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Comments and Responses Regarding Draft Local Coverage Determination: Psychological Services Coverage under the “Incident to” Provision for Physicians and Non-physicians

As an important part of Medicare Local Coverage Determination (LCD) development, National Government Services solicits comments from the provider community and from members of the public who may be affected by or interested in our LCDs. The purpose of the advice and comment process is to gain the expertise and experience of those commenting.

We would like to thank those who suggested changes to the draft Psychological Services Coverage under the “Incident to” Provision for Physicians and Non-physicians LCD. The official notice period for the final LCD begins on May 15, 2008, and the final determination will become effective on July 1, 2008.

Comment: Commenters from one group objected to the title of this draft LCD. They said the scope of the draft LCD includes services provided incident to the services of psychiatrists and services provided incident to the services of psychologists. As stated in their current LCD, no other providers can provide “incident to” services by supervising another professional. Psychiatrists may provide both psychiatric services (E/M services and psychiatric medical services (e.g., 90805, 90807, 90862) and psychological services (e.g., 90804, 90806). Psychologists can only provide psychological services (i.e., psychotherapy, 90804, 90806 and psychological testing) Therefore, they recommend that the title be changed to *Coverage of “Incident to” Services Provided by Psychiatrists or Psychologists*.

Response: In titling this LCD we wanted to focus on which psychological services may be provided “incident to” and not which provider type possessed this benefit. The incident to provision applies to other providers besides psychiatrists and psychologists.

Comment: The same commenter stated that the use of the term “*psychological services*” throughout the draft LCD to describe the services that may be provided on an “incident to” basis is both inaccurate and incomplete. With respect to “incident to” services provided for the treatment of mental illness, psychiatrists may provide both psychiatric and psychological services on an “incident to” basis. However, psychologists may provide only psychological services on an “incident to” basis. Therefore, we recommend that throughout the draft LCD the term “*psychological services*” be changed to

“psychiatric and/or psychological services” to reflect the full scope of practice of psychiatrists and maintain the distinction between the respective scopes of practice of psychiatrists and psychologists.

Response: The term, psychological services, was chosen as an umbrella term to encompass all services that Medicare would cover for the treatment for mental conditions. We felt it was too cumbersome and unnecessary to refer to psychiatric services, psychological services, licensed clinical social workers’ services, etc. We are using psychological services in the broadest, all-inclusive sense, not limiting it to a specific provider type.

Comment: The same commenter noted that the draft LCD does not include specific mention of the provision of E/M services on an “incident to” basis. Nurse practitioners and physician assistants can provide E/M services “incident to” the services of a psychiatrist. We suggest that the LCD include a specific reference indicating that nurse practitioners and physician assistants can provide E/M services for treatment of mental illness incident to the services of a psychiatrist.

Response: The focus of this LCD was to specify the special licensure requirements needed for the treatment of mental illness using the CPT codes for psychiatric therapeutic procedures. It is not within the scope of licensure and training of nurse practitioners and physician assistants to render psychiatric services covered within the scope of this policy. The provision of evaluation and management (E&M) services is no different for psychiatric patients than it is for the general medical patient. Therefore, while it is true that nurse practitioners and physician assistants may render E&M services to psychiatric patients these services are not regarded as psychological services and do not fall within the scope of this LCD.

Comment: The same commenter also recommended that LCDs for Part A and Part B be addressed in separate policies or at a minimum in separate and distinct sections of the same policy. The inclusion of Part A issues in this draft LCD regarding the “office area” in a hospital and the use of hospital staff is unnecessarily confusing as is the section on billing. Part A issues should be addressed separately or at least labeled to indicate Part A or Part B.

Response: With the advent of the new Medicare administration contract (MAC) a single contractor will be responsible for administering both Part A and Part B Medicare. The medical necessity parameters are the same no matter which setting, hospital outpatient or physicians office, the services are rendered. The supplemental instruction article (SIA) has different sections for Part A and Part B billing.

Comment: One request was that in Article A46200 the language under the heading “Carrier Guidelines” be changed to: “Claims for Psychological Services Coverage Under the "Incident to" Provision are payable under Medicare Part B in settings other than a hospital or to a resident of a skilled nursing facility who is in a Part A stay.”

Response: We agree and the statement has been changed.

Comment: The same commenter requested that under the heading of Indications and Limitations we consider changing the language to: "If auxiliary personnel perform services outside the office setting, e.g. in a patient's home or in an institution (other than a hospital or in a SNF to a resident who is on a Part A stay), their services are covered incident to...only if there is direct supervision. The availability of the physician on the same floor and immediately available to provide assistance and direction to the auxiliary personnel performing the service does constitute direct personal supervision."

Response: This section is italicized and represents text from CMS manuals. The contractor does not have the authority to amend this language.

Comment: The same commenter stated that: The LCD DL26899 states "Individuals who are not licensed or otherwise authorized by state law to provide psychological services may not provide psychological services under the "incident to" provision" which is in accordance with CMS guidance. Making it unclear it also states "individuals other than those listed above are not covered." Then Article A46222 lists additional providers licensed in New York that are covered further confusing the issue. It remains unclear whether NY licensed MSW's; mental health counselors and psychoanalysts can provide these services. CMS does allow those psychotherapists licensed in the state to provide services "incident to" a psychologist.

Response: The language was clarified to make reference to providers listed in the appendix as well as those listed in the body of the policy. In reviewing state licensure laws for providers who have license and training required to render psychotherapy services, only those practitioners listed in article A4622 were considered able to render this service in addition to those practitioners listed in the main body of the policy (e.g., physicians, psychologists, etc.). If the commenter feels that we have omitted certain provider types that are eligible to render the psychology services described in this policy, then a reconsideration request may be made with supporting documentation.

Comment: One commenter is concerned that the proposed LCD may preclude Part A "incident to" services provided by Doctoral Level Psychology Interns to be billed to the Fiscal Intermediary. The commenter cited programs in Massachusetts that utilize Psychology Interns with "great success." The commenter said the specialized training that these psychology interns receive is especially beneficial to Medicare patients with disabling and persistent mental illness or those over 65. The request is that the final LCD clarify that psychology interns can continue to provide services incident to physician's services and hospitals may bill NGS Part A accordingly.

Response: For the provision of psychiatric services "incident to", psychology interns are regarded as unlicensed providers. While we regard the training of psychologists to be an important function of many academic institutions, there is no statutory Medicare benefit to pay for these training programs.

In the past we have said that on an inpatient psychiatric service, the services of psychology interns would be seen as an incidental part of the overall care provided to these inpatients by licensed professionals, and as long as the services of psychology interns did not form the bulk of the psychological services received by these patients, we would still consider the overall multidisciplinary package of inpatient services to be medically necessary. In the outpatient setting the provision of psychological services by unlicensed individuals, whether psychology interns, clinic social work students, or others, are not covered by Medicare under the “incident to” provision.

Comment: In regard to A46222 - Appendix - New York - Related to DL26899: one commenter opposes the use of individuals licensed under the titles Mental Health Counselor, Psychoanalyst, and Marriage and Family Therapist to deliver services in lieu of “better-qualified” Medicare providers. The commenter maintained that the scopes of practice of these newly created licenses do not include the ability to diagnose and treat mental illness. The commenter said that although the generic term “psychotherapy” is included in each scope of practice, these individuals are not required to have the appropriate training to work effectively treating medically and neurologically complex, elderly and disabled persons.

Response: Although we are concerned that state license laws may allow lesser trained individuals to render psychiatric services, we have endeavored to consider the training requirements for each named provider type to assure adequate preparation to render services to Medicare beneficiaries. We would appreciate a more detailed explanation for the assertion that Mental Health Counselors, Licensed Psychoanalysts and Marriage and Family Therapists are not qualified to render psychological treatment to Medicare beneficiaries.