

BOARD OF GOVERNORS

PRESIDENT

Robert C. DeLuca, DO, FACOFP *dist.*
Eastland, TX

PRESIDENT-ELECT

Nicole H. Bixler, DO, MBA, FACOFP
Spring Hill, FL

VICE PRESIDENT

David J. Park, DO, FACOFP
Ivins, UT

SECRETARY/TREASURER

Bruce R. Williams, DO, FACOFP
Blue Springs, MO

IMMEDIATE PAST PRESIDENT

Duane G. Koehler, DO, FACOFP *dist.*
Miami, OK

PAST PRESIDENT

Rodney M. Wiseman, DO, FACOFP *dist.*
Pearland, TX

GOVERNORS

Greg D. Cohen, DO, FACOFP
Chariton, IA

David A. Connett, DO, FACOFP *dist.*
Anaheim Hills, CA

Gautam J. Desai, DO, FACOFP *dist.*
Kansas City, MO

Brian A. Kessler, DO, FACOFP
Harrogate, TN

Saroj Misra, DO, FACOFP
Warren, MI

Ronna D. New, DO, FACOFP
Abingdon, VA

RESIDENT GOVERNOR

DeAundre A. Dyer, DO
Westlake, OH

STUDENT GOVERNOR

Thomas W. Duffy, OMS IV
Tulsa, OK

SPEAKER, CONGRESS OF DELEGATES

Elizabeth A. Palmarozzi, DO, FACOFP
Auburn, AL

EXECUTIVE DIRECTOR

Bob Moore, MA, CAE
Arlington Heights, IL

October 5, 2020

VIA ELECTRONIC SUBMISSION

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS- 1736-P
P.O. Box 8016
Washington, D.C. 21244-8016

Dear Administrator Verma:

On behalf of the American College of Osteopathic Family Physicians (ACOFP), we appreciate the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) *Calendar Year (CY) 2021 Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center Payment System and Quality Reporting Programs* proposed rule.

ACOFP is the professional organization representing more than 18,000 practicing osteopathic family physicians, residents, and students throughout the United States who are deeply committed to advancing our nation's health care system by improving health care delivery and outcomes and ensuring that patients receive high-quality care.

As an organization of family medicine physicians, we appreciate CMS' efforts to address the COVID-19 public health emergency (PHE). CMS has promulgated many flexibilities that have helped family medicine physicians treat their patients during these unprecedented times. We are encouraged to see CMS propose to extend many regulatory flexibilities to physicians beyond the COVID-19 PHE. In particular, ACOFP supports the physician supervision flexibilities in the CY 2021 OPPS proposed rule.

Our full comments are detailed on the following pages. Thank you for the opportunity to share our feedback with you. Should you need any additional information or if you have any questions, please feel free to contact ACOFP at advocacy@acofp.org or (847) 952-5100.

Sincerely,



Robert C. DeLuca, DO, FACOFP *dist.*
ACOFP President

CMS is proposing changes to the level of supervision for outpatient therapeutic services in hospitals and critical access hospitals (CAH). The March 31 COVID-19 interim final rule with comment period (IFC)¹ reduced the minimum default level of supervision for non-surgical extended duration therapeutic services (NSEDTS) to general supervision for the duration of the COVID-19 pandemic. Furthermore, the IFC directed that supervision of pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation includes virtual presence of a physician through audio-visual real-time communications to reduce COVID-19 exposure risks. The proposed rule would adopt these policies on a permanent basis.

ACOFPP members are in support of these two proposals because they would provide flexibility for situations in which physician face-to-face visits cannot take place. Although we are in support of the policies, we want to emphasize that physical face-to-face visits are the gold standard for care delivery especially since they generally are more comprehensive in nature and physicians are able to detect more significant diagnostic subtleties during these types of visits.

1. General supervision for hospital outpatient NSEDTS

Federal regulations describe NSEDTS as hospital or CAH services that can 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 immediate availability, and are not primarily surgical in nature.² Beginning January 1, 2021, CMS is proposing to establish that general supervision is the minimum required supervision for all NSEDTS. Additionally, non-physician practitioners would be able to provide the required supervision of services in accordance with state law.

We are supportive of the lowered supervision requirements for NSEDTS throughout and beyond the COVID-19 pandemic. We believe this would continue to reduce exposure for physicians and patients to the coronavirus while also providing greater flexibility for providers after the pandemic. General supervision does not require the physician to be present during the procedure and, therefore, fewer people would be required to be in a hospital, which reduces the chance of spreading COVID-19. Furthermore, under the proposed rule, a physician would still be able to oversee a NSEDTS-related procedure if that is medically necessary for the patient. This would be helpful for physicians as it provides them with the flexibility to decide whether their presence is necessary based on the needs of the patient.

Although the proposal defers to state law for supervision levels for non-physicians, we want to highlight that physician-led care is the gold standard for care delivery. ACOFP has previously written to CMS on the importance of physician-led primary care.³ We reiterate that physicians deliver the highest quality care for America's seniors because of their extensive training and education. Seniors deserve to have access to the highest quality primary care services, which are delivered by physician-led care teams. Non-physician-led care teams are not the equivalent. We

¹ See Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency. Pg. 126. Available at <https://www.cms.gov/files/document/covid-final-ifc.pdf>

² 42 CFR §410.27(a)(1)(iv)(E)

³ See ACOFP Letter to Administrator Seema Verma re: CMS solicitation of Feedback on EO #13890. Accessible at https://www.acofp.org/acofpimis/Acofporg/PDFs/Advocacy/ACOFPP_Comments_EO_Scope_of_Practice.pdf

urge CMS to consider policies that will prioritize physician-furnished primary care services in future rulemaking.

2. Direct supervision of pulmonary, cardiac, and intensive cardiac rehabilitation services using audio-visual technology

As noted by CMS in the proposed rule, the Agency does not believe it has the authority to lower the level of supervision for pulmonary, cardiac, and intensive cardiac rehabilitation services. However, by allowing physicians to meet the requirements of direct supervision using audio-visual technology, CMS can protect patients and providers without changing the level of supervision for such rehabilitation services when the physical presence of the physician is not possible. This proposal also would reduce burden for physicians after the pandemic. We also recommend that CMS evaluate this policy periodically to ensure it is properly implemented over time.

Using audio-visual technology to satisfy direct supervision requirements would reduce exposure to COVID-19 for patients and providers. Physicians would not have to be physically present in the facility to satisfy the direct supervision requirements, and this would reduce the risk of exposure to coronavirus to patients and providers. Furthermore, this policy would provide flexibility for physicians to deliver care that is necessary for their patients beyond the COVID-19 pandemic. Under this proposal, physicians would continue to have the option to use audio-visual technology to supervise the rehabilitation procedures or the physician could be in the facility if appropriate for the patient. This would allow physicians to organize their practices as efficiently as possible and develop care plans that best fit the medical needs of their patients.

We hope CMS will continue to promulgate these types of regulatory flexibilities to support physicians both during and after the COVID-19 pandemic.