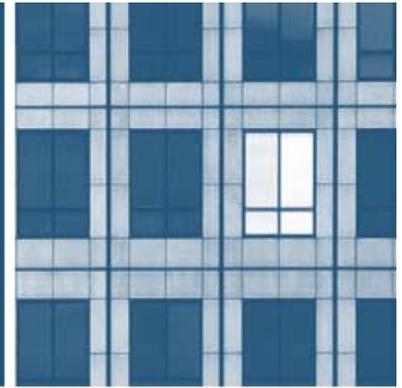


# On the Subject



## Health Industry Advisory

August 20, 2010

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The Centers for Medicare & Medicaid Services' 2011 outpatient prospective payment system proposed rule clarifies supervision requirements for certain nonsurgical services.

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### CMS Proposes Revisions to Nonsurgical Services Supervision Requirements in Proposed Rule

Over the last couple years, the Centers for Medicare & Medicaid Services (CMS) has clarified and refined the rules relating to physician supervision of hospital outpatient services. CMS currently requires direct supervision for outpatient therapeutic services in hospital outpatient departments. Historically, direct physician supervision was assumed in on-campus settings. However, in the preamble of the 2009 outpatient prospective payment system (OPPS) rule, CMS “clarified” that assumed supervision did not mean that no supervision was required, and that hospitals must ensure supervising physician presence and immediate availability to meet the direct-supervision requirement that applies to most outpatient therapeutic services and to many diagnostic services.

The preamble language in the 2009 OPPS rule generated numerous comments and requests for clarification, which CMS addressed in part in the 2010 OPPS final rule. In the 2010 OPPS final rule, CMS provided a somewhat more flexible approach than the 2009 OPPS preamble and interpreted direct supervision on the hospital campus or in an on-campus provider-based department (PBD) to mean that “the supervisory physician or nonphysician practitioner must be present on the same campus and immediately available to furnish assistance and direction throughout the performance of the procedure.” For details on the 2010 OPPS final rule, see *On The Subject* titled “CMS Finalizes Requirements for Supervision of Hospital Outpatient Services” at [http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object\\_id/85e58419-e300-4d81-b478-92671453da92.cfm](http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/85e58419-e300-4d81-b478-92671453da92.cfm). CMS defined “in the hospital” as areas in the main building(s) of a hospital under the ownership and financial and administrative

control of the hospital; which are operated as part of the hospital and for which the hospital bills the services furnished under the hospital’s CMS Certification Number. For off-campus PBD’s of hospitals, the physician or nonphysician practitioner must be present in the off-campus PBD and immediately available to furnish assistance and direction throughout the performance of the procedure.

Although the 2010 OPPS rule addressed some of the provider community’s concerns, many hospitals, particularly rural hospitals and critical access hospitals (CAHs), commented that physicians or nonphysician practitioners are not always available when therapeutic services need to be provided, particularly services of long duration. In response, CMS has identified a limited set of nonsurgical services for which direct supervision is required only for *initiation of the service*, followed by a general supervision requirement for the remainder of such service in the 2011 OPPS proposed rule, 75 Fed. Reg. 46302 (August 3, 2010). Unlike direct supervision, where physician presence is required, services provided under general supervision are furnished under the overall direction and control of the physician or nonphysician practitioner, but his or her physical presence is not required during the performance of the procedure.

In the 2011 OPPS proposed rule, CMS has listed specific “non-surgical, extended duration therapeutic services” that are eligible for the proposed hybrid supervision requirement. The list includes services with lengthy monitoring components and low risk of complications that would require the assistance and direction of the supervising physician or nonphysician practitioner after assessment. Such services include a limited number of injection, infusion and observation services, but not chemotherapy or blood transfusions.

For these non-surgical, extended duration therapeutic services, direct supervision is required only for initiation of the service, followed by a general supervision requirement for the remainder of the service. CMS defines “initiation of the service” as “the beginning portion of a service ending when the patient is stable and the supervising physician or appropriate nonphysician practitioner believes the remainder of the service can be delivered

safely under [his or her] general direction and control without their physical presence on the hospital campus or in the [PBD] of the hospital.”

Comments to the proposed rule may be submitted through August 31, 2010. The proposed changes would be applicable to services furnished on or after January 1, 2011.

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