

Supervising physician should bill incident-to services, CMS clarifies

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Billing

Only the physician or practitioner who directly supervises incident-to services may bill for those services, CMS states in the final 2016 Medicare physician fee schedule, released Oct. 30. However, the supervising physician need not be the provider who ordered or initiated the care, the agency explains.

“We intended to clarify that under circumstances where the supervising practitioner is not the same as the referring, ordering or treating practitioner, only the supervising practitioner may bill Medicare for the incident-to service,” CMS states in the final rule.

The change clears up a long-standing source of confusion with incident-to services, billing experts say.

“That clarification needed to happen,” observes Ann Silvia, CPC, director of compliance, auditing and education for Reid Physician Associates in Richmond, Ind. A number of practices bill incident-to services “under whomever the patient belonged to, not necessarily the supervising doctor,” she explains.

Clarification removes gray area

Most practices are already billing incident-to services properly, contends Terry Fletcher, CPC, president of Terry Fletcher Consulting in Laguna Beach, Calif. For those who haven’t been following the rules, however, “CMS has now issued a clarifying statement so there is no gray area.”

Medicare’s incident-to rules allow practices to bill the services of non-physicians such as nurse practitioners and physician assistants under the supervising physician’s national provider identifier so the services are paid at 100% of the allowable rate, not 85% — the amount non-physicians receive when they bill for the services directly.

To bill incident to, practices must follow certain rules; for example, you can’t do it for a new patient or for a new problem with an established patient. In addition, a supervising physician must be present in the office suite at the time of the incident-to service. Now, CMS states, that supervising physician is the one who should bill for the service.

“It has been our position that billing practitioners should have a personal role in, and responsibility for, furnishing services for which they are billing and receiving payment as an incident to their own

professional services,” the agency explains in the final rule. “This is consistent with the requirements that all physicians and billing practitioners attest on each Medicare claim that he or she ‘personally furnished’ the services for which he or she is billing.”

The agency scrapped its proposal to remove a sentence from the Medicare regulation that the supervising practitioner need not be the provider that initiated the incident-to service ([PBN 7/20/15](#)). A “majority” of commenters told CMS that removing that sentence would cause undue financial burdens for practices by setting a new requirement that the initiating provider also had to supervise incident-to services.

CMS instead revised that sentence “to reflect our policy that the physician (or other practitioner) supervising the auxiliary personnel need not be the same physician (or other practitioner) treating the patient more broadly,” the agency stated.

Excluded NPPs can’t provide incident-to services

The agency added a new requirement that auxiliary personnel who have been excluded or revoked from Medicare and Medicaid are prohibited from providing incident-to services. Excluded providers are already prevented from providing services to Medicare beneficiaries, CMS notes, so the change “is an additional safeguard” to make sure they are not providing incident-to services or supplies.