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HEALTHCARE BULLETIN

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CMS CLARIFIES PHYSICIAN SUPERVISION REQUIREMENTS

The Centers for Medicare and Medicaid Services ("CMS") has clarified its policies related to physician supervision of diagnostic and therapeutic services provided to hospital outpatients. The policy changes appear in Sections 20.4 and 20.5 of Chapter 6 of the Medicare Benefits Policy Manual. The revisions were communicated to CMS contractors in Change Request No. 6996 dated May 28, 2010, and effective July 1, 2010 and clarify the supervision requirements originally issued in the 2010 Outpatient Prospective Payment System/ASC Payment System ("OPPS") final rule.

I. Background

Prior to CMS' issuance of the 2009 OPPS Final Rule, providers relied on the supervision standards published by CMS in the preamble to the 2000 OPPS Final Rule. Under the 2000 standard, CMS required hospital outpatient departments to provide physician supervision for all therapeutic and diagnostic services, but indicated that it would "assume" that the required supervision was provided in hospital departments on the main hospital campus. This "assumed" supervision did not apply to off-campus hospital departments in which CMS required that a supervising physician be present at all times therapeutic services were rendered.

In the preamble to the 2009 OPPS final rule, CMS indicated that on-campus hospital outpatient services require direct physician supervision, which in turn requires the supervising physician to be present in the outpatient department while services are

rendered. CMS did not propose new regulatory language, but rather characterized its position as a "clarification" of existing law. Not surprisingly, CMS received comments from many industry groups urging the agency to retract or revise its "clarification."

One year later in the 2010 OPPS final rule, CMS responded with a somewhat more flexible approach. The following non-physician practitioners ("NPP") may directly supervise all hospital outpatient therapeutic services (except pulmonary, cardiac, or intensive cardiac rehabilitation services) that they are able to personally perform in accordance with state law: clinical psychologists; licensed clinical social workers; physician assistants; nurse practitioners; certified nurse specialists; and certified nurse-midwives. Diagnostic outpatient hospital services, however, still require supervision by a physician rather than an NPP. CMS emphasized in the preamble commentary that the supervising physician or NPP must be prepared and able to "step in and perform the service, not just to respond to an emergency."

The definition of "direct supervision" in the 2010 OPPS final rule depends on the location in which the outpatient therapeutic services are delivered. For therapeutic services delivered in a hospital or critical access hospital (CAH) or in an on-campus outpatient department of the hospital or CAH, the physician or NPP must be "present on the same campus and immediately available to furnish assistance and direction throughout the performance of the procedure."

For therapeutic services delivered in an off-campus hospital facility, the definition is the same except that the physician or NPP must be in the off-campus hospital facility rather than just on the same campus. The Final Rule further clarifies that "direct supervision" does not mean that the physician or NPP must be present in the room when the procedure is performed.

II. New Policies

The new policies clarify that although physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse midwives who operate within the scope of practice under State law may order and perform diagnostic tests, diagnostic x-ray and other diagnostic tests must be furnished under the appropriate level of supervision by a physician. Some of these non-physician practitioners may perform diagnostic tests without supervision, but they are not permitted to function as supervisory "physicians" for the purposes of other hospital staff performing diagnostic tests.

The new policies also clarify the term "immediately available." "Immediate availability" requires the immediate physical presence of the physician or NPP. CMS has not specifically defined the word "immediate" in terms of time or distance; however, an example of a lack of immediate availability would be situations in which the supervisory physician or NPP is performing another procedure or service that he or she could not interrupt. Also, for services furnished on-campus, the supervisory physician or NPP may not be so physically far away on-campus from the location in which hospital outpatient therapeutic services are being furnished that he or she could not intervene right away.

CMS also states that it expects hospitals to have credentialing procedures, bylaws and other policies in place to ensure that hospital outpatient therapeutic services are being supervised in a manner commensurate with their complexity, including personal supervision where appropriate. Supervisory responsibility, according to CMS, is more than just the ability to respond to an emergency, and includes the ability to take over performance of a procedure or to change a procedure or course of care for a particular patient. Thus, the supervising physician or NPP must be clinically appropriate to supervise the service or procedure.

Hospitals may find that their current supervision policies or procedures are inadequate to meet the demands of the revised policies 20.4 and 20.5. This may be especially true for rural hospitals or hospitals that are understaffed.

If you have any questions regarding the new policies or any other Medicare updates, please feel free to contact us.

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