

Session 505 - Compliance Issues Surrounding Physician Assistants (PAs) and Nurse Practitioners (NPs): Processes, Tools, and Solutions

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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 encouraged to contact their legal counsel for advice and direction on specific matters of concern to them.



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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



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Agenda

- NP and PA Scope of Practice
- Physician Collaboration and Supervision Requirements
 - NP and PA Compliance Checklist Example
- Medicare Rules for Reporting NP and PA Services
 - Overview of Medicare Rules Tip Sheet
- Questions/Discussion



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Scope of Practice

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



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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
 - **Maintaining documentation of NP and PA credentials, current licensure, etc.**



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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



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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



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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.**



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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
 - **Annual review and update all facility policies and procedures**



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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



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NP and PA Compliance Checklist Example

| | Yes | No |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| 1. PA or NP Education and Experience | | |
| A. Copy of current PA's or NP's license from the state he/she is practicing is maintained. | | |
| B. Documentation of PA's or NP's continuing medical education to maintain licensure is retained by PA or NP and/or healthcare organization. | | |
| 2. State Law | | |
| A. Documentation of current PA's or NP's licensure or state certification requirements/guidelines from the applicable state, board or other organization are annually reviewed and retained. | | |
| 3. Facility Policies | | |
| A. Facility where PA or NP practices has written protocols/standards outlining the services PAs or NPs may provide and are consistent with the PAs or NPs education, training and experience. | | |
| B. Facility maintains documentation of other internal practice or facility requirements of PAs or NPs such as: CPR training, safety/disaster training, code of conduct, confidentiality, etc. | | |
| 4. Physician Delegation | | |
| A. Supervising or Collaborating Physician is a fully licensed physician (MD or DO)? Documentation of this requirement is maintained. | | |
| B. Internal policies outline the type of PA or NP supervision (personal, direct and general) and addresses any applicable requirements of specific payers. | | |
| 5. Other: | | |
| A. Do internal policies and procedures outline PA or NP services specific to Medicare guidelines specific to employment arrangements, credentialing and enrollment with Medicare and other payers, split/shared services, "incident-to" services, medical record documentation requirements and other billing requirements? | | |
| B. Complete and up-to-date information must be maintained. Are the above documents annually reviewed and updated including documentation of the review date and reviewer signature? | | |
| Checklist Form Completed By: _____ Date: _____ | | |

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



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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 contractor under an indirect contractual arrangement



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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
 - Applies when no other benefit category under SSA §1861(s) exists



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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



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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



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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



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**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
 - o Medicare reimbursement 100% of MPFS amount
 - or
- Bill service under NP's or PA's name and number
 - o Medicare reimbursement 85% of MPFS amount
- "Incident to" not applicable to:
 - o Consultation services
 - o 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 **office setting** for the same encounter
- "Incident to" criteria must be met
- Bill service under physician's name and number
 - o Medicare reimbursement 100% of MPFS amount
 - or
- Bill service under NP's or PA's name and number
 - o Medicare reimbursement 85% of MPFS amount
- *****
- Both a physician and NP or PA provide services in the **hospital inpatient, hospital outpatient, observation or emergency department** on the same day
- "Incident to" not applicable in an institutional setting
- Bill service under physician's name and number
 - o Medicare reimbursement 100% of MPFS amount
 - or
- Bill service under NP's or PA's name and number
 - o Medicare reimbursement 85% of MPFS amount

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

- Service performed by NP or PA
 - o Consultation services
 - o New patient services
 - o Established patient services
 - o Hospital outpatient services
 - o Hospital inpatient services
 - o Emergency Department services
 - o Other services
- Bill service under NP's or PA's name and number
 - o 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



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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



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NP and PA Medicare Billing Options (continued)

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

- Consultation services may not be billed as a split/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**



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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



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NP and PA Medicare Billing Options (continued)

- Refer to:
Overview of Medicare Billing Rules for Split/Shared E/M Services Tip Sheet



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NP and PA Services

- Identification of Medicare NP and PA compliance concerns:
 - Billing NP or PA service(s) performed in the Emergency Department (ED) under a physician's name/number
 - Patient seen for consultation by NP or PA and billed under a physician's name/number
 - Patient seen for consultation by NP or PA and MD/DO (split/shared service) and consultation is billed under the physician's name/number



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NP and PA Services (continued)

- New patient is seen by NP or PA and MD/DO (split/shared service) and new patient visit is billed under the physician's name/number
- Billing E/M service performed by NP or PA as an “incident to” service in the office setting with no physician supervision
- Billing E/M service performed by NP or PA as “incident to” in the hospital setting



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Summary Compliance Strategies

- **Team effort and ongoing education, training and communication**
 - **Staying current with the rules**
 - **NP and PA scope of practice, state laws, Medicare requirements, etc.**
 - **How are you managing compliance trends?**
 - Stay current with hot topics?
 - Staff resources and support?



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Summary Compliance Strategies (continued)

- **Written internal policies and procedures**
 - Documented processes to accurately capture and report all NP and PA services
 - Are policies annually reviewed and updated as needed? Documentation and proof of reviews?
 - Are policies being followed? Can you demonstrate that you follow your policy consistently?



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Summary Compliance Strategies (continued)

Risk Assessment

- **Monitoring and Auditing – What are you assessing and how often?**
 - Physician Practice - NP and PA services
 - Split/shared E/M services
 - “Incident to” services
 - OIG Work Plans - 2002, 2003, 2004, 2007 and 2008
 - Consultation services
 - OIG Work Plans – 2002, 2003, 2004 and 2008
 - Compliance report card, sharing results with applicable staff



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Questions/Discussion



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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/stateregguidelines.html>
 - <http://www.aapa.org/gandp/3rdparty.html>



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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



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