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AHA Advocacy Alliance for Rural Hospitals

Direct Supervision and Opportunity to Present at HOP Panel Meeting

Agenda

- Review of the direct supervision regulations
- Review of the Advisory Panel on Hospital Outpatient Payments (HOP Panel) process
- Past HOP Panel recommendations
- August 2013 HOP Panel meeting and request for presentations

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Outpatient Therapeutic Services are "Incident to"

- **THE LAW: Social Security Act § 1861(s)(2)(B)**
  - Medicare pays for **hospital outpatient therapeutic services** furnished "incident to" a physician's service.

- **THE REGULATIONS**
  - Through regulations and manual instructions, CMS has established a standard of **"direct supervision"** for these services.

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Which Services are O/P Therapeutic Services?

- **Examples of "incident to" outpatient therapeutic services:**
  - **Clinic/emergency department visits**
  - **Outpatient observation services**
  - **Outpatient psychiatric services**
  - **Drug infusions and blood transfusions**
  - **Wound debridement**
  - **Cardiac rehabilitation, pulmonary rehabilitation (special case but still treated as such)**
  - **CAH outpatient therapeutic services ARE INCLUDED.**

- **Examples of outpatient services that are NOT outpatient therapeutic services subject to Medicare supervision rules:**
  - **Diagnostic services such as x-ray, MRI, CT (but subject to other supervision requirements -- except in CAHs)**
  - **Physician services (paid as Medicare PFS)**
  - **Physical & occup. therapy (paid as Medicare PFS)**
  - **Clinical lab services (Clin. Lab. Fee Schedule)**
  - **Dialysis (ESRD PPS)**
  - **Rural Health Clinic services (diff. payment system)**

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Direct Supervision for Outpatient Therapeutic Services: Current Regs

- In order to be paid by Medicare, hospital and CAH outpatient therapeutic services require DIRECT SUPERVISION
  - All sites of service in which services furnished: main hospital, main campus and in an off-campus provider-based department.
  - Direct supervision means:
    - "the physician or nonphysician practitioner (NPP) must be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician or NPP must be present in the room when the procedure is performed".
    - Since 2010, beyond MD/DO, includes PA, NP, CNS, CNM, LCSW, CP
    - Physician or NPP must be "clinically appropriate", meaning state license and hospital-granted privileges must allow them to perform service they are supervising.
    - There are no specific physical proximity requirements, but "immediately available" implies knowledge, interrupt-ability, nearby *physical* presence.
    - Emergency physician can supervise if "immediately available"
    - CMS does not recognize "immediate availability" by telephone, telemedicine or other modes not involving physical presence.
- **CAH and small rural PPS hospitals (100 or fewer beds) have an ENFORCEMENT DELAY thru 2013**

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Two-tiered Supervision for "Extended Duration Services

- CMS created a two-tiered level of supervision for a few specific HOPD therapeutic services.
  - Applies to certain "nonsurgical extended duration therapeutic services":
    - with a significant monitoring component that can extend for a sizable period of time; not surgical and low risk of complication.
    - These service include:
      - observation services
      - various intravenous and subcutaneous infusions
      - various therapeutic, prophylactic or diagnostic injections
- POLICY: Services require **direct supervision** for service **initiation**, then **general supervision.**
  - "General supervision" does not require physician/NPP physical presence when service furnished.
  - Transition from direct to general supervision must be documented in progress notes or medical record.

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Independent Review Panel Established

- **Establishes "HOP" Panel as independent review body to review requests for re-assignment of supervision levels**

- **Panel may recommend reassigning supervision levels both up (i.e. personal supervision) or down (i.e. general supervision) from current (i.e. direct supervision)**

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Expectation for Future

CMS established an additional year of enforcement delay, through 2013, of direct supervision rules for CAHs and small rural hospitals

- All other hospitals already required to be in compliance.

- Intended to give CAHs/small rural hospitals an additional opportunity to become familiar with HOP Panel process.
- CMS states:

  "[w]e expect that this will be the ***final year*** for the instruction, regardless of the services reviewed by the Panel during its summer meeting."

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HOP Panel Process

- **Independent Review Process**
  - Advisory Panel on Hospital Outpatient Payment (HOP Panel)
    - Renamed panel and expanded membership to CAHs and small rural hospitals
    - Narrow Panel charge on supervision: Consider stakeholder presentations and make recommendations to CMS for reduced level of supervision for individual outpatient therapeutic services.
    - CMS posts their preliminary decision on CMS website with 30-day public comment period
    - CMS considers public comment and posts final decision on CMS website
- **HOP Panel convened in February and August 2012 and considered supervision issues.**

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HOP Panelists

The current Panel members are:

- E. L. Hambrick, MD, JD, Chair
- Karen Borman, MD
- Ruth L. Bush, MD, MPH
- Lanny Copeland, MD
- Kari S. Cornicelli, CPA, FHFMA
- Dawn L. Francis, MD, MHS
- David A. Halsey, MD
- Brain D. Kavanagh, MD, MPH
- Scott Manaker, MD, PhD
- John Marshall, CRA, RCC, RT
- Jim Nelson
- Leah Osbahr
- Jacqueline Phillips
- Daniel J. Pothen, MS, RHIA, CCS,
- Gregory J. Przbylski, MD
- Traci Rabine
- Michael Rabovsky, MD
- Marianna Spanki-Varelas MD, PhD
- Gale Walker
- Kris Zimmer

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HOP Panel Criteria

- **Clinical justification needed to reduce supervision level:**
  - Is there a significant likelihood that the supervising professional would need to reassess the patient and modify treatment or provide guidance or advice to staff who furnish service?
- **Factors to be considered:**
  - Complexity of the service.
  - Acuity of the patients receiving the service.
  - Probability of unexpected or adverse patient event.
  - Expectation of rapid clinical changes during the therapeutic service or procedure.
  - Recent changes in technology or practice patterns that affect a procedure's safety.
  - The clinical context in which the service is delivered.
- **February 27-28 HOP Panel meeting**
  - Panel recommended 28 services be reduced to general supervision
  - In May, CMS approved 27 services as general supervision

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Feb. 2012 HOP Panel Recommendations

CMS approves general supervision for:

Mental Health Services

- 90804, 90806, 90808 Individual psychotherapy insight oriented behavior modify/support in office or outpatient facility
- 90810, 90812, 90814 Individual psychotherapy interactive using play equipment physical devices language interpreter or other mechanisms of non-verbal communication in office or outpatient facility
- 90816, 90818, 90821 Individual psychotherapy insight oriented behavior modify/support in inpatient hospital, partial hospital, or residential care setting
- 90823, 90826, 90828 Individual psychotherapy interactive using play equipment physical devices language interpreter or other mechanisms of non-verbal communication in an inpatient hospital, partial hospital, or residential care setting
- 90846 Family psychotherapy (without the patient present)
- 90847 Family psychotherapy (conjoint psychotherapy) (with patient present)
- 90849 Multiple-family group psychotherapy
- 90853 Group psychotherapy (other than of a multiple-family group)
- 90857 Interactive group psychotherapy
- G0177 Training and educational services related to care/treatment of patient's disabling mental health problems
- G0410 Group psychotherapy other than of a multiple-family group in a partial hospitalization setting
- G0411 Interactive group psychotherapy in a partial hospitalization setting

Medical Services

- 51701 Insertion of non-indwelling bladder catheter
- 90471, 90472, 90473, 90474 Immunization administration
- 99406, 99407 Smoking and tobacco use cessation counseling visit

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Aug. 2012 HOP Panel Recommendations

CMS approves general supervision for:

Immunization services

- G0008, G0009, G0010 Administration of influenza virus, pneumococcal and hepatitis B vaccines

Medical services

- G0127 Trimming of dystrophic nails any number
- 11719 Trimming of nondystrophic nails any number
- 29580 Strapping; Unna boot
- 29581 Application of multi-layer compression system; including ankle and foot
- 36000 Introduction of needle or intracatheter vein
- 36591 Collection of blood specimen from completely implantable venous access device
- 36592 Collection of blood specimen using established central or peripheral catheter, venous
- 51700 Bladder irrigation, simple, lavage and/or instillation
- 51702 Insertion of temporary indwelling bladder catheter; simple Foley
- 51705 Change of cystostomy tube; simple
- 51798 Measurement of post-voiding residual urine and/or bladder capacity by US non-imaging

Infusion and injection services

- 96360 IV infusion, hydration; initial, 31 minutes to 1 hour
- 96361 IV infusion hydration; each additional hour
- 96521 Refilling and maintenance of portable pump
- 96523 Irrigation of implanted venous access device for drug delivery systems
- 96366 IV infusion, for therapy, prophylaxis, or diagnosis; each additional hour
- 96372 Therapeutic, prophylactic, or diagnostic injection; subcutaneous or IM
- 96376 Therapeutic, prophylactic, or diagnostic injection; each additional sequential IV push of the same substance/drug provided in a facility

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Aug. 2012 HOP Panel Recommendations

CMS did not approve general supervision for:

Observation services

- G0378* Hospital observation service, per hour
- G0379* Direct admission of patient for hospital observation care

Infusion and injection services

- 96365* IV infusion, for therapy, prophylaxis, or diagnosis; initial, up to 1 hour
- 96367* IV infusion, for therapy, prophylaxis, or diagnosis; additional sequential infusion of a new drug/substance, up to 1 hour
- 96368* IV infusion, for therapy, prophylaxis, or diagnosis; concurrent infusion
- 96374* Therapeutic, prophylactic, or diagnostic injection; IV push, single or initial substance/drug
- 96375* Therapeutic, prophylactic, or diagnostic injection; each additional sequential IV push of a new substance/ drug

* Indicates services designated as an extended duration therapeutic service

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March 2013 HOP Panel

No hospital or CAH requested an opportunity to present

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August HOP Panel Meeting
WE NEED YOU!

- **Need action from:** **Hospital leaders, including key clinical staff**
- **Action:** **Submit a presentation and testify at August 26-27 HOP Panel meeting at CMS in Baltimore, MD**
- **Why:** **This may be the last opportunity for change before the 2014 enforcement of CMS's direct supervision for all hospitals**

Examples of previous Panel presentations available on AHA's website

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WHAT YOU CAN DO

- **Submit a presentation to CMS proposing general supervision for specific therapeutic services and make a request to testify during the upcoming HOP Panel meeting.**
- **Detailed instructions on CMS's requirements for submitting a draft presentation to the HOP Panel are in the May 24 *Federal Register*.**
- **The deadline for submitting an electronic copy of your presentation is July 19. CMS must also receive a hard copy of your presentation by July 26. You must submit both.**
- **CMS will review all requests and select who will testify at the HOP Panel meeting.**
- **Individuals interested in attending the August meeting in person must register online with CMS between July 8 and Aug. 9.**

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Protecting Access to Rural Therapy Services Act (S.1143)

- **AHA-supported bill introduced June 12 by Sen. Jerry Moran (R-KS)**
  - **Original cosponsors: Sens Tester (D-MT) & Thune (R-SD)**
- **Specifically, S. 1143, would:**
  - **Adopt a default standard of "general supervision" by a physician or NPP for outpatient therapeutic services**
  - **Create an exception process, using an advisory panel, to identify those outpatient services risky and complex enough to require direct supervision**
  - **Ensure that for CAHs, the definition of "direct supervision" is consistent with the CAH conditions of participation that allow a physician or NPP to present within 30 minutes of being called**
  - **Holds hospitals and CAHs harmless from civil or criminal action regarding the CMS's retroactive reinterpretation of "direct supervision" requirements for the period 2001 through 2014.**

Contact your senators and urge them to support S. 1143, and educate your representative about the supervision policy!

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