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"INCIDENT TO" SERVICES UNDER MEDICARE

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Medicare Part B allows for services to be billed by a physician even though the services are actually performed by non-physicians. These types of services are known as "incident to" services and are provided under the Medicare "incident to" rule. Services billed under the "incident to" rule are paid at 100% of the Medicare Physician Fee Schedule amount.

"Incident to" services are provided incident to a physician's or other practitioner's (physician assistant, nurse practitioner, clinical nurse specialist, nurse midwife and clinical psychologist) professional service and must be:

1. an integral, although incidental, part of the physician's professional service;
2. commonly rendered without charge or included in the physician's bill;
3. of a type that are commonly furnished in the physician's offices or clinics;
4. furnished by the physician or by auxiliary personnel under the physician's "direct supervision."

"Incident to" services must be billed under the physician's provider number and must meet specific criteria to fall within the parameters of the Centers for Medicare & Medicaid Services ("CMS") guidelines. Generally, (i) the physician must first see the patient to establish a physician-patient plan of care, (ii) the services provided by the non-physician should be provided in the physician's office, (iii) the physician must be present in the office suite and readily available when the services are provided (direct supervision) and (iv) the physician must be involved in the patient's treatment of care on an ongoing basis.

Services provided under the "incident to" rule are coming under new focus by the federal government. The Health and Human Services, Office of the Inspector General ("OIG") 2012 Work Plan lists "incident to" services as a new review for the agency to examine billing error rates and assess CMS's capability to monitor services billed as "incident to." The OIG intends to prevent unqualified personnel from providing services to Medicare beneficiaries and will be seeking to recover overpayments made if individuals have been incorrectly billing "incident to" services.

Billing "incident to" services is attractive to physicians because it allows the physician to generate additional revenue from the services that are provided by non-physicians. However, before engaging in "incident to" services, the physician and non-physician providing the services must ensure they are strictly complying with the "incident to" rules. Failure to do so can result in harsh penalties, including without limitation, a comprehensive CMS investigation into billing practices, recoupment of Medicare overpayments, and/or criminal charges from filing and submitting false claims to Medicare.

For more information about "incident to" services under Medicare, please contact Troy A. Kishbaugh and Sarah L. Mancebo with GrayRobinson's Health Law Team.

Troy A. Kishbaugh
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32801
Phone: 407-843-8880
Fax: 407-244-5690
Troy.Kishbaugh@gray-robinson.com

Sarah Logan Mancebo
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32801
Phone: 407-843-8880
Fax: 407-244-5690
Sarah.Mancebo@gray-robinson.com

www.gray-robinson.com