

Research of Definition of “Availability”

Definition of availability:

- the quality or state of being available
- an available person or thing

Definition of available:

- Present or ready for immediate use
- Accessible, obtainable
- Qualified or willing to do something or to assume a responsibility
- Present in such chemical or physical form as to be usable

California Medical Association (CMA) Report F-02-08 to the CMA Board of Trustees, July 30, 2009

CMA made the following recommendations in its report regarding supervision:

- Recommendation #1: That CMA support addition to current and future California regulations/legislation affecting physician supervision, the Medicare definitions for sliding scale of supervision, with the addition of “treatment” under the general supervision definition, as provided below:
 - General supervision means the procedure is furnished under the physician’s overall direction and control, but the physician’s presence is not required during the performance of the procedure. Under general supervision, the training of the non-physician personnel who actually perform the diagnostic procedure or treatment and the maintenance of the necessary equipment and supplies are the continuing responsibility of the physician.
 - Direct supervision in the office setting means the physician must be present in the office suite or surgical 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.
 - Personal supervision means a physician must be in attendance in the room during the performance of the procedure.
- Recommendation #2: That CMA continue to educate its members about the legal requirements concerning mid-level providers and encourage its membership to appropriately review the standardized protocols of mid-level practitioners at regular intervals as necessary to ensure that they reflect the practice needs of the physician and address issues of patient safety.
- Recommendation #3: That the Board of Trustees approve the report on Appropriate Standards for Physician Supervision and forward it to the 2009 House of Delegates with the recommendation that it be filed for information.

Federal Government – Center for Medicare and Medicaid Services (CMS)

CMS has clarified and refined Medicare rules relating to physician supervision of hospital outpatient services over the last couple of years. CMS currently requires direct supervision for most outpatient therapeutic services in hospital outpatient departments. The definition for direct supervision was revised in 2011 and now requires that the physician be immediately available, interruptible, and able to furnish assistance and direction throughout the performance of the procedure. It no longer requires that the physician be present in the office or surgical suite and there is no reference to a particular physical boundary in the definition.

Previous Legislation:

In 2008, AB 2398 (Nakanishi) proposed to add the following to the Business and Professions Code (as amended 4/22/08):

2259.6. (a) Any physician and surgeon who delegates the performance or administration of any elective cosmetic medical procedure or treatment to a registered nurse shall, pursuant to the requirements of this article, perform an initial, good faith, and appropriate prior examination of the patient for whom treatment has been delegated. Subject to the provisions of subdivision (d), in a physician and surgeon-owned and operated treatment setting, direct supervision is not required upon delegation to a nurse practitioner, physician assistant, or registered nurse. In all circumstances, upon request of the patient, the delegating physician and surgeon shall afford the patient direct supervision of the procedure or treatment.

(b) Direct supervision shall mean that the physician and surgeon must be onsite and available for immediate consultation at the time of performance or administration of the procedure or treatment.

(c) As used in this section, "elective cosmetic medical procedure or treatment" means a medical procedure or treatment that is performed to alter or reshape normal structures of the body solely in order to improve appearance.

(d) In no event may a physician and surgeon delegate the performance or administration of elective cosmetic medical procedures or treatments to more than four separately addressed locations under his or her supervision, one of which shall be his or her primary practice location. These sites shall be located within a radius no greater than that which may be reached within 60 minutes from the physician and surgeon's primary practice location. A delegating physician and surgeon shall be available to attend to emergent patient circumstances within a reasonable time, not to exceed 24 hours from the onset of those circumstances.

This version of the bill was a result of many stakeholders coming together and negotiating a definition; however, this language was stricken from the bill because it was too prescriptive.