



Direct Physician Supervision

Protecting Access to Rural Therapy Services (PARTS) Act of 2013: S. 1143/H.R. 2801

Background

It may be helpful to recall the history of this “direct supervision” requirement. Under Section 20.5.1 of the Medicare Benefit Policy Manual, it states that the physician supervision requirement inherent in “incident- to” billing for hospital outpatient department services would be generally assumed to be met where the services were performed “on hospital premises.”

Beginning in 2009, Centers for Medicare & Medicaid Services (CMS) introduced the concept of “direct supervision” by physicians with some commentary in Open Door Forums that the physician must be “physically present” in the outpatient therapy department. This requirement, which was stated as a “clarification,” was actually a fairly drastic change in policy. CMS provided no clinical rationale for this change and acknowledged it was issued without allegations or evidence that quality of care or patient safety had been compromised in hospital outpatient departments. Further, CMS characterized the change as a “restatement and clarification” of existing policy in place since 2001. As a result, hospitals and critical access hospitals (CAHs) found themselves at increased risk for unwarranted enforcement actions.

Key Points

- CMS has ended the delayed enforcement of the direct supervision policy for CAHs and small and rural hospitals with fewer than 100 beds. As of Jan. 1, 2014, CMS permits its contractors to enforce the direct supervision policy in all hospitals and CAHs.
- There continues to be shortages of health care professionals, particularly in rural areas, the direct supervision requirement will be difficult to implement for hospitals and CAHs, and only has the prospect of reducing access because of a requirement that is clinically unnecessary.
- More deference should be given to the Advisory Panel on Hospital Outpatient Payment (HOP Panel) to recommend, and CMS to adopt, alternate supervision levels, including general supervision, for individual hospital outpatient therapeutic services. The HOP Panel is an independent review body that considers stakeholder testimony on what is the appropriate level of supervision, ensuring an appropriate level of quality and safety for the delivery of patient care.

- Direct supervision is not a requirement of the Medicare hospital conditions of participation (CoP) and, in fact, the rules contradict the CoPs for CAHs. One CAH CoP requires a physician or non-physician practitioners (NPPs) to be available by phone, but not necessarily physically present on the CAH campus. In order to ensure access to hospital emergency care in these otherwise underserved areas, another CAH CoP has long required only that a physician or NPP be able to arrive within 30 minutes of a request from the staff in the facility. Therefore, CAHs may meet the CoPs yet be non-compliant with direct supervision regulations.

WHA/RWHC Position

The Wisconsin Hospital Association and the Rural Wisconsin Health Cooperative believe that CMS' requirement for physician "direct supervision" of hospital outpatient therapies and the removal of the delay on enforcement of the direct supervision policy for outpatient therapeutic services provided in CAHs and in small rural PPS hospitals with 100 or fewer beds, will have an extreme and disparate impact on rural hospitals and access for rural residents to these services.

WHA and RWHC support bipartisan legislation – *Protecting Access to Rural Therapy Services (PARTS) Act of 2013 (S. 1143/H.R. 2801)*:

- ***Adopt a default standard of "general supervision" for outpatient therapeutic services and supplement with a reasonable exceptions process with provider input to identify those specific procedures that require direct supervision;***
- ***Ensure that for CAHs the definition of "direct supervision" is consistent with the CAH conditions of participation (CoP) that allow a physician or NPP to present within 30 minutes of being called; and***
- ***Prohibit enforcement of CMS's retroactive reinterpretation that the "direct supervision" requirements applied to services furnished since Jan. 1, 2001.***

WHA and RWHC thank Rep. Duffy for co-sponsoring these bills. We encourage all of Wisconsin's Delegation to do likewise.

January 2014