

## Title 42 – Public Health

### Chapter IV – Centers for Medicare & Medicaid Services, Department of Health and Human Services

#### Subchapter B – Medicare Program

#### Part 410 – Supplementary Medical Insurance (SMI) Benefits

#### Subpart B – Medical and Other Health Services

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##### EDITORIAL NOTE ON PART 410

**Editorial Note:** Nomenclature changes to part 410 appear at 62 FR 46037, Aug. 29, 1997.

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#### § 410.26 Services and supplies incident to a physician's professional services: Conditions.

(a) **Definitions.** For purposes of this section, the following definitions apply:

- (1) **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.
- (2) **Direct supervision** means, except as provided in paragraphs (a)(2)(i) and (ii) of this section, the level of supervision by the physician (or other practitioner) of auxiliary personnel as defined in § 410.32(b)(3)(ii). The presence of the physician (or other practitioner) required for direct supervision may include virtual presence through audio/video real-time communications technology (excluding audio-only) for services without a 010 or 090 global surgery indicator.
- (3) **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.
- (4) **Independent contractor** means an individual (or an entity that has hired such an individual) who performs part-time or full-time work for which the individual (or the entity that has hired such an individual) receives an IRS-1099 form.
- (5) **Leased employment** means an employment relationship that is recognized by applicable State law and that is established by two employers by a contract such that one employer hires the services of an employee of the other employer.
- (6) **Noninstitutional setting** means all settings other than a hospital or skilled nursing facility.
- (7) **Practitioner** means a non-physician practitioner who is authorized by the Act to receive payment for services incident to his or her own services.
- (8) **Services and supplies** means any services or supplies (including drugs or biologicals that are not usually self-administered) that are included in section 1861(s)(2)(A) of the Act and are not specifically listed in the Act as a separate benefit included in the Medicare program.

(b) Medicare Part B pays for services and supplies incident to the service of a physician (or other practitioner).

- (1) Services and supplies must be furnished in a noninstitutional setting to noninstitutional patients.
- (2) Services and supplies must be an integral, though incidental, part of the service of a physician (or other practitioner) in the course of diagnosis or treatment of an injury or illness.
- (3) Services and supplies must be commonly furnished without charge or included in the bill of a physician (or other practitioner).
- (4) Services and supplies must be of a type that are commonly furnished in the office or clinic of a physician (or other practitioner).

- (5) In general, services and supplies must be furnished under the direct supervision of the physician (or other practitioner). Designated care management services can be furnished under general supervision of the physician (or other practitioner) when these services or supplies are provided incident to the services of a physician (or other practitioner). Behavioral health services can be furnished under general supervision of the physician (or other practitioner) when these services or supplies are provided by auxiliary personnel incident to the services of a physician (or other practitioner). The physician (or other practitioner) supervising the auxiliary personnel need not be the same physician (or other practitioner) who is treating the patient more broadly. However, only the supervising physician (or other practitioner) may bill Medicare for incident to services.
- (6) Services and supplies must be furnished by the physician, practitioner with an incident to benefit, or auxiliary personnel.
- (7) Services and supplies must be furnished in accordance with applicable State law.
- (8) A physician (or other practitioner) may be an employee or an independent contractor.
- (9) Claims for drugs payable administered by a physician as defined in section 1861(r) of the Social Security Act to refill an implanted item of DME may only be paid under Part B to the physician as a drug incident to a physician's service under section 1861(s)(2)(A). These drugs are not payable to a pharmacy/supplier as DME under section 1861(s)(6) of the Act.

(c) **Limitations.**

- (1) Drugs and biologicals are also subject to the limitations specified in § 410.29.
- (2) Physical therapy, occupational therapy and speech-language pathology services provided incident to a physician's professional services are subject to the provisions established in §§ 410.59(a)(3)(iii), 410.60(a)(3)(iii), and 410.62(a)(3)(iii).

[51 FR 41339, Nov. 14, 1986, as amended at 66 FR 55328, Nov. 1, 2001; 67 FR 20684, Apr. 26, 2002; 69 FR 66421, Nov. 15, 2004; 77 FR 69361, Nov. 16, 2012; 78 FR 74811, Dec. 10, 2013; 79 FR 68002, Nov. 13, 2014; 80 FR 14870, Mar. 20, 2015; 80 FR 71372, Nov. 16, 2015; 81 FR 80552, Nov. 15, 2016; 87 FR 70223, Nov. 18, 2022; 89 FR 98555, Dec. 9, 2024; 90 FR 50007, Nov. 5, 2025]