Medicare’s New Part B Smoking Cessation Counseling Benefit and its Impact on Respiratory Therapists

An Analysis by Care Setting
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ADDENDUM
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Since the original analysis of Medicare’s smoking cessation benefit was conducted in 2005, the following changes have occurred. These changes do not impact the overall analysis of the impact of this benefit on the respiratory therapist as discussed in the attached “Analysis by Care Setting” except in the case of CORFs.

• Effective August 25, 2010, CMS has expanded coverage of smoking cessation for outpatient and hospitalized Medicare beneficiaries to include those individuals who use tobacco, regardless of whether the patient has signs or symptoms of tobacco-related disease. When the original decision was made to cover smoking cessation counseling back in 2005, it only covered individuals who had been diagnosed with a disease or adverse health effect that had been found to be linked to tobacco use, or who were taking a therapeutic agent whose metabolism or dosing is affected by tobacco use based on the Food and Drug Administration’s approved information.

• The temporary G codes G0375 and G0376 originally assigned to the intermediate and intensive counseling sessions have been replaced with permanent CPT codes. Effective January 1, 2008, the new CPT codes are:
  o **99406** – Smoking and tobacco-use cessation counseling visit; intermediate, greater than 3 minutes up to 10 minutes;
  o **99407** – Smoking and tobacco-use cessation counseling visit; intensive, greater than 10 minutes.

• As of July 1, 2008, CMS has removed outpatient physical therapy providers and comprehensive outpatient rehabilitation facilities (CORFs) from the list of applicable bill types for smoking and tobacco cessation counseling. At the time the original analysis was prepared in 2005, there were differences of opinion within the CMS as to whether CORFs should be covered given the rules and regulations that governed services provided in that setting. CMS has now decided that smoking cessation is not covered in this setting.
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Introduction

With the recent National Coverage Determination (NCD) by the Centers for Medicare and Medicaid Services (CMS) to cover smoking cessation counseling as a new Part B benefit, respiratory therapists have posed a number of questions as to whether they are eligible to furnish smoking cessation counseling to qualified Medicare beneficiaries.

To provide its members with general insight into the new benefit, the American Association for Respiratory Care (AARC) enlisted the help of Muse & Associates, a Washington, DC-based health care consulting firm, to put together an analysis, by various care settings, as to the impact the new Part B benefit may have on respiratory therapists and their ability to furnish smoking cessation counseling.

This paper is simply a guidance tool. In developing the paper, we sought assistance from various CMS staff in attempting to interpret the NCD language. Regardless of any efforts undertaken to interpret the NCD by Muse & Associates, CMS, or other individuals with respect to the qualifications of respiratory therapists to furnish smoking cessation counseling, the final analysis and interpretation will be the responsibility of the local Part A and Part B Medicare contractors to apply the details of the NCD to individual claims for services based on their reading of the language and applicable State and local licensing laws, regulations, etc.

Note: Specific questions or requests for advice with respect to whether a respiratory therapist is qualified to furnish smoking cessation counseling to an individual patient in a particular setting should be directed to the local Medicare contractor, rather than relying on the information contained in this paper. [See the “Reference” section for a link to the toll free numbers for the Part A fiscal intermediaries and Part B carriers.]

Background

On March 22, 2005, CMS issued a final “Decision Memo for Smoking & Tobacco Use Cessation Counseling” (CAG-00241N). The memo determined that smoking cessation counseling services, based on current Public Health Service guidelines, were reasonable and necessary for the treatment of certain individuals with a disease or adverse health effect that has been found by the U.S. Surgeon General to be linked to tobacco use, or who are taking a therapeutic agent whose metabolism or dosing is affected by tobacco use based on FDA-approved information.
On May 20, 2005, CMS issued the official NCD (Pub 100-03, Transmittal 36, Change Request 3834) and related claims processing manual instructions (Pub 100-04, Transmittal 562, Change Request 3834) to implement the new Medicare Part B benefit. Effective for services furnished on or after March 22, 2005, smoking cessation counseling is covered for outpatients and hospitalized beneficiaries who are smokers and meet certain conditions, as long as the services are “furnished by qualified physicians and other Medicare-recognized practitioners.” The benefit became fully operational on July 5, 2005 when new codes were established for the services. [See the “Reference” section for links to the appropriate CMS web sites related to smoking cessation counseling.]

A cessation counseling session is defined as “face to face patient contact of either the intermediate (greater than 3 minutes and up to 10 minutes) type or the intensive (greater than 10 minutes) type performed either by or “incident to” the services of a qualified practitioner for the purpose of counseling the beneficiary to quit smoking or tobacco use.” Medicare will cover 2 cessation attempts per year. Each attempt may include a maximum of four intermediate or intensive sessions, with the total annual benefit covering up to 8 sessions in a 12-month period. The NCD does not change the existing coverage for minimal cessation counseling (defined as 3 minutes or less in duration) bundled into the normal Evaluation and Management (E/M) visit.

The new codes established for smoking cessation counseling are listed below:

- **G0375** – Smoking and tobacco-use cessation counseling visit; greater than 3 minutes up to 10 minutes  
  Short Descriptor: Smoke/Tobacco counseling 3-10
- **G0376** – Smoking and tobacco-use counseling visit; greater than 10 minutes  
  Short Descriptor: Smoke/Tobacco counseling greater than 10

**Overview**

The term “other Medicare-recognized practitioners” has raised many questions as to who is qualified to perform smoking cessation counseling under the new Part B benefit. The Medicare law limits coverage of medical services to those providers or suppliers of medical services that are recognized as Part B benefit categories. Therefore, the term should be interpreted to include hospitals, clinical psychologists, nurse practitioners, physician assistants, clinical social workers, and others, that is, those who are specified in the Medicare statute as being allowed to provide and bill Medicare for Part B covered services furnished to beneficiaries.

Respiratory therapists do not qualify currently as “other Medicare-recognized practitioners” because there is no separate Part B benefit category that allows them to bill Medicare directly for their services. Respiratory therapists could, however, qualify to furnish smoking cessation counseling under the benefit category established by Section 1861(s)(2)(A) of the Social Security Act, namely, “services furnished as an incident to a physician’s professional service.” Any service provided by a respiratory therapist under this benefit category must meet the “incident to” requirements, which generally require direct supervision by a physician, as well as
applicable coverage requirements that pertain to a particular beneficiary. [See the “Reference” section for a link to the CMS web site for the manual instructions on “incident to” provisions.]

Under the “incident to” benefit, respiratory therapists are most likely to furnish smoking cessation counseling in a freestanding physician’s office and in the hospital outpatient setting as long as the regulatory requirements are met. Respiratory therapists may be able to provide various types of smoking cessation services in a hospital or skilled nursing facility (SNF), but the services would be covered as a Part A benefit, not under the new Part B smoking cessation benefit. This is because the intermediate and intensive counseling sessions that are reimbursable under the NCD that became effective March 22, 2005, are available as a Part B benefit to physicians and other Medicare-recognized practitioners who can bill Medicare directly and be paid for the service.

The intent of the new Part B benefit is to provide a separate payment to qualified physicians and other Medicare-recognized practitioners who furnish smoking cessation services. If smoking cessation counseling is furnished by a respiratory therapist, regardless of the setting, no payment for the service will be made to the respiratory therapist because Medicare law does not permit respiratory therapists to bill and receive payment directly. Respiratory therapists will continue to be paid under whatever arrangements they have negotiated between themselves and the relevant practitioner/provider/facility.

In settings where Medicare payment is made to the provider under a prospective payment system or an all-inclusive facility rate, the provider will not receive a separate payment for the smoking cessation counseling service if furnished by a respiratory therapist because separate billing is not applicable. The service will be bundled into the overall payment rate made to the facility.

**Smoking Cessation Counseling by Care Setting - An Analysis**

**Physician’s Office**

As noted earlier, the new Part B benefit permits a service to be performed “incident to” a physician’s professional service. Therefore, it appears that respiratory therapists can provide smoking cessation counseling in a physician’s office, as long as the “incident to” requirements and coverage requirements are met.

“Incident to” services are defined as “those services that are furnished incident to physicians’ professional services in the physician’s office (whether the office is located in a separate office suite or within an institution) or in a patient’s home.” Medicare contractors determine whether the personnel providing a service “incident to” a physician are qualified to provide that service.

“Incident to” services must be all of the following:

- An integral part of the patient’s treatment course;
- Commonly rendered without charge (or included in the physician’s bill);
• Of a type commonly furnished in a physician’s office or clinic; (not in an institutional setting); and
• Furnished by the physician or by auxiliary personnel under the physician’s direct supervision.

Auxiliary personnel means “any individual who is acting under the supervision of a physician, regardless of whether the individual is an employee, leased employee, or independent contractor of the physician, or of the legal entity that employs or contracts with the physician.” Respiratory therapists would be considered auxiliary personnel in this scenario.

To be covered as an “incident to” service, the physician must personally perform an initial service and remain actively involved in the course of treatment of the patient. As noted above, the physician must also provide direct supervision of the auxiliary personnel. In this case, direct supervision means that the physician does not have to be physically present in the treatment room, but must be present in the office suite to render assistance, if necessary.

If a respiratory therapist furnished smoking cessation counseling as “incident to” a physician’s service in the office setting, the physician would bill Medicare directly for the service and payment would be made directly to the physician under the Medicare Physician Fee Schedule. The respiratory therapist would be paid by the physician for any services furnished under the negotiated arrangements made between both parties.

**Hospital Outpatient Department**

Under the new Part B benefit, the hospital is responsible for determining the appropriate staff that are qualified and trained to provide smoking cessation counseling to Medicare beneficiaries who are registered hospital outpatients, subject to the local contractor’s approval, and the appropriate physician supervision. Hospital outpatient services are those services and supplies (including the use of hospital facilities) which are an integral, although incidental, part of the physician’s professional service in the course of treating the patient. Such services and supplies must be furnished on a physician’s order by hospital personnel and under a physician’s supervision.

The physician supervision requirement is generally assumed to be met where the services are performed on hospital premises. The hospital medical staff supervising the services need not be in the same department as the ordering physician. During any course of treatment furnished by auxiliary personnel (e.g., respiratory therapists), the physician must see the patient periodically and sufficiently often to assess the course of treatment and, where necessary, to change the treatment regimen. This does not mean that the physician must render a personal professional service on each occasion of service furnished by auxiliary personnel.

If the hospital determines that a respiratory therapist is qualified to furnish smoking cessation counseling to a Medicare hospital outpatient, there will be no separate payment made for the service. The payment is bundled into the prospective payment rate and the hospital is paid directly by Medicare under the applicable Ambulatory Payment Classification rate. The
respiratory therapist would be paid for his/her services under arrangements with the facility.

**Hospital Inpatient Setting**

According to the NCD, smoking cessation counseling is available to “hospital beneficiaries who are smokers” and meet certain requirements, as long as the services are furnished by qualified physicians and other Medicare-recognized practitioners. It is a fundamental rule of the Medicare program that no Medicare payment may be made under Part B for any services to the extent the beneficiary is entitled to have payment made with respect to such services under Part A. For services to be covered under Part A or Part B, a hospital must also furnish non-physician services to its inpatients directly or under arrangements. According to CMS manual instructions, except for nurse anesthetists employed by anesthesiologists, services “incident to” physicians’ services are non-physician services for purposes of this provision.

The Medicare Part A benefit for inpatient hospital services broadly covers therapeutic services. Thus, our interpretation of CMS’ policy with respect to furnishing smoking cessation counseling to hospital inpatients in a Part A stay is that the hospital may choose to use the services of a respiratory therapist in providing these counseling services, subject to contractor approval. The services would be covered under Part A and not be covered under the new Part B benefit, however. In such cases, the service would be considered like any other covered service a respiratory therapist may furnish under Part A. The services would be “bundled” along with the other inpatient services furnished by the hospital, and Medicare would pay the hospital under the usual Diagnosis Related Group (DRG) payment. The respiratory therapist would be paid by the hospital under the arrangements made by them.

As noted above, services provided to a hospital inpatient must be treated as an inpatient hospital service to be paid for under Part A. However, there are a few exceptions to this rule, and a physician’s service is one such exception. When provided to a hospital inpatient, a physician’s service, such as smoking cessation counseling, may be covered under the new Part B benefit, e.g., not bundled into the DRG payment, even though the patient has Part A coverage for the hospital stay. Further, if a Medicare beneficiary’s Part A benefits are exhausted, or if the beneficiary is not entitled to Part A, but the beneficiary is enrolled in Medicare Part B, then the new Part B coverage of smoking cessation counseling services could also be available, even if the beneficiary remains a hospital inpatient. Medicare would not cover the services of a respiratory therapist in these cases, because there is no Part B benefit that allows respiratory therapists to bill Medicare directly for their services.

Because the NCD and implementing instructions focus mainly on outpatient settings and do not elaborate on smoking cessation services furnished in the hospital inpatient setting, it is advisable to consult the local Medicare contractor should questions arise with respect to smoking cessation services furnished to hospital inpatients by respiratory therapists.
Skilled Nursing Facility (SNF)

If a beneficiary resides in the SNF under the Part A skilled nursing facility services benefit, only physicians and other Medicare recognized practitioners who can bill Medicare directly could furnish smoking cessation counseling under the Part B benefit to such residents. While it is possible that some smoking cessation services, including some counseling, may be furnished by respiratory therapists in this setting, the service would be covered under Medicare Part A, not the new Part B smoking cessation benefit. It would be up to the SNF to determine whether to have a respiratory therapist provide smoking cessation services if directed under a physician’s plan of care as a Part A benefit.

If respiratory therapists furnish smoking cessation services under the Part A SNF benefit, it would be like any other service they furnish currently to a patient in a SNF as part of a written plan of care. The service would be covered under the Part A skilled nursing facility benefit category, not the new Part B smoking cessation benefit. Medicare payment in this scenario would be made directly to the facility under the prospective payment system and not as a separately billable service. Any payments made to respiratory therapists for services they furnish in the SNF would be under the financial arrangements agreed to by both parties.

There may be an occasion where a respiratory therapist might provide smoking cessation counseling in a SNF as “incident to” the services of a physician in his/her office if certain requirements are met. For the service to be covered, the physician’s office in the SNF must be confined to a separately identifiable part of the facility and cannot be construed to extend throughout the entire facility; the service must be performed in the office to outpatients of the SNF, to patients who are not in a Medicare covered stay or in a Medicare certified part of the SNF; and the service must be billed by the physician as an outpatient service. The “incident to” requirements and coverage requirements must be met, as determined by the local Medicare contractor. Payment for smoking cessation counseling in this situation would be made directly to the physician under the Medicare Physician Fee Schedule. The respiratory therapist would be paid for any services as negotiated with the physician.

Rural Health Clinics/Federally Qualified Health Centers (FQHCs)

Services and supplies “incident to” a physician’s professional service are reimbursable in a rural health clinic or FQHC as long as the “incident to” requirements and coverage requirements are met. It would be up to the Rural Health Clinic and/or FQHC to determine whether a respiratory therapist is qualified to furnish the service. To be a covered service, “incident to” services and supplies in these settings are similar to those in a physician’s office except that a member of the clinic’s health care staff who is an employee of the clinic must furnish the service.

The costs of services in these settings are paid under an all-inclusive rate that Medicare pays the facility directly. Although respiratory therapists’ services do not generate a separate billable encounter (RHS/FQHC payment), it is permissible to bundle their services into the facility’s all-inclusive payment rate. Respiratory therapists would be paid for their services depending upon the arrangements made between the applicable parties.
**Comprehensive Outpatient Rehabilitation Facilities (CORFs)**

CORFs are established and operated exclusively to provide (by or under the supervision of a physician) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons. As such, the statute and regulations are very specific as to the types of services that are covered under this benefit category. Therefore, we expect that smoking cessation counseling furnished in a CORF may be limited.

From our research, we have not been able to conclude the extent to which respiratory therapists may be qualified to provide smoking cessation services in this setting. Therefore, we recommend the local Medicare contractor be contacted for advice about individual situations. With respect to a physician’s service, under the new Part B benefit, it would appear that should a physician provide an occasional session of smoking cessation at the CORF, the physician providing the service could bill the carrier directly and note the place of service as the CORF. Payment would be made directly to the physician under the Medicare Physician Fee Schedule.

**Patient’s Home**

The requirements in this setting are very strict. A respiratory therapist could qualify to provide smoking cessation counseling in a patient’s home only if the physician bills the service and the physician is personally present and provides direct supervision to the respiratory therapist in the patient’s home. In this scenario, the physician would bill Medicare directly for the smoking cessation service. The respiratory therapist would be paid for any services furnished under the negotiated arrangements with the physician. If a respiratory therapist went to a patient’s home to give treatment unaccompanied by a physician, Medicare would not cover the therapist’s services.

**Summary**

Our analysis and interpretation of the NCD and implementing instructions issued by CMS on coverage of smoking cessation counseling as a new Part B benefit indicate that there are opportunities for respiratory therapists to furnish these services to qualified Medicare beneficiaries in a number of settings. The local Medicare Part A Fiscal Intermediaries and Part B Carriers, however, are responsible for interpreting the relevant policies and determining whether respiratory therapists are qualified to furnish smoking cessation counseling as a covered service to qualified Medicare beneficiaries under the new Part B benefit.

Despite the fact that smoking cessation counseling is a new covered benefit under Part B, our analysis also shows that it would not change the way respiratory therapists currently provide covered services. That is to say, respiratory therapists would not receive any additional payment for rendering smoking cessation counseling, regardless of the setting.

Because there will undoubtedly be a number of issues that will surface as implementation of this new benefit gets underway, Muse & Associates will keep abreast of the issues and apprise AARC of any changes to this analysis that may be warranted.
References (Internet Web Sites)


- Medicare National Coverage Determination (Pub 100-3):
  http://www.cms.hhs.gov/manuals/pm_trans/R36NCD.pdf

- Medicare Claims Processing (Pub 100-4) – Implementing Instructions:
  http://www.cms.hhs.gov/manuals/pm_trans/R562CP.pdf

- Incident to” provisions: http://www.cms.hhs.gov/manuals/pm_transR1764b3.pdf

- Part A Fiscal Intermediary and Part B Carrier toll free numbers:
  http://www.cms.hhs.gov/medlearn/tollnums.asp