



# “Incident-to” Billing and Supervision: Navigating Through the Curves

## The West Virginia Oncology Society Annual CME Meeting

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# “Incident-to” Billing and Supervision: Navigating Through the Curves

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- “Incident - to” Services
- “Shared Visit”
- Revenue Cycle Management

# Nonphysician Practitioner Billing

- Nonphysician Practitioners
  - Physician Assistant
  - Nurse Practitioner
  - Clinical Nurse Specialist
  - Certified Nurse Midwife
  - Clinical Psychologist
  - Clinical Social Workers
  - Physical Therapist
  - Occupational Therapist
- All have their own benefit category under Medicare and may provide services without direct physician supervision and bill directly for these services.
- Under Medicaid, Advanced Nurse Practitioners may enroll and practice independently; PA's are billed under supervising physician and Clinical Social Workers and Counselors are under supervising psychiatrist.
- No definition of "incident-to" provided in WV DHHS Manual. Section 519.4.1 states, "the physician may not bill for services furnished by any employee who is enrolled , or eligible to be enrolled, as a Medicaid provider."

# ““Incident to” Billing in Physician Office (410.26)

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- “Incident-to” is when nonphysician practitioners services are provided as “ancillary” personnel.
- Only in this situation is the Medicare billing under “incident-to” applied.
- Cannot enter into a relationship with a physician merely to “bill through”

# ‘Incident-to’ Billing

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Term applies differently to:

- Physician Practices
  - 42 CFR § 410.26
- Hospital Outpatient
  - 42 CFR § 410.27
  - Criteria for provider-based clinics (departments)
  - Incident - to criteria in a physician practice does not apply in a hospital setting, inpatient or outpatient.

# “Incident to” Billing in Physician Office (410.26)

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- Medicare Part B pays for services and supplies incident to the service of a physician (or other practitioner).
  - Must be furnished in a noninstitutional setting (all settings other than hospitals and SNFs) to noninstitutional patients.
  - Must be an integral, though incidental, part of the service of a physician in the course of diagnosis or treatment of an injury or illness.
  - Must be commonly furnished without charge or included in the bill of a physician (or other practitioner).
  - Must be of a type that are commonly furnished in the office or clinic of a physician.
  - Must be furnished under the direct supervision of the physician (or other practitioner).

# “Incident to” Billing in Physician Office (410.26)

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- Incident-to services are billed under “supervising” or “collaborating” physician NPI number.
  - Note that an executed supervision agreement (PA) or collaboration agreement (APN) must be on file with the WV State Medical Board and/or WV State Nursing Board.
  - Medicaid also requires a copy of these agreements upon enrollment in Medicaid) and must be notified for any change (DHHS Manual Chapter 519 section 519.3.6)
- Incident-to billing under Medicare requires direct supervision.
- Direct supervision means “in the office suite”.

# “Incident to” Billing in Physician Office (410.26)

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- Consider “direct supervision”
  - What is your proof?
    - Schedules
    - Ancillary personnel notes in chart
    - Make sure you meet supervision and coverage requirements for all diagnostic and therapeutic testing.

# “Incident to” Billing in Physician Office (410.26)

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- Specifics for billing “incident – to”
  - Physician must provide initial services and develop treatment plan.
  - Physician must remain actively involved in the ongoing treatment.
    - Subsequent services by the physician must be of a frequency that reflects his/her continuing active participation in, and management of , the course of treatment.
    - Documentation that the patient is under the care of the physician and physician has authorized services (treatment plan). As always, documentation must support medical necessity.

# “Incident to” Billing in Physician Office (410.26)

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- May bill “incident – to”
  - Established patient without a new problem according to prior treatment plan established by physician.
  - Within a practice supervising physician/billing physician for one visit may be different from physician who established the treatment plan. NPP must have collaboration agreement/supervising agreement with such physician.

# “Incident to” Billing in Physician Office (410.26)

- Never bill “incident – to” for:
  - New patients
  - Established patient with new problem
  - In each of these visits, the physician must be personally and actively involved in the visit therefore, physician must bill.
  - Time based E&M services when more than 50% of the service is counseling or coordination of care (CPM 100-04 12 §30.6 )
  - Services within provider-based clinic, hospital outpatient or inpatient setting.

# “Incident to” Billing in Physician Office (410.26)

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- New patients and established patients with new problems may be billed by NPP’s under their own number for Medicare; service must be under the scope of practice as defined in supervising/collaboration agreement.
- Never assume commercial/managed care and/or Medicaid follow same rules. Medicaid in WV does not. Check individual contracts with commercial/managed care for credentialing/incident-to billing rules.
- Incident-to rules do not apply to flu shots, lab tests, EKG’s or X-rays performed within office setting; services have own benefit category and are not incident-services; must meet coverage/billing rules of specific category

# “Incident to” Billing – Changes on the Horizon?

- OIG released report titled “Prevalence and Qualifications of Nonphysicians Who Performed Medicare Physician Services” on August 5, 2009.
- Study performed 1<sup>st</sup> 3 months – 2007
- OIG identified days where Medicare allowed physician services in a single day that exceeded 24 hours of physician work time
- Of the 805,401 physicians who billed, 3,165 submitted bills for physician time that exceeded 24 hours.
- Physicians were requested to submit all relevant credentials for the NPP that performed services “incident-to”.

# “Incident to” Billing – Changes on the Horizon?

- **OIG Findings:**
  - Half of the services billed were performed by nonphysicians
  - “unqualified nonphysicians performed 21% of the services that physicians did not perform personally”
  - “unqualified” means the nonphysicians either did not possess the necessary licenses or certifications, had no verifiable credentials, or lacked the training to perform the service
  - NPPs with inappropriate qualifications performed 7% of the invasive services that physicians did not perform.
  - Unqualified NPPs performed 1 in every 5 services not performed by a physicians

# “Incident to” Billing – Changes on the Horizon?

- **OIG recommendations**
  - Revisions to the incident-to rules should ensure that when the physician does not perform the services only qualified nonphysicians with relevant training, licensure, or certification perform the service under direct physician supervision
  - Services billed as incident to should be identified with a modifier

*Note that CMS disagreed with this recommendation citing the operational difficulty in defining a service as not being personally performed due to the nature of these services being shared by physicians and staff*
  - CMS should take action on the claims billed as incident to where incident-to criteria were not met.
- Go to August 5, 2009 “Prevalence and qualifications of Nonphysicians Who Performed Medicare Physician Services” at the following link:  
<http://oig.hhs.gov/w-new.asp>

## “Shared Visit”

- A physician and NPP in same group working together in hospital Inpatient setting,
- Service is provided on same date,
- NPP can see patient first, physician can follow and perform any part of an E/M visit in an encounter with the patient face to face,
- and total service may be billed at 100% under physician’s number (or under NPP at 85% of MPFS).
- Not “incident – to” – in a hospital setting.

# Reminder: Consult Codes Eliminated

- Most frequently billed by specialists
- Transmittal # 1875: Effective January 1, 2010
- Other E&M codes are used:
  - 99221-99223 - Initial IP hospital care
    - Issue – IP consult code level 1 does not meet lowest level Initial IP hospital care (requires detailed history and detailed exam)
  - 99304-99306 – Nursing Facility visits
  - Consult in office or Hospital observation setting
    - Query: seen by another physician, same specialty, same group in the past 36 months?
      - Yes – 99211-99215
      - No – 99201-99205
      - POS 11 – Office
      - POS 22 – Hospital
- Don't forget to append AI to admitting or attending physician who oversees the patient's care and is designated as the Principal Physician of Record
- Revenue Neutral – review records to determine if you are seeing a payment impact.
  - Higher RVU's for New & Established patients – 6%
  - Higher RVU's for initial hospital & initial nursing facility visits – 2%

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**Questions??**

Thank you for attending!