Medicare Incident to Billing Reimbursement Policy

IMPORTANT NOTE ABOUT THIS REIMBURSEMENT POLICY

You are responsible for submission of accurate claims. This reimbursement policy is intended to ensure that you are reimbursed based on the procedure code or codes that correctly describe the health care services provided to individuals whose behavioral health benefits are administered by Optum, including but not limited to UnitedHealthcare members. This reimbursement policy is also applicable to behavioral health benefit plans administered by OptumHealth Behavioral Solutions of California.

Our behavioral health reimbursement policies may use Current Procedural Terminology (CPT®), Centers for Medicare and Medicaid Services (CMS) or other procedure coding guidelines. References to CPT or other sources are for definitional purposes only and do not imply any right to reimbursement. This reimbursement policy applies to all health care services billed on CMS 1500 forms and, when specified, to services billed on the UB-04 claim form and to electronic claim submissions (i.e., 837p and 837i) and for claims submitted online through provider portals. Coding methodology, industry-standard reimbursement logic, regulatory requirements, benefits design and other factors are considered in developing reimbursement policy.*

This information is intended to serve only as a general reference resource regarding our reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, Optum may use reasonable discretion in interpreting and applying this policy to behavioral health care services provided in a particular case. Further, the policy does not address all issues related to reimbursement for behavioral health care services provided to members. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: member's benefit coverage, provider contracts and/or legislative mandates. Finally, this policy may not be implemented exactly the same way on the different electronic claim processing systems used by Optum due to programming or other constraints; however, Optum strives to minimize these variations.

Optum may modify this reimbursement policy at any time by publishing a new version of the policy on this website. However, the information presented in this policy is accurate and current as of the date of publication.

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Applicability

This reimbursement policy applies to services reported using the 1500 Health Insurance Claim Form (a/k/a CMS 1500) or its electronic equivalent or its successor form. This policy applies to all Medicare products and all network and non-network physicians and other qualified health care professionals, including, but not limited to, non-network authorized and percent of charge contract physicians and other qualified health care professionals. Additional criteria apply to Federally Qualified Health Center or Rural Health Clinic rendered services.

Policy

Overview

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 in a physician's office (whether located in a separate office suite or within an institution such as hospital or skilled nursing facility (SNF)) or in a patient's home. Services that would normally be part of the treatment of a patient by a physician are rendered by an auxiliary person, functioning under the appropriate supervision.

As noted in section §1861(s)(2)(A) of the Act for Skilled Nursing Facilities (SNF) patients who are in a Medicare covered stay, there is no Optum Behavioral Health Part B coverage of the services of physician-employed auxiliary personnel as services incident to physicians' services. Such services can be covered only under the SNF benefit and payment for such services can be made to only the SNF by a Medicare intermediary. Claims that are submitted and do not follow this guideline will be will denied.

In some cases, the physician or practitioner supervising the service may not be the same individual treating the patient more broadly; in these cases only the supervising physician or practitioner that is not excluded, not precluded and has not opted out of Medicare may bill for the “incident to” services if all incident to requirements have been met.
It is required that auxiliary personnel providing “incident to” services are rendering service(s) in accordance with the rules and regulations within the state in which the individual practices and have not been excluded from Medicare, Medicaid, or other Federal health care programs or have had their enrollment revoked for any reason at the time they provide such services or supplies.

Reimbursement Guidelines

If all requirements are met, a Psychiatrist (MD/DO), Clinical Psychologist (CP), Clinical Social Worker (CSW), Nurse Practitioner (NP), Clinical Nurse Specialist (CNS), Certified Nurse-Midwife (CNM), and Physician Assistant (PA), Independently Practicing Psychologist (IPP) can be auxiliary personnel under the incident to benefit category and provide outpatient psychiatric services incident to personal professional (MD or DO), CP, NP, CNS, CNM, and PA.

If all requirements are met, Auxiliary Personnel may provide outpatient psychiatric services incident to personal professional (MD or DO), CP, NP, CNS, CNM, and PA.

Optum follows CMS guidelines and will consider reimbursement under the “Incident to” provision when the noninstitutional services and supplies comply with State law and meet all the following requirements:

- The services are furnished as an integral, although incidental, part of the physician (MD/DO) or Practitioner (CP, NP, CNS, CNM, and PA) professional services in the course of the diagnosis or treatment of an injury or illness. Physician or Practitioner (CP, NP, CNS, CNM, and PA) must first evaluate/see patient and monitor or continue treatment plan.
- Billing 'incident to' the physician, the physician must initiate treatment and see the patient at a frequency that reflects his/her active involvement in the patient's case. This includes both new patients and established patients being seen for new problems. The claims are then billed under the physician's NPI.
- Billing 'incident to' the CP, NP, CNS or PA, the nonphysician practitioners must initiate treatment and see the patient at a frequency that reflects his/her active involvement in the patient's case. The claims are then billed under the nonphysician practitioner's NPI
- Services and supplies must be of a type that are commonly furnished in the office or clinic of a physician (or other practitioner).
- The services are rendered under the most stringent of state required supervision or general supervision by the physician, CP, NP, CNS, or in the case of a physician directed clinic, the Physician Assistant (PA).
- In the case where State law and scope of practice are silent about whether an individual serving in the capacity of auxiliary personnel is licensed/authorized to provide a given behavioral health service, the supervision level for the provision of the behavioral health service will default to the most stringent of state requirements or standard direct supervision requirement for “incident to” services. Direct Supervision requires that supervising physician or (CP, NP, CNS or PA) be Immediately Available.
- Supervising Practitioner may not supervise Auxiliary Personnel or other Practitioner’s outside the scope of their license.
- Auxiliary Personnel may only provide service within their state scope of license.
- Medicare does not allow for services provided by interns or postdoctoral graduate students to be billed under the “incident to” provisions. Medicare considers services furnished by interns or postdoctoral graduate students to be training and therefore not eligible.
- The service rendered must be a covered benefit, e.g. unless a supplemental benefit, Medicare does not cover marriage or pastoral counseling even if performed under incident to.
- Fellows (licensed clinicians in an approved training program studying another sub - specialty) could be covered “incident to” under a psychologist. It does not include interns or students.

- The service rendered must be a covered benefit, e.g. unless a supplemental benefit, Medicare does not cover marriage or pastoral counseling even if performed under incident to.
- Health Behavior Assessment and Intervention ("HBAI") not covered under incident to for:
- Licensed Clinical Social Worker LCSW
- Counselors (any), Qualified Mental Health Professional (QMHP), etc.
- Incident to is not allowed for:
- 90791 or 90792: only MD, CNS, CP, LCSW, NP, PA may treat and bill

Terminology Defined:

- ***Auxiliary personnel*** means any individual who is acting under the supervision of a physician (or other practitioner), regardless of whether the individual is an employee, leased employee, or independent contractor of the physician (or other practitioner) or of the same entity that employs or contracts with the physician (or other practitioner), has not been excluded from the Medicare, Medicaid and all other federally funded health care programs by the Office of Inspector General or had his or her Medicare enrollment revoked, and meets any applicable requirements to provide incident to services, including licensure, imposed by the State in which the services are being furnished.
- ***Direct supervision*** in the office setting means the physician (or other supervising practitioner) must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician (or other supervising practitioner) must be present in the room when the procedure is performed.
- **Immediately Available:** CMS has clarified that "immediately available" means "without delay" so Optum considers "immediately available" to mean the supervising physician is in the office suite or patient's home, readily available and without delay, to assist and take over the care as necessary.
- ***General supervision*** means the service is furnished under the physician's (or other practitioner's) overall direction and control, but the physician's (or other practitioner's) presence is not required during the performance of the service.
- **Office Suite:** An "office suite" is limited to the dedicated area, or suite, designated by records of ownership, rent or other agreement with the owner, in which the supervising physician or practitioner maintains his/her practice or provides his/her services as part of a multi-specialty clinic.
- ***Personal supervision*** means a physician must be in attendance in the room during the performance of the procedure.
- ***Practitioner*** means a non-physician practitioner who is authorized by the Act to receive payment for services incident to his or her own services.

Place of Service:

Your Office Suite:
In your office, qualifying “incident to” services must be provided by an auxiliary personnel whom you provide general supervision.

In Patient’s Home that is not considered an institution:
In patient’s home, qualifying “incident to” services must be provided by an auxiliary personnel whom you provide general supervision.

Hospital or SNF:
For inpatient or outpatient hospital services and services to residents in a Part A covered stay in a SNF, the bundling provision (§1862 (a)(14) of the Social Security Act (the Act) for hospitals, and §1862(a)(18) of the Act for SNFs) provides that payment for all services are made to the hospital or SNF (except for certain professional services personally performed by physicians and other allied health professionals). Therefore, incident to services are not separately billable or payable.

Physicians may have an office suite within a nursing home or other institution. Where a physician establishes an office suite within a nursing home or other institution, coverage of services and supplies furnished in the office suite must be determined in accordance with the "incident to a physician's professional service" provision, as in any physician's office. A physician's office suite within an institution must be confined to a separately identified part of the facility which is used solely as the physician's office and cannot be construed to extend throughout the entire institution. Thus, services performed outside the "office suite" area would be subject to the coverage rules applicable to services furnished outside the office suite.

In order to accurately apply the criteria in the Medicare Benefit Policy Manual, Chapter 6, §20.4.1 or Chapter 15, §60.1, the contractor gives consideration to the physical proximity of the institution and physician's office. When his or her office suite is located within a facility, a physician may not be reimbursed for services, supplies, and use of equipment which fall outside the scope of services "commonly furnished" in physician's offices generally, even though such services may be furnished in his institutional office. Additionally, make a distinction between the physician's office practice and the institution, especially when the physician is administrator or owner of the facility. Thus, for their services to be covered under the criteria, the auxiliary medical personnel must be members of the office staff rather than of the institution's staff, and the cost of supplies must represent an expense to the physician's office practice. Denials for failure to meet any of these requirements would be based on §l861(s) (2) (A) of the Act.

Establishment of an office suite within an institution would not modify rules otherwise applicable for determining coverage of the physician's personal professional services within the institution. However, in view of the opportunity afforded to a physician who maintains such an office for rendering services to a sizable number of patients in a short period of time or for performing frequent services for the same patient, claims for physicians' services rendered under such circumstances would require careful evaluation by the carrier to assure that payment is made only for services that are reasonable and necessary.

Questions & Answers	
1	**Q:** Are there any external “incident to Self-Service Tools” that can be used to assist providers with understanding the CMS Part B "incident-to" requirements. **A:** Please reference CMS guidelines www.cms.gov and to the link provided below for guidance related to “incident to services”. Additionally the Medicare Administrative Contractor (MAC) has jurisdiction to process **Medicare Part A** and Part B (A/B) for Fee-For-Service (FFS) beneficiaries, however they do provide some tools specific to incident to that you may find helpful. • https://www.novitas-solutions.com/webcenter/portal/MedicareJL/IncidentTool# • https://medicare.fcso.com/tools_center/incident_reporting/incident_to.asp **Note:** The MAC “incident to Self Service Tools” may not incorporate the changes included in 87 FR 70223 (here) surrounding supervision requirements that are reflected above.
2	**Q:** Does Optum Behavioral Health reimburse for supplies? **A:** No. Optum Behavioral Health does not reimburse for supplies.

Resources

Centers for Medicare and Medicaid Services, CMS Manual System and other CMS publications and services

- 1861(s)(2)(A) Social Security administration
- 42 CFR 410
- Medicare Benefit Policy Manual – Chapter 15
- MLN Matters Number: SE0441
- MLN Medicare Mental Health Training Booklet

History / Updates	
March, 2023	Updated Reimbursement Guidelines Section Updated Q&A Section Replaced “direct supervision” with “general supervision”
March, 2022	Annual Anniversary Review; No updates
May, 2021	Annual review; Updates to Overview and Reimbursement Guidelines Section based on CMS Added Q&As 1, 2, & 3
March, 2020	Annual review
March, 2019	Annual review
April, 2018	Annual review
March, 2017	New