

# Reimbursement Policy

## Incident-To Services

REIMBURSEMENT POLICY NUMBER: 5

**Effective Date:** 8/1/2024

**Last Review Date:** 7/2024

**Next Annual Review:** 11/2024

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**INSTRUCTIONS FOR USE:** Company reimbursement policies serve as guidance for the administration of plan benefits. Reimbursement policies do not constitute medical advice nor a guarantee of coverage. Company reimbursement policies are reviewed annually. The Companies reserve the right to determine the application of reimbursement policies and make revisions to reimbursement policies at any time. The scope and availability of all plan benefits are determined in accordance with the applicable coverage agreement. Any conflict or variance between the terms of the coverage agreement and Company Reimbursement Policy will be resolved in favor of the coverage agreement.

### SCOPE AND APPLICATION

Provider Type:

- Professional Claims
- Providence Health Plan Participating Providers
- Non-Participating Providers

Plan Product:

- Commercial
- Medicare
- Medicaid/Oregon Health Plan (OHP)

### POLICY STATEMENT

- I. Services billed as “incident to” **may be reimbursed** when **all** of the following are met:

**SCOPE:** Providence Health Plan, Providence Health Assurance, and Providence Plan Partners as applicable (referred to individually as “Company” and collectively as “Companies”).

- A. Addressing only established problems, and the physician must have personally seen the member and developed a plan of care for that particular condition;
  - B. An integral, yet incidental, part of the supervising provider's service;
  - C. Commonly rendered without charge (included in the supervising provider's bill);
  - D. Of a type that are commonly furnished in a physician's office or clinic;
  - E. Furnished under the supervising provider's **direct** supervision (see [Policy Guidelines](#) below for more information regarding supervision levels); and
  - F. Furnished by an individual with a valid employment arrangement with the supervising provider (see [Policy Guidelines](#) below for more information regarding "employment arrangement").
- II. Services would **not** be eligible to be reported as "incident to" services when the above requirements are not met, including but not limited to:
- A. The service is rendered for a new medical problem or complaint;
  - B. The service is not an integral or incidental part of a supervising physician's services;
  - C. The service is not of the type commonly furnished in a physician's office or clinic;
  - D. Services are rendered during a time when the supervising physician (or in some instances the supervising non-physician practitioner or NPP) has left the office (for any reason);
  - E. Services are rendered for a medical condition when a physician is not actively involved in the care or treatment plan for that medical condition.
- III. Except for auxiliary personnel, **all providers billing "incident to" are required to be credentialed with Company**. Providers who are excluded from billing the Company may not bill "incident to."
- IV. Nurse practitioners (NP's) and physicians' assistants (PA's) licensed by the state and credentialed by the Company may either bill for their services independently or bill under the physician's name using the "incident to" guidelines when all "incident to" requirements" are met.
- V. Coverage of services rendered by auxiliary personnel who are **not** licensed by the state to practice independently is limited to those services performed while in the employment of a physician and under the direct supervision of a physician or physician extender.
- A. If a **solo** practitioner, he/she must directly supervise the care.
  - B. IF a **group** practice, any physician or physician extender who is a member of the group may be present in the office to supervise.
  - C. Auxiliary personnel subject to the restrictions of this provision include pharmacists, nurses (RN, LPN), medical assistants, technicians, and other aides.
  - D. See [Billing and Coding Guidelines](#) below for specific CPT/HCPCS information.
- VI. Auxiliary personnel may administer influenza vaccine without physician supervision when furnished in compliance with any applicable State law.

### Virtual (Telehealth) Services

- VII. Telehealth (aka, telemedicine or services provided virtually) may be billed under this “incident to” provision when **all** of the following are met:
  - A. All criteria from Criterion II are met; **and**
  - B. The service is an eligible telehealth service.
- VIII. Telehealth services are **not eligible** to be reported under the incident-to provision when all of Criterion IX is not met, **or** if any of the non-covered scenarios apply (see Criterion III).

**Chiropractors, Chiropractic Assistants (CA), and Licensed Massage Therapists (LMT)**

- IX. Chiropractic assistants (CA) or licensed massage therapists (LMT) performing manual therapies/modalities under the direct supervision of a chiropractor may bill “incident to” the supervising chiropractor.

**Physical Therapists (PT), Occupational Therapists (OT) and Physical Therapy Assistants (PTA)**

- X. Physical therapists and occupational therapists who are credentialed with Company may bill physical therapy (PT) or occupational therapy (OT) services “incident to” a physician, NP, or PA. All supervision requirements, employment requirements, and any other requirements for billing “incident to” as outlined for auxiliary personnel and defined in this policy must be met.
- XI. PT or OT services provided by non-physician practitioners who are not credentialed with Company are **not** billable services.
- XII. Physical therapy assistants (PTA) performing within scope of license under direct supervision of a physical therapist may bill “incident to” the supervising physical therapist. PTAs may not provide evaluative or assessment services, make clinical judgments or decisions; develop, manage, or furnish skilled maintenance program services; or take responsibility for the service. They must act at the direction and under the supervision of the treating physical therapist and in accordance with state laws.

**POLICY GUIDELINES**

**BACKGROUND**

Generally, all licensed and credentialed providers (both physicians and non-physician practitioners) submit claims for services they perform under their own name and national provider identified (NPI). However, in some instances, services may be reported as “incident to,” meaning the services rendered by a non-physician practitioner or auxiliary staff member are reported under the supervising physician’s or supervising non-physician practitioner’s name and NPI instead, as if the physician personally performed the service in question.

**General**

In order to be billed under the physician's, certified NPP's, or other qualified provider's name, the services ""must meet **all** of the following requirements:

1. The services must be an integral, although incidental, part of the supervising provider's professional service;
2. The services must be commonly rendered without charge or included in the supervising provider's bill;
3. The services must be of a type that are commonly furnished in providers' offices or clinics;
4. The services must be furnished under the supervising provider's direct personal supervision; and
5. The services must be furnished by an individual who is an employee of the supervising provider and is either (1) not licensed by the state to practice independently or (2) is licensed by the state to practice independently and is credentialed by Company.

In addition to the above requirements, services may only be billed "incident to" when the following conditions have been satisfied by the supervising physician:

1. Physician must perform the initial service.
2. Physician must create a plan of treatment.
3. Physicians must initiate any necessary change in treatment.
4. Physician must see the patient when there are changes in the patient's status or condition.

In the 'incident to' scenario, the NPP or auxiliary staff are expected to be carrying out a treatment plan initiated by the physician, and there must be documentation showing that the physician has seen the patient at regular intervals and at every change of therapy or status. Therefore, the physician must periodically see the patient at a frequency which reflect their active participation in and management of the course of treatment.

### **Non-Physician Practitioners (NPP)**

Since nurse practitioners (NPs), clinical nurse specialists (CNSs), and physician assistants (PAs) can see new patients or established patients with new problems without physician supervision, and they can enroll and receive their own provider billing number, services provided by these specialties would only be considered 'incident to' if all the above conditions are met. If all the above conditions are not met, the service is not truly 'incident to' and cannot be billed under a supervising physician's NPI.<sup>5</sup>

### **Auxiliary Personnel**

Each individual occasion of service by auxiliary personnel (or the furnishing of a supply) do **not** require a personal professional service by the physician. Such a service or supply could be considered to be incident to when furnished during a course of treatment where the physician performs an initial service and subsequent services of a frequency which reflect their active participation in and management of the course of treatment. (However, the direct supervision requirement must still be met with respect to every nonphysician service.)

The provider supervising the auxiliary personnel need not be the same provider who is primarily responsible for treating the patient. However, only the provider who supervises the auxiliary personnel providing the incident to services may bill the Company for those services.

Example: Doctor A and Doctor B are in a practice together. Dr. A has a patient come in for a wound check, but only Dr. B is in the office to supervise the auxiliary staff. Even though Dr. B is not the patient's usual physician, this would be an acceptable "incident to" situation; however, the claim would be submitted under Dr. A, since Dr. B was not the provider who supervised the auxiliary personnel on that date.

### **Inappropriate Incident To Scenarios**

The following are some examples of situations where the "incident to" provision would not be appropriate.

Example #1: Due to the nature of chiropractic services, they are not "of the type commonly furnished in a physician's office or clinic, and must be an integral, although incidental, part of the physician's professional services." If the chiropractor was not there to perform the services, would the medical physician be able to perform that same service? If that answer is "no," then the chiropractor would not be able to report their services under the "incident to" provision. Instead, the chiropractor would need to submit their claims under their own name and NPI.

Example #2: An assistant for a surgical procedure must bill independently and may not bill "incident to" the surgeon.

Example #3: A patient presents to the office for a routine wound check, but mentions a new medical complaint to the auxiliary personnel during the course of the visit. This visit cannot be billed under the incident-to provision because the physician would need to do a personal evaluation of the new complaint to make a diagnosis and create a treatment plan.

### **Incident To and Behavioral Health Services**

CMS allows "behavioral health services to be provided under the general supervision of a physician or non-physician practitioner (NPP), rather than under direct supervision, when these services or supplies are furnished by auxiliary personnel, such as LPCs and LMFTs, incident to the services of a physician (or NPP)." ([CMS Final Rule](#))

### **DEFINITIONS**

**An integral, although incidental, part of the provider's professional service:** "Integral, although incidental" means the services or supplies are furnished as part of the provider's personal professional services in the course of diagnosis or treatment of an injury or illness.

**Commonly rendered without charge or included in the provider's bill:** Services generally provided by the physician in the course of an office visit and not billed separately might be billed "incident to" when provided on a day when the patient does not see the physician. Examples would be a dressing change, blood pressure check, etc.

**Of a type that are commonly furnished in providers' offices or clinics:** Only services and supplies commonly furnished in providers' offices are covered under the "incident to" provision. Services or supplies not considered medically appropriate in an office setting would not be covered under the "incident to" provision.

**Furnished under the provider’s direct personal supervision:** Coverage of services and supplies “incident to” the professional services of a provider in private practice is limited to situations in which there is direct personal supervision by the billing provider.

If more than one provider supervises a service, the one who has the responsibility for the majority of the service should be identified on the claim. The provider billing number on the submitted claim must reflect the provider who was on site during the time of the encounter with the patient.

**Immediately Available:** According to CMS, "immediately available" means "without delay" so Noridian considers "immediately available" to mean the supervising physician is in the office suite or patient’s home, readily available and without delay, to assist and take over the care as necessary.<sup>5</sup>

**Initiating care:** If the patient has a new or worsened complaint, a physician must conduct an initial evaluation and management (E&M) for that complaint. The physician must establish the diagnosis and plan of care. Incident-to services cannot be rendered on the patient’s first visit, or if a change to the plan of care (e.g., medication adjustment) is required. ‘Incident to’ situations are essentially non-physician personnel carrying out elements of a treatment plan which has been initiated by the physician. There must be documentation to support that the physician has seen the patient at regular intervals and at every change of therapy or status.

**Provider Types**

Table 1 below provides examples of physicians, non-physician practitioners, physician extenders and auxiliary personnel.

**Table 1: Physician and Non-Physician Practitioner Examples**

**Note:** This is not meant to be an all-inclusive list.

Category	Examples
<i>Physician</i>	<ul style="list-style-type: none"> <li>• doctor of medicine (MD)</li> <li>• doctor of osteopathy (DO)</li> <li>• doctor of dental surgery or of dental medicine</li> <li>• doctor of podiatric medicine</li> <li>• doctor of optometry</li> <li>• chiropractor (limited to manual manipulation of the spine for subluxation)</li> </ul> <p>While not technically defined as “physicians” by Medicare, physical and occupational therapists are recognized service providers by Medicare and are able to provide services without direct physician supervision, submitting claims for the services they render. However, if they do provide services as auxiliary personnel, they may also bill under the “incident to” provision, when the “incident to” requirements are met.</p> <p><u>CMS Sources:</u></p> <ol style="list-style-type: none"> <li>1. <a href="#">Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 40.4 - Definition of Physician/Practitioner</a></li> </ol>

	<p>2. <a href="#">Medicare General Information, Eligibility, and Entitlement, Chapter 5 – Definitions, 70 - Physician Defined and 90.1 - Supplier Defined</a></p>
<b>Non-Physician Practitioner (NPP)</b>	<ul style="list-style-type: none"> <li>• physician assistant (PA)</li> <li>• nurse practitioner (NP)</li> <li>• certified registered nurse anesthetist (CRNA)</li> <li>• certified nurse midwife (CNM)</li> <li>• clinical psychologist (CP)</li> <li>• clinical social worker (CSW)</li> <li>• clinical nurse specialist (CNS)</li> <li>• registered dietitian</li> <li>• nutrition professional</li> </ul> <p><u>CMS Sources:</u></p> <ol style="list-style-type: none"> <li>1. <a href="#">Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 40.4 - Definition of Physician/Practitioner</a></li> <li>2. <a href="#">Medicare General Information, Eligibility, and Entitlement, Chapter 5 – Definitions, 90.3 - Practitioners Defined</a></li> </ol>
<b>Physician Extender</b>	<ul style="list-style-type: none"> <li>• nurse practitioner</li> <li>• clinical nurse specialist</li> <li>• physician assistant (as of January 1, 2011).</li> </ul> <p><u>CMS Sources:</u></p> <ol style="list-style-type: none"> <li>1. <a href="#">Medicare General Information, Eligibility, and Entitlement, Chapter 4 - Physician Certification and Recertification of Services, 40.1 - Who May Sign the Certification or Recertification for Extended</a></li> </ol>
<b>Auxiliary Personnel</b>	<ul style="list-style-type: none"> <li>• nurses (RN, LPN)</li> <li>• medical assistant (MA)</li> <li>• technician</li> <li>• pharmacist</li> <li>• other aides.</li> </ul> <p>Other providers, such as physical therapists, occupational therapists, or NPPs may also provide services as auxiliary personnel as well.</p> <p><u>CMS Sources</u></p> <ol style="list-style-type: none"> <li>1. <a href="#">Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 60.2 - Services of Nonphysician Personnel Furnished Incident To Physician’s Services</a></li> </ol>

### Levels of Supervision<sup>6</sup>

Level	Definition
<b>General</b>	<p>“General supervision means that the physician need not be physically present at the patient’s place of residence when the service is performed; however, the service must be performed under his or her overall supervision and control.” (<a href="#">Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 60.4 - Services Incident to a</a></p>

	<a href="#"><u>Physician’s Service to Homebound Patients Under General Physician Supervision</u></a>
<b>Direct</b>	<p>“Direct supervision in the office setting does not mean that the physician must be present in the same room with his or her aide. However, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the aide is performing services.” (<a href="#"><u>Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 60.1 - Incident To Physician’s Professional Services</u></a>)</p> <p><b>NOTE:</b> During the COVID-19 public health emergency (PHE) and continuing through December 2024, “direct supervision” may include a virtual presence via <i>audio and video</i> real-time communications technology. Note that CMS does <b>not</b> include <i>audio-only</i> technology as meeting the requirements for “direct supervision.”<sup>7</sup></p>
<b>Personal</b>	<p>“...means a physician must be in attendance in the room during the performance of the procedure.” (<a href="#"><u>Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 80 - Requirements for Diagnostic X-Ray, Diagnostic Laboratory, and Other Diagnostic Tests</u></a>)</p>

## EMPLOYMENT ARRANGEMENT

According to CMS:

“Auxiliary personnel means any individual who is acting under the supervision of a physician, regardless of whether the individual is an employee, leased employee, or independent contractor of the physician, or of the legal entity that employs or contracts with the physician. Likewise, the supervising physician may be an employee, leased employee or independent contractor of the legal entity billing and receiving payment for the services or supplies.

“However, the physician personally furnishing the services or supplies or supervising the auxiliary personnel furnishing the services or supplies must have a relationship with the legal entity billing and receiving payment for the services or supplies that satisfies the requirements for valid reassignment. As with the physician’s personal professional services, the patient’s financial liability for the incident to services or supplies is to the physician or other legal entity billing and receiving payment for the services or supplies. Therefore, the incident to services or supplies must represent an expense incurred by the physician or legal entity billing for the services or supplies.

“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>2</sup>

## DOCUMENTATION REQUIREMENTS



Documentation submitted to support “incident to” services must link the auxiliary personnel or credentialed NPP with the supervising provider. Documentation must follow all standard requirements for medical records. In addition, there must be a visible link such as:

- A co-signature
- Notation of supervising provider’s involvement within the text of the associated medical record entry
- Documentation from additional dates of service, other than those requested, which establish the link between the two providers.

Providence Health Plan may elect to do a retrospective review of documentation to ensure these rules are followed for “incident to” billing.

## **CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)**

As of 6/12/2024, the following Centers for Medicare & Medicaid (CMS) guidance was identified which addresses “incident to” billing:

- Centers for Medicare & Medicaid Services (CMS). Medicare Benefit Policy Manual, Chapter 15 - Covered Medical and Other Health Services, §60 - Services and Supplies Furnished Incident To a Physician’s/NPP’s Professional Service.
- Centers for Medicare & Medicaid Services (CMS). Medicare Benefit Policy Manual, Chapter 15 - Covered Medical and Other Health Services, §§60.1-60.4.
- Noridian web page for “Incident To Services.”
- National Coverage Determination (NCD). Physician's Office within an Institution Coverage of Services and Supplies Incident to a Physician's Services (70.3).
- MLN Matters Number: SE0441.
- Centers for Medicare and Medicaid Services (CMS) Final Rule CMS-1784-F.

The above reimbursement policy position statements are consistent with CMS guidance and methodologies.

As of 10/6/2023, the following Oregon Health Authority (OHA) references were identified:

- Health Systems Division: Medical Assistance Programs - Chapter 410. Division 147, FQHC AND RHC SERVICES. 410-147-0120, Division Encounter and Recognized Practitioners.  
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=286624>

## **BILLING AND CODING GUIDELINES**

### **GENERAL**

**Auxiliary Personnel (RN, LPN), Clinical Nurse Specialist, Licensed Clinical Social Worker, or Licensed Clinical Psychologist**

With the exception of CPT codes 99408, 99409, 99453, 99454, 99497, and 99498 (see below), the only E&M code which may be billed as “incident to” a physician by auxiliary personnel (including an RN or LPN) is CPT code 99211 (*Office or other outpatient visit for the evaluation and management of an established patient, that may not require the presence of a physician or other qualified health care professional*). CPT 99211 is intended to report E&M services which have been rendered by *non-physicians* within the practice (e.g., a member is seen in the office for a quick hypertension or wound check by a nurse or medical assistant).

- An RN, LPN, clinical nurse specialist, licensed clinical social worker, or licensed clinical psychologist who is specifically trained to do so may also report CPT codes 99408 or 99409 “incident to” a physician or physician extender.
- Auxiliary personnel may provide remote physiologic monitoring services described by CPT codes 99453 and 99454 “incident to” the billing practitioner’s services and under their supervision.
- An RN or LPN who is specifically trained to do so based on criteria listed in Coding Policy 86.0 (*Advance Care Planning and Palliative Care*) may report CPT codes 99497 and 99498 “incident to” a physician or physician extender.

### Certified Life Coach

A certified Life Coach may report CPT code 0403T “incident to” the supervising nutritionist for a contracted Diabetic Prevention Program.

## CROSS REFERENCES

None

The full Company portfolio of current Reimbursement Policies is available online and can be [accessed here](#).

## REFERENCES

1. Centers for Medicare & Medicaid Services (CMS). Medicare Benefit Policy Manual, Chapter 15 - Covered Medical and Other Health Services, §60 - Services and Supplies Furnished Incident To a Physician’s/NPP’s Professional Service. 2003; <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/bp102c15.pdf>. Accessed 6/12/2024.
2. Centers for Medicare & Medicaid Services (CMS). Medicare Benefit Policy Manual, Chapter 15 - Covered Medical and Other Health Services, §§60.1-60.4. 2003; <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/bp102c15.pdf>. Accessed 6/12/2024.
3. National Coverage Determination (NCD). Physician's Office within an Institution Coverage of Services and Supplies Incident to a Physician's Services (70.3). <https://www.cms.gov/medicare-coverage-database/view/ncd.aspx?ncdid=140>. Accessed 10/4/2023.
4. MLN Matters Number: SE0441. Revised 8/24/2016. <https://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/se0441.pdf>. Accessed 10/4/2023.
5. Noridian Healthcare Solutions. Jurisdiction F. Incident To Services. Last updated: 12/9/2023. <https://med.noridianmedicare.com/web/jfb/topics/incident-to-services>. Accessed 6/12/2024.
6. Medicare Benefit Policy Manual, Chapter 15 – Covered Medical and Other Health Services, 80 - Requirements for Diagnostic X-Ray, Diagnostic Laboratory, and Other Diagnostic Tests.

<https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/bp102c15.pdf>. Accessed 6/12/2024.

- Centers for Medicare and Medicaid Services (CMS). Final Rule CMS-1784-F. Dated 11/16/2023. <https://www.federalregister.gov/documents/2023/11/16/2023-24184/medicare-and-medicaid-programs-cy-2024-payment-policies-under-the-physician-fee-schedule-and-other>. Accessed 6/17/2024.

## **POLICY REVISION HISTORY**

<b>Date</b>	<b>Revision Summary</b>
1/2024	New reimbursement policy (previously Coding Policy 62.0, <i>Documentation Guidelines "Incident To" Services</i> )
8/2024	Interim update regarding virtual services and employment arrangements