 - May not necessarily be in the same room;
 - Must be in the envelope of the building;
 - May be "directly supervising" more than one person at a time;
 - May be on duty for more than administrative duties;
 - Can be a "leased employee."
- The claim must be filed with the supervising provider's NPI number.
- The **supervising** provider can be, but does not always have to be, the **attending** provider who first saw the patient and oversees the care plan
- A billing provider may not hire and supervise a professional whose scope of practice is outside the hiring provider's own scope of practice as authorized under State law, or whose professional qualifications exceed those of the supervising provider.
- In a physician-directed clinic, supervision is "assumed".

Financing: Reimbursement Rates and Claim Submission

- "Incident to" services are paid at 100% of the physician fee schedule, as if the physician provided the service. This is in contrast to when a service is provided and billed by a non-physician practitioner, and the service is reimbursed at 85% of the physician fee schedule.
 - *Example:* a Medicare-enrolled LCSW could either (1) provide and bill services directly to Medicare and be reimbursed at 85% of the physician fee schedule, or (2) provide the services "incident to" a supervising psychiatrist, bill under the psychiatrist's NPI, and be reimbursed at 100% of the physician fee schedule.
- No special modifier is required to show that the rendering provider furnished the care.

Social Work Services: LCSWs and LMSWs

- LCSWs may render services "incident to"
- LCSWs may **not** supervise services provided "incident to" in New York State
- LMSWs may render services "incident to" a physician or clinical psychologist, provided that the LMSW is receiving clinical supervision as described in regulations, thus "acting as an LCSW"

Summary

This Fact Sheet has outlined the requirements that should guide you in examining your organization's opportunity to bill Medicare under the "incident to" provisions. As you do so, keep the following "checklist" in mind:

- ✓ Confirm Medicare eligible service/beneficiary;
- ✓ See the physician first;
- ✓ Establish the medical necessity of the services;
- ✓ Ensure service is listed on a current and active treatment plan;
- ✓ Provide "direct" supervision;
- ✓ Periodically involved in Care Plan Oversight (Attending);
- ✓ Claim filed by Supervising provider;
- ✓ Billing and rendering provider both meet state scope of practice requirements.

Citations

- Title XVIII of the Social Security Act, Section 1862 (a)(7)
This section excludes routine physical examinations.
- Title XVIII of the Social Security Act, Section 1862 (a)(1)(A)
This section allows coverage and payment for only those services considered medically reasonable and necessary.
- Title XVIII of the Social Security Act, Section 1833 (e)
This section prohibits Medicare payment for any claim which lacks the necessary information to process the claim.
- CMS Manual System, Pub 100-3, Medicare National Coverage Determinations, Chapter 1, Section 70.1
This section describes conditions for consultations with family members.
- Medicare Coverage Issues Manual, section 35-27
This section provides limitations to biofeedback services.
- CMS Manual System, Pub 100-1, Medicare General Information, Eligibility, and Entitlement, Chapter 3, Sections 30-30.3 and Pub 100-4, Medicare Claims Processing, Chapter 12, Sections 120.B, 210, and 210.1
These sections define the mental health treatment limitation.
- CMS Manual System, Pub 100-2, Medicare Benefit Policy, Chapter 15, Section 50.3
This section defines "incident to" guidelines.
- CMS Manual System, Pub 100-2, Medicare Benefit Policy, Chapter 15, Section 80.2 and Pub 100-4, Medicare Claims Processing, Chapter 12, Section 160
These sections describe coverage for psychological testing.
- CMS Manual System, Pub 100-2, Medicare Benefit Policy, Chapter 15, Section 150 and Pub 100-4, Medicare Claims Processing, Chapter 12, Sections 160, 170, and 170.1
These sections define Clinical Psychologists services.

- CMS Manual System, Pub 100-2, Medicare Benefit Policy, Chapter 15, Section 170 and Pub 100-4, Medicare Claims Processing, Chapter 12, Section 150
These sections provide guidelines for Clinical Social Worker's Services.
- CMS Manual System, Pub 100-4, Medicare Claims Processing, Chapter 12, Section 160.1
This section provides guidelines for payment to psychologists.
- Federal Register, volume 63, November 1998, 58813, pp. 58873-58875
This document defines non-physician practitioners' services, per the Balanced Budget Act of 1997 (BBA).
- 45 CFR §164.501, Definitions
This section provides definitions of terms, including disclosure of protected health information relating to psychotherapy notes.
- Commissioner of Education Regulations, Part 74, Social Work
This section provides information about the practice of social work and supervision requirements of licensed master social workers providing clinical social work services.
- National Government Services, Inc. "[Article for Psychological Services Coverage Under the Incident To Provision for Physicians and Non-Physicians.](#)" Revision effective date February 15, 2014.
This article by National Government Services, the Medicare Administrative Contractor for New York State, describes local Medicare Incident To requirements as applied for its service area.

¹ CMS Publication 100-02, *Medicare Benefit Policy Manual*, Chapter 15, Section 60.1.

² CMS Publication 100-02, *Medicare Benefit Policy Manual*, Chapter 15, Section 60.2. Section 1862(a)(1)(A) of the Social Security Act governs payment for the provision of medical care to Medicare beneficiaries.

³ Ibid.

⁴ New York State Office of Professions <http://www.op.nysed.gov/>

⁵ CMS Publication 100-02, *Medicare Benefit Policy Manual*, Chapter 15, Section 60.1B.