#### Incident-to / Split-Shared Billing for Medicare

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THIS PRESENTATION ADDRESSES THE CONCEPTS OF INCIDENT-TO AND SPLIT/SHARED BILLING FROM THE STANDPOINT OF CMS GUIDANCE ONLY. THESE CONCEPTS MAY OR MAY NOT APPLY IN COMMERCIAL INSURANCE BILLING SCENARIOS. CHECK LOCAL CARRIER MEDICAL POLICIES TO DETERMINE THE APPROPRIATENESS OF APPLYING CMS RULES IN THOSE BILLING SCENARIOS.

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#### **Course Objective**

- Review CMS Rules regarding Incident-To Services.
  - To define who can perform Incident-To Services.
  - Outline relevant case-law pertaining to Incident-To Billing issues.
- Review CMS Rules regarding Split/Shared E/M Services.



## What is Incident-to??



#### **CMS Guidance**

Internet Only Manual (IOM)

 Publication 100-2, Chapter 15, Section 60
 <u>www.cms.hhs.gov/manuals/Downloads/bp102c15.pdf</u>



#### **Core Elements**

- Non-Institutional Setting
  - All settings other than a hospital or SNF
- Services that are usually not self-administered
- An integral, although incidental, part of the physician's professional service (see §60.1);
- Services are 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).



#### **Non-Institutional Requirement**

#### Office within an Institution

- Must be confined to a separately identified part of the facility used solely as the physician's office <u>and</u>
  - Cannot be construed to extend throughout the entire institution
  - Physician must be in office suite to establish direct supervision.
- Services performed outside the "office" area
  - Subject to the coverage rules outside the office setting



#### **Narrative Definition**

 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.



# What is the Compliance Issue?

- Consider this scenario...
  - Service is Performed by Auxiliary personnel.
  - The service is then reported under the name/PTAN of the physician
  - If extender is a NPP authorized to be reimbursed directly, Medicare Pays the full fee allowance under the MPFS rather than the 85% that the NPP would be entitled to.
  - If the extender is not a NPP authorized to be reimbursed directly, the entire payment may be improper.
- What is misrepresented on the claim that led to the improper payment?



#### **General Rule**

- Medicare generally requires that the identity of the person who actually performed the service be reported on the claim.
- The I2 Rule is an exception that permits reporting of services actually performed by one person to be reported under the name of another provided that certain requirements are met.



- Integral Although Incidental
  - Axiomatic in this requirement is that the physician is controlling the management of the patient's condition
    - Translation The physician MUST initiate the care but need not render a physician service at each instance of I2 billing; however,...
    - The physician must remain actively involved in the care

– Changes in condition being managed?

- Initial Service Requirement
  - To bill incident-to, 'there must have been a direct, personal, professional service furnished by a the physician to initiate the course of treatment of which the service being performed by the non-physician practitioner is an incidental part, and there must be subsequent services by the physician of a frequency that reflects his/her continuing active participation in and management of the course of treatment.'



#### Established Plan of Care

- The personnel performing the incident-to service should:
  - Document the 'link' between their face-to-face service of the preceding physician service to which their service in incidental.
  - Reference by date and location the precedent providers' service that supports the active involvement of the physician.
  - Legibly record both their identity and credentials
  - Legibly record the supervising physician for the encounter



- Commonly Furnished in Physician's 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.



 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.



- Direct Personal Supervision
  - Who are auxiliary personnel?
    - 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.



- Auxiliary Personnel
  - "Any individual" CMS deliberately chose this term when defining "auxiliary personnel"
    - "So that the physician (or other practitioner), under his or her discretion and license, may use the service of anyone ranging from another physician to a medical assistant."
    - "...impossible to exhaustively list all incidentto services and those specific auxiliary personnel who may perform each service."

Federal Register, Vol. 66, No. 212, pp 55267-55268 (November 1, 2001).



- Auxiliary Personnel CMS Guidance
  - 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.)

IOM Pub 100-2, Ch. 15 §60.2

The Key is Licensure



- Direct Personal Supervision
  - 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.



#### Incident-To Case Law

- U.S. ex rel Lockyer v. Hawaii Pacific Health, 490 F. Supp. 2d 1062 (D. Hawaii 2007)
  - The "incident to" rule requires the provider submitting a claim, or the group practice submitting the claim on behalf of its members, to ensure he or she provides *direct supervision*.
  - *Direct supervision*" means the provider must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure.
  - Direct supervision does not mean that the provider must be present in the same room when the procedure is performed.



#### Incident-To Case Law

- U.S. ex rel Lockyer v. Hawaii Pacific Health, 490 F. Supp. 2d 1062 (D. Hawaii 2007)
  - The billing number of the ordering provider should not be used if the ordering provider did not directly supervise the auxiliary personnel performing the medical service (such as the nurse) being billed.
  - The supervising provider (satisfying the present inoffice suite/immediately available requirements) *need not be the same provider who ordered the incident to services*. The supervising provider's provider number, not the ordering provider's, should be used when billing Medicare for "incident to" services.



#### Incident-To Case Law

- U.S. ex rel Lockyer v. Hawaii Pacific Health, 490 F. Supp. 2d 1062 (D. Hawaii 2007)
  - In a physician directed clinic setting, any one of multiple physicians who are available in the office suite may be deemed to be supervising the "incident to" service. Thus, in any given administration of an "incident to" service, the supervising provider may not and need not be aware that he is supervising a particular "incident to" service.
  - When a group is billing Medicare, the claim form requires the <u>entity billing for services to attest that it met the</u> <u>requirements of direct supervision for the services</u> <u>billed</u>, that is, that the provider whose number is used was present in the office suite and immediately available to furnish assistance.



#### **I2 Elements - Summary**

- Physician must initiate the care for the condition
- Physician must remain actively involved in the care of the patient's condition.
- Subsequent services must be of the type commonly performed in the physician office
- Subsequent services performed by employee, or someone with an employment relationship. Where an entity, physician must also be an employee
  - Locum Tenans?
- Physician must be on the premises in the office suite (same address/same building)



- Defined
  - A split/shared visit is a medically necessary encounter with a patient where the physician and a qualified non-physician practitioner (NPP) each performs a substantive portion of the evaluation and management (E/M) visit, face-to-face with the same patient on the same date of service.
    - A substantive portion of an E/M visit involves all or some portion of the history, examination, and/or medical decision making components of the E/M service.
      - Note: Simply signing off on the NPP's note does not meet the criteria for a split/shared visit. Both providers must perform a significant portion of the visit to include a face-to-face visit with the physician.
    - The physician and NPP both must be in the same group practice or employed by the same employer.

Medicare Claims Processing Manual, IOM Pub 100-4, Ch. 12 §30.6.1



## Split/Shared E/M Services Applies only to selective E/M Encounters and Settings

- Encounter is between a physician and NPP (NP, PA, CNS, CNM)
- NPP is employed by the physician or they share the same employer
- Split/shared is not applicable to medical students, nurses, residents.
- Split/shared is not applicable to consultations, procedures or critical care services.

- Office/Clinic Setting "Incident-to" is met and patient is an "established patient"
  - Medicare Incident To criteria met:
    - Physician must personally perform the initial service and remain actively involved in the course of treatment
    - Physician must be present in the office suite
    - NPP must be directly employed by the physician, physician group, or entity that employs the physician(s). NPP may also be leased or independent contractor.
    - "Incident to" applies to the office/clinic setting. "Incident to" is not applicable in the hospital setting.
  - Bill under Physician NPI
    - I2 met and when there is face-to-face E/M work personally performed by the physician with the patient at the encounter - 100% of physician fee schedule
  - Bill under NPP NPI
    - If there is no face-to-face encounter between the patient and the physician (e.g., even if the physician participated in the service only by reviewing the patient's medical record) then the service may only be billed under the NPP's NPI - 85% of physician fee schedule



- Office/Clinic Setting "Incident to" is Not met
  - NPPs should bill under their own name/number when:
    - Seeing new patients
    - Seeing established patients with new problems
    - Physician not physically present in office suite

- Entitled to 85% of physician's fee.



- Hospital Inpatient/Outpatient/Hospital Observation/Hospital Discharge/Emergency Department Setting
  - E/M encounter is shared between a physician and a NPP from the same group practice and the physician provides any face-to-face substantive portion of the E/M encounter with the patient.
  - Can be billed under either the physician's or the NPP's NPI)
  - NOTE!
    - If there is no face-to-face encounter between the patient and the physician (e.g., even if the physician participated in the service only by reviewing the patient's medical record) then the service may only be billed under the NPP's NPI



- Consults
- Effective 01/01/06, a consultation cannot be billed as a split/shared visit (regardless of the place of service i.e., office, hospital inpatient, hospital outpatient).
  - Intent of consultation service is that a physician or qualified NPP or other appropriate source is asking another physician or qualified NPP for advice and opinion in evaluating a patient.
  - Consult must be performed either by physician or by NPP. They cannot share the encounter. Where this occurs, bill consult under NPP.



- The ROS and/or PFSH may be recorded
   by ancillary staff or on a form completed
   by the patient.
- To document that the physician reviewed the information, there must a notation supplementing or confirming the information recorded by others.



- Examples of Documentation for Split/Shared
   Visits
  - Acceptable Documentation from Physician:
    - "Seen and agree. Heart and lungs normal." Followed by the physician's legible signature.
    - "Agree with above. Lungs clear." Followed by the physician's legible signature.
  - Unacceptable Documentation from Physician:
    - "Above noted. Proceed with cardiac catheterization as planned." Followed by the physician's legible signature.
    - This documentation fails to establish the face-toface encounter by the physician with the patient.



#### Use of Scribe(s)

(Per Cigna Government Services Medicare Part B Bulletins, Sept/Oct. 2001 and Oct. 25, 2004)

- "A scribe should be merely that, a person who writes what the physician dictates and performs. This individual should not act independently and Medicare makes no payment for this activity. It is acceptable for a physician to use a scribe, however current documentation guidelines must be followed. The physician is ultimately accountable for the documentation."
- "If a nurse or mid-level provider (PA, NP, CNS) acts as a scribe for the physician, the individual writing the note (or history or discharge summary, or any entry in the record) should note "written by xxx, acting as scribe for Dr. yyy.
- Then, Dr. yyy should co-sign, indicating that the note accurately reflects work and decisions made by him/her."





## Questions? CEU Code:

