Supervision of Hospital Outpatient Therapeutic Services

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Background

- Conditions of Medicare payment for hospital outpatient therapeutic services
  - Furnished in accordance with applicable State law, including State licensure and scope of practice (not all services are delegable)
  - For delegable services, the billing physician or non-physician practitioner must be involved in the care in accordance with Social Security Act Sec. 1861(s)(2)(B) (orders, supervision)
- CY 2009 Clarification (applicable both on- and off-campus)
- For CY 2010-2013, non-enforcement instruction in CAHs and small rural hospitals with 100 or fewer beds

Supervision Levels- Definitions

42 CFR 410.27

- **General supervision** – the procedure is furnished under the physician or NPP's overall direction and control, but his or her presence is not required during the performance of the procedure
- **Direct supervision** - the physician or NPP must be immediately available to furnish assistance and direction throughout the performance of the procedure. He or she does not have to be present in the room.
- **Personal supervision** – the physician or NPP must be in attendance in the room during the performance of the procedure

“Immediately Available”

CY 2010 OPPS Final Rule (74 FR 60580)

- Immediate physical presence (not “on call”)
- Not defined in terms of time or distance
- “Without interval of time”
- Interruptible if concurrently engaged in other activities (such as patient care)

Extended Duration Services

- In CY 2011, CMS designated a subset of services as non-surgical extended duration therapeutic services (NSEDTS or extended duration services)
- Hybrid level- Requires direct supervision initially, with potential transition to general supervision at discretion of the supervising practitioner
- **Current list of NSEDTS and services allowing general supervision at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/CY2013-OPPS-General-Supervision.pdf**

Extended Duration Services

Factors considered by CMS in assigning extended duration services (75 FR 72002):

- Offering flexibility within the direct supervision requirement for certain non-surgical services with an extended monitoring component and a low risk of requiring the supervisor's immediate availability, identified by CAHs and small rural hospitals in CY 2009 and following
- Protocols cannot address all circumstances or substitute for the physician/NPP evaluation

Added Flexibility Since CY 2010

- Certain NPPs (CP, NP, PA, CNS, LCSW, CNM) may supervise therapeutic services that they may personally perform under State law and hospital privileges, subject to their conditions of coverage in 42 CFR Part 410 **(except PR/CR/ICR which require a physician)**
- Hospitalist or ED physician (or appropriate NPP) can supervise, provided they are interruptible, and are licensed, able and have hospital privileges to furnish the service(s)
- Technicians may operate certain sophisticated equipment (MBPM ch. 6 Sec. 20.5)

Added Flexibility Since CY 2010

- NSEDTS for observation, IV hydration and other minor services
- Independent review process established in CY 2012 → General supervision for other minor services

Independent Review Process

- Federal Advisory Committee (HOP Panel) evaluates the required supervision for individual service(s) as defined by their HCPCS codes
- Recommends to CMS the supervision level (general, direct or personal) that will ensure the appropriate quality and safety for delivery of the service
  - Cannot create new NSEDTS, but can maintain current list
- Next meeting on March 10-11, 2014; ***evaluation requests (with presentation) due 5 p.m. EST, Friday, January, 31, 2014***

Independent Review Process

- Stakeholders submit evaluation requests to CMS (instructions at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/CY2013-OPPS-General-Supervision.pdf)
- Criteria for referral to the Panel, e.g. clinical justification
- Panel recommendations inform preliminary agency decisions
- Sub-regulatory 30-day public comment period prior to final decisions

Independent Review Process

- Assess whether there is a significant likelihood that the supervising practitioner would need to:
  - Reassess patient and modify treatment, during or immediately following the service
  - Provide guidance or advice to the individual who provides the service
  - Not only manage an emergency

Independent Review Process- Evaluation Criteria

- 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 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
- Other factors as appropriate

Resources

- Regulation (42 CFR 410.27 for therapeutic services, 410.28 for diagnostic services)- http://www.ecfr.gov/cgi-bin/text-idx?SID=d95d8f5d527583443b2489468fad0aff&tpl=/ecfrbrowse/Title42/42cfr410_main_02.tpl
- Medicare Benefit Policy Manual Chapter 6, Secs. 20.4 – 20.6 - http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c06.pdf
- List of NSEDTS and therapeutic services allowing general supervision- http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/CY2013-OPPS-General-Supervision.pdf
- Instructions for submitting requests for evaluation by the Panel (bi-annual)- http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Downloads/Supervision-Agenda-Request-Instructions.pdf and http://www.gpo.gov/fdsys/pkg/FR-2013-12-06/pdf/2013-29185.pdf

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