Incident-to for Medicare – Common Misconceptions and Fraud Risk

Presented by:
Michael D. Miscoe, Esq, CPC, CASCC, CUC, CCPC, CPCO, CPMA

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Mr. Miscoe is admitted to the practice of law in California (Cal Bar ID 260146), the United States Supreme Court and the US District Courts in the Southern District of California and the Western District of Pennsylvania.
Course Objective

• Review CMS Rules regarding services performed under Incident-To Billing Arrangements.
  – To define who can perform Incident-To Services.
  – Outline relevant case-law pertaining to Incident-To Billing issues.
  – Address common misconceptions about the I-2 rule that could potentially lead to fraud risk
The I-2 Rule is an exception to what key compliance concept in Medicare Billing?
General Rule

• Medicare generally requires that the identity of the person who actually performed the service be reported on the claim.

• The I-2 (locums and reciprocal billing) rules are an exception that permit reporting of services actually performed by one person under the name of another provided that certain requirements are met.
What is the Compliance Issue?

- Depending on who actually performed the service, erroneous reporting could result in either a 15% or 100% overpayment.
  - Auxiliary person is unlicensed – 100%
  - Auxiliary person is licensed (NP/PA/MD/DO) but is not credentialed in group – 100%
  - Auxiliary person is licensed (NP/PA) and is credentialed in the group – 15%
What is Incident-to??
CMS Guidance

• Internet Only Manual (IOM)
  – Publication 100-2, Chapter 15, Section 60
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);
- Employment of physician and auxiliary person
- Licensure authority for performance by auxiliary person
- 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 and
  • Cannot be construed to extend throughout the entire institution
  • Physician must be in office suite to establish direct supervision.
Non-Institutional Requirement

• Services performed in the home
  – Subject to the coverage rules outside the office setting (See Pub 100-2, Ch. 15 §60.4)
    • Limited to certain qualifying underserved areas.
    • Patient must be homebound as defined at §60.4.1.
    • Limited to specifically identified therapeutic services only (no E/Ms) – see §60.4.B.
• Where the above requirements met, can bill I2 where only “general” supervision is provided by a physician.
I2 Elements

• Integral Although Incidental of the Physician’s Service
  – Axiomatic in this requirement is that the physician is controlling the management of the patient’s condition
• Translation – The physician **MUST** examine, diagnose and develop the plan of care for a condition 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?
I2 Elements

• **Initial Service/Ongoing Involvement Requirement**
  – To bill incident-to, ‘there must have been a direct, personal, professional service furnished by a 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.’

• What is the purpose of these requirements?
I2 Elements

• 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.
I2 Elements

• Employment
  – Sole proprietor: auxiliary person must be employed by supervising physician.
  – Group practice: Both the supervising physician and the auxiliary person must be employed.
    • W-2
    • 1099
    • Leased employee
I2 Elements

- Performed by 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.
I2 Elements

• 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 incident-to services and those specific auxiliary personnel who may perform each service.”

I2 Elements

- 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 non-physician practitioners covered as services incident to a physician’s professional services. These non-physician 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/non-physician practitioners’ services.) IOM Pub 100-2, Ch. 15 §60.2
  - The key is that the person is permitted to perform the service under applicable licensure rules.
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.
I2 Elements

• 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.
  – What does immediately available mean and how has OIG evaluated this element?
Documenting Control/Supervision of Physician

- 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
Incident-To Case Law

  - 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

  - 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 in-office 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

  - 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 *entity billing for services to attest that it met the requirements of direct supervision for the services billed*, 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 examine, diagnose and develop the plan of care for the condition.
• Physician must remain actively involved in the care of the patient’s condition.
• Subsequent services must be those that cannot be self-administered and be of the type commonly performed in the physician office.
• Subsequent services performed by employee, or someone with an employment relationship who is qualified under applicable licensure rules to provide the service. Where an entity, both the physician and auxiliary person must be an employee of that entity.
• Physician must be on the premises in the office suite (same address/same building).
Common Misconceptions

• New Physicians Awaiting Credentialing
• Temporary PA-Cs or NPs
• New Conditions
  – Completely New
  – Mixed visit – Old plus New Conditions
• Credentialing Status of Extenders
• The incident-4 rule – delegation by NPs/PAs
Questions?

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