

INCIDENT TO A PHYSICIAN'S PROFESSIONAL SERVICE

To qualify as “incident to,” services must be part of your patient’s normal course of treatment, during which a physician **personally performed an initial service** and remains **actively involved** in the course of treatment. You do not have to be physically present in the patient’s treatment room while these services are provided, but you must provide **direct supervision**, that is, you must be present in the office suite to render assistance, if necessary. The patient record should document the essential requirements for incident to service.

More specifically, these services must be all of the following:

- An integral part of the patient’s treatment course;
- Commonly rendered without charge (included in your physician’s bills
- Of a type commonly furnished in a physician’s office or clinic (not in an institutional setting); and
- An expense to you.

Examples of qualifying “incident to” services include providing non-self-administrable drugs and other biologicals, and supplies usually furnished by the physician in the course of performing his/her services, e.g., gauze, ointments, bandages, and oxygen.

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.

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. If you are a solo practitioner, you must directly supervise the care. If you are in a group, any physician member of the group may be present in the office to supervise.

The requirement for direct supervision of a service incident to a physician or non-physician practitioner is not satisfied unless there is a specific physician or non-physician practitioner responsible for the supervision of the billed service. If more than one person supervises a service, the one who had the responsibility for the major part of the service should be identified

on the claim. The claim is paid at the rate appropriate to the supervisor (at 85% if the supervisor is a non-physician practitioner).

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 non-physician 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.)

Non-physician Practitioner 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 (as discussed above), 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/nonphysician practitioners' services.)

Services performed by these non-physician practitioners incident to a physician 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 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 §§60 through 60.1. 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 non-physician 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 §§190 or 200, respectively) to perform the procedure without physician supervision and have the service separately covered and paid for by Medicare as a physician assistant's 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 §60.1, this does not mean that each occasion of an incidental service performed by a non-physician 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 non-physician practitioner is an incidental part, and there must be subsequent services by the physician of a frequency that reflects the physician's 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 non-physician 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 establishes a course of treatment could be covered even if, during the same visit, a non-physician practitioner performs a non-covered service such as acupuncture.

Physician directed clinics

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.

Private practice

Coverage of services and supplies "incident to" the professional service of a physician in a private practice and office setting is limited to situations in which there is direct physician supervision. A physician may have auxiliary personnel (i.e., nurses, non-physician anesthetists, psychologists, technicians, therapists and other aides) to assist him or her in rendering services to patients and include the charges for their services in his or her own bills. The services of such personnel are considered "incident to" the physician's services if:

- There is a physician's service rendered to which the services of such personnel are an incidental part; and
- There is direct personal supervision by the physician.

Direct personal supervision in the office setting does not mean that the physician must be physically 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.

Hospital Settings

The Medicare program has identified that some physicians are billing incorrectly for services provided to hospital patients.

The Social Security Act provides that every service to hospital inpatients and outpatients, except for the professional services of physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists, as well as qualified psychologists services, must be provided by the hospital directly, or by others under arrangements made by the hospital, and only the hospital may bill its Medicare Intermediary for the services.

If the services are not provided and billed for in this way, they are not covered by Medicare. This is sometimes referred to as the hospital “bundling” provision. This provision is applicable to hospital patients where a Medicare payment can be made to the hospital, including patients in psychiatric hospitals. There are some psychological tests that physicians and clinical psychologists may bill to Medicare Part B that are **not** considered “bundled” into the Part A payment to the hospital. These tests are:

Procedure Code	Description
96100	Psychological Testing
96105	Assessment of Aphasia
96110	Development Testing
96111	Development Testing
96115	Neurobehavior Status Exam
96117	Neuropsych Test Battery

This means that services and supplies that would normally be covered “incident to” in an office setting, such as the services of nurses and other clinical assistants that you hire and supervise, are not billable by you in hospital settings.

Therefore, if you utilize the services of your own employees in a hospital setting and you merely supervise their services, you are not eligible for a payment from Medicare. Although your employees might meet the supervision and employment requirements generally applicable to “incident to” services in other settings, their services are nevertheless not payable as “incident to” services to you when furnished in a hospital setting.

Their services would only be payable to the hospital, because of the bundling provisions described above, but the hospital could in turn purchase the services from you when furnished in a hospital setting.

Also, you are not eligible for a payment from Medicare because supervision alone does not constitute a reimbursable practitioner service. You must personally perform the practitioner service for which you bill in order for it to be payable in a hospital setting. If you do not personally perform the service, you are not entitled to any practitioner payment.

When your staff provides services to hospital patients (such as the services of nurses or therapists, diagnostic tests, etc.), the Medicare payment for those services is included in the Medicare payment to the hospital.

You may not seek payment from the patient for such services. You may, however, seek payment from the hospital. Neither you nor the hospital may charge the patient.

The Social Security Act authorized civil money penalties for any person who bills for services in violation of the bundling requirement; this provision applies to improper billings of the patient as well as to improper billings to a Medicare contractor.

Homebound Patients

In some medically underserved areas there are only a few physicians available to provide services over broad geographic areas or to a large patient population. The lack of medical personnel (and, in many instances, a home health agency servicing the area) significantly reduces the availability of certain medical services to homebound patients. Some physicians and physician-directed clinics, therefore, call upon nurses and other paramedical personnel to provide these services under general (rather than direct) supervision. In some areas, such practice has tended to become the accepted method of delivery of these services.

The Senate Finance Committee Report accompanying the 1972 Amendments to the Act recommended that the direct supervision requirement of the "incident to" provision be modified to provide coverage for services provided in this manner.

Accordingly, to permit coverage of certain of these services, the direct supervision criterion in §60.2 above is **not** applicable to individual or intermittent services outlined in this section when they are performed by personnel meeting any pertinent State requirements (e.g., a nurse, technician, or physician extender) and where the criteria listed below also are met:

1. The patient is homebound, i.e., confined to his/her home (see §60.4.1 for the definition of a "homebound" patient and §110.1(D) for the definition of patient's "place of residence;")
2. The service is an integral part of the physician's service to the patient (the patient must be one the physician is treating) and is performed under general physician supervision by employees of the physician or clinic. General supervision means that the physician need not be physically present at the patient's place of residence when the service is performed; however, the service must be performed under his or her overall supervision and control.

The physician orders the service(s) to be performed, and contact is maintained between the nurse or other employee and the physician, e.g., the employee contacts the physician directly if additional instructions are needed, and the physician must retain professional responsibility for the service. All other "incident to" requirements must be met (see §§60-60.4);

3. The services are included in the physician's/clinic's bill, and the physician or clinic has incurred an expense for them (see §60.2);
4. The services of the paramedical are required for the patient's care, that is, they are reasonable and necessary as defined in the Medicare Benefit Policy Manual, Chapter 16, "General Exclusions from Coverage," §20; and
5. When the service can be furnished by an HHA in the local area, it cannot be covered when furnished by a physician/clinic to a homebound patient under this provision, except as described in §60.4.C.

Where the requirements above are met, the direct supervision requirement in the section "*Non-physician Practitioner Services*" is not applicable to the following services:

1. Injections;
2. Venipuncture;
3. EKGs;
4. Therapeutic exercises;
5. Insertion and sterile irrigation of a catheter;

6. Changing of catheters and collection of catheterized specimen for urinalysis and culture;
7. Dressing changes; e.g., the most common chronic conditions that may need dressing changes are decubitus care and gangrene;
8. Replacement and/or insertion of nasogastric tubes;
9. Removal of fecal impaction (including enemas);
10. Sputum collection for gram stain and culture, and possible acid-fast and/or fungal stain and culture;
11. Paraffin bath therapy for hands and/or feet in rheumatoid arthritis or osteoarthritis; or
12. Teaching and training the patient for:
 - a. the care of colostomy and ileostomy;
 - b. the care of permanent tracheostomy;
 - c. testing urine and care of the feet (diabetic patients only); and
 - d. blood pressure monitoring.

Teaching and training services (also referred to as educational services) can be covered only where they provide knowledge essential for the chronically ill patient's participation in his/her own treatment and only where they can be reasonably related to such treatment and diagnosis. Educational services that provide more elaborate instruction than is necessary to achieve the required level of patient education are not covered. After essential information has been provided, the patient should be relied upon to obtain additional information on his or her own.

Note: *This coverage should not be considered as an alternative to home health benefits where there is a participating home health agency in the area that could provide the needed services on a timely basis.*