



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

COMPLIANCE ALERT 10-6

2010 CMS Rules for Physician Supervision for Hospital Outpatient Services

The Social Security Act covers hospital outpatient services if they are "incident to a physician's service." Requirements for "incident to" services are set out in 42§CFR.27 and are significantly amended for 2010.

Direct supervision applies to both on and off campus provider based departments. Where provider based departments are not specifically identified by CMS regulations, hospitals should "attest and determine" the status using regulations in 42§CFR413.65.

In the November 20, 2009 Federal Register (74 FR 60575-60591), CMS clarified final rules (2010 OPPS) regarding physician supervision for hospital outpatient services. Specially, the final rule:

1. Permits non-physician practitioners including clinical psychologists, licensed clinical social workers, physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse-midwives to directly supervise all hospital outpatient services that they are allowed to perform within their State licenses and hospital-granted privileges provided that they meet all additional requirements.
2. Clarifies that cardiac rehabilitation, pulmonary rehabilitation, and intensive cardiac rehabilitation services in hospital outpatient departments must be supervised by a physician.
3. Reiterates that the direct supervision requirement does not apply to physical therapy, occupational therapy, and speech-language pathology from hospital outpatient services.
4. Allows for the supervisory physician or non-physician practitioner to be anywhere on the hospital campus, including a physician's office an on-campus SNF, RHC, or other non-hospital space. The physician or non-physician practitioner must be present and immediately available to furnish assistance and direction throughout the performance of the procedure. The physician must be able to intervene right away, not occupied with another procedure that cannot be interrupted, and be skilled and credentialed to be able to take over the procedure.

5. Defines “in the hospital” as meaning 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; and for which the hospital bills the services furnished under the hospital’s or critical access hospital’s (CAH) billing number.
6. Mandates that for off-campus provider based departments of hospitals, the physician or non-physician practitioner must be present in the off-campus provider based department and immediately available to furnish assistance direction throughout the performance of the procedure. It does not mean the physician or non-physician practitioner must be in the room when the procedure is performed.
7. Clarifies that these requirement for supervision do apply to CAHs.

(Source: 74 FR 60585-88)

Next Steps: Advice by HCPro (1/12/10) recommends that entities document the:

- a. services to be provided;
- b. physician specialties and physicians qualified by the Hospital to provide the direct supervision of the services;
- c. non-physician practitioners qualified and approved by the Hospital to provide supervision for the specified services.
- d. “Supervisor of Record” in each medical record for an outpatient procedure.

CMS argues that these requirements for supervision (except for the addition on non-physician practitioners) are essentially the same as always stated in their rules. However, the interpretations and guidance are much clearer with this Final Rule.