



Administrator
Washington, DC 20201

MAR 25 2014

Mr. Kent J. Moore
American Academy of Family Physicians
1133 Connecticut Avenue, NW, Suite 1100
Washington, DC 20036

Dear Mr. Moore:

Thank you for your letter regarding whether a physician may bill the Medicare program under the physician fee schedule (PFS) for services provided by a pharmacy if all the conditions for “incident to” services are met. The Centers for Medicare & Medicaid Services greatly appreciates your bringing these concerns to our attention.

In your letter, you ask that we confirm your impression that if all the requirements of the “incident to” statute and regulations are met, a physician may bill for services provided by a pharmacist as “incident to” services. We agree.

As noted in your letter, you reviewed our manual provisions regarding “incident to” services. We would also like to draw your attention to the regulations at 42 CFR 410.26, and more specifically to the provisions relating to compliance with state law which took effect on January 1, 2014. In conjunction with rulemaking for the calendar year (CY) 2014 PFS, we adopted two modifications in the regulations with respect to “incident to” billing. Specifically, in section 410.26(a)(1) of the regulations, we added the following phrase to the definition of auxiliary personnel: “and meets any applicable requirements to provide the services, including licensure, imposed by the State in which the services are being furnished.” In addition, we added a new section 410.26(b)(7), which states, “[s]ervices and supplies must be furnished in accordance with applicable State law.” If you would like more information about the recent modifications to the “incident to” regulations, please see the CY 2014 PFS final rule with comment period (78 FR 74410). Accordingly, in deciding whether it is appropriate to bill for services as “incident to” the physician’s services, along with the conditions listed in your letter, you would need to consider also the applicable state laws.

Also, your understanding that medication management services are not covered under Part B is correct. As you note, these services may be paid by a beneficiary’s Medicare Advantage or Part D plan and are not subject to “incident to” requirements.

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I appreciate your interest in this important issue as we work towards our mutual goal of strengthening the Medicare program for all beneficiaries. Please do not hesitate to contact me with any further thoughts or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Marilyn Tavenner". The signature is written in a cursive style with a large, sweeping flourish at the end.

Marilyn Tavenner