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# Medicare

## Carriers Manual

### Part 3 - Claims Process

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

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#### CHANGE REQUEST 2222

<u>HEADER SECTION NUMBERS</u>	<u>PAGES TO INSERT</u>	<u>PAGES TO DELETE</u>
2050.1 – 2050.3	2-19 - 2-22 (4 pp.)	2-19 - 2-22 (4 pp.)

**NEW/REVISED MATERIAL--*EFFECTIVE DATE: August 28, 2002***  
***IMPLEMENTATION DATE: August 28, 2002***

Section 2050, Services and Supplies, is revised to implement new regulations at 42 CFR 410.26 on services and supplies furnished incident to a physician's services. Section 410.26(a)(7) indicates that the incident to requirements do not apply to services, such as clinical diagnostic tests, that have their own benefit category in the statute.

Section 2050.1, Incident to Physician's Professional Services, revises the incident to supervision and employment requirements so that both the supervising physician and the auxiliary personnel furnishing the service may be an employee, a leased employee or an independent contractor of the physician or legal entity billing and receiving payment for the services.

Sections 2050.2, Services of Nonphysician Personnel Furnished Incident to Physicians Services, and 2050.3, Incident to Physician's Service in Clinic, are revised to comply with the use of the terms "auxiliary personnel" and "direct supervision" in regulations §§410.26(a)(1) and 410.32(b)(3)(ii).

Section 2050.3, Incident to Physician's Service in Clinic, revised to indicate that auxiliary personnel must be supervised by clinic physicians.

**DISCLAIMER:** The revision date and transmittal number only apply to the redlined material. All other material was previously published in the manual and is only being reprinted.

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

## 2050. SERVICES AND SUPPLIES

Medicare pays for services and supplies (including drug and biologicals which are not usually self-administered) that are furnished incident to a physician's or other practitioner's services, are commonly included in the physician's or practitioner's bills, and for which payment is not made under a separate benefit category listed in §1861 (s) of the Act. Carriers should not apply incident to requirements to services having their own benefit category. Rather, these services should meet the requirements of their own benefit category. For example, diagnostic tests are covered under §1861 (s)(3) of the Act and are subject to the coverage requirements in §2070. Depending on the particular tests, the supervision requirement in §2070 may be more or less stringent than that discussed in §2050.1.B. Diagnostic tests need not also meet the incident to requirement in this section. Likewise, pneumococcal, influenza, and hepatitis B vaccines are covered under §1861 (s)(10) of the Act and need not also meet incident to requirements. (Physician assistants, nurse practitioners, clinical nurse specialists, certified nurse midwives, clinical psychologists, clinical social workers, physical therapists and occupational therapists all have their own benefit categories and may provide services without direct physician supervision and bill directly for these services. When their services are provided as auxiliary personnel (see §2050.1.B.) under direct physician supervision, they may be covered as incident to services, in which case the incident to requirements would apply (see §2050.2)).

Certain hospital services may also be covered as incident to a physician's services under §1861(s)(2)(B) of the Act. Payment for these services is made under Part B to a hospital by the hospital's intermediary and are not subject to the same requirements as services covered under §1861(s)(2)(A).

For purposes of this section, physician means physician or other practitioner (physician assistant, §2156; nurse practitioner, §2158; clinical nurse specialist, §2160; nurse midwife, §2154; and clinical psychologist, §2150) authorized by the Act to receive payment for services incident to his or her own services.

To be covered incident to the services of a physician, services and supplies must be:

- o An integral, although incidental, part of the physician's professional service (see §2050.1);
- o Commonly rendered without charge or included in the physician's bill (see §2050.1A);
- o Of a type that are commonly furnished in physician's offices or clinics (see §2050.1A);
- o Furnished by the physician or by auxiliary personnel under the physician's direct supervision (see §2050.1B).

**2050.1 Incident to Physician's Professional Services.**--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 §2049 regarding coverage of drugs and biologicals under this

provision.) To be covered, supplies, including drugs and biologicals, must be 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 drug is not covered.

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 in §3060. 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 §45-15 of the Coverage Issues 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 coverage of the services of physician-employed auxiliary personnel as services incident to physicians' services under §1861(s)(2)(A) of the Social

**Security 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. For services in a hospital, see §2390. (See §2070 concerning physician supervision of technicians performing diagnostic x-ray procedures in a physician's office.)

**2050.2 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, 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 §§2150 through 2160 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 himself or herself 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 §§2050 through 2050.1. 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 §§2156 or 2158, 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 §2050.1, 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 his or her 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 established a course of treatment could be covered even if, during the same visit, a nonphysician practitioner performs a noncovered service such as an acupuncture.

2050.3 Incident to Physician's Service in Clinic.--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 (a) a physician (or a number of physicians) is present to perform medical (rather than administrative) services at all times the clinic is open; (b) each patient is under the care of a clinic physician; and (c) 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** are covered even though they are performed in another department of the clinic.

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.

