

# Legally Allowable Medical Assisting Tasks in Telehealth



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**T**he telehealth tasks delegated to medical assistants expanded considerably during the COVID-19 pandemic. And medical assistants continue to assume crucial roles in telehealth. The purpose of this article is to explain the legal analysis for determining which telehealth tasks are delegable to medical assistants.

## Medical Assisting Telehealth Task Billing and Reimbursement

As with all medical assisting tasks, telehealth duties performed by medical assistants are billed “incident to” the services of the delegating/overseeing licensed provider(s)—usually physicians, nurse practitioners, and physician assistants. Medical assistants are not permitted to bill for services independently. Consequently, they do not have National Provider Identifier numbers.

The requirements for services to be incident to those of a licensed provider are set forth in the following excerpt from the *Code of Federal Regulations*:

§405.2413. Services and supplies incident to a physician’s services.

(a) Services and supplies incident to a physician’s [and a nurse practitioner’s and a physician assistant’s] professional service

are reimbursable under this subpart if the service or supply is:

...

(3) Furnished as an *incidental*, although *integral*, part of a physician’s professional services [emphasis added]<sup>1</sup>

## Laws that Determine Which Telehealth Tasks Are Delegable to Medical Assistants

State statutory law, common law, and federal statutory law determine which telehealth tasks are delegable to medical assistants and reimbursable by third-party payers—including the Centers for Medicare & Medicaid Services (CMS).

### State Statutory Law

Medical assisting scope of practice is determined primarily by state law. The laws of some American jurisdictions do not include a specific reference to “medical assistants.” In these jurisdictions, medical assistants are classified as “unlicensed assistive personnel,” “employees,” “qualified persons,” and “agents” of the delegating provider, for example.

In other states, the law includes the term “medical assistant” and specifies the tasks that may and may not be performed by medical assistants—regardless of which category of licensed provider is assigning duties to the medical assistant. In contrast, under the laws of other states, the scope of practice of medical assistants is established by the legal scope of delegation of the licensed provider.

The scope of practice of medical assistants in these states may vary depending on whether medical assistants are working under the authority and supervision of (1) physicians (allopathic and osteopathic), (2) advanced practice registered nurses (primarily nurse practitioners), or (3) physician assistants.

## Common Law Principles Established by Judicial Decisions

In addition to the authority to enact legislation and promulgate rules and regulations, state and federal governments are empowered to resolve disputes about the law and conflicts between parties by means of their judicial (court) systems. Courts may formulate and apply legal principles to resolve a case or controversy under federal or state law. These legal principles constitute the common law and have precedential authority in future cases.

### Federal Statutory Law

The U.S. Constitution does not authorize the U.S. Congress to make scope of practice determinations for professions and occupations. This authority is reserved to the states by the Tenth Amendment of the Constitution and is considered part of the state’s police power exercised to protect the health, safety, and welfare of its residents. However, federal law allows Congress and executive branch bodies (e.g., CMS) to establish the conditions for reimbursement for the services of professionals under federal programs—such as Medicare and Medicaid.

## Tasks (Including Telehealth Tasks) Not Delegable to Medical Assistants

My legal opinion is that state law and common law principles do not allow the following the delegation to medical assistants:

- Tasks that require the exercise of independent clinical judgment
- Tasks that require the making of clinical assessments, evaluations, or interpretations
- Tasks limited by law to other (often licensed) professionals

## Tasks (Including Telehealth Tasks) Delegable to Medical Assistants

My legal opinion is that state law and common law principles allow to be delegated to knowledgeable and competent medical assistants the verbatim receiving, documenting, and transmitting of information for or on behalf of the provider. Verbatim transmitting includes only what the provider has authorized.

Verbatim transmitting does not permit the answering of questions that require the exercise of independent clinical judgment or the making of clinical assessments, evaluations, etc. Such questions must be referred to a licensed provider or licensed health professional.

## Other Delegable Tasks

As long as the “no clinical assessment” principle is followed, the following tasks are delegable to knowledgeable and competent medical assistants:

- Patient education
- Relaying test results (negative or positive)

To reiterate, questions involving clinical judgment must be referred to a licensed provider or professional.

## Chronic Care Management

Note the following description of Chronic Care Management (CCM) by CMS:

CCM is the care coordination that is outside of the regular office visit for patients with multiple (two or more) chronic conditions expected to last at least 12 months or until the death of the patient, and that place the patient at significant risk of death, acute exacerbation or decompensation, or functional decline.<sup>2</sup>

## CCM Services Licensed Providers May Delegate to Clinical Staff

CMS addresses what tasks (including telehealth tasks) licensed providers are permitted to delegate to clinical staff. Importantly, most of these tasks may be done under the general (not direct/on-site) supervision of the licensed provider:

As a member of the care team, clinical staff may perform activities such as: collect structured data, maintain/inform updates for the care plan, manage care, provide a 24/7 access to care, document CCM services, and provide support service to facilitate CCM.<sup>3</sup>

Most of these services may be performed under *general provider supervision*. *The provider does not have to be on the premises/in the office suite.*<sup>3</sup>

## Definition of “Clinical Staff”

CMS defines “clinical staff” by directing practitioners to the *Current Procedural Terminology (CPT)* code:

Certain CCM codes describe time spent per calendar month by “clinical staff.” Who qualifies as “clinical staff?”

Practitioners should consult the CPT definition of the term “clinical staff.”<sup>3</sup>

The CPT defines “clinical staff” as follows:

A clinical staff member is a person who works under the supervision of a physician or other qualified health care professional and who is allowed by law, regulation, and facility policy to perform or assist in the performance of a specific professional service but does not individually report that professional service.<sup>4</sup>

## Clinical Staff License Requirements

According to the CPT codebook, clinical staff do not need to be licensed. The CPT definition does not limit clinical staff to those who are licensed. The following are the only requirements:

- The clinical staffer must work “under the supervision of a physician or other qualified health professional.”<sup>4</sup>
- The clinical staffer is allowed by “law, regulation, and facility policy to perform or assist in the performance of a specific professional service.”<sup>4</sup>
- The clinical staff “does not individually report that professional service.”<sup>4</sup>

## Medical Assistants as Clinical Staff

Medical assistants are considered clinical staff under the definition in the CPT codebook. The following is true of medical assistants:

- They work under the supervision of a licensed health professional.
- They are allowed by law to perform specific professional services.
- They do not bill independently for their services; their services are billed incident to the services of the delegating licensed professional.

## CMS Definition of “Auxiliary Personnel”

CMS defines “auxiliary personnel” as follows:

- (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)<sup>5</sup>

Medical assistants are included within this definition of “auxiliary personnel.”

## Clinical Staff/Auxiliary Personnel Telehealth Services

CMS addresses specific telehealth services that may be carried out by clinical staff and auxiliary personnel. CMS states in one of its fact sheets that patient consent may be obtained remotely by clinical staff/auxiliary personnel (including medical assistants) under the general supervision of the billing practitioner:

Consent for Care Management & Virtual Communication Services

We require patient consent for all services, including non-face-to-face services. You may get patient consent at the same time you initially provide the services. Direct supervision isn't required to get consent. In general, *auxiliary personnel* [who include medical assistants] under *general supervision* of the billing practitioner can get patient consent for these services [emphasis added]. The

person getting consent can be an employee, independent contractor, or leased employee of the billing practitioner.<sup>6</sup> ♦

*Questions and thoughts about this article may be directed to the author at [DBalasa@aama-ntl.org](mailto:DBalasa@aama-ntl.org).*

### References

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