Medicare's Physician Supervision Requirements

The Centers for Medicare and Medicaid Services or CMS (formerly known as the Health Care Financing Administration) is responsible for administering the Medicare program. Over the years, Medicare's policies related to physician supervision requirements have been issued through regulations or through instructions to Medicare carriers in various manuals.

The CMS policies on physician supervision requirements that are pertinent to radiation oncologists are focused on five specific benefits to which Medicare beneficiaries are entitled by law (Title XVIII of the Social Security Act). The five benefits, the statutory language and the section of the Social Security Act in which they appear are listed below.

1. **"Incident To" Services in an Outpatient Hospital Setting** (Section 1861(s)(2)(B));

2. **Radiation Therapy Services in an Office or Free Standing Radiation Therapy Center** (Section 1861(s)(3));

3. **Diagnostic Tests in an Office or Free Standing Radiation Therapy Center** (Section 1861(s)(3));

4. **Diagnostic Tests in an Outpatient Hospital Setting** (Section 1861(s)(2)(C)); and

5. **"Incident To" Services in an Office or Free Standing Radiation Therapy Center** (Section 1861(s)(2)(A)).

In the following sections, the supervision requirements for these five benefit categories are summarized and the implications for radiation oncologists, who are the supervising physicians, are discussed. This document uses the term "physician" throughout but the regulations also permit a "non-physician practitioner" to provide supervision. The service in question, however, must be within that individual's State scope of practice for which the individual has been granted privileges by the hospital to perform said service. This paper also includes a summary of the Federal laws and regulations as cited in the document.

1. Physician Supervision of "Incident to" Services in an Outpatient Hospital Setting

Hospitals provide two distinct types of services to outpatients: services that are diagnostic in nature and other services that aid the physician in the treatment of a patient. Therapeutic services 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.

Hospital outpatient therapeutic services furnished in the hospital or Critical Access Hospitals (CAHs) or in an outpatient department of the hospital or CAH, both on- and off-campus have a minimum requirement of direct supervision. In order to meet that direct supervision requirement the supervising physician or non-physician practitioner must be immediately available, meaning physically present, interruptible and able to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician or non-physician practitioner must be present in the room when the procedure is performed.

CMS removed the physical boundary requirement in the definition of direct supervision in order to allow the supervising practitioner greater flexibility in location while still meeting the requirement to be immediately available.

CMS did not relax the requirement that, for direct supervision, the supervisory physician or non-physician practitioner must be immediately available, meaning that the supervisory practitioner must be physically present and interruptible. They are not defining immediate availability in terms of time or distance.

The new definition will now apply equally in the hospital or in on-campus or off-campus provider-based departments (PBDs).

The supervising physician or non-physician practitioner must also be a person who is clinically appropriate to supervise the services or procedures. More specifically, the current CMS regulations (410.27(f)) state that the physician or non-physician practitioner must be available to furnish assistance and direction throughout the performance of the procedure. This means that the physician or non-physician practitioner must be prepared to step in and perform the service, not just respond to an emergency. The supervising physician does not necessarily need to be of the same specialty as the procedure or service that is being performed or from the same department as the ordering physician. However, the supervisory physician or non-physician practitioner must have within his or her State scope of practice and hospital-granted privileges, the ability to perform the service or procedure.

So for example, if radiation therapy services were being provided in a hospital outpatient department and the radiation oncologist who was supervising those therapeutic services left the hospital campus, a qualified physician or physician practitioner would need to be immediately available to supervise the procedures. If there is no qualified supervising physician immediately available, no radiation therapy services provided during his/her absence can be covered by Medicare. The services covered under this benefit also include materials and services of technicians.

It is inappropriate to allow one physician or non-physician practitioner to supervise all services being provided in multiple PBDs. It would be highly unlikely that one physician or non-physician practitioner would be both immediately available at all times that therapeutic services are being provided and would have the knowledge and ability to adequately supervise all services being performed at once in multiple off-campus PBDs.

CMS has also designated a limited set of therapeutic services meeting specific criteria as nonsurgical extended duration therapeutic services, defined in 42 CFR 410.27(a)(1)(v). A table listing the current extended duration services can be found at:
http://www.cms.gov/HospitalOutpatientPPS/Downloads/CY2011_List_Ext_Duration_Services-csr.pdf

CMS includes such things as IV infusion or hospital observation care. They do NOT include radiation therapy services.

In the provision of these services, CMS requires a minimum of direct supervision during the initiation of the service, which may be followed by general supervision for the remainder of the service at the discretion of the supervisory practitioner. CMS defines "initiation of the service" as the beginning portion of a service ending when the patient is stable and the supervising physician or appropriate non-physician practitioner believes the remainder of the service can be delivered safely under his or her general supervision. CMS does not further define the terms "stable" or "initiation". CMS requires that the transition from direct to general supervision be documented in the progress notes or in the medical record.

2. 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 have their own benefit category in Medicare. These radiation therapy services, when furnished in an office or free-standing radiation therapy center, require "direct personal supervision" by 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 supervising physician leaves the office or the freestanding radiation therapy center, 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.

As described above in section 1, Physician Supervision of "Incident to" Services in an Outpatient Hospital Setting, CMS has indicated that the supervising physician or non-physician practitioner must also be a person who is "clinically appropriate" to supervise the services or procedures. The concept of "clinically appropriate" as described above in section 1 is not specifically addressed in CMS regulations or manual instructions for physician supervision of radiation therapy services in an office or free-standing radiation therapy center.

However, in the 2011 Final Rule CMS commented that they were often questioned about clinical requirements for practitioners supervising extremely specialized services, notably radiation oncology services. CMS responded that in the Medicare Benefit Policy Manual (Pub. No. 100-02), Chapter 6,

Section 20.5.24, "the supervisory physician or non-physician practitioner must have, within his or her State scope of practice and hospital-granted privileges, the knowledge, skills, ability, and privileges to perform the services or procedure…..The supervisory responsibility is more than the capacity to respond to an emergency……"

In light of these statements, it is ASTRO's opinion that CMS is likely to apply the requirements outlined above for "incident to" services in an outpatient hospital setting to radiation therapy services provided in an office setting.

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 5 below). The incident to provision may also be extended to include all necessary and appropriate services supplied by a physicist assisting a radiation oncologist when the physicist is in the physician's employ and working under his or her direct supervision.

3. 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. The MPFS Relative Value Unit File is updated quarterly and is available on the CMS Web site at:http://www.cms.gov/PhysicianFeeSched/.

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*).

[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)

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.

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

All hospital outpatient diagnostic services (e.g., IGRT) follow the physician supervision requirements for individual tests as listed in the MPFS RVU File, as though they were furnished in a physician's office.

The definition of direct supervision and immediate availability for outpatient diagnostic services is the same as the definition for outpatient therapeutic services, described in Section 1, except for diagnostic services performed under arrangement in non-hospital locations. For diagnostic services furnished under arrangement in non-hospital locations, direct supervision will continue to mean physical presence in the office suite as defined in 410.32(b)(3)(ii). For all other outpatient diagnostic services, direct supervision means immediately available, without any reference to any physical boundary.

5. 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.

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 were described in Section 2 above. An example of services that would fall into this benefit category in a typical RO practice would be office visits.

For the services of auxiliary personnel, such as the nurses, to be covered under the "incident to" benefit, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time that services are being provided. Therefore, if the supervising physician leaves the office, the services of the auxiliary personnel provided during his/her absence cannot be covered by Medicare.

The radiation oncologist does not have to personally examine the patient every time auxiliary personnel provide services but the medical record must show that the radiation oncologist performed an initial service and subsequent services of a frequency which reflect his/her active participation in and management of the course of treatment.

As described above in section 1. Physician Supervision of "Incident to" Services in an Outpatient Hospital Setting, CMS has indicated that the supervising physician or non-physician practitioner must

also be a person who is "clinically appropriate" to supervise the services or procedures. The concept of "clinically appropriate" as described above in section 1 is not specifically addressed in CMS regulations or manual instructions for physician supervision of "incident to" services in an office or free-standing radiation therapy center. However, it is ASTRO's opinion that CMS would likely apply the requirements as outlined for "incident to" services in an outpatient hospital setting to "incident to" services in the office setting because of the similarity of the wording of the authorities applicable to each, as explained in Section 2.

Rural Areas
CMS expanded their non-enforcement policy through 2011 for direct supervision of therapeutic services provided in Critical Access Hospitals (CAHs) to include small and rural hospitals that have 100 or fewer beds.

https://www.cms.gov/HospitalOutpatientPPS/downloads/WebNotice.pdf

CMS considers hospitals to be rural if they are either geographically located in a rural area or are paid through the OPPS with a wage index for rural areas. (Section 70, Chapter 4, of the Medicare Claims Processing Manual (Pub. No. 100-04)).

If you have questions regarding this summary or any of the references to the Medicare laws and regulations, please contact the ASTRO Health Policy Department at 1-800-962-7876.