Medicare Supervision Rules – Focus on RA/RPA-Performed Services

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Agenda

- Recap of Medicare Physician Supervision Rules
- 2019 MPFS Final Rule revises requirements for physician supervision of diagnostic tests when RAs/RPAs perform diagnostic tests
- Explore requirements for “incident to” billing in physician offices

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Supervision of Diagnostic Tests

– Medicare Supervision Rules
  - Physician Offices
  - IDTFs
  - Medicare Hospital Outpatient Services – HOPPS

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Supervision of Diagnostic Tests

- Do not apply to tests for hospital inpatients
- Teaching physician regulations are separate requirements
- Supervision and interpretation of RS & I procedures

Supervision of Rules

Levels of Physician Supervision for Diagnostic Tests

- General Supervision
- Direct Supervision
- Personal Supervision

42 CFR 410.32

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Level One – General Supervision

- The supervising physician does not need to be present for the test, but he/she has overall responsibility for the control and direction of the service.
  - Plain Film
  - Ultrasound
  - Nuclear Medicine
  - MR and CT without contrast

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Level Two – Direct Supervision

– Office

– The supervising physician need not be in the room when the testing procedure is performed, but must be present in the same office suite and immediately available throughout the performance of the procedure to assist if required

– Hospital Outpatient

– The supervising physician need not be in the room when the testing procedure is performed, but must be immediately available

– MR and CT with contrast

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Level Three – Personal Supervision

The supervising physician must be in the same room where the test is performed throughout the performance of the procedure.

- Fluoroscopic imaging guidance
- Swallowing studies; radiographic arthrograms and myelograms
- Needle injection of contrast into the joint cannot be supervised – must be performed by physician

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Supervision in an IDTF

- Supervising physician must be "proficient" in the "performance and interpretation" of the tests they supervise
- General supervising physician may perform general supervision to no more than three (3) IDTF sites

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Non-Physician Practitioners (NPPs)

Nurse Practitioners, Clinical Nurse Specialists and Physician Assistants are not physicians and may not function as supervising physicians under Medicare's Diagnostic Test Benefit. **They may perform diagnostic tests pursuant to State Scope of Practice laws**

NPPs are enrolled to provide and bill for physician services

RAs/RPAs

They may perform diagnostic tests pursuant to State Scope of Practice laws. Also cannot supervise

State law also defines their scope for various radiology procedures

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RAs and RPAs

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Radiologist Assistants & Radiology Practitioner Assistants

Relaxed Medicare Supervision Requirements

- 2019 MPFS Final Rule – Effective January 1, 2019
- Tests requiring “personal” (Level 3) supervision may now generally be furnished under “direct” (Level 2) supervision when performed by an RA/RPA
- Such tests must be within the RA/RPA’s scope of practice under state law

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Amendment to Supervision Rule

- CMS did not change the level of supervision for those tests requiring personal supervision
- Unless performed by an RA/RPA in a state that authorizes such performance by an RA/RPA, the test continues to require personal physician supervision
- New paragraph (b)(4) was added to 42 CFR 410.32 stating that diagnostic tests performed by certified RAs/RPA that require a personal level of supervision can be furnished under the direct supervision of a physician, to the extent permitted by state law and state scope of practice regulations for RAs/RPAs

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Radiologist Assistants and Radiology Practitioner Assistants

- Effective January 1, 2019, CMS revised the physician supervision standards for diagnostic tests performed by one of the following:
  - Registered Radiologist Assistant (RRA) who is certified and registered by the American Registry of Radiologic Technologists; or
  - Radiology Practitioner Assistant (RPA) who is certified by the Certification Board for Radiology Practitioner Assistants

State Scope of Practice Restrictions

- For new CMS supervision standards to apply to RA/RPA performed services, applicable tests must be within an RA/RPA's scope of practice under state law
- New rules therefore only impact states that permit RA/RPAs to perform the applicable tests – approximately 30 states
- Medicare does not preempt state law or otherwise provide RA/RPAs greater authority to perform tests outside scope of practice
- Therefore, if a state has no RA/RPA licensing laws, then the new MPFS supervision rules do not apply, and applicable **Level 3** tests must be performed by a radiologic technologist (the tech can also be an RA/RPA) in that state under the "personal" supervision of a physician

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Hospital Outpatient Departments

- Effective 1/1/19, CMS extended the newly-revised supervision rules to diagnostic tests paid under the HOPPS. *See Transmittal 251, Change Request 11043, dated 11/30/18*
- Does not extend to hospital inpatients
- Unlike the MPFS, the HOPPS rules do *not* impose a proximity requirement for "direct" supervision (i.e., "present in the office suite")
- For "direct" supervision, the HOPPS requires only that the supervising physician be "immediately available" to furnish assistance and direction

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Radiologist Assistants & Radiology Practitioner Assistants

Limitations of MPFS Final Rule—the newly revised supervision rules do *not*:

- Expand circumstances when one can bill for RA/RPA performed radiology *procedures*;
- Permit an RA/RPA to *supervise* diagnostic tests;
- Expand an RA/RPA's *scope of practice* under state law; or
- Modify "*incident to*" requirements, including "course of treatment" requirements

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A Note About Radiologic Supervision and Interpretation Services

- RS & I codes are used to describe the personal supervision of the performance of the radiologic portion of a procedure by one or more physician(s) and the interpretation of the findings
- To report the "supervision" aspect of the procedure, the physician must be present during its performance. <u>And must personally be involved in rendering the service. Must be hands-on</u>
- These are <u>physician</u> services
- Billing physician attests on 1500 claim form that she/he rendered the service

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RS & I Services

- The concept of physician supervision does not authorize auxiliary clinical personnel to perform radiological/surgical procedures and allow radiologist to bill when in room for “key and critical” elements. That is an element of Teaching Physician rules
- The exception to this are “incident to” services

For a service to be covered as "incident to" the services of a physician and paid by Medicare as if the physician performed the service (i.e., at 100% of the MPFS), certain requirements must be met, including the following:

- Must be integral, though incidental, part of the physician's professional service rendered "*in the course of diagnosis or treatment*" (i.e., MD must have an established relationship with the patient and initiated a course of treatment);
- Commonly rendered without charge or included in the physician's bill;
- Of a type that is commonly furnished in the physician's offices or clinics (concept does not apply to hospital-based services); and
- Furnished under the physician's direct supervision. See *42 CFR 410.26*.

Keys to "Incident to" Services

- Office Based – Not Hospital
- Radiologists sees patient "clinically"
- Pre-procedural consultations/evaluations
- Post-procedural office visits/evaluations
- Does not apply to stand-alone, referred services at radiology offices

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ACR Clarifies "Incident to" Billing Rule When RAs Perform Supervised Office-Based Procedures

ACR, in collaboration with imaging technologist and physician extender stakeholders, clarifies Medicare's "Incident to" rule covering conditions for payment for radiologists providing direct supervision to radiologist assistants (RAs) performing diagnostic or non-diagnostic procedures

- https://www.acr.org/Advocacy-and-Economics/Advocacy-News/Advocacy-News-Issues/In-the-March-2-2019-Issue/ACR-Clarifies-Incident-to-Billing-Rule-When-RAs-Perform-Supervised-Office-Based-Procedures

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Clinical Examples

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- Percutaneous Thrombectory (CPT Codes 36818-36830)
  - Referred to Radiologist's Office by Urologist
  - Listed as requiring Level "9" under MPFS supervision
  - A stand-alone procedure – Not "incident to" service
  - Even if state scope of practice laws (or the RA/RPA's training/certification) allow an RA/RPA to perform these services, cannot be billed to CMS (or other payors that follow CMS guidelines)
  - Must be personally performed by the physician listed on the claim form

General Example of Where "Incident to" Can Work

- Radiology group operates IR clinic in its office - sees patients clinically
- Patient schedules appointment for IR consultation
- Patient is evaluated and minimally invasive procedure is scheduled (perhaps along with other services ordered by IR)
- There will be follow up evaluation of the patient
- Can the radiological/surgical procedure can be performed by RA/RPA "incident to" the treating radiologist's other services?
- Must be within the scope of the RA's/RPA's licensure and/or credentials and radiologist's view of patient need

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- Endovascular Ablation of Vericose Veins (CPT Code 36475) performed in physician office
  - Radiology group operates IR clinic in its office - sees patients clinically
  - Patient schedules appointment for IR consultation regarding patient's varicose veins
  - Patient is evaluated and endovascular ablation procedure is scheduled (perhaps along with other services ordered by IR)
  - There will be follow up evaluation of the patient
  - Can the radiological/surgical procedure can be performed by RA/RPA "incident to" the treating radiologist's other services?
  - Must be within the scope of the RA's/RPA's licensure and/or credentials and radiologist's view of patient need

- Future for RAs/RPA
- 2019 MPFS rule first step
- Achieve licensure in all states
- In states where licensed, RAs today can perform Level 3 diagnostic tests under direct physician supervision
- Can perform procedures in radiologist offices if it is within the scope of the RA/RPA's scope of training/credentials <u>and</u> if it meets "incident to" requirements
- ACR and others part of the Intersocietal Commission for the Radiologist Assistant (ICRA) are seeking Federal legislation to achieve NPP status for RAs, like PAs and NPs

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Questions?

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Thank you

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