

§ 410.26 Services and supplies incident to a physician's professional services: Conditions.

**(a)** Definitions. For purposes of this section, the following definitions apply:

**(1)** Auxiliary personnel means any individual who is acting under the supervision of a physician (or other practitioner), regardless of whether the individual is an employee, leased employee, or independent contractor of the physician (or other practitioner) or of the same entity that employs or contracts with the physician (or other practitioner) and meets any applicable requirements to provide the services, including licensure, imposed by the State in which the services are being furnished.

**(2)** Direct supervision means the level of supervision by the physician (or other practitioner) of auxiliary personnel as defined in § 410.32(b)(3)(ii).

**(3)** Independent contractor means an individual (or an entity that has hired such an individual) who performs part-time or full-time work for which the individual (or the entity that has hired such an individual) receives an IRS-1099 form.

**(4)** Leased employment means an employment relationship that is recognized by applicable State law and that is established by two employers by a contract such that one employer hires the services of an employee of the other employer.

**(5)** Noninstitutional setting means all settings other than a hospital or skilled nursing facility.

**(6)** Practitioner means a non-physician practitioner who is authorized by the Act to receive payment for services incident to his or her own services.

**(7)** Services and supplies means any services or supplies (including drugs or biologicals that are not usually self-administered) that are included in section 1861(s)(2)(A) of the Act and are not specifically listed in the Act as a separate benefit included in the Medicare program.

**(b)** Medicare Part B pays for services and supplies incident to the service of a physician (or other practitioner).

**(1)** Services and supplies must be furnished in a noninstitutional setting to noninstitutional patients.

**(2)** Services and supplies must be an integral, though incidental, part of the service of a physician (or other practitioner) in the course of diagnosis or treatment of an injury or illness.

**(3)** Services and supplies must be commonly furnished without charge or included in the bill of a physician (or other practitioner).

- (4)** Services and supplies must be of a type that are commonly furnished in the office or clinic of a physician (or other practitioner).
- (5)** In general, services and supplies must be furnished under the direct supervision of the physician (or other practitioner). Chronic care management services and transitional care management services (other than the required face-to-face visit) can be furnished under general supervision of the physician (or other practitioner) when they are provided by clinical staff incident to the services of a physician (or other practitioner). 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.
- (6)** Services and supplies must be furnished by the physician, practitioner with an incident to benefit, or auxiliary personnel.
- (7)** Services and supplies must be furnished in accordance with applicable State law.
- (8)** A physician (or other practitioner) may be an employee or an independent contractor.
- (9)** Claims for drugs payable administered by a physician as defined in section 1861(r) of the Social Security Act to refill an implanted item of DME may only be paid under Part B to the physician as a drug incident to a physician's service under section 1861(s)(2)(A). These drugs are not payable to a pharmacy/supplier as DME under section 1861(s)(6) of the Act.

§ 410.27 Therapeutic outpatient hospital or CAH services and supplies incident to a physician or nonphysician practitioner's service: Conditions.

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**(a)** Medicare Part B pays for therapeutic hospital or CAH services and supplies furnished incident to a physician's or nonphysician practitioner's service, which are defined as all services and supplies furnished to hospital or CAH outpatients that are not diagnostic services and that aid the physician or nonphysician practitioner in the treatment of the patient, including drugs and biologicals which are not usually self-administered, if--

- (1)** They are furnished--
  - (i)** By or under arrangements made by the participating hospital or CAH, except in the case of a SNF resident as provided in § 411.15(p) of this subchapter;
  - (ii)** As an integral although incidental part of a physician's or nonphysician practitioner's services;
  - (iii)** In the hospital or CAH or in a department of the hospital or CAH, as defined in § 413.65 of this subchapter;

**(iv)** Under the direct supervision (or other level of supervision as specified by CMS for the particular service) of a physician or a nonphysician practitioner as specified in paragraph (g) of this section, subject to the following requirements:

**(A)** For services furnished in the hospital or CAH, or in an outpatient department of the hospital or CAH, both on and off-campus, as defined in § 413.65 of this subchapter, "direct supervision" means that the physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician or nonphysician practitioner must be present in the room when the procedure is performed;

**(B)** Certain therapeutic services and supplies may be assigned either general supervision or personal supervision. When such assignment is made, general supervision means the definition specified at § 410.32(b)(3)(i), and personal supervision means the definition specified at § 410.32(b)(3)(iii);

**(C)** Nonphysician practitioners may provide the required supervision of services that they may personally furnish in accordance with State law and all additional requirements, including those specified in §§ 410.71, 410.73, 410.74, 410.75, 410.76, and 410.77;

**(D)** For pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation services, direct supervision must be furnished by a doctor of medicine or a doctor of osteopathy, as specified in §§ 410.47 and 410.49, respectively; and

**(E)** For nonsurgical extended duration therapeutic services (extended duration services), which are hospital or CAH outpatient therapeutic services that can last a significant period of time, have a substantial monitoring component that is typically performed by auxiliary personnel, have a low risk of requiring the physician's or appropriate nonphysician practitioner's immediate availability after the initiation of the service, and are not primarily surgical in nature, Medicare requires a minimum of direct supervision during the initiation of the service which may be followed by general supervision at the discretion of the supervising physician or the appropriate nonphysician practitioner. Initiation means the beginning portion of the nonsurgical extended duration therapeutic service which ends when the patient is stable and the supervising physician or the appropriate

nonphysician practitioner determines that the remainder of the service can be delivered safely under general supervision; and

(v) In accordance with applicable State law.

(2) In the case of partial hospitalization services, also meet the conditions of paragraph (e) of this section.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.129.

(c) Rules on emergency services furnished to outpatients by nonparticipating hospitals are specified in subpart G of Part 424 of this chapter.

(d) Rules on emergency services furnished to outpatients in a foreign country are specified in subpart H of Part 424 of this chapter.

(e) Medicare Part B pays for partial hospitalization services if they are--

(1) Prescribed by a physician who certifies and recertifies the need for the services in accordance with subpart B of part 424 of this chapter; and

(2) Furnished under a plan of treatment as required under subpart B of part 424 of this chapter.

(f) Services furnished by an entity other than the hospital are subject to the limitations specified in § 410.42(a).

(g) For purposes of this section, "nonphysician practitioner" means a clinical psychologist, licensed clinical social worker, physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse-midwife.

§ 410.32 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests:  
Conditions.

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**(b) Diagnostic x-ray and other diagnostic tests –**

(3) Levels of supervision. Except where otherwise indicated, all diagnostic x-ray and other diagnostic tests subject to this provision and payable under the physician fee schedule must be furnished under at least a general level of physician supervision as defined in paragraph (b)(3)(i) of this section. In addition, some of these tests also require either direct or personal supervision as defined in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section, respectively. (However, diagnostic tests performed by a physician assistant (PA) that the PA is legally authorized to perform under State law require only a general level of physician supervision.) When direct or personal supervision is required, physician supervision at the specified level is required throughout the performance of the test.

**(i)** 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 perform the diagnostic procedure and the maintenance of the necessary equipment and supplies are the continuing responsibility of the physician.

**(ii)** 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.

**(iii)** Personal supervision means a physician must be in attendance in the room during the performance of the procedure.