

Foulston Siefkin Health Care Issue Alert

CMS Clarifies “Incident-To” Billing Rules: Billing Physician Must Supervise Incident-To Services

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by Brooke Bennett Azjere & Justan R. Shinkle



Brooke Bennett Azjere
Foulston Siefkin Attorney
bazjere@foulston.com
316.291.9768



Justan R. Shinkle
Foulston Siefkin Attorney
jsinkle@foulston.com
316.291.9794

Earlier this year, the Centers for Medicare & Medicaid (CMS) included proposed revisions to the ever-confusing “incident-to” billing rules in its 2016 Medicare Physician Fee Schedule Proposed Rule. This attempt to provide clarification only further muddied the waters, leading many healthcare stakeholders to believe that the “clarification” represented a significant change in policy that would require the physician supervising the incident-to services to be the same physician ordering and treating the patient. Good news! The Final Rule published in the Federal Register on November 16, 2015, relieved the confusion and concern. Most healthcare stakeholders will see no change in how they bill Medicare in accordance with the incident-to rules.

The confusion surrounded CMS’ proposal to delete the last sentence of 42 C.F.R. § 410.26(b)(5). This language states that the supervising physician need

not be the same as the physician upon whose service the incident-to service is based. The healthcare industry interpreted this proposed change as requiring the ordering physician to provide the direct supervision, meaning the ordering, supervising, and billing physician must be the same.

CMS clarified in the Final Rule that this was not its intent. In so doing, CMS did not finalize its proposal to delete the last sentence of 42 C.F.R. § 410.26(b)(5). Instead, CMS offered a revision to this language expressly stating that the physician supervising the incident-to service does not need to be the same physician treating the patient. CMS also finalized its proposal to amend 42 C.F.R. § 410.26 to state explicitly that only the physician who directly supervises the incident-to services may bill Medicare for the incident-to services. This means that when the supervising physician is not the ordering, referring, or treating physician, only the supervising physician may bill Medicare for the incident-to services.

For more information regarding the clarification to the incident-to billing rules, see <https://www.federalregister.gov/articles/2015/11/16/2015-28005/medicare-program-revisions-to-payment-policies-under-the-physician-fee-schedule-and-other-revisions> and 42 C.F.R. 410.26.

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