

Avoid NPP-doctor supervision violations for diagnostic tests

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You may be exposing your practice to compliance risks — and be on the HHS' Office of Inspector General's (OIG's) radar — if you're not strictly following supervision requirements for non-physician practitioners (NPPs).

So far this year, the OIG settled two NPP supervision cases: One was a \$1.4 million fraud case with Bartlett (Arkansas) Regional Hospital which self-disclosed for submitting claims for NPP services under the doctor's name and NPI number and another with an Oregon radiology group and imaging center who agreed to pay \$189,000 for billing Medicare for diagnostic tests that required personal physician supervision but were rendered by radiology practitioner assistants under direct supervision.

For the latter case, the providers knew or should have known that the claims were false or fraudulent, according to the settlement agreement.

There are three levels of physician supervision for NPPs: general, for which the doctor ultimately is responsible for the services but doesn't need to be present; direct, when the physician must be in the office suite and immediately available; and personal which requires the doctor to be in the exam room with the NPP. (*See Compliance Toolbox, p. 8 for a full breakdown of supervision levels.*)

CMS doesn't cover services not performed under the appropriate supervision, however, the differences, and the definition of "immediately available" under direct supervision can be confusing, which leads to billing errors, says attorney Kim Looney with Waller law firm in Nashville.

Physician oversight of diagnostic tests is of particular concern because it involves the patient's quality of care being provided by the person being supervised and can be expensive, according to Ralph Wuebker, chief medical officer of Executive Health Resources in Newtown Square, Pa.

In a way, the Oregon radiologists were lucky because they self-disclosed their conduct to the OIG, which likely reduced the amount of the settlement they had to pay, says Looney. They also weren't required to sign a corporate integrity agreement, which would have subjected them to increased reporting and other obligations (*MPCA 5/13/13*).

3 tips on how to comply with CMS' supervision rules

If your practice uses NPPs to perform diagnostic tests, use the following tips to make sure you don't get tripped up in compliance issues:

- ▶ **Train staff on the different levels of supervision.** Sometimes practices run into problems because a new employee forgets to get the doctor for a procedure or a physician steps out of the procedure room for a moment, Looney says. "Don't cut corners [when it comes to staff education; this is part of ongoing compliance]," she warns.
- ▶ **Document required physician supervision level for each service.** Providers must do more than practice the supervision and demonstrate through documentation that the correct level was performed.
- ▶ **Tailor your compliance plan to your practice's operations.** Sometimes practices borrow or use cookie-cutter compliance programs without customizing it by specialty, warns David Zetter, president of Zetter Health Care Management Consultants in Mechanicsburg, Pa. Doing that leaves practices in a lurch and they end up making supervision mistakes. For instance, you don't want your compliance plan to say only physicians will perform certain tests if your practice's NPPs also perform them.

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