



How Close is Close Enough? CMS Proposes Panel to Review Physician Supervision Standards

How close is close enough for physician supervision of outpatient procedures? In its 2012 Outpatient Prospective Payment System (OPPS) proposed rule, the Centers for Medicare and Medicaid Services (CMS) has set its sights once again on physician supervision standards, this time proposing that an independent panel make recommendations as to which level of supervision is required for a particular therapeutic service. The comment period ends August 30, 2011, and the final rule will go into effect on January 1, 2012.

Standards in Flux

CMS defines three standards for supervision for outpatient services: (1) general, (2) direct and (3) personal. The general supervision standard is the most lenient and requires that the service be provided under the physician's (or non physician provider's [NPP's]) direction and control, but there is no requirement of actual physical presence. Personal supervision is the most stringent because the physician or NPP must be physically present in the same room where the procedure is taking place. The requirements for the middle level (direct supervision) have been tougher to pin down, and CMS has provided differing guidance over the years regarding the physical proximity of the supervising physician or NPP to the location of the procedure. Must the supervisor be on the same campus? Or is presence in the same provider-based department enough? Most recently, in the 2011 final OPPS rule, CMS deleted all references to physical proximity for direct supervision, requiring only that the supervising physician or NPP be "immediately available" to assist with the procedure.

While the supervision standards for diagnostic services are set forth in the Medicare Physician Fee Schedule (MPFS), direct supervision is currently the standard applicable to all outpatient therapeutic services (with the exception of non-surgical extended duration therapeutic services, which require direct supervision during the initiation period and general supervision after the patient is stable).

Panel to Review Supervision Standards for Therapeutic Services

In the 2012 proposed rule, CMS has moved away from further defining the supervision standards towards a focus on which standards should apply to particular hospital outpatient therapeutic services. Though CMS still views direct supervision to be the "default" level of supervision for these services, it will seek outside recommendations as to whether particular services warrant a higher or lower level of supervision. To that end, CMS proposes that the existing Federal Advisory Ambulatory Payment Classification Panel (the "Panel") serve as an independent review body. The Panel would solicit suggestions from stakeholders as to which services it should evaluate and would then review and provide recommendations to CMS as to which of the standards (personal, direct or general) should apply for each service. In making its recommendations, the Panel would take into consideration "(i) the complexity of the service, (ii) the acuity of the patients receiving the service, (iii) the probability of an unexpected or adverse patient event, and (iv) the expectation of rapid clinical changes during the therapeutic

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service or procedure.” In contrast with the way CMS sets supervision levels for diagnostic services under the MPFS, CMS’s decisions based on the Panel’s recommendations would be subject to public comment prior to going into effect. Once a particular service has been reviewed by the Panel, any subsequent request to re-evaluate the supervision level for that service would have to be submitted with new evidence, such as new technology or different methods of service, warranting a fresh review.

Critical Access Hospitals

The proposed rule also addresses the application of the direct supervision standard to critical access hospitals (CAHs) and small rural hospitals. These CAHs and rural hospitals face additional challenges as they provide services over a large geographic area, and requirements for physical presence of supervisors may be particularly burdensome. In the 2011 final rule, CMS postponed enforcement of the standard for those providers through 2011. The 2012 proposed rule provides that the postponement will continue through at least part of 2012, until CMS has completed its policy review.

If you have any questions about the proposed rule, please contact [Heather Iverson](#), [Andrea Barach](#) or one of the other attorneys in the [Health Care](#) group at Bradley Arant Boulton Cummings LLP.

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