Incident-to Billing

Services provided by a non-physician practitioner “incident-to” a physician’s professional service is outlined in Section 60 of the Medicare Carriers Manual (MCM). The services are billed under the physician’s Medicare billing number, and paid at 100% of the physician fee schedule, as if the physician provided them. No special modifier is required to show that the non-physician practitioner furnished the care. And the NPP performing the services doesn’t necessarily need to be enrolled as a Medicare provider.

Remember, though, that the term “incident-to” is a Medicare term. Many people use this term to describe the situation in which they bill for their NPPs under the physicians billing number for private insurers. This is because some private insurers do not give NPPs billing numbers, and instruct the practices/clinics to bill for the NPP services under the physician’s number. Don’t confuse this: “incident-to” is a Medicare term and applies only to when billing the Medicare program.

There are rules that must be adhered to in order to bill Medicare for services provided incident-to the physician’s services, using the physician’s number. Here’s a breakdown of the wording from Section 60.1 of the MCM, and some help understanding what it means. Language from the MCM is in bold.

To be covered under Medicare’s incident-to benefit, NPP services and supplies must be:

1. **60.1 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.** There must be a physician service to which the ancillary services are incidental. This means the physician must see the patient first to determine a course of treatment. (There has to be a service by the physician in the first place to which the NPP’s services are incidental).

   There has been confusion in practices as to whether an NPP can bill incident-to when seeing an established patient who has a new diagnosis. CMS officials say that you can’t bill incident-to for an established patient visit if there’s a new diagnosis.

   There are no standards on how much involvement a physician has to have in ongoing care of the patient. Some carriers have taken this one step further, adding another requirement that if the patient comes back in with a new symptom, the physician must see the patient for the subsequent services to be incident-to. But again, that’s a local carrier requirement and not a national requirement.

2. **Commonly rendered without charge or included in the physician’s bill (see § 60.1A).** Services and supplies that you typically provide in a doctor’s office are covered. If the supplies were something you normally wouldn’t have on hand, they would not be covered under this provision. Supplies Medicare thinks you would normally have are gauze, ointment bandages and oxygen. These are supplies that represent an expense to the physician.

3. **Of the type commonly furnished in physician’s offices or clinics:** Services considered medically appropriate to provide in the office setting.

4. **Furnished under the physician’s direct supervision:** Direct supervision doesn’t mean that for each service by an NPP there must also be the actual rendition of a professional service
by a physician. However, the physician must perform an initial service and be involved in subsequent services of a “frequency which reflect active participation and management” of the treatment.

Direct supervision doesn’t mean that the physician must be present in the same room as the NPP, but must be present in the office suite and immediately available to provide assistance and direction throughout the time the NPP performs the services.

If you are in an “institutional office” (which means a SNF, nursing or convalescence home – not a hospital) or patient’s home, direct supervision applies only when the incident-to services are provided in the discrete part of the institution designated as the physician’s office. If services are provided elsewhere in the facility, you can bill incident-to only if there is direct personal supervision, which means “over the shoulder” supervision by the physician. Plus the availability of the physician by phone and the presence of the physician somewhere else in the institution doesn’t constitute direct personal supervision. For hospital inpatients or outpatients, there is no incident-to a physician service billing.

5. **Furnished by the physician or by an individual who qualifies as an employee of the physician:** That means the NPP must be either an employee who receives a W-2 form from the practice or works under a lease contract that gives the practice the same control over the person as it would an employee.

The incidental service must represent an expense incurred by the physician, physician group practice or legal entity responsible for providing the professional service.
To be covered incident to the services of a physician or other practitioner, services and supplies must be:

- An integral, although incidental, part of the physician’s professional service (see §60.1);
- Commonly rendered without charge or included in the physician’s bill (see §60.1A);
- Of a type that are commonly furnished in physician’s offices or clinics (see §60.1A);
- Furnished by the physician or by auxiliary personnel under the physician’s direct supervision (see §60.1B).

60.1 - Incident to Physician’s Professional Services
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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.

A - Commonly Furnished in Physicians’ Offices

Services and supplies commonly furnished in physicians’ offices are covered under the incident to provision. Where supplies are clearly of a type a physician is not expected to have on hand in his/her office or where services are of a type not considered medically appropriate to provide in the office setting, they would not be covered under the incident to provision. Supplies usually furnished by the physician in the course of performing his/her services, e.g., gauze, ointments, bandages, and oxygen, are also covered. Charges for such services and supplies must be included in the physicians’ bills. (See § 50 regarding coverage of drugs and biologicals under this provision.) To be covered, supplies, including drugs and biologicals, must represent an expense to the physician or legal entity billing for the services or supplies. For example, where a patient purchases a drug and the physician administers it, the cost of the drug is not covered. However, the administration of the drug, regardless of the source, is a service that represents an expense to the physician. Therefore, administration of the drug is payable if the drug would have been covered if the physician purchased it.

B - Direct Personal 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. 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. However, the 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.
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 (or the furnishing of a supply) need also always be the occasion of the actual rendition of a personal professional service by the physician. Such a service or supply 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.)

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.

If auxiliary personnel perform services outside the office setting, e.g., in a patient’s home or in an institution (other than hospital or SNF), their services are covered incident to a physician’s service only if there is direct supervision by the physician. For example, if a nurse accompanied the physician on house calls and administered an injection, the nurse’s services are covered. If the same nurse made the calls alone and administered the injection, the services are not covered (even when billed by the physician) since the physician is not providing direct supervision. 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.) For hospital patients and for 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.)

60.2 - Services of Nonphysician Personnel Furnished Incident to Physician’s Services

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 a 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, certified nurse midwives, 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.)
Services performed by these nonphysician practitioners incident to a physician’s professional services include not only services ordinarily rendered by a physician’s office staff person (e.g., medical services such as taking blood pressures and temperatures, giving injections, and changing dressings) but also services ordinarily performed by the physician such as minor surgery, setting casts or simple fractures, reading x-rays, and other activities that involve evaluation or treatment of a patient’s condition.

Nonetheless, in order for services of a nonphysician practitioner to be covered as incident to the services of a physician, the services must meet all of the requirements for coverage specified in § 60 through 60.1. For example, the services must be an integral, although incidental, part of the physician’s personal professional services, and they must be performed under the physician’s direct supervision.

A nonphysician practitioner such as a physician assistant or a nurse practitioner may be licensed under State law to perform a specific medical procedure and may be able (see §§ 190 or 200, respectively) to perform the procedure without physician supervision and have the service separately covered and paid for by Medicare as a physician assistant’s or nurse practitioner’s service. However, in order to have that same service covered as incident to the services of a physician, it must be performed under the direct supervision of the physician as an integral part of the physician’s personal in-office service. As explained in § 60.1, this does not mean that each occasion of an incidental service performed by a nonphysician practitioner must always be the occasion of a service actually rendered by the physician. It does mean that there must have been a direct, personal, professional service furnished by the physician to initiate the course of treatment of which the service being performed by the nonphysician practitioner is an incidental part, and there must be subsequent services by the physician of a frequency that reflects the physician’s continuing active participation in and management of the course of treatment. In addition, the physician must be physically present in the same office suite and be immediately available to render assistance if that becomes necessary.

Note also that a physician might render a physician’s service that can be covered even though another service furnished by a nonphysician practitioner as incident to the physician’s service might not be covered. For example, an office visit during which the physician diagnoses a medical problem and establishes a course of treatment could be covered even if, during the same visit, a nonphysician practitioner performs a noncovered service such as acupuncture.