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Is 'incident to' billing for Medicare going . . .going . . . gone?

The Medicare Payment Advisory Commission (MedPAC) recommended to Congress in its June 2019 report that 'incident to' billing be eliminated. In response to MedPAC's biennial reports, Congress normally holds hearings to listen to MedPAC's commissioners and staff and then decide whether any legislation should be introduced based on the recommendations. Some recommendations are embraced while others are simply disregarded. But, given the government's current focus on saving money for Medicare, this recommendation is not likely to be ignored.

MedPAC is an independent congressional agency established by the Balanced Budget Act of 1997 to advise Congress on issues affecting the Medicare program. The Commission analyzes access to care, quality of care and other issues affecting Medicare and publishes reports each year in March and June. In its most recent report, MedPAC analyzed the use and reimbursement related to nurse practitioners (NPs) and physician assistants (PAs) and made two recommendations: 1) Medicare should refine specialty designations for NPs and PAs; and 2) 'incident to' billing should be eliminated, requiring NPs and PAs to bill Medicare directly for the services they provide.

Medicare permits NPs and PAs to bill under the National Provider Identifier (NPI) number of a supervising physician, if certain conditions are satisfied. Specifically, 'incident to' applies only to established patients with established problems and an established plan of care by the physician. The physician must be in the office suite at the time of the visit, and documentation must exist in the record to evidence the physician's ongoing involvement with the patient. Visits must take place in an office (not hospital) setting. Services billed under the physician's number are reimbursed at 100% of the Physician Fee Schedule, while those billed directly by NPs and PAs are paid at 85%. Therefore, it is more profitable for NPs and PAs to bill their services 'incident to' under a physician's NPI

number.

'Incident to' dates back to the creation of Medicare but was probably "not designed to cover the breadth of services NPs and PAs currently furnish to Medicare patients."^[ii] In the beginning, NPs and PAs were not eligible for their own provider numbers and thus could not bill Medicare directly. They were considered physician extenders, necessary for providing primary care services to patients in many rural areas where physicians were scarce. But recent estimates indicate that only about 50% of NPs and 27% of PAs work in primary care.^[iii] So, much of the rationale for 'incident to' no longer exists.

Plus, the elimination of 'incident to' billing would result in huge savings for the Medicare program – an estimated \$50–250 million in the first year and \$1–5 billion over the first 5 years. And Medicare beneficiaries would also see savings, with no adverse effect on their access to care. Though MedPAC didn't focus on the money, the interest of Congress will likely be piqued by the numbers; if so, this could very well be the beginning of the end of 'incident to.'

If you would like more information on 'incident to' billing or healthcare billing compliance, please contact me, Rhonda Frey (rfrey@fbtllaw.com or 859.817.5915.). You can also read [about CMS's long-awaited guidance on shared space arrangements](#) and other Medicare-related topics on our [Health Law Matters blog](#).

^[i] *Medicare and the Health Care Delivery System*, MedPAC, June 2019

^[ii] *Id.* 146

^[iii] *Id.* 160