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CMS' 2012 OPPS Proposed Rule Further Revises Physician Supervision Requirements

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The U.S. Centers for Medicare & Medicaid Services (CMS) intends to further revise its physician supervision policy by proposing the federal Advisory Panel on Ambulatory Payment Classification Groups serve as the independent review body to evaluate and recommend physician supervision levels to CMS, and by defining personal supervision and general supervision for all hospital outpatient therapeutic services.

In the 2012 outpatient prospective payment system (OPPS) proposed rule, the U.S. Centers for Medicare & Medicaid Services (CMS) proposes to further revise the physician supervision rules that apply to hospital outpatient services. The proposed changes include the following:

- The federal Advisory Panel on Ambulatory Payment Classification Groups (Panel) will serve as the independent review body that evaluates individual services defined by CPT® code and recommends to CMS a supervision level (general, direct or personal) to ensure an appropriate level of quality and safety
- CMS will issue decisions based on Panel recommendations through sub-regulatory guidance
- Definitions for personal supervision or general supervision for all hospital outpatient therapeutic services will be added

Over the last few years, CMS has clarified and refined the rules relating to physician supervision of hospital outpatient services. CMS currently requires direct supervision for most outpatient therapeutic services in hospital outpatient departments. Historically, direct physician supervision was assumed in on-campus settings. However, in the preamble of the 2009 OPPS rule, CMS "clarified" that assumed supervision did not mean that no supervision was required, and that hospitals had to ensure supervising physician presence in the outpatient department 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. (View CMS Finalizes Requirements for Supervision of Hospital Outpatient Services for more information.)

In the 2010 OPPS final rule, CMS provided a somewhat more flexible approach than the 2009 OPPS preamble, permitting supervision by certain nonphysician practitioners and interpreting direct supervision

in the hospital or on-campus provider-based department (PBD) of the hospital 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." However, for off-campus PBDs of hospitals, CMS continued to require that 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 commented that, particularly in rural and critical access hospitals (CAHs), requiring a physician or nonphysician practitioner to be available at all times that the respective services are provided is excessively burdensome and difficult to staff if there is no other activity to occupy the physician in the hospital.

In the 2011 OPPS final rule, CMS addressed these concerns by substantially revising its physician supervision policy to eliminate the requirement that a supervising physician must be "on the same campus" or "in the off-campus provider-based department of the hospital," identify a limited set of "non-surgical, extended duration therapeutic 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, and announce its intent to establish an independent review process for evaluating the appropriate level of physician supervision for specific therapeutic services in the calendar year 2012 OPPS rulemaking cycle. (View CMS' 2011 OPPS Final Rule Substantially Revises Physician Supervision Requirements for more information.)

In the 2012 OPPS proposed rule, CMS is proposing that the Panel serve as the independent review body that evaluates individual services defined by CPT code and recommends to CMS a supervision level (general, direct or personal) to ensure an appropriate level of quality and safety. In order to ensure the Panel is prepared to address supervision standards, CMS intends to amend the Panel's charter to include supervision, add two to four members to represent CAHs, and create a supervision subcommittee to evaluate appropriate supervision standards for individual services.

CMS intends to issue supervision decisions based on Panel recommendations through sub-regulatory guidance, similar to the process used to set supervision levels for diagnostic services under the Medicare Physician Fee Schedule (MPFS). Unlike the MPFS process, CMS' decisions would be posted on the OPPS website for public review and comment, and would be effective either in July or January of the given year.

While CMS stated that direct supervision is the most appropriate, and therefore the default, level of supervision for most hospital outpatient therapeutic services that are authorized for payment as "incident

to" physicians' services (unless personal supervision is required), the Panel could recommend the potential assignment by CMS of general (lower) or personal (higher) supervision. CMS is proposing that the Panel assess whether there is a significant likelihood that the supervisory practitioner would need to reassess the patient and modify treatment during or immediately following the therapeutic intervention, or provide guidance or advice to the individual who provides the services. Because CMS intends to allow the Panel to recommend that CMS assign either personal or general supervision to hospital outpatient therapeutic services, it is proposing to use the definitions of personal and general supervision established for purposes of the MPFS for the hospital outpatient setting. See 42 C.F.R. 410.32(b)(3).

CMS is also reiterating its position that all hospital outpatient therapeutic services are furnished "incident to" a physician's service even when described by benefit categories other than the specific "incident to" provisions. Because hospital outpatient therapeutic services are furnished "incident to" a physician's professional service, the conditions for payment, including the direct supervision standard, apply to all of these services.

CMS anticipates it will extend the notice of nonenforcement of the requirement for direct supervision in CAHs and small rural hospitals through calendar year 2012 while it works to establish the independent review process.

These changes will be applicable to services furnished on or after January 1, 2012. Comments to the proposed rule must be submitted no later than 5 pm EDT on August 30, 2011.