

Given that the NCD states that auxiliary personnel furnishing acupuncture must be under the appropriate level of supervision required by our regulations at 42 CFR §§ 410.26 and 410.27, it seems the NCD is defaulting to the general requirements in those regulations. That means that:

- In an outpatient hospital/CAH setting, services would be furnished under general supervision (per §410.27(a)(1)(iv), as amended by the recent [CY 2020 OPPTS/ASC rule](#)).
 - Per §410.26(a)(3), *general supervision* means the service is furnished under the physician's (or other practitioner's) overall direction and control, but the physician's (or other practitioner's) presence is not required during the performance of the service.
- In office settings, services would be furnished under direct supervision (per §410.26(b)(5)).
 - Per §410.32(b)(3)(ii), *direct supervision* in the office setting means the physician must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room when the procedure is performed.

References to the specific regulations are included below.

§ 410.27 Therapeutic outpatient hospital or CAH services and supplies incident to a physician's or nonphysician practitioner's service: Conditions.

(a) Medicare Part B pays for therapeutic hospital or CAH services and supplies furnished incident to a physician's or nonphysician practitioner's service, which are defined as all services and supplies furnished to hospital or CAH outpatients that are not diagnostic services and that aid the physician or nonphysician practitioner in the treatment of the patient, including drugs and biologicals which are not usually self-administered, if—

(1) They are furnished—

(iv) **Under the general supervision** (or other level of supervision as specified by CMS for the particular service) of a physician or a nonphysician practitioner as specified in paragraph (g) of this section, subject to the following requirements:

(A) For services furnished in the hospital or CAH, or in an outpatient department of the hospital or CAH, both on and off-campus, as defined in § 413.65 of this chapter, general supervision means the definition specified at § 410.32(b)(3)(i).

(B) Certain therapeutic services and supplies may be assigned either direct supervision or personal supervision. For purposes of this section, direct supervision means that the physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician or nonphysician practitioner must be present in the room when the procedure is performed. Personal supervision means the definition specified at § 410.32(b)(3)(iii);

§410.26 Services and supplies incident to a physician's professional services: Conditions.

(b) Medicare Part B pays for services and supplies incident to the service of a physician (or other practitioner).

(1) Services and supplies must be furnished in a noninstitutional setting to noninstitutional patients.

(2) Services and supplies must be an integral, though incidental, part of the service of a physician (or other practitioner) in the course of diagnosis or treatment of an injury or illness.

(3) Services and supplies must be commonly furnished without charge or included in the bill of a physician (or other practitioner).

(4) Services and supplies must be of a type that are commonly furnished in the office or clinic of a physician (or other practitioner).

(5) In general, services and supplies must be furnished under the direct supervision of the physician (or other practitioner). Designated care management services can be furnished under general supervision of the physician (or other practitioner) when these services or supplies are provided incident to the services of a physician (or other practitioner). The physician (or other practitioner) supervising the auxiliary personnel need not be the same physician (or other practitioner) who is treating the patient more broadly. However, only the supervising physician (or other practitioner) may bill Medicare for incident to services.