

CMS' Clarification of the Direct Physician Supervision Rule for Hospital Outpatient Diagnostic and Therapeutic Services: 2009 Final Rule and 2010 Proposed Rule

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The 2009 OPPTS/ASC proposed and final rules provided a restatement and clarification of the requirements for hospital outpatient diagnostic and therapeutic services. Medicare would pay for such services when the 2000 final rule physician supervision requirements were furnished.

Direct Supervision means that the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of a procedure.

The restatement of the requirements was made to remove the assumption that there would always be a physician nearby in a hospital outpatient setting. Advances in medical technology, patterns in healthcare delivery, and on-site versus off-site provider based campuses changed physician "presence" and capability to fulfill the direct supervision requirement. There was also a quality of care concern and Medicare wanted to ensure that services provided to beneficiaries are provided in a safe and effective manner and consistent with Medicare requirements.

The 2000 OPPTS requirement states that the physician is required to be "on the premises of the location". A provider-based department (PBD), which includes both a hospital on-campus department as well as off-campus department, is included in the definition. Therefore, in order to meet the direct supervision requirements, the physician has to be available in the department of the hospital.

Several stakeholders are asking Medicare to rescind the ruling, although Medicare states that they are not changing anything. They are clarifying what the direct supervision requirement should be in hospital PBDs. This means potential physician staffing issues and operational costs to the facilities.

The 2010 proposed rule is clarifying the direct supervision requirement to state "*the physician must be present on the same campus, in the hospital or on-campus PBD of the hospital, and immediately available to furnish assistance and direction throughout the performance of the procedure*".

This may resolve any misinterpretation of the direct supervision definition, yet still ensure that the direct supervision requirement is met for both on and off-campus PBDs.

There is still concern over the direct physician supervision requirements and what is expected for on-campus versus off-campus PBDs. We will look forward to what clarification Medicare will provide to us on this subject.