Regulation Through the Years: Physician Supervision of Therapeutic Services in Hospital Outpatient Departments

Pre-2009	• Prior to 1997, the requirement of physician supervision in hospital outpatient departments (HOPDs) was limited to services such as portable x-rays, and even then the level of supervision required was minimal. • In 1997, HCFA (today, CMS) set forth a general rule that diagnostic tests payable under the physician fee schedule require at least general supervision (and in some cases either direct or personal supervision) by a physician and defined the three levels of supervision: (i) ***General Supervision*** means the procedure is furnished under the physician's overall direction and control, but the physician's presence is not required during performance of the procedure; (ii) ***Direct Supervision*** means the physician must be present in the office suite and immediately available to furnish assistance and direction throughout performance of the procedure; (iii) ***Personal Supervision*** means a physician must be in attendance in the room during the performance of the procedure. • In 2000, CMS issued new OPPS rules to include both on-campus provider-based departments (PBD) and the HOPDs. The new rules provided that the physician supervision requirement is generally *assumed to be met* where the services are performed on hospital premises. (42 CFR 410.28; Medicare Intermediary Manual, Section 3112.4)
2009	• According to CMS, the 2009 OPPS Final Rule was a "restatement and clarification" of rules in place since 2000; however, the Rule's provisions were difficult to reconcile with earlier positions. The Rule "clarified" that "assumed supervision" did not mean that no supervision was required. (73 Fed. Reg. 41,518) • The 2009 OPPS Final Rule required direct physician supervision of outpatient therapeutic services furnished in both on-campus PBDs and in the hospital itself. In addition, the Rule could be interpreted to require direct physician supervision of therapeutic outpatient hospital services provided on hospital premises. (*See* Medicare Benefits Policy Manual, Ch.6, Section 20.5.1)
2010	• The 2010 Final Rule clarified that direct supervision is required for all hospital outpatient therapeutic services in the hospital or on the hospital's campus. (*See* 42 CFR 410.27(a)(1)(iv)(A)) • In a somewhat more flexible approach, however, the definition of "direct supervision" was expanded by allowing a supervising physician or non-physician practitioner (NPP) (such as a physician assistant, nurse practitioner, clinical nurse specialist, certified nurse-midwife, clinical psychologist, and licensed clinical social worker) to supervise therapeutic services furnished in the main hospital or an on-campus HOPD from anywhere on the hospital campus (i.e., within 250 yards of the main buildings of the hospital), including a physician office, an on-campus SNF, RHC, or other non-hospital space. • However, for off-campus HOPDs, CMS continued to require that the physician or NPP must be present in the off-campus PBD and "immediately available to furnish assistance" and direction throughout the procedure. • Many hospitals, particularly rural and critical access hospitals (CAHs), commented that requiring a physician or NPP to be available at all times the respective services are provided was excessively burdensome and difficult to staff.

2011	• CMS revised its supervision policy so that nonsurgical extended duration therapeutic services (NSEDTS) require direct supervision during the "initiation" of the service, which may be followed by general supervision at the discretion of the supervising physician or NPP. (*See* 75 Fed. Reg. 72,259; 42 CFR 410.27(a)(2)) • "Immediate Availability" also became the sole proximity requirement replacing the specific location requirements for on-campus and off-campus outpatient services (especially beneficial for off-campus HOPDs and applicable to both therapeutic and diagnostic hospital outpatient services). • The 2011 OPPS Final Rule extended nonenforcement of the supervision requirements for Critical Access Hospitals (CAHs) and small rural hospitals with fewer than 100 beds through CY 2011.
2012	• In the 2012 OPPS Final Rule, CMS designated the Hospital Outpatient Payment Panel (Panel) as the independent review body to evaluate individual hospital outpatient therapeutic services and recommend to CMS a supervision level (general, direct or personal) to ensure an appropriate level of quality and safety. • CMS again extended the notice of nonenforcement of the requirement for direct supervision of outpatient therapeutic services in CAHs and small rural hospitals through calendar year 2012.

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