

"Incident to:" Temporary Alternative Route to Medicare Coverage?

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Background of Clinical Mental Health Counselors Status with Medicare

- Currently Psychologists and Social Workers are the only “non-medical” professionals recognized as Medicare Providers
- States like Massachusetts which have had a long history of “ACA like coverage”, the PCMH’s & ACO’s in that state only hire Psychologists & Social Workers since they do not want to “triage” their patients as to their 3rd party payer & they would need to do so, if they had LMHC or LPC’s on their staff
- So they avoid this by not hiring LMHC or LPC’s in Massachusetts
- For this reason it is imperative that LMHC & LPC’s get Congress to approve them as Medicare Providers

“Incident to” is Alternative for now!

- “Incident to” are services supervised by physicians (Psychiatrists included) or certain non-physician practitioners such as physician assistants, nurse practitioners or clinical psychologists
- “Incident to services” are reimbursed at 85% of physician fee schedule
- To qualify as “incident to,” services must be part of patient’s normal course of treatment, during which a physician personally performed an initial service & remains actively involved in course of treatment
- Physician or non-physician does not have to be physically present in patient’s treatment room while services are provided, but must provide direct supervision, by being present in office suite to render assistance, if necessary. Patient record should document essential requirements for “incident to” service.

Regulations concerning “Incident to”

- “Incident to: is fully explained in the *Medicare Benefit Policy Manual Chapter 15 – Covered Medical and Other Health Services* (Rev. 186, 04-16-14)
- “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
- Services and supplies commonly furnished in physicians’ offices are covered under the “incident to” provision
- 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.

Cautionary regulations concerning “Incident to” services

- 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.

So “incident to” service must be billed for by supervising physician

- 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
- This does not mean, however, that to be considered incident to, each occasion of service by auxiliary personnel need also always be the occasion of the actual rendition of a personal professional service by the physician.
- Such a service 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 supervision requirement must still be met with respect to every nonphysician service.)

What does direct supervision mean?

- Direct supervision in the office setting does not mean that the physician must be present in the same room with his or her 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
- 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 does not constitute direct supervision. (See §70.3 of the Medicare National Coverage Determinations Manual for instructions used if a physician maintains an office in an institution.)

How does “incident to” apply to Medical Settings?

- For hospital patients and for Skilled Nursing Facility (SNF) patients who are in a Medicare covered stay, there is no Medicare Part B coverage of the services of physician-employed auxiliary personnel as services incident to physicians' services under §1861(s)(2)(A) of the Act.
- 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. (See §80 concerning physician supervision of technicians performing diagnostic x-ray procedures in a physician's office.)
- So it is a good practice to be contracted with or hired on by hospitals and SNF's to provide “Incident to” services in such settings

“Incident to” in Medical Clinics

- Services incident to a physician's service in a physician directed clinic or group association are generally the same as those described earlier
- A physician directed clinic is one where:
 1. A physician (or a number of physicians) is present to perform medical (rather than administrative) services at all times the clinic is open;
 2. Each patient is under the care of a clinic physician; and
 3. The nonphysician services are under medical supervision.

“Incident to” not available to LMHC’s & LPC’s

- 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 physician (as discussed in §60.1),
- a physician may also have the services of certain nonphysician practitioners covered as services incident to a physician’s professional services
- These nonphysician practitioners, who are being licensed by the States under various programs to assist or act in the place of the physician, include, for example, clinical psychologists, clinical social workers, physician assistants, nurse practitioners, and clinical nurse specialists. (See §§ 150 through 200 for coverage instructions for various allied health/nonphysician practitioners’ services.)

Internet Resources

Centers for Medicare & Medicaid Services Information on ACO:

<http://innovation.cms.gov/initiatives/aco/>

Coping.us at:

<http://coping.us/introbehavioralmedicine/affordablecareactimplications.html>