

“Proper Incident-To Billing: Avoiding Pitfalls that Could Paralyze Your Practice”

Incident-to billing presents one of the last remaining opportunities for physicians to multiply their services and increase their income without having to work harder. However, the regulations which govern this practice under both the federal Medicare program and the various state Medicaid programs can present pitfalls to unwary physicians and their staffs who fail to properly understand and apply them. These mistakes can lead to government intrusion, overpayment demands, audits and false claim allegations.

Both Medicare Part B and many state Medicaid programs include coverage of services that are rendered “incident-to” a physician’s services. Unraveling the requirements will help ensure that non-physician practitioner (NPP) billing is handled correctly. When such services are properly provided incident-to a physician’s services, an NPP’s services may be billed using the physician’s provider number and are allowed to be reimbursed at 100 percent of the Medicare and Medicaid physician fee schedules. Otherwise, NPP services must be billed at their Medicare or Medicaid program fee schedule which is typically 85 percent of the applicable physician fee schedule. Either way, the NPP must have his or her own active, valid Medicare or Medicaid provider number.

Key Criteria

In order to qualify as “incident-to” services for billing purposes, an NPP’s services must meet several criteria. These include: (1) the NPP must be licensed or certified to provide professional health care services in the state where the physician practice is located; (2) generally, the NPP must be a full-time, part-time or leased employee of the physician or physician group practice (although in limited cases, the NPP may be an independent contractor of the physician or physician group practice); (3) the NPP must provide services as an integral part of and incident-to the physician’s services; and (4) the NPP must provide such services under the direct supervision of the physician.

An Integral Part of the Physician’s Services

The foundation of proper incident-to billing is that the incident-to services must be an integral part of the physician’s services. The physician must have initially provided health care services to the patient whom the NPP is treating “incident-to” the physician’s services. This requirement does not mean that there must have been a service rendered by a physician for each visit by a patient. Rather, an ongoing course of treatment initiated by a physician with the physician seeing the patient at the first visit will qualify under the incident-to billing guidelines. In other words, a physician must see a patient at the first visit but would not necessarily have to see the patient for subsequent, related visits. However, if the same established patient reported a new chief complaint or problem, the physician would have to see that patient again for the new issue before an NPP saw the patient in order to be able to bill for the NPP’s services as incident-to the physician’s services.

Physicians and physician group practices often overlook this second point when treating patients for on-going, related visits which also involve new chief complaints. This is an issue which both the Medicare and Medicaid programs focus on when auditing and reviewing claims. As a result, physicians and their group practices should develop policies and procedures for ensuring that they only bill incident-to services for those chief complaints and problems for which one of their physicians has seen a patient prior to services being rendered by an NPP.

Direct Physician Supervision

Perhaps one of the most misunderstood aspects of the incident-to billing rules is the requirement for direct physician supervision of an NPP providing incident-to services. Many state laws permit advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to furnish health care services to patients without a physician's on-site presence or direct supervision. Many of these state laws permit "general" physician supervision.

However, incident-to services must be furnished under a physician's direct supervision under both Medicare and many states' Medicaid program regulations. Direct supervision means that a physician must be immediately available to provide assistance and direction while an NPP is providing services that the physician plans to bill as incident-to. While the physician does not have to be in the same room as the NPP, the physician must be in the same office suite. By far, this is the incident-to billing requirement which physicians and their group practices misunderstand and fail to comply with. Unfortunately, they often confuse the direct supervision requirements for incident-to billing with their state law supervision requirements. This is particularly true, for example, in Florida where ARNPs and PAs can practice under the general supervision of a physician. Thus, physicians and their office staff need to understand the difference between general supervision and direct supervision. They also must understand that the general supervision requirements for ARNPs or PAs under Florida law (and most likely in many other states as well) will not satisfy the direct supervision requirements for incident-to billing under either the Medicare program or perhaps the applicable state Medicaid program.

State Licensing Requirement

Another common misunderstanding physicians face when billing incident-to services is their misperception that an NPP may be licensed in another state and provide services to their patients in the state in which the physician's practice is listed. However, both the Medicare and Medicaid program incident-to billing regulations require that the NPP be licensed or certified to practice in the applicable state before a physician can bill their services incident-to.

Failing to ensure that an NPP is properly licensed or certified to practice in the applicable state will result in an improper and potentially false claim for incident-to services. Moreover, allowing an NPP to perform services when the NPP is not licensed or certified to practice in the applicable state can result in allegations by the Department of Health that a physician is aiding and abetting the unlicensed practice of medicine or nursing. Physicians and their group practices need to ensure that their NPP's are licensed or certified to practice in the applicable state before they permit them to render services to their patients and bill those services incident-to.

Institutional Settings

Finally, it is important to note that neither Medicare nor Medicaid incident-to billing regulations apply in institutional settings (i.e., hospitals or skilled nursing facilities). Physicians cannot bill Medicare Part B or many state Medicaid programs for services furnished by NPPs in an institutional setting even if they meet all of the other requirements such as direct supervision. Thus, physicians and their group practices must be very careful not to bill NPP services as incident-to when they are rendered in these settings.



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Policies, Procedures & Compliance Plans

In order to prevent billing mistakes and problems with regard to incident-to services, physicians and physician group practices should develop specific policies and procedures for billing these services and make them part of their compliance plans. While the incident-to billing requirements appear to be simple and easy to comply with, many of the recent overpayment, audit, civil false claims act and even criminal cases instituted by the federal and state health care regulatory agencies tasked with overseeing the Medicare and Medicaid programs involve allegations of improper billing for incident-to services.

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- [Nurse Practitioners & Physician Assistants - Applications for Success](#)
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