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Complete Healthcare Compliance Manual 2024
Patient Care: Rehab

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What Is Rehab?

Rehab is an enigma—it's both a program and a service offering. It is more popularly described as therapy, or more specifically as physical therapy (PT), occupational therapy (OT), or speech-language pathology (SLP). How this therapy is delivered, billed for, and paid for is described in U.S. Statute; U.S. Code of Federal Regulations (C.F.R.); Centers for Medicare & Medicaid Services (CMS) policy manuals, including the *Benefit Policy Manual* and *Claims Processing Manual*; as well as in Medicare national coverage determinations (NCDs) and local coverage determinations (LCDs).[2] Risk identification, risk assessment, and risk mitigation spin on the specific single disciplinary or multidisciplinary rehab service or program.

What are the major areas of therapy, and how are they delivered? Table 1 shows Medicare venues and payment, including the type of rehab service delivery venue, the Medicare category, and the applicable Medicare payment methodology. The final column contains information from the October 2020 Medicare Payment Advisory Commission (MedPAC) *Payment Basics* fact sheets (per program) that give context to the complexity of Medicare rules, regulations, and payment criteria, and therefore the complexity of compliance risk across the therapy and rehabilitation spectrum.

Table 1: Medicare Venues and Payment

Rehab Service Delivery Venue	Medicare Category	Medicare Payment Methodology	MedPAC *Payment Basics* Fact Sheet
Acute care hospital	Inpatient, outpatient	**Inpatient**: Prospective payment system (PPS) **Observation**: Physician fee schedule[3] **Outpatient**: Physician fee schedule	Hospital acute inpatient services payment system[4]

Critical access hospital (CAH)	Inpatient, outpatient	CAH cost-based	Critical access hospitals payment system[5]
Inpatient rehabilitation facility (IRF)	Inpatient, outpatient	**Inpatient**: PPS **Outpatient**: Physician fee schedule	Inpatient rehabilitation facilities payment system[6]
Long-term care hospital	Inpatient, outpatient	**Inpatient**: PPS **Outpatient**: Physician fee schedule	
Home health agency (HHA)	Patient-driven grouping models (PDGM), outpatient	**Home health episode**: PDGM **Outpatient**: Physician fee schedule	Home health care services payment system[7]
Skilled nursing facility (SNF)	Patient-driven payment model (PDPM), outpatient	**Skilled nursing Part A episode**: PDPM **Outpatient**: Physician fee schedule	Skilled nursing facility payment system[8]
Comprehensive outpatient rehabilitation facility (CORF)	Outpatient, Part A provider	**Outpatient**: Physician fee schedule	Outpatient therapy services payment system[9]
Rehabilitation agency, also known as rehab agency (RA), outpatient physical therapy (OPT), or outpatient rehab facility (ORF)	Outpatient, Part A provider	**Outpatient**: Physician fee schedule	Outpatient therapy services payment system

Private practice, including group, PT-OT group, also known as physical therapist in private practice (PTPP), occupational therapist in private practice (OTPP), or speech-language pathologist in private practice (SLPPP)	Outpatient, Part B Supplier	**Outpatient**: Physician fee schedule	Outpatient therapy services payment system
Physician practice	Outpatient, Part B supplier	**Outpatient**: Physician fee schedule	Physician and other health professional payment system[10]

All therapy venues, in general, provide outpatient therapy, or at least have the ability to provide outpatient therapy. Outpatient therapy is paid under the physician fee schedule, with the exception of critical access hospitals, which are paid on the basis of cost.[11] Documentation, coding, and billing guidance for outpatient therapy is provided by CMS in the *Medicare Benefit Policy Manual* (MBPM) and the *Medicare Claims Processing Manual* (MCPM).[12][13] Guidance in the MBPM and the MCPM discuss the presence of varying regulations, such as supervision requirements, provision of maintenance therapy, or statutory requirements or limitations.

Many identified compliance risks associated with therapy programs and/or therapy services are universal to all providers of therapy programs and services, such as:

- Therapy is not medically necessary
- Billing for therapy not provided
- Lacking required certifications
- Not meeting supervision requirements
- Misrepresenting time (therapy minutes) to obtain higher reimbursement

Likewise, compliance risks that would be identified for outpatient therapy programs and services are often universal risks, such as:

- Compliance with the Health Insurance Portability and Accountability Act Privacy, Security, and/or Breach Notification rules
- Updating Medicare enrollment records as required
- Medical director contracts and agreements
- Excluded providers and entities
- Offering free or discounted services to induce referrals

This article will focus on compliance risks from the viewpoint of outpatient therapy programs and services, including physical therapy, occupational therapy, and speech language pathology.

Risk Area Governance

Outpatient therapy providers and services are not governed under a single law or regulation—as noted before, therapy is both a program and a service. Providers are often confused in the process of determining applicable governance. The relevant areas of governance are found in applicable Conditions for Participation for hospitals, skilled nursing facilities, home health agencies, rehabilitation agencies, and CORFs, as well as in applicable conditions for coverage and conditions for payment.

Other laws and regulations that govern risk include the following.

False Claims Act, 31 U.S.C. §§ 3729–3733

Submitting claims for therapy not provided, upcoding to receive higher reimbursement, duplicate billing, and therapy that is not medically necessary may constitute the submission of a false claim. In therapy practices, there are many examples of whistleblowers who are often ex-business partners, competitors, or staff members. Whistleblowers may receive up to 30% of any False Claims Act settlement.[14]

Anti-Kickback Statute, 42 U.S.C. § 1320a–7b(b)

The Anti-Kickback Statute (AKS) prohibits asking for or receiving anything of value in exchange for the referral of federal healthcare program (Medicare, Medicaid) business. The AKS applies to both payers and recipients. Asking for or offering a kickback could violate the AKS. A routine waiver of patient copayments could be considered a violation of the AKS. Offering a physician a medical director position in exchange for referrals may be considered a violation of the AKS.[15]

Civil Monetary Penalties Law, 42 U.S.C. § 1320a–7a

The Office of Inspector General (OIG) may seek civil monetary penalties for a wide variety of abusive conduct, such as failing to report and turn an overpayment.[16]

Exclusion Statute, 42 U.S.C. § 1320a–7

Under its exclusion authorities, the OIG may exclude providers and others from participation in federal healthcare programs. Mandatory exclusions are imposed on the basis of certain criminal convictions, and permissive exclusions are based on sanctions by other agencies, such as the applicable state licensing board.[17]

Physician Self-Referral Law (Stark Law), 42 U.S.C. § 1395nn

The Stark Law is a "strict liability" statute. The Stark Law limits physician referrals in instances where the physician has a financial relationship with an entity. PTs, OTs, and SLPs are included in the in-office ancillary exception to Stark.[18]

Mandatory Claims Submission, 42 U.S.C. § 1395w-4; *Medicare Claims Processing Manual*, Chapter 1, Section 70.8.8

As suppliers that are not eligible to opt out, physical therapists, occupational therapists, and speech-language pathologists must comply with mandatory claims submission.[19][20]

Professional State Practice Acts

State practice acts provide additional laws and regulations regarding the practice of physical therapy,

occupational therapy, and speech-language therapy. In instances where rules are stricter than Medicare, the stricter rules apply. Relevant state practice acts should be reviewed and assessed for compliance risk. Relevant state practice acts for:

- Physical therapy's are at the **Federation of State Boards of Physical Therapy**: https://www.fsbpt.org/Free-Resources/Licensing-Authorities-Contact-Information
- Occupational therapy's are at **American Occupational Therapy Association**: https://www.aota.org/Advocacy-Policy/State-Policy/Licensure/StateRegs.aspx
- Speech-language pathology's are at **American Speech-Language-Hearing Association**: https://www.asha.org/advocacy/state/

Telehealth and Telehealth Waivers

During the COVID-19 public health emergency, CMS has issued a number of waivers related to the provision of telehealth, including expansion of telehealth capability to PT, OT, and SLP who are not recognized as telehealth providers. Provider risks include compliance with telehealth waivers and applicability to private practice settings and institutional settings, including documentation, coding, and billing. Providers are cautioned to keep up to date on state practice acts regarding telehealth, as well as CMS waiver updates.[21]