

Medicare's Physician Supervision Requirements

Note: This is a summary of the Federal laws and regulations as cited in the document and is not a policy created by the American Society for Radiation Oncology (ASTRO). If you have questions regarding the summary or any of the references to the Medicare laws and regulations, please contact the ASTRO Health Policy Department at 1-800-962-7876.

1. Physician Supervision Requirements for Diagnostic Tests in an Office or Free-Standing Radiation Therapy Center

The physician supervision requirements described below apply to the technical component of diagnostic tests performed in physicians' offices or freestanding radiation therapy centers. Nearly 1000 services (CPT® or HCPCS codes) have been identified by Medicare as diagnostic tests that are subject to these supervision requirements. All the IGRT codes are considered diagnostic tests subject to the physician supervision requirements in the Code of Federal Regulations (CFR) at 42CFR §410.32(b)(3). The regulation defines the levels of physician supervision for diagnostic tests as shown below. The IGRT codes assigned to a given level are listed in parentheses.

- General Supervision - means the procedure is furnished under the physician's overall direction and control, but the physician's presence is not required during the performance of the procedure. (76950 *Ultrasonic guidance for placement of radiation therapy fields* and 77417 *Therapeutic radiology port film(s)*)
- Direct Supervision - means the physician must be present and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room when the procedure is performed. (77014 *Computed tomography guidance for placement of radiation therapy fields*¹ and 77421 *Stereoscopic X-ray guidance for localization of target volume for the delivery of radiation therapy*²)
- Personal Supervision - means a physician must be in attendance in the room during the performance of the procedure. (76965 *Ultrasonic guidance for interstitial radioelement application*).

As shown above, CMS believes that code 76965 requires personal supervision. It remains the position of ASTRO that this code should be subject to direct supervision and ASTRO continues to work with CMS to bring about the necessary changes in policy. In the meantime, ASTRO wants radiation oncologists to be aware of the current supervision requirements and to understand that services furnished without the required level of supervision are not covered under Medicare.

2. Physician Supervision Requirements for Diagnostic Tests Furnished in an Outpatient Hospital Setting

The physician supervision requirements for diagnostic tests that apply to services furnished in physicians' offices (and described above) also apply to provider-based departments of hospitals that provide diagnostic services, whether on or off the hospital's main campus. The term "provider-based" refers to a provider of health care services that is either created by, or acquired by, a main provider for

¹ Note this service was previously reported with CPT® code 76370.

² The level of supervision for 77421 was changed from personal to direct, effective for services on or after January 1, 2009 in the July Update to the 2009 Medicare Physician Fee Schedule Database (Transmittal 1748, Change Request 6484, May 29, 2009)

the purpose of furnishing health care services of a different type from those of the main provider under the ownership and administrative and financial control of the main provider. Regulations at 42 CFR 410.28(e) require that diagnostic tests (e.g., IGRT) in a provider-based department be furnished under an appropriate level of supervision (general, direct or personal) as though they were furnished in a physician's office.

The Medicare manuals do not explicitly state that the physician supervision requirements of general, direct, or personal apply when diagnostic services are provided on hospital premises – as opposed to provider-based departments where they do apply. When the diagnostic services are provided on the hospital premises, it is ASTRO's position that the physician supervision requirements are met because staff physicians would always be nearby within the hospital. Therefore, ASTRO does not believe there is a Medicare requirement that the radiation oncologist be present in the radiation therapy department or suite during the time that diagnostic services are being provided. However, because CMS regulations and manual instructions are not clear on physician supervision requirements for diagnostic tests that are provided on hospital premises, a request for written clarification of CMS policy was submitted on December 30, 2008.

3. Physician Supervision of “Incident to” Services in an Office or Free-Standing Radiation Therapy Center

The term “incident to” refers to the services or supplies that are furnished as an integral, although incidental, part of the physician's personal professional services in the course of diagnosis or treatment of an injury or illness. Examples of “incident to” services include the services of auxiliary personnel such as physicists, nurses and technicians. Auxiliary personnel must act under the direct supervision of a physician, regardless of whether the individual is an employee, leased employee, or independent contractor of the physician, or of the legal entity that employs or contracts with the physician.

Direct supervision in the office setting does not mean that the physician must be present in the same room with his or her auxiliary personnel. However, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the auxiliary personnel are performing services. Therefore, if the radiation oncologist leaves the office to go to the hospital, the services of the auxiliary personnel provided during his/her absence cannot be covered by Medicare.

It is important to note that the supervision requirements for this “incident to” benefit category do not apply to radiation therapy services. Such services are subject to their own, albeit similar, physician supervision requirements that are described in section 5 below.

4. Physician Supervision of “Incident to” Services in an Outpatient Hospital Setting

Therapeutic services, which hospitals provide on an outpatient basis, are those services and supplies (including the use of hospital facilities) which are “incident to” the services of physicians in the treatment of patients. Such services include radiation therapy, clinic services and emergency room services.

To be covered as incident to physicians' services, the services and supplies must be furnished on a physician's order by hospital personnel and under a physician's supervision. A hospital service or supply

would not be considered incident to a physician's service if the attending physician merely wrote an order for the services or supplies and referred the patient to the hospital without being involved in the management of that course of treatment.

There is no requirement that the physician who orders the hospital services be directly connected with the department that provides the services.

The physician supervision requirement for therapeutic hospital services furnished incident to physicians' services (including radiation therapy) is generally assumed to be met where the services are performed on hospital premises and the hospital medical staff that supervises the services need not be in the same department as the ordering physician. However, if the services are furnished at a department of the hospital which has provider-based status (e.g., a facility that is not physically located within or connected to the hospital) the services must be rendered under the direct supervision of a physician. The requirement for direct supervision in a department of a hospital that has provider-based status applies to both on-campus and off-campus departments of the hospital.

Direct supervision in this context means the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room when the procedure is performed.

5. Physician Supervision of Radiation Therapy Services in an Office or Free-Standing Radiation Therapy Center

Radiation therapy services (X-ray, radium, and radioactive isotope therapy) furnished in an office or free-standing radiation therapy center require "direct personal supervision" of a physician. The physician need not be in the same room, but must be in the area and immediately available to provide assistance and direction throughout the time the procedure is being performed. Therefore, if the radiation oncologist leaves the office or the freestanding radiation therapy center to go to the hospital, any radiation therapy services provided during his/her absence cannot be covered by Medicare. The services covered under this benefit also include materials and services of technicians.

Unfortunately, similar terms are used to describe the supervision requirements under the various benefits. As a result, the terms are often misunderstood. For example, the term "direct supervision" is used for the "incident to" and diagnostic test benefits and the term "personal supervision" is used for the diagnostic test benefit. In the case of the radiation therapy benefit, the term "direct personal supervision" is used but its definition is similar to the definition of "direct supervision" under the "incident to" and diagnostic test benefits.

A separate charge for the services of a physicist in an office or freestanding radiation therapy center is not recognized unless such services are covered under the "incident to" provision (see section 3 above). The incident to provision may also be extended to include all necessary and appropriate services supplied by a physicist assisting a radiologist when the physicist is in the physician's employ and working under his or her direct supervision.