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FOULSTON SIEFKIN ISSUE ALERT

The Centers for Medicare & Medicaid Services ("CMS") Modifies the Physician Supervision Requirements for Hospital Outpatient Therapeutic Services

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On November 24, 2010, CMS issued the 2011 Outpatient Prospective Payment System ("OPPS") Final Rule, which made important changes to the level of supervision necessary for outpatient therapeutic services reimbursed by Medicare. The new rules are intended to provide flexibility to all hospitals, especially those with off-campus provider-based facilities.

In the 2011 OPPS Final Rule, CMS relaxed the supervision requirement by modifying the definition of "direct supervision." Previously, "direct supervision" meant that the supervisory physician or non-physician practitioner ("NPP") had to be (1) physically present on the hospital campus or at the off-campus provider-based department where the services are performed; and (2) immediately available to furnish assistance and direction throughout the performance of the service. Under the new rule, effective January 1, 2011, CMS no longer requires the supervising physician or NPP to be on the same campus or at the off-campus provider-based department. Rather, the new definition only requires the supervising physicians or NPP to be "immediately available." CMS defines "immediately available" as "physically present, interruptible, and able to furnish assistance and direction throughout the performance of the procedure." This will be especially helpful for off-campus provider-based departments because a supervising physician in an adjacent office can now serve as a supervising physician as long as the "immediately available" standard is met. CMS' goal in modifying this definition was to provide flexibility in allowing direct supervision to come from a location other than the hospital campus or provider-based department, while still requiring the physicians or NPPs to be immediately available.

CMS further relaxed the supervision requirements by creating a new subcategory of therapeutic services called "Nonsurgical & Extended Duration Therapeutic Services." This new subcategory is comprised of sixteen specific hospital outpatient therapeutic services for which CMS relaxed the direct supervision rule noted above.[1] For these services, direct supervision is only required during the "initiation" of the service. CMS defines "initiation" as "the beginning portion of a service ending when the patient is stable and the

[1] A complete list of the sixteen identified Nonsurgical & Extended Duration Therapeutic Services is located at 75 FED. REG. 72013 (Nov. 24, 2010).

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supervising physician or appropriate [NPP] believes the remainder of the service can be delivered safely under his or her general direction and control without his or her physical presence on the hospital campus or in the [provider-based department] of the hospital." The determination of when a patient is sufficiently stable to transfer from direct to general supervision is a clinical judgment. This point of transition should be documented "prominently" in progress notes or in the medical record. Sufficient documentation is crucial to demonstrate that the service was properly supervised.

CMS also announced good news for critical access hospitals and small rural hospitals that struggle to meet the supervision requirements due to smaller staff. Earlier this year, CMS issued instructions to its Medicare contractors not to enforce the direct supervision requirements for therapeutic services provided to outpatients in critical access hospitals during 2010. In the 2011 OPPS Final Rule, CMS announced it will extend its notice of non-enforcement of the direct supervision requirements for one year. CMS extended this provision to hospitals geographically located in a rural area or designated to be located in a rural area for their wage index that have 100 or fewer beds. It noted, "We believe this non-enforcement policy will permit the CAHs and small rural hospitals that do not consistently meet our direct supervision standard for outpatient therapeutic services to make appropriate adjustments over the coming year." While CMS will not enforce the supervision requirements in 2011, critical access hospitals and small rural hospitals should prepare now to comply with the supervision requirements.

Finally, CMS announced that, during the 2012 OPPS rulemaking cycle, it will appoint a group to conduct an independent review that will assess "the appropriate supervision levels for individual outpatient therapeutic services." This group will evaluate and recommend appropriate supervision levels for specific procedures to be implemented in the 2012 OPPS Final Rule. Therefore, hospitals can expect more changes to the supervision requirements for hospital outpatient therapeutic services in the near future.

For Further Information

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