

The Regulation of Mid-Level Provider Practice

As discussed in a previous issue of Health Capital Topics (see *The Scope of Non-Physician Provider Practice* – Volume 3, Issue 2, February 2010), while mid-level providers are authorized to provide certain services autonomously and *in lieu* of physicians, they are still considered primarily to be physician-extenders, in providing an array of services *incident to* physicians.

Mid-level providers face significant regulatory scrutiny as mandated by state and federal law, which govern the supervision and scope of mid-level providers and differ by state, specialty, practice setting, and the provider's specific role in the provision of care.

However, services billed under Medicare *incident-to* rules include those services provided by a mid-level provider without direct supervision of a licensed physician, regardless of specialty or whether the non-physician provider (NPP) was the primary service provider.¹ Further, Medicare allows physicians to bill for *incident-to* services provided by mid-level practitioners at 100 percent of the physician fee schedule. *Incident-to* services are defined as services provided by qualified non-physician professionals that are integral to and continuous with the services provided by the primary physician.²

Some midlevel providers, e.g., physician assistants, nurse practitioners, and clinical nurse specialists, are generally permitted to act as independent contractors and bill directly for their services at 85 percent of the physician fee schedule amount, when working more autonomously, *in lieu*, of a physician-collaborator.³

Also, certain mid-level providers are afforded the legal autonomy to form independent group practices, and provide certain services *in lieu* of primary care physicians.⁴ The autonomy afforded to these and other mid-level providers has even expanded to include supervision of other NPPs *in lieu* of physician supervision.⁵ Under the January 2010 update of the Hospital Outpatient Prospective Payment System, outpatient therapeutic services provided in a hospital setting must be directly supervised by either a physician or certain NPPs, i.e., clinical psychologists, physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse midwives.⁶ These NPPs are permitted to provide direct supervision *in lieu* of physicians if they are authorizing to personally perform

the services they are overseeing, as prescribed by the scope of practice rules derived by their state.⁷

Careful analysis and review by qualified legal counsel of the specific facts and circumstances regarding mid-level provider practice is an important step in maintaining corporate compliance and adherence to regulatory edicts.

¹ "Incident to" Services, by the Centers for Medicare and Medicaid Services, MLN Matters, SE0441, 2004, <http://www.cms.hhs.gov/mlnmattersarticles/downloads/se0441.pdf> (accessed 02/01/2010).

² "Incident to" Services, by the Centers for Medicare and Medicaid Services, MLN Matters, SE0441, 2004, <http://www.cms.hhs.gov/mlnmattersarticles/downloads/se0441.pdf> (accessed 02/01/2010).

³ "110 - Physician Assistant Services Payment Methodology," and "120 - Nurse Practitioner (NP) and Clinical Nurse Specialist (CNS) Services," in "Chapter 12 - Physicians/Nonphysician Practitioners," in "Medicare Claims Processing Manual," Centers for Medicare and Medicaid Services, December 18, 2009.

⁴ "110 - Physician Assistant Services Payment Methodology," and "120 - Nurse Practitioner (NP) and Clinical Nurse Specialist (CNS) Services," in "Chapter 12 - Physicians/Nonphysician Practitioners," in "Medicare Claims Processing Manual," Centers for Medicare and Medicaid Services, December 18, 2009.

⁵ "20.5.1 - Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2010," in "January 2010 Update of the Hospital Outpatient Prospective Payment System (OPPS)," by the Centers for Medicare and Medicaid Services, the Department of Health and Human Services, Transmittal 116, Pub. 100-02 Medicare Benefit Policy, December 11, 2009.

⁶ "20.5.1 - Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2010," in "January 2010 Update of the Hospital Outpatient Prospective Payment System (OPPS)," by the Centers for Medicare and Medicaid Services, the Department of Health and Human Services, Transmittal 116, Pub. 100-02 Medicare Benefit Policy, December 11, 2009.

⁷ "20.5.1 - Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2010," in "January 2010 Update of the Hospital Outpatient Prospective Payment System (OPPS)," by the Centers for Medicare and Medicaid Services, the Department of Health and Human Services, Transmittal 116, Pub. 100-02 Medicare Benefit Policy, December 11, 2009.



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