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# CMS Manual System

## Pub. 100-02 Medicare Benefit Policy

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Department of Health &  
Human Services (DHHS)  
Centers for Medicare &  
Medicaid Services (CMS)

Transmittal 17

Date: JUNE 18, 2004

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**CHANGE REQUEST 3242**

**I. SUMMARY OF CHANGES:** This transmittal includes instructions for providing supervisor's information on an electronic claim when a service incident to the ordering physician is supervised by another physician in the group.

**NEW/REVISED MATERIAL - EFFECTIVE DATE: October 4, 2004**

**\*IMPLEMENTATION DATE: October 4, 2004**

*Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

### **II. CHANGES IN MANUAL INSTRUCTIONS:**

**(R = REVISED, N = NEW, D = DELETED)**

<b>R/N/D</b>	<b>CHAPTER/SECTION/SUBSECTION/TITLE</b>
<b>R</b>	15/ 60.1/Incident to Physician's Professional Services
<b>R</b>	15/ 60.3/Incident to Physician's Service In Clinic

### **\*III. FUNDING:**

**These instructions shall be implemented within your current operating budget.**

### **IV. ATTACHMENTS:**

<b>X</b>	<b>Business Requirements</b>
<b>X</b>	<b>Manual Instruction</b>
	<b>Confidential Requirements</b>
	<b>One-Time Notification</b>
	<b>Recurring Update Notification</b>

**\*Medicare contractors only**

# Attachment - Business Requirements

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**SUBJECT: Incident-To Services on Form CMS-1500**

## I. GENERAL INFORMATION

**A. Background:** The preamble of the final rule for the Medicare Physician Fee Schedule on November 1, 2001 (66 Fed Reg. 55267) stated “the billing number of the ordering physician (or other practitioner) should not be used if that person did not directly supervise the auxiliary personnel.” Pub. 100-04, chapter 26, section 10.4 manualized that rule and provided instructions for including the supervisor’s information on the Form CMS-1500. This transmittal provides instructions in cases where the electronic claim form is used.

**B. Policy:** The manual update clarifies where physician’s Provider Information Numbers and names should be reported on the electronic claim when both an ordering provider and a supervising provider are involved in a service.

**C. Provider Education:** A provider education article related to this instruction will be available at [www.cms.hhs.gov/medlearn/matters](http://www.cms.hhs.gov/medlearn/matters) shortly after the CR is released. You will receive notification of the article release via the established "medlearn matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article must be included in your next regularly scheduled bulletin.

## II. BUSINESS REQUIREMENTS

*“Shall” denotes a mandatory requirement*

*“Should” denotes an optional requirement*

Requirement #	Requirements	Responsibility
3242.1	Post or link the Provider Education article as instructed above.	Carriers

## III. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

**A. Other Instructions: N/A**

X-Ref Requirement #	Instructions

**B. Design Considerations: N/A**

<b>X-Ref Requirement #</b>	<b>Recommendation for Medicare System Requirements</b>

**C. Interfaces: N/A**

**D. Contractor Financial Reporting /Workload Impact: N/A**

**E. Dependencies: N/A**

**F. Testing Considerations: N/A**

**IV. SCHEDULE, CONTACTS, AND FUNDING**

<p><b>Effective Date:</b> October 4, 2004</p> <p><b>Implementation Date:</b> October 4, 2004</p> <p><b>Pre-Implementation Contact(s):</b> Dorothy Shannon at <a href="mailto:DShannon2@cms.hhs.gov">DShannon2@cms.hhs.gov</a></p> <p><b>Post-Implementation Contact(s):</b> Dorothy Shannon at <a href="mailto:DShannon2@cms.hhs.gov">DShannon2@cms.hhs.gov</a></p>	<p><b>These instructions shall be implemented within your current operating budget.</b></p>
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## **60.1 - Incident to Physician's Professional Services**

*(Rev. 17, 06-18-04)*

### **B3-2050.1**

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.

#### **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 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 supervision of auxiliary personnel.

Direct supervision in the office setting *means the physician must be present in the office suite and immediately available and able to provide assistance and direction throughout the time the service is performed.* *Direct supervision* does not mean that the physician must be present in the same room with his or her aide.

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.

*In some cases the physician or nonphysician practitioner who performed an initial service and ordered the service that is subsequently performed by auxiliary personnel is not the same person who is supervising the service. Then the supervising physician must be identified on both the paper and electronic claim forms. When the paper Form CMS 1500 is used, follow the instructions for completing the form, found in Pub 100-04, chapter 26, §10.4. When filing electronic claims with incident to services, supply the ordering physician information for each line of service in the 2420E loop and supply the supervising physician information in loop 2310E. If the supervising physician information differs for a specific detail line, then supply that detail line supervising physician information in loop 2420D.*

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.)

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.)

## **60.3 - Incident to Physician's Service in Clinic**

*(Rev. 17, 06-18-04)*

### **B3-2050.3**

Services and supplies incident to a physician's service in a physician directed clinic or group association are generally the same as those described above.

A physician directed clinic is one where:

1. A physician (or a number of physicians) is present to perform medical (rather than administrative) services at all times the clinic is open;
2. Each patient is under the care of a clinic physician; and
3. The nonphysician services are under medical supervision.

In highly organized clinics, particularly those that are departmentalized, direct physician supervision may be the responsibility of several physicians as opposed to an individual attending physician. In this situation, medical management of all services provided in the clinic is assured. The physician ordering a particular service need not be the physician who is supervising the service. Therefore, services performed by auxiliary personnel and other aides are covered even though they are performed in another department of the clinic, *as long as the contractor determines the situation allows the supervisor to be present in the clinic and immediately available and able to provide assistance and direction throughout the service. However, the requirement for direct supervision is not satisfied unless there is a specific physician responsible for the supervision of the billed service. The clinic may meet this requirement, e.g., by assigning one supervisor for the day or by assigning individual supervisors for specific services. In the case where a long service requires more than one supervisor, the physician who had the responsibility for the major part of the service should be identified on the claim. The supervisor's identification is provided on the claim as described in Section 60.1.*

Supplies provided by the clinic during the course of treatment are also covered. When the auxiliary personnel perform services outside the clinic premises, the services are covered only if performed under the direct supervision of a clinic physician. If the clinic refers a patient for auxiliary services performed by personnel who are not supervised by clinic physicians, such services are not incident to a physician's service.