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FOULSTON SIEFKIN ISSUE ALERT

CRITICAL ACCESS HOSPITALS BEWARE: COME JANUARY 1, 2014, CMS WILL ENFORCE THE DIRECT SUPERVISION REQUIREMENTS FOR OUTPATIENT THERAPEUTIC SERVICES PROVIDED IN CAHS

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by Brooke Bennett Aziere

ON DECEMBER 10, 2013, the Centers for Medicare & Medicaid (CMS) published the CY 2014 Final Rule for the Medicare hospital outpatient prospective payment system (OPPS). As part of the CY 2014 OPPS Final Rule, CMS elected not to extend its previous nonenforcement instruction to Medicare contractors concerning direct supervision of outpatient therapeutic services covered and paid by Medicare in critical access hospitals (CAHs). This means that as of January 1, 2014, Medicare contractors can review and enforce the direct supervision requirements for outpatient therapeutic services delivered in CAHs.

DIRECT SUPERVISION OF OUTPATIENT THERAPEUTIC SERVICES

CAHs are subject to the direct supervision requirements for outpatient therapeutic services as set forth in 42 C.F.R. 410.27 and the Medicare Benefit Policy Manual, Ch. 6 – Hospital Services Covered Under Part B. In March 2010, CMS issued a nonenforcement policy for outpatient therapeutic services rendered in CAHs. CMS later extended its nonenforcement policy for CY 2011, 2012, and 2013.

During the period of nonenforcement, CMS approved several outpatient therapeutic services to be furnished under general supervision and designated other hospital outpatient therapeutic services as “non-surgical extended duration therapeutic services” or “NSEDT,” requiring direct supervision during the initiation of the service and general supervision for the remainder of the service. The list of general supervision and NSEDT services is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html>.

SO WHAT DOES THIS MEAN FOR CAHS?

Hospitals must comply with the direct supervision requirements for outpatient therapeutic services (unless the service appears on the list of general supervision or NSEDT services) or risk reimbursement for the outpatient therapeutic services they provide. What follows are some tips for satisfying the direct supervision requirements.

USE OF NON-PHYSICIAN PRACTITIONERS (NPPs)

The direct supervision does not necessarily have to be provided by a physician. In the CY 2010 OPPS Final Rule, CMS indicated that the direct supervision requirement could be satisfied by allowing NPPs (e.g., physician assistants, nurse practitioners) to supervise outpatient therapeutic services that are within the scope of their practice under State law and their hospital-granted or CAH-granted privileges. The supervisory physician or NPP must be knowledgeable about the service and clinically able to

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perform the service.

INTERRUPTIBLE AND IMMEDIATELY AVAILABLE

“Direct supervision” means that the physician or NPP must be “immediately available” to furnish assistance and direction throughout the delivery of the outpatient therapeutic service. This does not require the practitioner’s physical presence in the room as long as he is interruptible and immediately available to provide assistance. A physician could provide direct supervision from an office or other nonhospital space as long as he remains immediately available to respond right away. However, a practitioner could not be performing another procedure or service that he could not interrupt. This means that emergency room physicians will not likely be able to function as the supervising provider because they will be engaged in procedures that cannot be interrupted.

SUPERVISION AGREEMENTS

CAHs should enter into supervision agreements with the practitioners responsible for providing the direct supervision of the outpatient therapeutic services. The supervisory responsibilities should also be documented in the practitioner’s credentialing file.

STAFFING SCHEDULE

CAHs should also document the staffing schedule, and during the period of direct supervision, the practitioner should not be engaged in any procedures or services that he cannot interrupt.

DOCUMENT IN THE MEDICAL RECORD

To the extent possible, the supervising practitioner should also be identified in the patient’s medical record. For NSEDT services, the transition from direct to general supervision must be documented in the patient’s medical record.

The full text of the CY 2014 OPPS Final Rule can be found at <https://www.federalregister.gov/articles/2013/12/10>.

FOR FURTHER INFORMATION

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