Pharmacist Incident-to Billing in Medicare

Background, Issue Brief and Ongoing Advocacy Initiatives

Medicare Incident-to Billing Rules

- Centers for Medicare and Medicaid Services (CMS) allows physicians and non-physician practitioners (NPPs) to bill for incident-to services provided by a pharmacist under physician supervision if certain conditions are met:
  - Patient must first be seen by the physician or NPP
  - Billing provider must continue to see the patient at regular intervals
  - Service is medically appropriate and covered by Part B
  - Service is within pharmacist scope of practice as defined by state law
  - Pharmacist must be an employee, leased or contracted to the billing provider

Evaluation & Management (E/M) Codes

- Two sets of codes that are basis for outpatient encounter billing
- Higher numbers represent increased complexity of services rendered and correspond with higher payment rates

Encounter complexity	New Patient		Return Patient	
	Code	Non-Facility Price	Code	Non-Facility Price
<10 min	[Deleted]	N/A	99211	$23.38
10-19 min	99202	$72.86	99212	$56.93
20-29 min	99203	$112.84	99213	$90.82
30-39 min	99204	$167.40	99214	$128.43
40-54 min	99205	$220.95	99215	$179.94

Source: 2024 Medicare Physician Fee Schedule

Background: Pharmacist Incident-to Billing

- **January 2014:** American Academy of Family Physicians asks CMS *'if all of the "incident to" rules are met, may a physician bill Medicare for a Part B covered service provided by a pharmacist in the practice"?*[1]
  - AAFP letter references codes 99211-99215 as services to be billed for

- **March 2014:** CMS Responds
  - *In your letter, you ask we confirm your impression that if all requirements of the "incident to" statute and regulations are met, a physician may bill for services provided by a pharmacist as "incident-to" services. We agree.*[2]
  - No reference to specific codes in CMS response

1. AAFP Letter to CMS
2. CMS Response

Background: Pharmacist Incident-to Billing

- **2014:** Medicare Administrative Contractors (MACs) begin to issue guidance clarifying that pharmacists may only reimbursed for the lowest level of return patient code (99211), regardless of encounter time or complexity of services
  - No explicit justification given
  - Non-uniform implementation across MACs; pharmacists in certain regions were able to continue billing for higher level codes
- **November 2020:** CMS issues guidance clarifying that pharmacists billing Medicare incident to physicians or NPPs may only submit code 99211

1. CMS 2021 Physician Fee Schedule Final Rule (pages 352-357)

CMS Policy Rationale

- CMS only considers practitioners who are able to enroll as Medicare providers and eligible to receive direct payment for a covered service to be “qualified health professionals” (QHPs)
- Since pharmacists are not recognized as Part B providers, they are not QHPs and are therefor “clinical staff”
- Clinical staff may only bill for the lowest level of E/M codes

Physician or qualified health professional	“A ‘physician or other qualified health care professional’ as an individual who is qualified by education, training, licensure/regulation (when applicable), and facility privileging (when applicable) who performs a professional service within his or her scope of practice and independently reports that professional service. These professionals are distinct from ‘clinical staff.’”
Clinical staff	“A clinical staff member is a person who works under the supervision of physician or other qualified healthcare professional, and who is allowed by law, regulation, and facility policy to perform or assist in the performance of a professional service, but does not individually report that professional service. Other policies may also affect who may report specific services.”

Definitions cited by the 2021 PFS referenced from CPT 2021 Professional Edition

CMS Incident-to Policy

- QHPs and clinical staff are not defined terms in the Social Security Act
  - Definitions are from the CPT Codebook, which is published by the American Medical Association (AMA)
- CMS arbitrarily ties Part B provider status to QHP status
  - AMA definition of QHP does not explicitly exclude pharmacists
  - Requirement that higher level E/M codes may only be billed by a QHP is derived from the CPT codebook
- **Nothing in Federal law requires CMS to limit pharmacist incident-to billing to the lowest level E/M codes**

Changes to CMS Incident-to Physician Supervision Requirements

Pre-COVID

- Pharmacist must be under “direct supervision” of an on-site physician
- Pharmacist must see the patient in the same clinic where referral originated
- Pharmacist must be employed, contracted or leased to clinic

Post-COVID (Thru 12/31/24)

- Pharmacist must be under “general supervision” – includes virtual remote supervision
- Pharmacist and supervising physician must both be employed/contracted/leased to the billing facility
- No pharmacist site restriction

Fiscal Impact of Incident-to Restrictions

Table 1: Actual and Determined Level of Pharmacist-led Services Incident to a Physician (2019-2021)**			
	Actual	**Total Determined**	**Determined** (excluding time)
Level of service, n(%)	-	-	-
Level 4 (99214)	0 (0%)	1496 (81.6%)	1114 (60.7%)
Level 3 (99213)	0 (0%)	321 (17.5%)	703 (38.3%)
Level 2 (99212)	0 (0%)	4 (0.2%)	5 (0.3%)
Level 1 (99211)	1834 (100%)	13 (0.7%)	12 (0.7%)
Reimbursement * **	**$22,704**	**$187,605.00**	**$174,640.00**
RVU	**1119.1**	**5268.6**	**4906.4**
Sustainability ** (encounters/day)**	**14.7**	**6.5**	**7.0**

** 21-month duration
*** based on average cost of clinical pharmacist salary + benefits, $160k
**** based on 2019 – 2020 CMS Physician Fee Schedule

Source: Nolan R Schmitz, PharmD, BCPS; University of Pittsburgh Medical Center

Incident-to Policy Options

1. CMS can reverse previous guidance and permit pharmacists to bill incident-to at higher level E/M codes
2. AMA can update CPT Codebook guidance
3. Congress can pass legislation permitting pharmacists to enroll as Medicare providers and seek reimbursement for at least one covered Part B service (provider status)
4. Congress can pass legislation requiring CMS to permit pharmacists to bill incident-to at higher level E/M codes

Incident-to Sign On Letter

- ASHP has drafted a letter and accompanying legislative language urging Congress to clarify CMS authority to reimburse for complex E/M services provided by pharmacists under physician supervision
- Legislation is specific to incident-to billing; would not establish pharmacists as providers
- Joint sign-on from ASHP, health systems and state affiliates
  - Sign on instructions sent to affiliates via email on **August 10, 2023**
  - Contact Kyle Robb(krobb@ashp.org) if you did not receive sign-on instructions or have questions

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