

Medicare Benefit Policy Manual

Chapter 6 - Hospital Services Covered Under Part B

20.5.2 - Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2010 (Rev. 169, Issued: 03- 01- 13, Effective: 04-01-13, Implementation: 04- 01-13)

Therapeutic services and supplies which hospitals provide on an outpatient basis are those services and supplies (including the use of hospital facilities and drugs and biologicals that cannot be self-administered) which are not diagnostic services, are furnished to outpatients incident to the services of physicians and practitioners and which aid them in the treatment of patients. These services include clinic services, emergency room services, and observation services. Policies for hospital outpatient therapeutic services furnished incident to physicians' services differ in some respects from policies that pertain to "incident to" services furnished in office and physician-directed clinic settings. See Chapter 15, "Covered Medical and Other Health Services," Section 60.

To be covered as hospital outpatient therapeutic services, the services and supplies must be furnished by the hospital or CAH or under arrangement made by the hospital or CAH (see section 20.1.1 of this chapter). The services and supplies must be furnished as an integral, although incidental, part of the physician or nonphysician practitioner's professional service in the course of treatment of an illness or injury.

The services and supplies must be furnished in the hospital or at a department of the hospital that has provider-based status in relation to the hospital under 42 CFR 413.65. For therapeutic services furnished during CY 2010, as specified at 42 CFR 410.27(g), "in the hospital or CAH" means areas in the main building(s) of the hospital or CAH that are under the ownership, financial, and administrative control of the hospital or CAH; that are operated as part of the hospital or CAH; and for which the hospital or CAH bills the services furnished under the hospital's or CAH's CMS Certification Number.

Hospital outpatient therapeutic services and supplies must be furnished under the order of a physician or other practitioner practicing within the extent of the Act, the Code of Federal Regulations, and State law. They must be furnished by hospital personnel under the appropriate supervision of a physician or nonphysician practitioner as required in this manual and by 42 CFR 410.27 and 482.12. This does not mean that each occasion of service by a nonphysician need also be the occasion of the actual rendition of a personal professional service by the physician responsible for care of the patient. However, during any course of treatment rendered by auxiliary personnel, the physician must personally see the patient periodically and sufficiently often to assess the course of treatment and the patient's progress and, when necessary, to change the treatment regimen. A hospital service or supply would not be considered incident to a physician's service if the attending physician merely wrote an order for the services or supplies

and referred the patient to the hospital without being involved in the management of that course of treatment.

CMS requires direct supervision (defined below) by an appropriate physician or non-physician practitioner in the provision of all therapeutic services to hospital outpatients, including CAH outpatients. CMS may assign certain hospital outpatient therapeutic services either general supervision or personal supervision. When such assignment is made, “general supervision” means the definition specified at 42 CFR 410.32(b)(3)(i), that is, the procedure or service is furnished under the physician's overall direction and control, but the physician's presence is not required during the performance of the procedure. “Personal supervision” means the definition specified at 42 CFR 410.32(b)(3)(iii), that is, the physician must be in attendance in the room during the performance of the service or procedure.

Effective January 1, 2011, hospitals may change to general supervision for a portion of services defined as non-surgical extended duration therapeutic services (“extended duration services”) but only as specified in this manual for those services (see section 20.7). Pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation services require direct supervision which must be furnished by a doctor of medicine or osteopathy, as specified at 42 CFR 410.47 and 410.49, respectively.

The list of services that may be furnished under general supervision or that are defined as non-surgical extended duration therapeutic services is available on the OPSS Website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html>.

Beginning January 1, 2010, according to 42 CFR 410.27, in addition to physicians and clinical psychologists, licensed clinical social workers, physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse-midwives may furnish the required supervision of hospital outpatient therapeutic services that they may personally furnish in accordance with State law and all additional rules governing the provision of their services, including those specified at 42 CFR Part 410. These nonphysician practitioners are specified at 42 CFR 410.27(g).

Considering that hospitals furnish a wide array of very complex outpatient services and procedures, including surgical procedures, CMS would expect that hospitals already have the credentialing procedures, bylaws, and other policies in place to ensure that hospital outpatient services furnished to Medicare beneficiaries are being provided only by qualified practitioners in accordance with all applicable laws and regulations. For services not furnished directly by a physician or nonphysician practitioner, CMS would expect that these hospital bylaws and policies would ensure that the therapeutic services are being supervised in a manner commensurate with their complexity, including personal supervision where appropriate.

For therapeutic services furnished during CY 2010 in the hospital or CAH or in an on-campus outpatient department of the hospital or CAH, as defined at 42 CFR 413.65, “direct supervision” means that the physician or nonphysician practitioner must be present on the same campus where the services are being furnished. For services furnished in an off-campus provider based department as defined in 42 CFR 413.65, he or she must be present within the off-campus

provider based department. The physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. The physician or nonphysician practitioner does not have to be present in the room when the procedure is performed.

For therapeutic services furnished during CY 2011 and following, whether in the hospital or CAH or in an on-campus or off-campus outpatient department of the hospital or CAH as defined at 42 CFR 413.65, “direct supervision” means that the physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. As discussed below, the physician is not required to be present in the room where the procedure is performed or within any other physical boundary as long as he or she is immediately available.

Immediate availability requires the immediate physical presence of the supervisory physician or nonphysician practitioner. 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 where the supervisory physician or nonphysician practitioner is performing another procedure or service that he or she could not interrupt. Also, for services furnished on-campus, the supervisory physician or nonphysician practitioner may not be so physically distant on-campus from the location where hospital/CAH outpatient services are being furnished that he or she could not intervene right away. The hospital or supervisory practitioner must judge the supervisory practitioner’s relative location to ensure that he or she is immediately available.

For services furnished in CY 2011 and following, a supervisory practitioner may furnish direct supervision from a physician office or other nonhospital space that is not officially part of the hospital or CAH campus where the services are being furnished as long as he or she remains immediately available. Similarly, as of CY 2011, an allowed practitioner can furnish direct supervision from any location in or near an off-campus hospital or CAH building that houses multiple hospital provider-based departments where the services are being furnished as long as the supervisory practitioner is immediately available.

The supervisory physician or nonphysician practitioner must have, within his or her State scope of practice and hospital-granted privileges, the knowledge, skills, ability, and privileges to perform the service or procedure. Specially trained ancillary staff and technicians are the primary operators of some specialized therapeutic equipment, and while in such cases CMS does not expect the supervisory physician or nonphysician practitioner to operate this equipment instead of technician, CMS does expect the physician or nonphysician practitioner to be knowledgeable about the therapeutic service and clinically able to furnish the service.

The supervisory responsibility is more than the capacity to respond to an emergency, and includes the ability to take over performance of a procedure or provide additional orders. CMS would not expect that the supervisory physician or nonphysician practitioner would make all decisions unilaterally without informing or consulting the patient’s treating physician or nonphysician practitioner. In summary, the supervisory physician or nonphysician practitioner must be clinically able to supervise the service or procedure.