



Incident-to Supervision of Outpatient Therapeutic Services: Are You in Compliance?

Introduction

On April 14, 2009, 12 health care organizations submitted a letter to the Centers for Medicare & Medicaid Services (CMS) requesting to withdraw or delay the implementation of CMS' clarification regarding physician supervision of hospital outpatient therapeutic services as announced in the 2009 Outpatient Prospective Payment System (OPPS) final rule (73 Fed. Reg. 68, 702). This policy requires a physician to provide direct supervision for all incident-to outpatient therapeutic services, regardless of whether the services are rendered in the hospital, on the hospital's campus, or off-campus. In the 2009 OPPS final rule, CMS describes the discussion of the direct supervision requirement as a "clarification" of existing rules. However, many health care organizations view the "clarification" as a policy change, which raises concerns regarding compliance. More specifically, health care organizations, including the Association of American Medical Colleges and the American Hospital Association, are concerned that the new policy negatively affects hospitals, physicians, and patients and that CMS did not allot sufficient time for hospitals to comment and adapt to the new policy.

Regardless the debate whether CMS clarified, expanded, or modified its interpretation of the direct supervision requirements, hospital providers are required to comply with the current regulations. Consequently, this article outlines the key points of CMS' current policy regarding direct supervision of hospital outpatient therapeutic services as well as strategies for complying with CMS' regulations.

Physician Supervision for Hospital Outpatient Therapeutic Services

Under section 1861(s)(2)(B) of the Social Security Act, CMS reimburses hospitals for outpatient therapeutic services provided "incidentto" a physician's service. In order to receive full reimbursement for outpatient therapeutic services, the following criteria must be met.

- The outpatient therapeutic services are furnished by or under an arrangement made by a hospital.
- The outpatient therapeutic services are an integral and incidental component of the physician's service.

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- The outpatient therapeutic services are under the order of a physician (or other authorized practitioner) and the physician appropriately assesses the patient's course of treatment, progress and issues changes to treatment regimen when applicable.
- The outpatient therapeutic services are rendered in a hospital or a provider-based setting as defined in section 413.65 of Title 42 of the Code of Federal Regulations (CFR).
- The outpatient therapeutic services are conducted under the direct supervision of a physician or clinical psychologist as outlined in section 410.32(b)(3)(ii) and 482.12 of Title 42 of the CFR.

Direct supervision means that "the physician must be present and on the premise of the location (the provider-based department of the hospital) and immediately available to furnish assistance and direction throughout the performance of the procedure."¹ The supervising physician is not required to be in the same department as the physician who ordered the services. Additionally, the supervising physician does not have to be present in the room when the procedure is performed.

Historically, health care organizations have been under the impression that the direct physician supervision requirements were automatically met for outpatient therapeutic services rendered in the hospital or on-campus. Thus, the focus for complying with CMS' direct supervision requirements was on outpatient therapeutic services provided off-campus. However, the issuance of the 2009 OPSS final rule indicates that direct supervision applies to all venues where outpatient therapeutic services are rendered incident-to a physician's service. As a result, hospitals should review their policies on physician supervision on and off-campus and consider entering into new arrangements with physicians to provide direct supervision at the additional site of service.

Compliance Strategies

The following list outlines strategies hospitals may wish to adopt when complying with CMS' regulations.

- **Work with hospital administrators.** Collaborate with hospital administrators to ensure that staff is in compliance with all Medicare supervision requirements.
- **Review provider-based attestations.** The provider-based attestation describes where outpatient-services are provided within the hospital. This will assist in determining where direct supervision is required.
- **Train and Educate.** Conduct ongoing compliance training regarding direct physician supervision for incident-to outpatient therapeutic services.

¹ CMS, Medicare Benefit Manual, CMS 100-02, Ch 6, section 20.5.1, Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After August 1, 2000.

- **Review CMS' Manual.** Medicare contractors have been instructed to refer to the Medicare Benefit Policy Manual Chapter 6 section 20.5.1 to review the latest revisions. Accordingly, to avoid submitting improper claims, Medicare providers should comply with section 20.5.1 of the Medicare Benefit Policy Manual.
- **Examine denied claims.** Medicare contractors will deny claims that fail to comply with CMS' direct physician supervision requirements. Thus, hospitals are encouraged to review and monitor denied claims to assess the reason for denial. If the reason is lack of direct physician supervision, education should be conducted to remediate the issue.

Conclusion

As noted above, a number of health care organizations have raised concerns regarding the direct supervision requirements to CMS. Although, CMS may respond to their concerns in the 2010 OPSS proposed rule, Medicare providers are still required to comply with the current regulations. Thus, regardless of how CMS characterized the direct supervision requirements in the 2009 OPSS final rule, hospital providers should take the proper steps to ensure that on-campus and off-campus outpatient locations that provide therapeutic services incident-to a physician's service are conducted under the direct supervision of a physician.

References

- 42 C.F.R. §410.27
- 42 C.F.R. §410.32(b)
- 42 C.F.R. §413.65
- 42 CFR Parts 410, 416, and 419 Medicare Program: Changes to the Hospital Outpatient Prospective payment System and CY 2009 Payment Rates; Changes to Ambulatory Surgical Center Payment System and CY 2009 Payment Rates; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers to Perform Organ Transplants- Clarification of Provider and Supplier Termination Policy Medicare and Medicaid Programs: changes to Ambulatory Surgical Center Conditions for Coverage; Final Rule, 73 Fed. Reg. 223, 68702, 68704 (November 18, 2008).
- CMS, Medicare Benefit Manual, CMS 100-02, Ch 6, section 20.5.1, Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After August 1, 2000.
- "Physician Supervision for Hospital Outpatient Therapeutic Services." Letter to CMS, April 14, 2009. Reproduced from High-Risk Areas in Medicare Billing Current Developments Newsletter © 2009 by Strategic Management Systems, Inc. and Atlantic Information Services, Inc., 1100 17th Street, NW, Suite 300, Washington, D.C. 20036, 202-775-9008 or 800-521-4323. www.AISHealth.com. Used with Permission.

- Eisenberg, Steven A., McBride, Scott, Williams, E. Requirements for Physician Supervision of therapeutic Hospital Outpatient Services: Clarification or Confusion? 2009. 4 May 2009 <<http://www.bakerlaw.com/files/Uploads/Documents/News/Articles/AHLA%20Eisenberg%20McBride%20Williams%204-2009.pdf>>.