

	Policy Title	Clinical Documentation: Assistant Surgery Cases
	Policy Number	3.04
	Department	Compliance & Privacy Office
	Effective Date	September 19, 2023
	Last Reviewed	September 19, 2023
	Approved By	Clinical Compliance Committee
	Approval Date	September 19, 2023

Policy

Documentation Requirements – The primary surgeon overseeing the procedure is responsible for dictating and completing an operative report. This report should explicitly state that the case involved an assistant-at-surgery and provide the name and credentials of the assisting surgeon. The operative report must include a concise statement justifying the medical necessity for the assistant-at-surgery, accompanied by a detailed account outlining the role played by the assistant surgeon during the case.

To enable the assistant surgeon’s billing and reimbursement by a third-party payer, the primary surgeon must substantiate the medical necessity for the assistant and explain why a resident was not used in that capacity. In situations where the Assistant-at-Surgery is not a resident or fellow in an approved ACGME training program, and the primary surgeon's department has such a program, documentation must confirm the unavailability of a qualified resident. The primary surgeon should specify the reason for their unavailability, such as scheduling conflicts, emergency cases, exceptional clinical circumstances, etc.

Pre-Billing Monitoring/Billing Coordination – Assistant-at-Surgery cases may necessitate pre-billing monitoring and coordination, involving a billing, coding, or compliance staff member from the assistant surgeon's department. The pre-billing review performed on behalf of the assistant surgeon must include reviewing the primary surgeon’s operative note to verify the following, based on Medicare rules:

- The name and credentials of the Assistant-at-Surgery.
- A clinical indication justifying the medical necessity for the assistant surgeon.
- Descriptions of the distinct surgical work performed by both the primary and assistant surgeons.
- An attestation regarding the unavailability of a qualified resident, including the reason for their unavailability.

The Assistant Surgeon’s billing or compliance team should additionally verify:

- The CMS fee schedule assistant-at-surgery indicator for the relevant CPT code(s) being billed.
- The correct assistant-at-surgery modifier is appended.
- Confirmation of the diagnosis related to the common procedure code(s).

Before releasing charges or the insurance claim to the provider, a query should be made to the primary surgeon for any documentation deficiencies or coding clarifications.

The final coordination step involves preparing to send supporting documentation with the claim if the assistant-at-surgery indicator was “0” for any shared procedures, as required to substantiate medical necessity. Some payers may request the operative note if the Assistant at Surgery indicator was “2”.

While most payers align with Medicare guidelines, it is advisable to research payer-specific guidelines for billing an assistant-at-surgery case if the patient is not covered by Medicare insurance.

Purpose

The purpose of this policy is to establish a streamlined workflow that supports coordination of procedure documentation, procedure coding, and timely claim submission for assistant-at-surgery cases.

Scope

This policy applies to primary surgeons requiring an assistant-at-surgery who is not a resident or fellow in an approved ACGME training program, as well as the provider serving as the assistant-at-surgery. The policy addresses the documentation requirements for the primary surgeon and outlines billing and coding rules for the assistant surgeon. Additionally, this policy extends to coding and billing staff supporting surgeons and providers involved in assistant-at-surgery cases.

Medicare will only reimburse for assistant-at-surgery services in a teaching setting when the service meets eligibility criteria and at least one of the following circumstances applies:

- The procedure is performed by a physician primarily engaged in the field of surgery, and the primary surgeon does not involve interns, residents, or fellows in ACGME-approved fellowship programs in the surgical procedures (including preoperative and postoperative care).
- There is no resident training program relevant to the specialty required for the surgery.
- A resident in a training program related to the specialty required for the surgery is unavailable, or
- The service is required by an exceptional medical circumstance.

For an assistant-at-surgery services, Medicare will allow reimbursement at 16% of the usual surgical allowance. To ensure proper reimbursement for both the primary surgeon and the assistant-at-surgery, the primary surgeon must document the necessity and role of the assistant-at-surgery. Furthermore, charges for the assistant-at surgery must be accurately coded to reflect the applicable circumstance(s).

Definitions

Assistant-at-Surgery – a provider who actively assists the primary surgeon in charge of a case in performing a surgical procedure. A physician, nurse practitioner, physician assistant or clinical nurse specialist who is authorized to provide such services under state law can serve as an assistant-at-surgery.

Modifier-80 Assistant Surgeon
(use in non-teaching settings only; not applicable at WCM)

Modifier-81 Minimum Assistant Surgeon
(use when a minor problem is encountered during the operation that requires the service of an assistant surgeon for a relatively short period of time)

Modifier-82 Assistant Surgeon
(use when the assistant-at-surgery service was provided by an MD or DO and a qualified resident was not available.)

Modifier-AS Physician assistant, nurse practitioner, or clinical nurse specialist for assistant at surgery

Assistant-at-Surgery Indicators The Centers for Medicare & Medicaid Services (CMS) Assistant-at-Surgery Indicators are listed in the CMS National Physician Fee Schedule Relative Value File for each CPT code and identify which services are eligible for Assistant-at-Surgery billing as well as whether claim adjudication requires documentation review. Values which are currently in the CMS file are listed below:

0 = Payment restriction for assistants-at-surgery applies to this procedure unless supporting documentation is submitted to establish medical necessity.

1 = Statutory payment restriction for assistants-at-surgery applies to this procedure. assistants-at-surgery may not be paid.

2 = Payment restriction for assistants-at-surgery does not apply to this procedure. Assistants-at-surgery may be paid.

9 = Concept does not apply.

Procedure

Compliance with this Policy

The Compliance Department will review and update this Policy, when necessary, in the normal course of its review of the Organization's Compliance Program.

Contact Information

Direct any questions about this policy to the Clinical Compliance and Privacy Office:

- Telephone: (646) 962-6930
- Email: Compliance@med.cornell.edu

Reports of Non-Compliance:

Reports of Non-Compliance should be made to the Clinical Compliance and Privacy Office:

- Telephone: (646) 962-6930
- Email: Compliance@med.cornell.edu

References

1. Code of Federal Regulations:

- Title: 42 CFR 415.190
- Source: eCFR (Electronic Code of Federal Regulations)
- <https://www.ecfr.gov/current/title-42/section-415.190>

2. Medicare Claims Processing Manual:

- Publication Number: 100-04
- Chapter: 12
- Section: 100.1.7
- Title: Assistants at Surgery in Teaching Hospitals
- <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/clm104c12.pdf>

3. Medicare Claims Processing Manual:

- Chapter: 23
- Title: Fee Schedule Administration and Coding Requirements
- Revision: 12068, dated June 20, 2023
- Section: Assistant at Surgery (Modifiers AS, 80, 81, and 82)

- <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c23.pdf>

4. Department of Health and Human Services, Office of Inspector General:

- Report Number: A-01-20-0053
- Date: November 2022
- Title: Medicare Improperly Paid Physicians for Co-Surgery and Assistant-at-Surgery Services That Were Billed Without the Appropriate Payment Modifiers
- <https://oig.hhs.gov/oas/reports/region1/12000503.asp>

5. CMS MLN (Medicare Learning Network) Document:

- Title: How to Use the MPFS Look-Up Tool
- Document Number: MLN901344
- Date: March 2021
- <https://www.cms.gov/files/document/physician-fee-schedule-guide.pdf>

Policy Approval

The Compliance Department will review and update this Policy, when necessary, in the normal course of its review of the Organization’s Compliance Program.

Version History

Original Policy Date – October 1, 2006

Review and Update – May 4, 2023

Date	Author	Revisions
		Initial draft completed. Original date of issue.