Yes, A Physician May Bill Medicare for Incident-To Services of Another Physician and Answers to Other Questions About Incident-To Policy

Paul W. Kim, JD, MPH
410-528-2979
pkim@coleschotz.com

Incident-To: What is it?

- Services and supplies that are not separately and independently listed in the Social Security Act (Medicare statute)
- Services that are incident to a professional service of a physician (or certain non-physician practitioner)
What is it?

- Services that are furnished by auxiliary personnel under direct supervision of a physician (or certain NPP)
- Services that are integral, albeit incidental, to diagnose or treat

What is it?

- Services that are commonly furnished
- Example: Patient sees physician for office visit, then sees nurse for injection
Incident Two?

- Non-Institutional or Office Settings
- Soc. Sec. Act §1861(s)(2)(A)
- 42 CFR §410.26
- 66 Fed. Reg. 55246 at 55267 (November 1, 2001)
- Medicare Benefit Policy Manual Chapter 15 Section 60

Incident Two?

- Institutional or Hospital Settings
- Soc. Sec. Act §1861(s)(2)(B)
- 42 CFR §410.27
- Medicare Benefit Policy Manual Chapter 6 Section 20
Services and supplies that are not separately and independently listed in the Social Security Act

Incident-To-Like?

- Diagnostic Services
- Soc. Sec. Act §1861(s)(3)
- 42 CFR §410.32
  - (a) Ordering of Diagnostic Tests by Treating Practitioner
  - (b) Supervision of Diagnostic Tests by Physician
2

- Services that are incident to a professional service of a physician (or certain non-physician practitioner)

New Patient vs. Problem

- Physician Encounter Required for New Patient vs. Established Patient with New Problem
- CPT Definition of Established Patient
- Involvement of Clinical Staff in Initial Visit
- Local Coverage Determinations
- Freestanding Infusion Centers
• Services that are furnished by auxiliary personnel

Auxiliary Personnel

• Non-Physicians (e.g., Registered Nurse)
• Medicare Non-Physician Practitioners
  • Physician Assistant
  • Nurse Practitioner
  • Clinical Nurse Specialist
  • Certified Nurse Midwife
  • Clinical Psychologist
• Physicians
Services that are furnished under direct supervision of a physician (or certain NPP)

Direct Supervision

- Office Suite
- Same Floor
- Same Building
- On-Campus
Direct Supervision

- Immediately Available
- Geographic distance
- Audio distance (shouting)
- Mental distance (preoccupation)
- Number of Incident-To Services
- Supervising Physician Awareness

Exceptions

- Chemotherapy
- Physician Encounter Required Every Xth Visit
- LCDs
Exceptions

• Homebound Patients
• Transitional or Chronic Care Management
• Physician Presence in Patient’s Home Not Required

Exceptions

• Evaluation & Management Services
• CPT Code 99211 Required if Auxiliary Personnel is Not Medicare Non-Physician Practitioner
Exceptions

- Physical or Occupational Therapy
- Auxiliary Personnel must be Qualified to Perform Therapy

Shared/Split Visit

- Evaluation & Management Services
- Hospital Settings
- Common Employment
- Face-to-Face Encounter
- LCDs
Issues

- Claims
  - Identity of Auxiliary Personnel
  - Ordering vs. Supervising Practitioner
  - Attending Physician in Group Practice
- Compensation
- Liability

Pending CMS Oversight

- CMS Oversight of Compliance
  - Audit
  - Registration
  - New Enrollment Categories
  - Modifiers
Checklist

- Policies & Procedures
- LCDs
- Documentation
  - Daily Log
  - Physician Schedules
- Claims

Questions?

Thank you!