



Donald A. Balasa, JD, MBA  
AAMA Chief Executive Officer and Legal Counsel

# “Incident-to” billing

## Medical assistants’ services under the Medicare CCM program

I have received numerous questions about whether medical assistants’ services can be billed *incident to* the services of physicians and nonphysician practitioners (i.e., physician assistants, nurse practitioners, certified nurse-midwives, and clinical nurse specialists) under Medicare’s Chronic Care Management (CCM) program. The answer to this question is generally yes. Incident-to services under the CCM program are *not* limited to services of licensed professionals, such as registered nurses or licensed practical/vocational nurses. The following is an explanation of why this is the case.

*(Note, Medicare’s Transitional Care Management [TCM] program is similar to its CCM program. This article will not discuss incident-to billing of medical assistants’ services under the TCM program; however, there will be references to TCM.)*

### CCM services

The CCM program went into effect January 1, 2015, and provides coverage to individuals enrolled in the Medicare Fee-for-Service program with “multiple (two or more) chronic conditions expected to last at least 12 months, or until the death of

the patient.”<sup>1</sup> Physicians and eligible non-physician practitioners can be reimbursed under the CCM program for “non-face-to-face care coordination services furnished to Medicare beneficiaries with multiple chronic conditions.”<sup>1</sup> Payment is made by Medicare under the Current Procedural Terminology (CPT) code 99490 for “at least 20 minutes of *clinical staff* time directed by a physician or other qualified health care professional per calendar month.”<sup>1</sup> [Emphasis added.]

The key question is which health professionals are considered clinical staff under CPT code 99490. Note the following from the Centers for Medicare & Medicaid Services (CMS):

Services provided directly by an appropriate physician or nonphysician practitioner, or by clinical staff incident to the billing physician or nonphysician practitioner, count toward the minimum amount of service time required to bill the CCM service (20 minutes per calendar month).

Nonclinical staff time cannot be counted. Consult the CPT definition of “clinical staff” and the Medicare PFS [Physician Fee Schedule] “incident to” rules to determine whether time by specific individuals may be counted toward the minimum time requirement.<sup>1</sup>

### CMS clarifications of *clinical staff* under 99490

Note the following from “Frequently Asked Questions about Billing Medicare for Chronic Care Management Services”:

1. **CPT code 99490 requires at least 20 minutes of time per calendar month by “clinical staff” in order to bill the code. Who qualifies as “clinical staff”? ...**

In most cases, we believe clinical staff will provide CCM services incident to the services of the billing physician (or other appropriate practitioner who can be a physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse-midwife). Practitioners should consult the CPT definition of the term “clinical staff.”<sup>2</sup>

The Medicare TCM program is comparable to the CCM program. An answer similar to the above is found in “Frequently Asked Questions about Billing the Medicare Physician Fee Schedule for Transitional Care Management Services”:

- **The CPT book describes services by the physician’s staff as “and/or licensed clinical staff under his or her direction.” Does this mean only RNs [registered nurses] and LPNs [licensed practical nurses], or may medical assistants also provide some parts of the TCM services?**

Medicare encourages practitioners to follow CPT guidance in reporting TCM services (see the CPT definition of the term “clinical staff”). Medicare requires that applicable state law, scope of practice, and incident-to rules must be met in order for a practitioner to bill the MPFS [Medicare Physician Fee Schedule] for TCM services.<sup>3</sup>

Most significantly, the following excerpt from the CMS Final Rule for the CCM program demonstrates that *clinical staff* and *auxiliary personnel* are synonymous and interchangeable terms:

**Section 410.26 Services and supplies incident to a physician’s professional services:**

**Conditions.**

\*\*\*\*\*

(b) \*\*\*

(5) In general, services and supplies must be furnished under the direct supervision of the physician (or other practitioner). Services and supplies furnished incident to transitional care management and chronic care management services can be furnished under general supervision of the physician (or other practitioner) when these services or supplies are provided by *clinical staff* ...

(6) Services and supplies must be furnished by the physician, practitioner with an incident-to benefit, or *auxiliary personnel*.<sup>4</sup> [Emphasis added.]

**The CPT definition of *clinical staff***

The “Instructions for Use of the CPT Codebook” defines *clinical staff* as follows:

A clinical staff member is a person who works under the supervision of a physician or other qualified health care professional and who is allowed by law, regulation, and facility policy to perform or assist in the performance of a specified professional service, but who does not individually report that professional service.<sup>5</sup>

The laws of all American jurisdictions permit unlicensed allied health professionals, such as medical assistants, to “perform or assist in the performance of specified professional services” as directed to do so by a physician or other qualified health care professional.<sup>5</sup> Consequently, medical assistants meet the CPT definition of *clinical staff*.

**Medical assistants are clinical staff or auxiliary personnel under the CCM program**

Both the CMS and CPT definitions make it clear that medical assistants are clinical staff or auxiliary personnel under the CCM program. Thus, the definition of *clinical staff* is *not* limited to licensed health care professionals. Because physicians and nonphysician practitioners are permitted under state law to delegate to medical assistants the performance of certain non-face-to-face tasks, the CMS rules do not prohibit the billing of such services as incident to the CCM services of a practitioner. For example, I am not aware of laws in any state that forbid a physician from assigning to a competent medical assistant the verbatim receiving of information from a patient for the physician’s review, and the verbatim conveying of information to a patient as ordered by the physician. However, it is my legal opinion that state laws do not permit providers to delegate to medical assistants any tasks that require the exercising of independent judgment, or the making of clinical assessments, evaluations, or interpretations.

**CMS definition of *incident to***

To reiterate, medical assistants’ services are furnished incident to the services of a physician or nonphysician practitioner. Note the following from chapter 15, section 60, of the *Medicare Benefit Policy Manual*:

Incident to a physician’s professional services means that the services or supplies are furnished as an integral, although incidental, part of the physician’s personal professional services in the course of diagnosis or treatment of an injury or illness. ...

Coverage of services and supplies incident to the professional services of a physician in private practice is limited to situations in which there is *direct physician supervision of auxiliary personnel*. ...

Thus, where a physician supervises *auxiliary personnel* to assist him/her in rendering

services to patients and includes the charges for their services in his/her own bills, the services of such personnel are considered incident to the physician’s service if there is a physician’s service rendered to which the services of such personnel are an incidental part and there is *direct supervision* by the physician.<sup>6</sup> [Emphasis added.]

**General supervision for clinical staff services under CCM**

Although the *Medicare Benefit Policy Manual* excerpt generally requires incident-to services to be under direct provider supervision, the CMS rules make a specific exception for incident-to services under the CCM program. Note the following excerpt from the CMS CCM Final Rule in the *Federal Register* under the heading “CCM and TCM Services Furnished Incident to a Physician’s Services under General Physician Supervision”:

We established an exception to the usual rules that apply to services furnished incident to the services of a billing practitioner. Generally, under the “incident to” rules, practitioners may bill for services furnished incident to their own services if the services meet the requirements specified in our regulations at Section 410.26. One of these requirements is that the “incident to” services must be furnished under direct supervision, which means that the supervising practitioner must be present in the office suite and be immediately available to provide assistance and direction throughout the service (but does not mean that the supervising practitioner must be present in the room where the service is furnished). ...

Therefore, we proposed to revise our regulation at Section 410.26, which sets out the applicable requirements for “incident to” services, to permit TCM and CCM services provided by clinical staff incident to the services of a practitioner to be furnished under the *general supervision of a physician or other practitioner*. As with other “incident to” services, the physician (or other practitioner) supervising the auxiliary personnel need not be the same physician (or other practitioner) upon whose professional service the “incident to” service is based. ... [Emphasis added.]

... Under the revised regulation, then, the time spent by clinical staff providing aspects of TCM and CCM services can be counted toward the TCM and CCM time requirement at any time, provided that the clinical staff are under the general supervision of a practitioner and all requirements of the revised “incident to” regulations at Section 410.26 are met.<sup>4</sup>

### Medical assistants’ services are billable under CCM

Medical assistants are classified as clinical staff or auxiliary personnel under the CCM program. As such, they may be delegated non-face-to-face tasks incident to the services of a physician or a nonphysician practitioner as long as state law permits medical assistants to perform these tasks under general provider supervision. Therefore,

under CCM, medical assistants’ services are billable incident to the services of the delegating practitioner. ♦

Questions? Contact Donald A. Balasa, JD, MBA, at [dbalasa@aama-ntl.org](mailto:dbalasa@aama-ntl.org) or 800/228-2262.

#### References

1. US Department of Health and Human Services; Centers for Medicare & Medicaid Services. Chronic care management services. <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/ChronicCareManagement.pdf>. Published May 2015. Accessed August 11, 2016.
2. Centers for Medicare & Medicaid Services. Frequently asked questions about billing Medicare for chronic care management services. [https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/Downloads/Payment\\_for\\_CCM\\_Services\\_FAQ.pdf](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/Downloads/Payment_for_CCM_Services_FAQ.pdf). Published March 17, 2016. Accessed August 12, 2016.
3. Centers for Medicare & Medicaid Services. Frequently asked questions about billing the Medicare Physician Fee Schedule for transitional care management services. <https://www.cms.gov/medicare/medicare-fee-for-service-payment/physicianfeesched/downloads/faq-tcms.pdf>. Published March 17, 2016. Accessed August 12, 2016.
4. Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule, Clinical Laboratory Fee Schedule, Access to Identifiable Data for the Center for Medicare and Medicaid Innovation Models and Other Revisions to Part B for CY 2015. *Fed Regist.* 2014;79(219):67547-68092. 42 CFR §403, 405, 410, et al.
5. Coding corner. American College of Osteopathic Internists. <https://www.acoi.org/practice-management/coding/defining-clinical-staff-and-other-qualified-health-care-professionals.html>. Accessed August 11, 2016.
6. Centers for Medicare & Medicaid Services. Covered medical and other health services. In: *Medicare Benefit Policy Manual*. CMS publication 100-02. <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf>. Reviewed May 13, 2016. Accessed August 12, 2016.



## Keep your benefits coming—renew your membership today!

Sign in on the AAMA website and click the "Renew My Membership" link from the left-side menu on the "My Account" page. **Haven't created a website account yet?** Create your new account using your e-mail address.

Visit [www.aama-ntl.org/account](http://www.aama-ntl.org/account)