



Is Physician Supervision Required, or Not? 2010 OPPS Rule Provides Clarification

March 2010

Karen S. Rieger, Director
Healthcare Practice Co-Chair
karen.rieger@crowedunlevy.com

Healthcare Practice Co-Chair

Kevin D. Gordon

Practice Area Members

Jennifer L. Ivester Berry

Laura D. Brookins

Jordan K. Field

Eric S. Fisher

James H. Holloman, Jr.

Alison M. Howard

Christopher B. Keim

Michael S. Laird

Cori H. Loomis

Kenni B. Merritt

Brooke S. Murphy

Cherish K. Ralls

Gary C. Rawlinson

Malcolm E. Rosser IV

Timila S. Rother

David A. Shipley

Earl A. Skarky

Roger A. Stong

Rustin Strubhar

The Issue:

In the preamble to the 2009 Outpatient Prospective Payment System (“OPPS”) rule, the Centers for Medicare and Medicaid Services (“CMS”) indicated that on-campus hospital outpatient services require direct physician supervision; and therefore, the supervising physician was required to be present in the outpatient department while services were being rendered. This position was not based on any new language, but rather was characterized by CMS as a “clarification” of existing law.

This position by CMS was troubling for many hospitals that, for staffing efficiency, financial and administrative reasons, were not requiring supervising physicians to be physically present in the outpatient departments they were responsible for supervising.

CMS’s Response:

In response to a stiff and public outcry by the hospital industry, CMS adopted a somewhat more flexible approach in its 2010 OPPS rule, which was released on October 30, 2009. The highlights of the 2010 OPPS Rule are as follows:

Supervision Requirement for On-Campus Outpatient Therapeutic Services (provided ‘incident to’ the services of a physician):

The 2010 OPPS rule amends 42 CFR § 410.27 to state that direct supervision of outpatient therapeutic services is required for services performed in the hospital or on the hospital’s campus and billed as hospital services. Specifically, § 410.27 requires that the physician or non-physician practitioner (“NPP”) “must be present on the same campus and immediately available to furnish assistance and direction throughout the performance of the procedure.” This means that physicians or NPPs in on-campus, non-hospital-



Is Physician Supervision Required, or Not? (Cont.)

tal facilities, such as physician offices, may serve as supervising physicians, as long as they are immediately available to furnish assistance.

Good News/Bad News

The good news is that there is greater flexibility for on-campus supervision, and such supervision may be provided by a physician or an NPP. The supervising physician or NPP may be physically located in a private physician's office or in a medical office building located on campus, as long as he/she is 'immediately available'. However, the bad news is that off-campus supervision requires the physical presence of the physician or NPP.

For outpatient, therapeutic services furnished in an off-campus setting, "direct supervision" means the physician or NPP must be present in the off-campus provider-based department of the hospital and immediately available to furnish assistance and direction throughout the performance of the procedure.

Supervision by Non-Physician Practitioners of Therapeutic Services:

The 2010 OPSS rule expands the scope of hospital outpatient services for which NPPs may provide direct supervision to include all hospital outpatient therapeutic services which they are authorized to perform under state scope of practice rules and hospital-granted privileges. Those NPPs that are permitted to supervise include: physician assistants, nurse practitioners, clinical nurse specialists, certified nurse-midwives and licensed clinical social workers. In order to be qualified to supervise under § 410.27, the NPP must be "immediately available to furnish assistance and direction throughout the performance of the procedure." In the commentary to this new rule, the Department of Health and Human Services interpreted this language to mean that the supervisor must be "clinically appropriate" to supervise the service or procedure, and indicated that "it is inappropriate for the supervisory physician or nonphysician practitioner to be responsible for patients, hospital staff and services that are outside the scope of their knowledge, skills, licensure or hospital-granted privileges."



Is Physician Supervision Required, or Not? (Cont.)

Supervision Requirement for Outpatient Diagnostic Services:

The 2010 OPPS rule requires that all hospital outpatient diagnostic services furnished directly or under arrangement to follow the Medicare Physician Fee Schedule physician supervision requirements for individual tests.

These new supervision requirements went into effect on January 1, 2010.

Hospitals should draft policies and procedures implementing the new practitioner supervision requirements. Such policies should clearly indicate the qualifications required for the supervision of specific therapeutic services. They also should define the practitioners who have responsibility for supervision at any given time and how they are to be summoned by department personnel when needed. These new rules may also require amendments or revisions to existing Medical Director, Hospitalist or other physician contracts which include supervision duties.

If you have any questions about the application of these new rules to various services offered by your facility, or need assistance with the drafting of the appropriate policies or contract revisions, please contact either Karen S. Rieger, at (405) 235-7788 (karen.rieger@crowedunlevy.com) or Cori H. Loomis, at (405) 234-3238 (cori.loomis@crowedunlevy.com).