



Related MLN Matters Article #: MM5288

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## Incident to Policy Update

### Key Words

MM5288, CR5288, R87BP, Incident

### Provider Types Affected

Physicians, nonphysician practitioners (NPP), and other providers who bill Medicare Carriers and Part A/B Medicare Administrative Contractors (A/B MACs) for services provided to Medicare beneficiaries

### Key Points

- The effective date of the instruction is June 2, 2008.
- The implementation date is June 2, 2008.
- The number of services provided as incident to the services of physicians/NPPs has grown continuously. As the benefit is applied in various settings for different services, the original instructions appeared insufficient.
- Change Request (CR) 5288 clarifies current Medicare policy regarding services provided as incident to the services of physicians or NPPs in the office. Specifically, it updates information in the *Medicare Benefit Policy Manual*.
- The update of the *Medicare Benefit Policy Manual* is extensive. To view the manual update itself, providers may review CR5288 at <http://www.cms.hhs.gov/Transmittals/downloads/R87BP.pdf> on the Centers for Medicare & Medicaid Services (CMS) website

### Key Points in CR5288

- Carriers and A/B MACs will interpret a service as integral to the initial service when it is both essential to, and connected to, that service.
- When carriers and A/B MACs are aware that a service is furnished by staff other than the physician/NPP who is overseeing the patient's care, they will not pay for services incident to a physician's/NPP's service unless the services meet the requirements in the *Medicare Benefit Policy Manual* (See the reference to the relevant sections in the Important Links section below).

- When carriers and A/B MACs are aware that a service is furnished by staff other than the physician/NPP overseeing the patient's care, carriers and A/B MACs will not pay for services incident to a physician's/NPP's service unless there is documentation authorizing the incident to service.
- Carriers and A/B MACs will not pay for services incident to the services of a physician/NPP if the services are for a new problem.
- Carriers and A/B MACs will use clinical judgment in determining whether the record contains sufficient documentation to indicate that a physician/NPP is overseeing the provision of services appropriately for the patient's condition, and whether the person furnishing the incident to service is appropriately qualified.
- Carriers and A/B MACs will apply the policies for services incident to a physician's/NPP's services in the office only in the identifiable boundary of an office or in a single room.
- Where services are provided in a home or in a skilled nursing facility (SNF), outside the boundary of an office suite, carriers and A/B MACs will require that the supervisor be in the same room as the patient and the staff furnishing a service, providing the equivalent of personal supervision.
- For payment purposes, carriers and A/B MACs will require:
  - That documentation in the medical record conform to the policy in CR5288;
  - An authorization for services provided incident to the physician/NPP initial service; and
  - That the name and professional identities of the people who furnished the services must be in the medical record.
- The authorization may be an "order" which may be part of the care plan. The authorization does not have to be in any specific form (it may be an order or part of a plan, treatment note, or team meeting note) but should indicate the physician's intent that further services will be provided.
- It is appropriate that the physician may plan to provide a follow-up service personally and later assign the service to qualified staff. It is not necessary that a formal order be written to the staff, but services may not be billed if staff has not been authorized to provide them and that authorization must be present in the medical record.
- The authorization will not be on the claim and, therefore, will be identified only when the record is reviewed.
- Services unrelated and not essential to the initial service will not be paid as incident to the initial covered service. These services may represent new problems for which an initial physician/NPP service is required.
- Carriers and A/B MACs are not required to perform medical review on all claims to determine whether there is a new problem, but if medical review reveals that there is a new problem, they will not pay for that service incident to the physician's service without a prior physician's service.
- Staff may be overqualified to provide a service, but the service will not be allowed as incident to if the service should have been provided under another benefit such as a physician's service or services of another professional. Carriers and A/B MACs will take special care in determining whether services provided by a physician or other professional incident to the services of a physician are actually

incidental services or they should be billed (e.g., as physician services by enrolled physicians, or as diagnostic tests).

- CMS requires that the professional title of the person who provides the service be written in the medical record in order that carriers and A/B MACs will know the staffs' professional qualifications or licensure.

## Important Links

The related MLN Matters article can be found at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5288.pdf> on the CMS website.

The official instruction (CR5288) regarding this change may be viewed at

<http://www.cms.hhs.gov/Transmittals/downloads/R87BP.pdf> on the CMS website. Providers will find attached to that CR the following updated *Medicare Benefit Policy Manual*, Chapter 15 (Covered Medical and Other Health Services), sections:

- 50.3 (Incident To Requirements for Coverage of Drugs and Biologicals That Are Not Usually Self-Administered);
- 60 (Services and Supplies Furnished Incident To a Physician's/NPP's Professional Service);
- 60.1 (Incident To Physician's/NPP's Professional Services in Office or Physician/NPP Owned and Operated Clinic);
- 60.2 (Services of Nonphysician Personnel Furnished Incident To Physician's Services); and
- 60.3 (Incident To Physician's/NPP's Services in Physician/NPP Owned and Operated Clinics).

All other manuals referenced in CR5288 are available at <http://www.cms.hhs.gov/Manuals/IOM/list.asp> on the CMS website.