

# Medicare and Medicaid: Navigating the Challenges

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Texas Children's  
April 28, 2009

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## Overview

Challenges with program differences.

Methodology for navigating the challenges.

Examples.

Questions.

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A little background...

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## Texas Children's at a glance

### Patient Population:

- Medicare population approximately 10%
- Medicaid populations: +40%
- Medicaid + Medicaid Managed Care: + 50%

### Organization:

- Currently 762 licensed beds.
- 6700 employees.
- 1000 employed or affiliated physicians; medical staff of approximately 1800 physicians.

### 2010 Expansion:

- Women's Hospital.
- 2<sup>nd</sup> Children's Hospital campus.
- Additional Research Campus.

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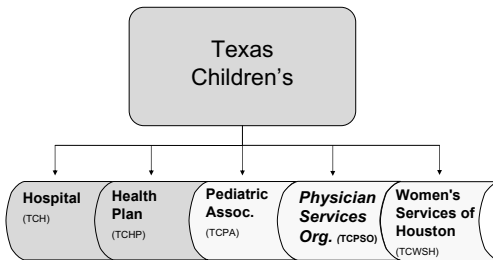
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## Texas Children's at a glance



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## Challenges and Solutions

*Navigating the rules maze*

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## Challenges and Solutions

Guidance: the search for answers.

- State programs versus federal programs.
- The third party quandary.

Navigating the grey.

- Rules conflicts—finding the appropriate path.
- How to pick your winner?



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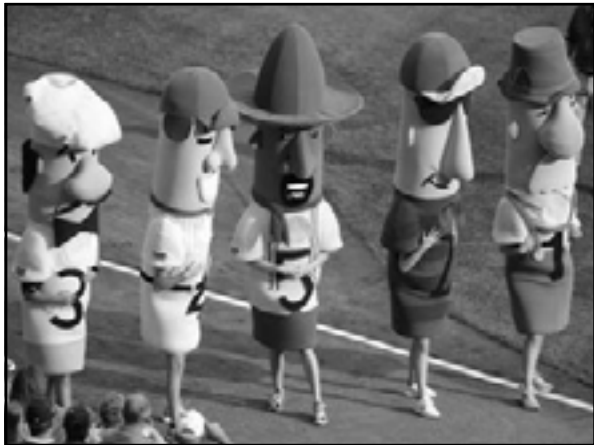
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## Challenges and Solutions

Effecting compliance.

- Active versus passive programs.
- Standards > Rule by Exception.
- Make sure you've got the right answer.

Compliance Enforcement and Support.

- Transparency.
- Valuing responses.

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## Challenges and Solutions

### Interpretation:

- Lowest Common Denominator Rule.
- Coordinate, don't abdicate.

### Operations:

- Simplify.
- Walk in the shoes of the people you serve.

### Resolution.

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## Examples

- NPP activity and Incident to billing
- Supervision.
- Psychology services.
- Obs v IP.

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*"In order to conquer the animal, I have to learn to think like an animal. And, whenever possible, to look like one. I've gotta get inside this guy's pelt and crawl around for a few days."*

Carl Spackler, Greenskeeper  
Bushwood Country Club



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**Incident-to Billing**

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**What is Incident to?**

- “Incident to” services are defined as services and supplies commonly furnished in a physician’s office, which are “incident to” the professional services of a physician or a Non-Physician Practitioner (NPP) and provided by auxiliary personnel.
- Medicaid programs often refer to this as ‘Supervision’.

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**Incident to billing**

Revenue/Volume opportunities.

Supply versus Demand: access.

Supply versus Demand: specialization.

*How do you deploy NPPs in a clinic environment?*

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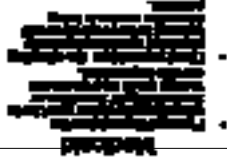
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## Incident to billing: physician involvement

### Medicare

- Personal Supervision - means a physician **must be in attendance in the room during the performance of the procedure.**
- Direct Supervision - in the office setting means the physician must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. **It does not mean that the physician must be present in the room when the procedure is performed.**
- General Supervision - means the procedure is furnished under the physician's overall direction and control, **but the physician's presence is not required during the performance of the procedure.** Under general supervision, the training of the nonphysician personnel who actually performs the diagnostic procedure and the maintenance of the necessary equipment and supplies are the continuing responsibility of the physician.



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## Medicare "Incident to"

- The **physician must have initially seen the patient.**
- The physician has an active part in the ongoing care of the patient.
- There is **direct personal supervision by the physician of auxiliary personnel**, regardless of whether the individual is an employee, leased employee or independent contractor of the physician.
- The **physician must be present in the office suite and immediately available to provide assistance and direction** while the aide is performing services.

(Medicare Benefit Policy Manual—Ch. 15 (IOM 100-2) sections 60.1, 60.2, and 60.3

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## Medicaid 2004

Physician services include those reasonable and necessary services ordered and performed by a physician or under a physician's personal supervision that are within the scope of practice of their profession as defined by state law. For each encounter, unless explicit exception is provided, the teaching/supervising physician must:

- Examine the patient
- Confirm or revise the diagnosis of record
- Confirm or revise a plan of care
- Document these tasks in the appropriate medical record for the client before submitted claims.

### Administrative Supervision:

Personal supervision requires that the physician be in the building or facility when and where the service is provided; however, with the March 1, 1999, revision, the supervising physician is no longer required to be in the building at the time services are performed.

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## Medicaid 2005

Physician services include those reasonable and necessary services ordered and performed by a physician or under a physician's personal supervision that are within the scope of practice of their profession as defined by state law. For each encounter, unless explicit exception is provided, the teaching/supervising physician must:

- Examine the patient
- Confirm or revise the diagnosis of record
- Confirm or revise a plan of care
- Document these tasks in the appropriate medical record for the client before submitted claims.

No Administrative Supervision definition provided.

Note: Personal Supervision requires that the physician be in the building or facility when and where the service is provided; however, with the March 1, 1999, revision, the supervising physician is no longer required to be in the building at the time services are performed.

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## Medicaid 2007

Physician services include those reasonable and necessary services ordered and performed by a physician or under a physician's personal supervision that are within the scope of practice of their profession as defined by state law. For each encounter, unless explicit exception is provided, the teaching/supervising physician must:

- Examine the patient
- Confirm or revise the diagnosis of record
- Confirm or revise a plan of care
- Document these tasks in the appropriate medical record for the client before submitted claims.

Administrative Supervision:

Personal supervision requires that the physician be in the building or facility when and where the service is provided; however, with the March 1, 1999, revision, the supervising physician is no longer required to be in the building at the time services are performed.

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## Medicaid 2008

Physician services include those reasonable and necessary services ordered and performed by a physician or under a physician's personal supervision that are within the scope of practice of their profession as defined by state law. For each encounter, unless explicit exception is provided, the teaching/supervising physician must:

- Examine the patient
- Confirm or revise the diagnosis of record
- Confirm or revise a plan of care
- Document these tasks in the appropriate medical record for the client before submitted claims.

Physician services must be performed by the teaching or supervising physician or a physician's personal supervision, in which the physician has delegated the responsibility. The level of supervision may be direct or personal.

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## Gunga Galunga

*So, I tell them I'm a pro jock, and who do you think they give me? The Dalai Lama, himself. Twelfth son of the Lama. The flowing robes, the grace, bald... striking. So, I'm on the first tee with him. I give him the driver. He hauls off and whacks one - big hitter, the Lama - long, into a ten-thousand foot crevasse, right at the base of this glacier. Do you know what the Lama says? Gunga galunga... gunga, gunga-galunga. So we finish the eighteenth and he's gonna stiff me. And I say, "Hey, Lama, hey, how about a little something, you know, for the effort, you know." And he says, "Oh, uh, there won't be any money, but **when you die, on your deathbed, you will receive total consciousness.**" So I got that goin' for me, which is nice.*

Carl Spackler, Greenskeeper  
Bushwood Country Club



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## NPP Discussion Points

- What is your lowest common denominator?
- What impact does this have on operations?
- How do you resolve the conflict?



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## Incident to billing

	Medicare	Medicaid	LCD
<b>New patients</b>	Physician must have initially seen the patient	Administrative? Direct or personal?	Medicare
<b>New conditions</b>	Physician must have initially seen the patient	Administrative? Direct or personal?	Medicare
<b>Physician presence</b>	physician's direct supervision	Administrative? Direct or personal?	Medicare

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## Medicaid 2007

As are eligible to enroll and bill as individual providers for services provided with dates of service on or after July 1, 2006. Enrollment as an individual provider is not mandatory.

Effective for dates of service on or after March 1, 1999, the Texas Medicaid Program will reimburse Medicaid-enrolled physicians or RHCs for services performed by the PA without the physician's personal supervision.

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## Nurse Practitioner

	MEDICARE	TEXAS MEDICAID
<b>Enrollment</b>	Optional for Incident to  NPI if billing independently	Optional for Incident to  Enrolled in Program if billing independently
<b>Reimbursement</b>	100% of MPFS  85% billing independently	100% of MFS  92% billing independently
<b>Benefits &amp; Limitations</b>	•Covered services • <b>Collaboration</b> •Direct Billing & Payment •Assignment	Follow APN SoP, as defined by Texas state law. Consistent with R&R promulgated by the Texas BON.

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## Physician Assistant

	MEDICARE	TEXAS MEDICAID
<b>Enrollment</b>	Optional for Incident to  NPI if billing independently	Optional for Incident to  Enrolled in Program if billing independently
<b>Reimbursement</b>	100% of MPFS  85% billing independently	100% of MFS  92% billing independently
<b>Benefits &amp; Limitations</b>	•Covered services • <b>Physician supervision</b> •Employment relationship	Follow PA SoP, as defined by (Texas) state law. Consistent with R&R promulgated by the Texas BON.

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# Supervision of Trainees

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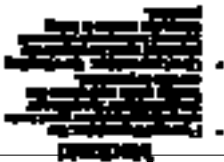
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## Incident to billing: physician involvement

<p style="text-align: center;"><b>Medicare</b></p> <ul style="list-style-type: none"> <li>• Personal Supervision - means a physician <b>must be in attendance in the room during the performance of the procedure.</b></li> <li>• Direct Supervision - in the office setting means the physician must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. <b>It does not mean that the physician must be present in the room when the procedure is performed.</b></li> <li>• General Supervision - means the procedure is furnished under the physician's overall direction and control, but the <b>physician's presence is not required during the performance of the procedure.</b> Under general supervision, the training of the nonphysician personnel who actually performs the diagnostic procedure and the maintenance of the necessary equipment and supplies are the continuing responsibility of the physician.</li> </ul>	
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## Trainee Supervision Outpatient/Office

<p style="text-align: center;"><b>Medicare</b></p> <p>For purposes of payment, E/M services billed by teaching physicians require that they personally document at least the following:</p> <ul style="list-style-type: none"> <li>• That the teaching physician <b>performed the service or were physically present during the key or critical portions of the service</b> when performed by the resident; and</li> <li>• The participation of the teaching physician in the management of the patient.</li> </ul>	<p style="text-align: center;"><b>Medicaid</b></p> <p>For services provided in an outpatient setting, the teaching attending physician must demonstrate that <b>personal supervision</b> was provided.</p> <p>The following tasks must be performed and their completion must be documented in the patient's medical record before the claims are submitted for consideration of reimbursement:</p> <ul style="list-style-type: none"> <li>• <b>Review</b> the patient's history and physical examination</li> <li>• <b>Confirm or revise</b> the patient's diagnosis</li> <li>• <b>Determine the course of treatment</b> to be followed</li> </ul>
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CMS Transmittal 811, Jan '06 2008 TX Medicaid Manual 30

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## 2008 Medicaid Manual

Note: All services provided in an outpatient setting that do not qualify for the exception\* require that the attending teaching physician examine the patient.

*(Primary Care Center exception)*

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## 2008 Medicaid Manual

The following prerequisites apply when the teaching physician submits claims for services performed, in whole or in part, by the resident physician.

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*"I have to laugh, because I've outsmarted even myself."*

Carl Spackler, Greenskeeper  
Bushwood Country Club

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### Trainee Supervision: Outpatient/Clinic Visits

	Medicare	Medicaid	LCD
<b>Outpatient</b>	Personally provided*	In building (?)	<b>Medicare</b>
<b>Inpatient</b>	?	?	?
<b>Surgery</b>	?	?	?

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### Trainee Supervision: Inpatient

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| <p><b>Medicare</b></p> <ul style="list-style-type: none"> <li>The physician shall satisfy the E/M documentation guidelines for admission to and discharge from inpatient observation or hospital care. In addition to meeting the documentation requirements for history, examination and medical decision making documentation in the medical record shall include:</li> <li>Documentation stating the stay for hospital treatment or observation care status involves 8 hours but less than 24 hours;</li> <li>Documentation identifying the <b>billing physician was present and personally performed the services</b>; and</li> <li>Documentation identifying the admission and discharge notes were written by the billing physician.</li> </ul> | <p><b>Medicaid</b></p> <p><b>The teaching attending physician must demonstrate that medically-appropriate supervision was provided.</b></p> <p>The documentation must be made in the same manner as required by federal regulations under Medicare:</p> <ul style="list-style-type: none"> <li>Review the patient's history, review the resident's physical examination, and examine the patient within a reasonable amount of time after the patient's admission and before the patient's discharge;</li> <li>Confirm or revise the patient's diagnosis.</li> <li>Determine the course of treatment to be followed.</li> <li>Document the teaching attending physician's <b>presence and participation in the major surgical or other complex and dangerous procedure or situation.</b></li> </ul> |
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### Trainee Supervision: Inpatient

	Medicare	Medicaid	LCD
<b>Outpatient</b>	Personally provided unless PCE setting	In building	<b>Medicare</b>
<b>Inpatient</b>	<b>Personally provided</b>	<b>Medically appropriate</b>	<b>Medicare</b>
<b>Surgery</b>	?	?	?

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## Trainee Supervision Surgery

### Medicare

The teaching surgeon is responsible for the preoperative, operative, and postoperative care of the Medicare patient

**Surgical, high-risk, or other complex procedures: The teaching physician must be present during all critical and key portions of the procedure and be immediately available to furnish services during the entire procedure.**

### Two Overlapping Surgeries

- Present during the critical or key portions of both operations.
- The critical or key portions may not take place at the same time.
- Teaching surgeon must personally document in the medical record that s/he was physically present during the critical or key portion(s) of both procedures.
- When a teaching physician is not present during non-critical or key portion(s) of the procedure and is participating in another surgical procedure, s/he must arrange

### Minor Procedures

- Teaching surgeon must be present for the entire procedure in order to bill for the procedure

### Medicaid

The teaching attending surgeon is responsible for the beneficiary's preoperative, operative, and postoperative care. **The teaching attending physician must demonstrate that medically appropriate supervision was provided.**

The documentation must be made in the same manner as required by federal regulations under Medicare.

- Review the patient's history, review the resident's physical examination, and examine the patient within a reasonable amount of time after the patient's admission and before the patient's discharge;

- Confirm or revise the patient's diagnosis.

- Determine the course of treatment to be followed.

- Document the teaching attending physician's presence and participation in the major surgical or other complex and dangerous procedure or situation.

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## Trainee Supervision: Surgery

	Medicare	Medicaid	LCD
<b>Outpatient</b>	Personally provided unless PCE setting	In building	Medicare
<b>Inpatient</b>	Personally provided	Medically appropriate	Medicare
<b>Surgery</b>	<b>All critical portions; available throughout</b>	<b>Medically appropriate; present during major, complex or dangerous elements</b>	Medicare

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## Trainee Supervision

	Medicare	Medicaid	LCD
<b>Outpatient</b>	Personally provided unless PCE setting	In building	Medicare
<b>Inpatient</b>	Personally provided	Medically appropriate	Medicare
<b>Surgery</b>	All critical portions; available throughout	Medically appropriate; present during major, complex or dangerous elements	Medicare

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**Psychologist's Services**

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**Psychologist's Services**

- a) Licensee is responsible for the **professional supervision of all individuals that the licensee employs or utilizes to provide psychological services** of any kind.
- b) Licensee provides **an adequate level of supervision to all individuals under their supervision according to accepted professional standards** given the experience, skill, and training.
- c) Licensees must be competent to perform any psychological services being provided under their supervision.
- d) Licensees shall **document their supervision activities in writing**.
- e) Licensees shall **delegate only those responsibilities that supervisees may legally and competently perform**.
- f) Licensees **utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance**.
- g) For purposes of this rule, the term supervision does not apply to the supervision of purely administrative or employment matters.
- h) Licensed psychological associates and provisionally licensed psychologists must be under the supervision of a licensed psychologist and may not engage in independent practice.

*TX Board of Examiners of Psychologists (Title 22.21 § 465)*

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**Psychologist's Services**

**Medicare (Medicare Benefit Policy Manual—Ch. 15):**

B. Qualified Clinical Psychologist Services Defined: Effective July 1, 1990, the diagnostic and therapeutic services of CPs and **services and supplies furnished incident to such services are covered as the services furnished by a physician or as incident to physician's services are covered**. However, CP must be legally authorized to perform the services under applicable licensure laws of the State in which they are furnished.

**Medicaid (TX Medicaid Providers Manual):**

The services of a psychological associate (master's level psychologists), licensed chemical dependency counselor (LCDC), social worker, psychiatric nurse, or mental health worker are not covered by Texas Medicaid and cannot be billed under a psychologist's provider number. **Psychologists must not bill for services performed by people under their supervision, including services performed by students, interns, or licensed professionals under their supervision**. For mental health services, only the licensed psychologist and Medicaid enrolled provider actually performing the service may bill for Texas Medicaid.

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## Psychologist's Services

(2008) TX Child Psychologist convicted for Medicaid fraud.

- Billed for work not personally performed by the psychologist but rather performed by a psychological assistant.
- Convicted of 6 counts of health care fraud (Medicaid).
- State activity during, post trial address conflict in regulations, billing guidelines.

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## Psychologist's Services

What is the recommendation to operations?

What problem(s) does this generate?

What solutions exist to resolve scheduling and access issues?

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## Observation and Inpatient

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## Observation and Inpatient Status: Interpretation

Medicaid (TX Medicaid Manual, 7.5.15.5)

- Reasonable and necessary services to evaluate the need for possible admission to the hospital...
- Observation services **after the 23<sup>rd</sup> hour are not payable** by the Program.
- If patient is going to be admitted, **status must be changed from observation to inpatient prior to the 24<sup>th</sup> hour.**

Medicare (Benefit Policy Manual) 20.6

- Well defined set of specific, clinically appropriate services before a decision can be made regarding whether patients require further treatment as hospital inpatient...
- In majority of cases...decision to discharge following resolution of the reason for observation care or to admit **can be made in less than 48 hours, usually less than 24 hours.**
- In only rare and exceptional cases do reasonable and necessary outpatient observation services span more than 48 hours.

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## Observation and Inpatient Status: Operations and Resolution

**What is your lowest common denominator?**

*Observation limits at 23 hours--regardless of payor.*

**So what needs to be operationalized?**

*Clinical decision by hour 23.*

**What is the recommendation to leadership?**

*Case management screening process to include flag for hours in Observation.*

*Education to providers about timeliness of clinical decision.  
Hours counts.*

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## Final Thoughts

- Change is coming...slowly.
- Approach to program enforcement dictates challenges for providers, changes to access.
- Managing Medicaid managed care providers and other insurers starts at the time the contract is negotiated.

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