From: Jesse, Susan [SJesse@cms.hhs.gov]
Sent: Wednesday, September 29, 2004 12:34 PM
To: [Redacted]
Subject: Incident to services
Attachments: Susan Jesse.vcf

From our office asked that I respond to some questions you presented to her regarding "incident to" services provided in a mental health center. My responses are based on the assumption that you are not a Medicare certified Community Mental Health Center. The following is the response issued to the "Kansas Task Force on Providers of Mental Health Services" when it raised questions regarding the acceptability of providing psychotherapy services incident to:

"Outside the CMHC and hospital setting, physicians, CPs, NPs, CNSs, and PAS can bill for services furnished as an incident to their professional services providing all of the "incident to" requirements are met. In order for these individuals to bill for the services of auxiliary personnel as an incident to their professional services, the services must be:

- Furnished by an employee of a physician, CP, NP, CNS, or PA (or an employee of the same legal entity that employs these individuals as supervisors);
- The type of services that are commonly furnished in the offices of physicians, CPs, NPs, CNSs, and PAS;
- An integral, although incidental, part of the professional services performed by physicians, CPs, NPs, CNSs, and PAS;
- Performed under the direct personal supervision of the physician, CP, NP, CNS, or PA, that is, these individuals must be physically present and immediately available; and
- Either furnished without charge or included in the bill of the physician, CP, NP, CNS, or PA.

These "incident to" requirements apply to all physician services. We do not further specify these rules to individual physician services. Carriers have the responsibility of determining the application of these national "incident to" rules to individual services. A reasonable interpretation of national "incident to" rules, in most cases, is that psychotherapy services are self-contained and cannot be fragmented. Therefore, these services do meet the "incident to" requirement that such services must be an integral, although incidental part of the overall professional services.

We would further note that, in the absence of national, statutory Medicare policy, Medicare contractors also have the discretion to develop criteria that helps them to determine whether certain services, when furnished by certain individuals are covered as long as the criteria do not conflict with national policy. These criteria are articulated through local medical review policies (LMRPs) / now referred to as local coverage determinations (LCDs)."

I believe the above information should answer your question, obviously you will need to check with your carrier to see if they have any LCD regarding the provision of psychotherapy and incident to. If I did not address all of your concerns or you have further questions please let me know.