Regulatory Issues Surrounding Physician Assistants (PAs) and Nurse Practitioners (NPs): It's Not Just About Billing

HCCA
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Disclaimer

A presentation can neither promise nor provide a complete review of the myriad of facts, issues, concerns and considerations that impact upon a particular topic. This presentation is general in scope, seeks to provide relevant background, and hopes to assist in the identification of pertinent issues and concerns. The information set forth in this outline is not intended to be, nor should it be construed or relied upon, as legal advice. Recipients of this information are encourage to contact their legal counsel for advice and direction on specific matters of concern to them.

Program Objectives

- Discuss and utilize a step-by-step tool kit to comply with physician collaboration and supervision requirements
- Learn how to ensure adherence to your state scope of practice requirements
- Take away an easy-to-use overview of Medicare rules for “incident to” and shared services tip sheet

Agenda

- NP and PA Scope of Practice
- Medicare Rules for NP and PA Services
- Summary of Medicare rules for NP and PA Services
  - Tip Sheet
- Questions/Discussion

Scope of Practice

- Scope of practice may be defined by:
  - Education and Experience
  - State Law
  - Facility Policy
  - Physician Delegation

Scope of Practice (continued)

- **Education and Experience**
  - Accredited NP and PA Education Programs
  - Experience in clinical work environment and continuing medical education
  - Credentials and Licensure
    - **Maintain documentation of NP and PA credentials, current licensure, etc.**

Scope of Practice (continued)

- **State Law**
  - **NP and PA Qualifications**
    - Licensure by State
    - NPs and PAs function in a variety of practice situations, in a wide range of specialties
    - Variations by State

Scope of Practice (continued)

- **State Law**
  - **Covered and Noncovered Services**
    - Coverage limited to the services NPs and PAs are legally authorized to perform in accordance with State law
    - Service may not be covered if otherwise excluded from Medicare coverage even though a NP or PA may be authorized to perform service

Scope of Practice (continued)

- NP's collaborating physician
- PA's supervising physician (or employer as provided under state law)
- Physician primarily responsible for the overall direction and management of the NP's and PA's professional activities and assuring services are medically necessary
  - **Maintain documentation of collaboration, supervision, scope of practice, protocols, etc.**

Scope of Practice (continued)

- **Facility Policy**
  - Facilities have a role in determining the scope of practice for health care professionals who practice in their institutions
  - Privileges are commonly granted in accordance with community need and norms
  - Facility privileges must conform to state law
    - **Annually review and update all facility policies**

Scope of Practice (continued)

- **Physician Delegation**
  - Delegatory determination of scope of practice made by collaborating or supervising physician
  - Flexible and customized "healthcare team" approach
  - Physician is responsible for collaboration or supervision of the NP or PA
    - In person, telecommunication or other means

Medicare Rules for NP and PA Services

- Medicare reimburses NP and PA services if:
  - No other entity is billing or receiving payment for that service
  - The service is a covered Medicare benefit
  - The NP or PA codes and documents in accordance with AMA and CMS documentation guidelines

Medicare Rules for NP and PA Services (continued)

- Medicare reimburses NP and PA services if:
  - When billed as an "incident to" service, all "incident to" requirements are met :
    - Integral, although incidental, part of the physician's professional service
    - Of a type that is commonly furnished in a physician's office or clinic
    - Furnished under the physician's direct personal supervision
    - A physician (or other practitioner) may be an employee, independent contractor or a contactor under an indirect contractual arrangement

Medicare Rules for NP and PA Services (continued)

- Medicare Benefit Categories
  - SSA, §1861(s)(2)(A)
    - "Incident to" services and supplies
    - Relationship of "incident to" to other types of services
    - <u>Applies when no other benefit category under SSA §1861(s) exists</u>

Medicare Rules for NP and PA Services (continued)

- Medicare Benefit Categories
  - Example of other benefit category:
  - **Diagnostic test services fall under SSA, §1861(s)(3)**
    - Must meet the requirements of the diagnostic test benefits and applicable supervision rules

Medicare Rules for NP and PA Services (continued)

- Supervision of Diagnostic Test Services
  - If state law permits, NP or PA may order, interpret and personally perform diagnostic test services; however, NPs and PAs are not permitted by CMS to supervise Medicare diagnostic test services

NP and PA Medicare Billing Options

- Three options for billing NP and PA Services:
  - Medicare's "Incident to" rules
  - Medicare's Split/Shared E/M visit rule
  - Billing under NP or PA name/number

Non-Physician Practitioner (NPP) Services
Nurse Practitioner (NP) and Physician Assistant (PA)

Three Options to Bill Medicare

1. "Incident to" Services

- Must be integral, although incidental part of the physician's personal professional service
- NP or PA may be an employee, independent contractor or a contractor under an indirect contractual arrangement
- Physician must first see patient and develop the plan of care the NP or PA will carry out
- Physician must remain active in patient's ongoing treatment
- Direct physician supervision is required
- Bill service under physician's name and number
  - Medicare reimbursement 100% of MPFS amount

<u>or</u>

- Bill service under NP's or PA's name and number
  - Medicare reimbursement 85% of MPFS amount
- "Incident to" not applicable to:
  - Consultation services
  - New patient office services if physician has not seen patient and established plan of care

2. Split/Shared Service

- Both a physician and NP or PA provide services in the <u>**office setting**</u> for the same encounter
- "Incident to" criteria must be met
- Bill service under physician's name and number
  - Medicare reimbursement 100% of MPFS amount

<u>or</u>

- Bill service under NP's or PA's name and number
  - Medicare reimbursement 85% of MPFS amount

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- Both a physician and NP or PA provide services in the <u>**hospital inpatient, hospital outpatient, observation or emergency department**</u> on the same day
- "Incident to" not applicable in an institutional setting
- Bill service under physician's name and number
  - Medicare reimbursement 100% of MPFS amount

<u>or</u>

- Bill service under NP's or PA's name and number
  - Medicare reimbursement 85% of MPFS amount

3. NP's or PA's Name and Number

- Service performed by NP or PA
  - Consultation services
  - New patient services
  - Established patient services
  - Hospital outpatient services
  - Hospital inpatient services
  - Emergency Department services
  - Other services
- Bill service under NP's or PA's name and number
  - Medicare reimbursement 85% of MPFS amount

NP and PA Medicare Billing Options (continued)

- **1. "Incident to" Services**

- Under "incident to", physician services are allowed at 100% of the Medicare physician fee schedule (MPFS)
- The physician sees the patient for the first visit and then remains actively involved in the care

NP and PA Medicare Billing Options (continued)

- **2. Medicare Split/Shared Services**
  - Publication 100-04 Medicare Claims Processing Manual, Chapter 12, §30.6 Evaluation and Management Service Codes –General (Codes 99201-99499)

Office/Clinic Setting

- Physician performs office E/M service, service is reported using physician name/number
- When an office established E/M service is a shared/split encounter and all "incident to" rules are met, service is reported using physician name/number or NP or PA name/number
- When an office established E/M service is a shared/split encounter and "incident to" is not met, service is reported using NP or PA name/number providing the service

NP and PA Medicare Billing Options (continued)

- **2. Medicare Split/Shared Services**

- **Hospital Inpatient/Outpatient or Emergency Department Setting**

  Includes:
  Hospital inpatient visits, outpatient visits, observation services, emergency department services,

  Does not include:
  - ✓ Consultation services
  - ✓ Critical care services
  - ✓ Surgical services

  Does not include locations such as:
  - ✓ SNFs
  - ✓ NFs
  - ✓ Home services
  - ✓ Assisted living facilities

NP and PA Medicare Billing Options (continued)

- **3. NP's or PA's Name and Number**
  - Consultation services may not be billed as a shared E/M visit between a physician and a NP or PA
  - **If state law permits, NP or PA can perform a consultation and bill under his/her own name and number**

NP and PA Medicare Billing Options (continued)

- NP or PA may request a consultation
- NP or PA may perform a consultation (allowed at 85% of the MPFS)
  - However, all the work must be performed by the NP or PA

OR

- The physician may perform a consultation (allowed at 100% of the MPFS)
  - All the work must be performed by the physician

NP and PA Medicare Billing Options (continued)

- Discussion of Tip Sheet
  - Separate Handout

Overview of Medicare Billing Rules for Split/Shared E/M Services

NP and PA Services

- NP and PA compliance concerns identified during internal and external reviews:
  - Billing NP or PA services provided in the Emergency Department (ED) under the physician name/number
  - Patient seen for consultation by NP or PA and billed under the name/number of the physician
  - Patient seen for consultation by NP or PA and MD (split/shared service) and billed with consultation code
  - New patient seen by NP or PA and MD (split/shared service) and billed with new patient visit code
  - Billing E/M service as "incident to" in the office setting with no physician supervision
  - Billing E/M service as "incident to" in the hospital setting

Summary
Compliance Strategies

- Team effort and communication
- Written internal policies and procedures
  - Are policies being followed?
  - Are policies annually reviewed and updated?
  - Develop methods to accurately capture all NP and PA services
- Ongoing Education
  - Staying current with the rules
    - NP and PA scope of practice, state laws, Medicare

Summary
Compliance Strategies

- Conduct internal and external reviews
  - NP and PA services
  - Split/shared E/M services
  - "Incident to" services
    - OIG Work Plans for 2002, 2003, 2004 and 2007
  - Discuss review results with staff

Questions/Discussion

Resources

- Scope of Practice
  - NPs
    - Rules governing the advance practice of nursing
      - California Board of Registered Nursing
        - Example: www.rn.ca.gov/practice/pdf/npr-b-19.pdf
      - Iowa Board of Nursing
        - Example: www.state.ia.us/nursing
  - PAs
    - http://www.aapa.org/gandp/statelaw.html
    - http://www.aapa.org/gandp/statereggguidelines.html

Resources

- Medicare
  - Internet Only Manuals
    - http://www.cms.hhs.gov/Manuals/IOM/list.asp#TopOfPage
      - Publication 100-02 Medicare Benefit Policy Manual, Chapter 15, §60
      - Publication 100-04 Medicare Claims Processing Manual, Chapter 12, §30.6
  - MedLearn Matters – www.cms.hhs.gov/MLNMattersArticles
    - Number MM4215
    - Number MM3096
  - Provider Inquiry Assistance – NPP Questions & Answers
    - www.cms.hhs.gov/ContractorLearningResources/downloads/JA0418.pdf