

# CMS Regulations Physician Supervision of Hospital Services

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## Basic Requirement

- “Services furnished at a department of a provider, as defined in 413.65(a)(2) of this chapter, must be under the direct supervision of a physician.”
- 413.65(a)(2) referred to provider-based status which encompasses all services provided by a department of the hospital and billed under the hospital’s provider number.

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## Potential Issue

Hospital physical therapy services are billed under the hospital’s provider number as a department of the hospital.

Physical therapy services can be provided by an independent therapy service that is not required to comply with any of the provider-based regulations, including direct supervision of a physician, because the independent therapy service has its own provider number.

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## Difference in Reimbursement

Provider-based PT, OT, ST paid based on cost plus one percent (estimated to be 75% of charges)

Freestanding PT, OT, ST paid based on fee scale (estimate to be 35% of charges) plus annual per Medicare beneficiary limit of \$1,840 for physical and speech therapy and a separate annual per Medicare beneficiary limit of \$1,840 for occupational therapy

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## Physician Supervision History

Prior to 2000, the hospital industry generally assumed that physician supervision existed since hospitals were required to have medical staff that supervised all services provided within departments of the hospital.

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## Physician Supervision History

Direct physician supervision regulations actually changed in 2000 when CMS issued regulations that required the physician to be present and immediately available to furnish assistance and direction throughout the performance of the service when physician supervision requirements were in affect

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## Physician Supervision History

CMS did not enforce the new physician supervision regulations and many within the healthcare industry did not believe the rules would be enforceable since they represented a radical change from the previous requirements.

We did not believe the new rules were enforceable and encouraged our clients to monitor the situation but take no action until such time as CMS began enforcing the regulation.



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## Physician Supervision History

In 2008, CMS said **we really mean it.**

CMS reissued regulations that required the physician to be present and immediately available to furnish assistance and direction throughout the performance of the service when physician supervision requirements were in affect



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## Physician Supervision History

CMS did not enforce the new physician supervision regulations and many within the healthcare industry still did not believe the rules would be enforceable since they represented a radical change from the previous requirements.

We still did not believe the new rules were enforceable and encouraged our clients to monitor the situation but take no action until such time as CMS began enforcing the regulation.



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**Physician Supervision 2009  
Proposed Rules**

**For on-campus services, the physician had to be merely on-campus at the time the service is provided.**

**Campus is defined as the main hospital building and locations within 250 yards of the main hospital building.**

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**Physician Supervision 2009  
Proposed Rules**

**For off-campus services, there was no change and the physician had to be immediately available within the department of the hospital where the service was being provided.**

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**Physician Supervision 2009  
Proposed Rules**

**Midlevel practitioners (nurse practitioners, physician assistants, etc.) could be used in place of physicians as long as the midlevel practitioner was permitted within the practitioner's scope of practice as defined by state regulations to provide the service.**

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## Physician Supervision 2009 Proposed Rules

The following services were required to use physicians and not midlevel practitioners to meet the physician supervision requirement: pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation services.

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## Physician Supervision 2009 Proposed Rules

We believe CMS really means it this time.

We believe the changes may allow these new rules to be enforceable and we believe CMS will enforce the new rules.

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## Physician Supervision 2009 Proposed Rules

There is one reason why CMS would enforce these rules. Money

CMS may be asking why should we pay more for provider-based services than we pay for freestanding services. The services are the same.

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## Physician Supervision Proposed Rules

Within these three sets of regulations, physical therapy services were mentioned only once in 2000.

One commenter asked that we [CMS] provide an exception to the direct supervision requirement in the case of physical therapy services. The commenter questioned why therapists who furnish the same services in a provider-based entity that they would furnish in an independent practice should be subject to direct physician supervision in one setting and not the other.

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## Physician Supervision Proposed Rules

[CMS] response: The provision on coverage for outpatient physical therapy and occupational therapy services <note it does not use hospital in its description> does not require that they be incident to physician services (see section 1861(s)(2)(D) of the Act). Therefore, there is no need to exempt them from the supervision requirement for outpatient hospital services incident to a physician service that is furnished at a provider-based entity.

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## Physician Supervision Proposed Rules

Section 1861(s)(2)(D) exempts independent physical, occupational, and speech therapy from the direct physician supervision requirement because it is not normally provided in a physician's office. This section of the regulation does not appear to exempt provider-based outpatient hospital services from the direct supervision requirement.

We do not believe the CMS response clearly answered the question raised by the commenter.

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## •Physician Supervision Proposed Rules

As part of this exercise, we reviewed articles on this issue published by various law firms and other organizations.

Only one mentioned outpatient hospital services that may be exempt from the physician supervision requirement:

- Laboratory services because they are covered by the Clinical Laboratories Improvement Act
- Mammography services governed by the Public Health Services Act
- Other non-physician health care professionals such as psychologists, audiologists, physical therapists, and nurse practitioners (no basis for the latter exemptions were provided).

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## •Physician Supervision Proposed Rules

**However, the next sentence in the article indicated that hospital-based outpatient departments must comply with the physician supervision requirements.**

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## Physician Supervision Proposed Rules

If your CAH has off-campus provider-based services, you may want to monitor developments related to these provides regulations very carefully.

If your CAH intends to move a provider-based service off-campus, you may want to wait and see what the final rules suggest.

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## Physician Supervision Proposed Rules

The final rules along with many questions  
and answers should be available before  
October 1, 2009.

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## Any Questions?

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