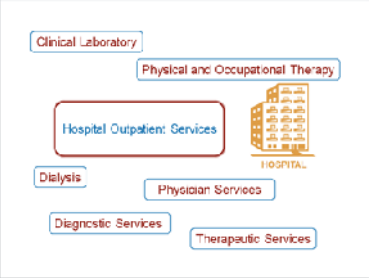
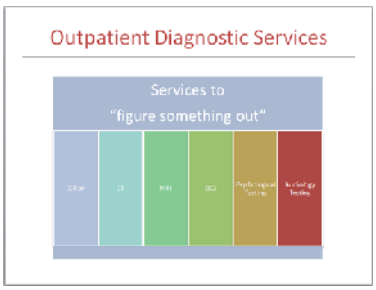
Who's In Charge Here?

Physician Supervision Rules for Hospital Outpatient Services

Presented by
Laura D. Seng, RN, Esq.
Barnes & Thornburg LLP
600 1st Source Bank Center
100 N. Michigan Street
South Bend, IN 46601-1632
Direct: (574) 237-1129
Laura.Seng@btlaw.com

Indiana State Bar Association Health Law Section
Health Law Symposium
April 21, 2011





Hospital Outpatient Services

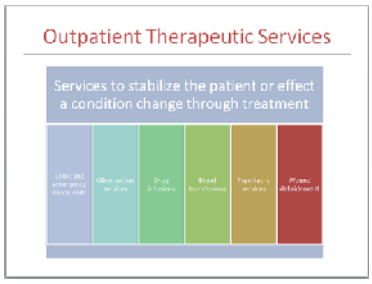
Medicare covers a variety of services furnished by hospitals, including clinical laboratory tests, dialysis and end stage renal disease services, physical and occupational therapy, speech-language pathology and physician services, as well as diagnostic and therapeutic services. Each service area has its own coverage and payment rules.

Outpatient Diagnostic Services

Examination or procedure to "obtain information to aid in the assessment of a medical condition or the identification of a disease."

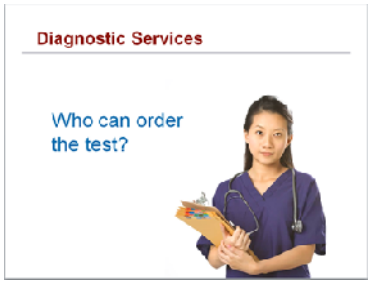
NOTES:

CONFIDENTIAL
© 2011 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is confidential, proprietary and the property of Barnes & Thornburg LLP, which may not be disseminated or disclosed to any person or entity other than the intended recipient(s), and may not be reproduced, in any form, without the express written consent of the author or presenter. The information on these pages is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg LLP.



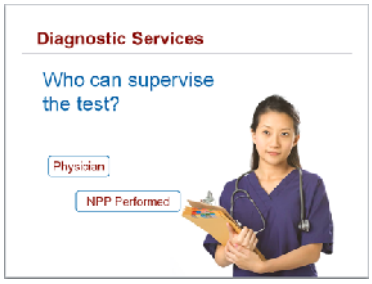
Outpatient Therapeutic Services

Services and supplies which are "incident to the services of physicians and practitioners in the treatment of patients. All hospital outpatient services that are not diagnostic are services that aid the physician or practitioner in the treatment of the patient."



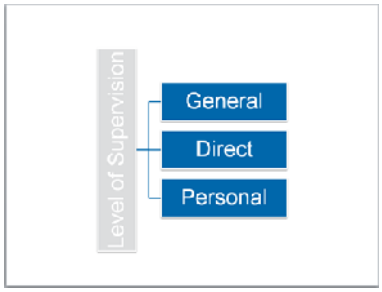
Diagnostic – Ordering

Must be ordered by the physician who is *treating* the patient. Exception for diagnostic mammography ordered by the physician interpreting the screening test. For non-physician practitioners (NPP) – check state law, scope of Medicare benefits, hospital rules/privileges.



Diagnostic - Supervision

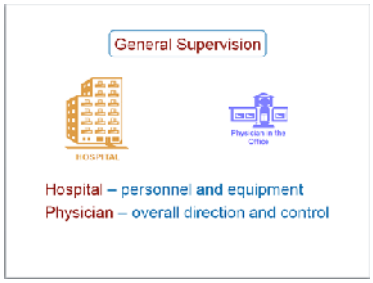
Diagnostic tests must be furnished "under the appropriate level of supervision *by a physician*." Exceptions exist for diagnostic mammography, audiologist performed tests, certain, psychological testing, certain electrophysiology testing by physical therapists, and diagnostic testing that is *personally performed* by a NPP in accordance with licensure collaboration/supervision rules.



Level of Supervision

Medicare recognizes three levels of supervision.

NOTES:



General Supervision

Procedure is furnished under the physician's overall direction and control. Physician's presence is not required during the procedure. Hospital is responsible for training of testing personnel and maintenance of equipment and supplies.

Direct Supervision

Supervising physician must be immediately available to furnish assistance and direction through the performance of the procedure. Physician does not need to be present in the room. If furnished under arrangements in a non-hospital location, the physician must also be physically present in the office suite.

Personal Supervision

Supervising physician must be in attendance in the room during the performance of the procedure.

Direct Supervision – Terminology

Immediate availability requires the immediate physical presence of the supervisory physician. No specific location requirement. Requires knowledge, skills, ability and privileges to perform the service or procedure (but not required to be an equipment operator).

NOTES:

Therapeutic Services – Ordering

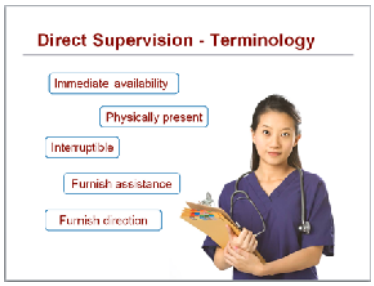
Therapeutic services are furnished incident to the services of physicians and practitioners in the treatment of patients. Services are furnished under the order of a physician or other qualified practitioner. Physician must manage the course of treatment.

Therapeutic Services – Supervision

Any therapeutic service may be supervised by a physician. Clinical psychologists may supervise certain psychological services. Non-physician practitioners may supervise those therapeutic services that they may personally furnish in accordance with State law.

Therapeutic - Direct Supervision

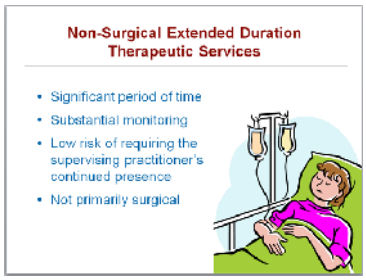
For therapeutic services, the supervising physician or practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure.



Direct Supervision – Terminology Revisited

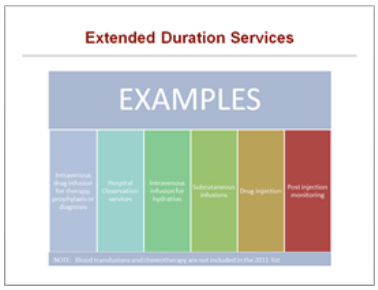
Immediate availability requires the immediate physical presence of the supervising practitioner (physician or NPP). No specific location requirement. Requires knowledge, skills, ability and privileges to perform the service or procedure - is the supervisor "clinically appropriate" to provide the service?

NOTES:



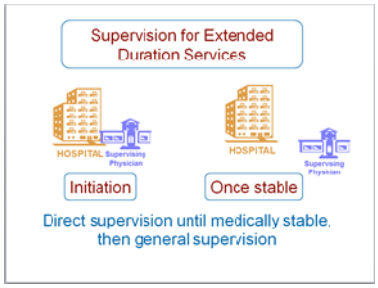
Non-Surgical Extended Duration Therapeutic Services

Extended duration services are certain therapeutic services that last a significant period of time, have a substantial monitoring component that is typically performed by auxiliary personnel, have a low risk of requiring the physician's or NPP's immediate availability after the initiation of the service, and are not primarily surgical in nature.



Extended Duration Services

Services identified by CMS as "extended duration" for each payment year are listed on the CMS OPPS web site. Services are typically infusion related or observational in nature. Blood transfusions and chemotherapy are not included in the list of extended duration services.



Supervision Combination

Direct supervision is required during the initiation of Extended Duration Services. Once the supervising practitioner deems the patient medically stable, the remainder of the service requires only general supervision.

Transition of Supervision

Transition of supervision from direct to general is at the discretion of the supervising physician or NPP. The point of transition to general supervision must be documented in the patient's medical record.

NOTES:

Hospital Policies and Credentialing

Hospital policies for diagnostic and therapeutic services should be updated to correspond with supervision requirements. Staff training and physician/practitioner education will likely be required. Changes in credentialing policies and/or physician duties may be required. Active participation by medical staff leadership will be important for ensuring a successful transition.

NOTES: