§ 410.22 Limitations on services of an optometrist.

Medicare Part B pays for the services of a doctor of optometry, which he or she is legally authorized to perform in the State in which he or she performs them, if the services are among those described in section 1861(s) of the Act and § 410.10 of this part.

[64 FR 59439, Nov. 2, 1999. Redesignated at 66 FR 55328, Nov. 1, 2001]

§ 410.23 Screening for glaucoma: Conditions for and limitations on coverage.

(a) *Definitions*: As used in this section, the following definitions apply:

(1) *Direct supervision in the office setting* means the optometrist or the ophthalmologist must be present in the office suite and be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean the physician must be present in the room when the procedure is performed.

(2) *Eligible beneficiary* means individuals in the following high risk categories:

(i) Individual with diabetes mellitus.

(ii) Individual with a family history of glaucoma.

(iii) African-Americans age 50 and over.

(iv) Hispanic-Americans age 65 and over.

(3) *Screening for glaucoma* means the following procedures furnished to an individual for the early detection of glaucoma:

(i) A dilated eye examination with an intraocular pressure measurement.

(ii) A direct ophthalmoscopy examination, or a slit-lamp biomicroscopic examination.

(b) *Condition for coverage of screening for glaucoma.* Medicare Part B pays for glaucoma screening examinations provided to eligible beneficiaries as described in paragraph (a)(2) of this section if they are furnished by or under the direct supervision in the office setting of an optometrist or ophthalmologist who is legally authorized to perform these services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or incident to a physician's professional service.

(c) *Limitations on coverage of glaucoma screening examinations.* (1) Payment may not be made for a glaucoma screening examination that is performed for an individual who is not an eligible beneficiary as described in paragraph (a)(2) of this section.

(2) Payment may be made for a glaucoma screening examination that is performed on an individual who is an eligible beneficiary as described in paragraph (a)(2) of this section, after at least 11 months have passed following the month in which the last glaucoma screening examination was performed.

[66 FR 55328, Nov. 1, 2001, as amended at 70 FR 70330, Nov. 21, 2005]

§ 410.24 Limitations on services of a doctor of dental surgery or dental medicine.

Medicare Part B pays for services furnished by a doctor of dental surgery or dental medicine within the scope of his or her license, if the services would be covered as physicians' services when performed by a doctor of medicine or osteopathy.[1]

[51 FR 41339, Nov. 14, 1986, as amended at 56 FR 8852, Mar. 1, 1991]

§ 410.25 Limitations on services of a podiatrist.

Medicare Part B pays for the services of a doctor of podiatric medicine, acting within the scope of his or her license, if the services would be covered as physicians' services when performed by a doctor of medicine or osteopathy.

§ 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] For services furnished before July 1, 1981, Medicare Part B paid only for the following services of a doctor of dental surgery or dental medicine;

Surgery on the jaw or any adjoining structure; and

Reduction of a fracture of the jaw or other facial bone.

(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), has not been excluded from the Medicare, Medicaid and all other federally funded health care programs by the Office of Inspector General or had his or her Medicare enrollment revoked, and meets any applicable requirements to provide incident to 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) *General supervision* means the service is furnished under the physician's (or other practitioner's) overall direction and control, but the physician's (or other practitioner's) presence is not required during the performance of the service.

(4) *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.

(5) *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.

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

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

(8) *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). Designated care management services can be furnished under general supervision of the physician (or other practitioner) when these services or supplies are provided 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) who is treating the patient more broadly. However, only the supervising physician (or other practitioner) may bill Medicare for incident to services.

(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.

(c) *Limitations.* (1) Drugs and biologicals are also subject to the limitations specified in § 410.29.

(2) Physical therapy, occupational therapy and speech-language pathology services provided incident to a physician's professional services are subject to the provisions established in §§ 410.59(a)(3)(iii), 410.60(a)(3)(iii), and 410.62(a)(3)(ii).

[51 FR 41339, Nov. 14, 1986, as amended at 66 FR 55328, Nov. 1, 2001; 67 FR 20684, Apr. 26, 2002; 69 FR 66421, Nov. 15, 2004; 77 FR 69361, Nov. 16, 2012; 78 FR 74811, Dec. 10, 2013; 79 FR 68002, Nov. 13, 2014; 80 FR 14870, Mar. 20, 2015; 80 FR 71372, Nov. 16, 2015; 81 FR 80552, Nov. 15, 2016]

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

(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 general 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 chapter, general supervision means the definition specified at § 410.32(b)(3)(i).

(B) Certain therapeutic services and supplies may be assigned either direct supervision or personal supervision. For purposes of this section, 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. 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. For purposes of this section, 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. During a Public Health Emergency, as defined in § 400.200 of this chapter, the presence of the physician includes virtual presence through audio/video real-time communications technology when use of such technology is indicated to reduce exposure risks for the beneficiary or health care provider; 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