



Health Care Fraud and Abuse Alert: What CMS's New Billing Requirement For "Incident To" Services Means For Medicare Providers.

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In the final Medicare Physician Fee Schedule for 2014 (2014 PFS), CMS implemented a new condition of payment for "incident to" services that has significant fraud and abuse implications for any Medicare provider who relies on reimbursement revenue from these types of services. CMS allows providers to bill for services, such as routine venipuncture or rehabilitation therapy, that are performed by non-physicians "incident to" the professional services of a physician. Beginning on January 27, 2014, providers can only bill Medicare for "incident to" services that are furnished in accordance with applicable State laws. As a result, any non-physician personnel who furnish "incident to" services must be properly licensed and/or qualified under State law to perform such services in order for them to be reimbursed by Medicare.

This new condition of payment was recommended by OIG following a recent investigation in which OIG found numerous instances of providers billing Medicare for "incident to" services that had been furnished by non-qualified personnel. Although CMS has long required billing providers to be properly licensed and/or qualified under State law to perform the services that they bill to Medicare, CMS has not previously imposed a similar requirement on auxiliary personnel who perform "incident to" services. As a result, CMS has had limited legal recourse when a provider submitted claims for "incident to" services that had been performed by non-licensed personnel. Now, providers who bill for "incident to" services can face potential payment audits, recoupment actions, civil monetary penalties, and False Claims Act litigation if they bill Medicare for services performed by non-qualified personnel.

As a result of this new condition of payment, providers who bill Medicare for ?incident to? services should review their policies, procedures, and practices to ensure that any personnel who are performing ?incident to? services are properly licensed, certified, or otherwise qualified under State law to perform such services.

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