

MDS Alert

Medicare Payment: Is Your Facility Really Following Supervision Requirements For Therapy Assistants?

Beware: compliance goes beyond the RAI user's manual instructions.

Talk about a scenario rife with the potential for payment and compliance headaches: a SNF that isn't following Medicare or more stringent state requirements for rehab therapy assistant supervision.

The compliance reality: Before a SNF files a claim, it should confirm that the services provided met state and federal regulations. If the SNF is out of compliance in that way, it could theoretically face an overpayment situation or -- if the noncompliance is purposeful -- a false claim act action, cautions **Donna Senft, JD, PT**, with the law firm of **Ober/Kaler** in Baltimore. "Noncompliance would also place the therapist and therapist assistant at risk for licensure action."

General Supervision Required

The RAI manual says you can count on the MDS therapy provided by a qualified physical therapy assistant under the direction of a licensed PT -- or by a qualified occupational therapy assistant if the person is under the direction of a licensed OT.

But Medicare doesn't cover any services provided by speech therapy assistants, Senft reminds.

"Medicare does not recognize speech therapy assistants because there is no certification program for becoming one," adds **Katy O'Connor, PT**, a consultant with **Zimmet Healthcare Services Group** in Morganville, NJ.

Speech therapy assistants thus fall into the category of a rehab aide -- and fall under those regulations, she says.

According to the Medicare Benefit Policy Manual, the skilled rehabilitation services must be provided directly or under the therapist's general supervision, notes **Shehla Rooney, PT**, principal, **Premier Therapy Solutions** in Cookeville, TN. The manual goes on to define general supervision as providing initial direction and periodic inspection of the actual activity, Rooney says.

"However, the supervisor need not always be physically present or on the premises when the assistant is performing services."

Therefore, the therapist does not have to be present during the treatment sessions rendered by the assistant, says Rooney.

The therapist should, however, provide the assistant any necessary guidance and direction required to ensure patient safety and achieve the medically desired result, she adds. This guidance and direction can be hands-on treatment, verbal communications, general observations, or written instructions, Rooney notes.

State Regs Trump Less Stringent Federal Ones

If the state practice act is more stringent than the federal Medicare requirements for supervision of therapist assistants, then you go with the state requirements, says **Pauline Franko, PT**, principal, **Encompass Consulting and Education** in Tamarac, FL.

Examples: The Florida state practice act talks about supervision being provided in the same geographical location. And even though it's not written, the understanding is that the licensed therapist should be within 20 minutes travel time of the area where the therapist assistant is providing services, says Franko. "Some states require the therapist to perform

every fifth or sixth treatment," she adds.

In most states, says O'Connor, physical therapy assistants are more highly regulated than occupational therapy assistants.

"In some states, a PT has to be in the building when providing supervision for physical therapy assistants," adds O'Connor.

Watch out for this: Senft notes that some state regulations dictate the number of PT assistants that a PT can supervise, "which logistically can become a compliance nightmare" when people work full-time one place and moonlight somewhere else, she says.

"It gets tricky and someone in the nursing facility and/or therapy company needs to stay on top of it," Senft says.

Find a Way to Stay on Top of Changes in Requirements

The company Senft worked for as a PT before attending law school reviewed all the state licensure regulations and practice acts each year to make sure they hadn't missed any changes in the supervision requirements. "The practice acts tend to be more stable," she says, because they require legislative action to update them. But the regulations do change more often -- and the PT boards aren't that good at notifying licensees of changes, she adds.

Note: The supervision requirements for Part B rehab therapy provided by PT or OT assistants in nursing homes are the same as for Part A, e.g., Medicare requires general supervision by the licensed PT or OT -- and stricter state requirements for supervision supercede the Medicare requirements, says **Rick Gawenda, PT**, a physical medicine and rehab coding expert in Detroit.