



August 3, 2021

The Honorable Ron Wyden
Chairman
U.S. Senate Finance Committee
219 Dirksen SOB
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
U.S. Senate Finance Committee
219 Dirksen SOB
Washington, DC 20510

The Honorable Frank Pallone
Chairman
U.S. House Energy & Commerce Committee
2125 Rayburn HOB
Washington, DC 20515

The Honorable Cathy McMorris-Rodgers
Ranking Member
U.S. House Energy & Commerce Committee
2125 Rayburn HOB
Washington, DC 20515

The Honorable Richard Neal
Chairman
U.S. House Ways & Means Committee
1102 Longworth HOB
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
U.S. House Ways & Means Committee
1102 Longworth HOB
Washington, DC 20515

Re: Mitigate the Medicare Part B Payment Differential for Rehabilitation Therapy Assistants

Dear Sens. Wyden and Crapo and Reps. Pallone, McMorris-Rodgers, Neal, and Brady:

On behalf of the undersigned, we write to convey our concerns with the implementation of the pending Medicare 15% payment differential for services furnished by physical therapist assistants (PTA) and occupational therapy assistants (OTA) beginning on Jan. 1, 2022. This 15% cut compounds significant payment reductions already imposed on rehabilitation therapy and will have a pervasive and pernicious impact on our patients.

The rehabilitation therapy sector is still recovering from the devastating impact of COVID-19 on patients and staff as we continue to provide services during the public health emergency (PHE). Especially early in the pandemic, access to care was curtailed. The AMA reported the early pandemic's effect on rehab therapy as among the hardest hit among the Medicare Physician Fee Schedule specialties, [with up to a 34% drop in spending for services](#).

To protect access to care, we request that Congress take action to mitigate the impact of these cuts, especially in rural and underserved areas and amid the PHE. Specifically, we request the implementation of three policies:

- Delay implementation of the payment differential to Jan. 1, 2023, to give the Centers for Medicare and Medicaid Services additional time to provide technical assistance and education to therapy providers.
- Provide an exemption to the 15% payment differential for rural and underserved areas, which disproportionately rely on services provided by OTAs and PTAs.
- Amend the current burdensome direct supervision regulatory requirements of therapy assistants in private practice settings.

Delay Implementation of the Payment Differential to Jan. 1, 2023

As providers try to stabilize their practices and continue providing therapy services, there is confusion over CMS' preparations for implementation of the Medicare payment differential for services furnished at least in part by OTAs and PTAs. The 2018 legislation that enacted the differential provided a nearly four-year delay in implementation, to 2022, to enable CMS to prepare to implement the provision as well as providers to prepare for the change. Unfortunately, we are rapidly approaching that implementation date, yet providers still lack certainty on how this provision will be implemented, given that new guidance on using the assistant modifiers was just released in the 2022 Medicare Physician Fee Schedule proposed rule. This will leave only 30-60 days to implement a policy that will require nationwide training of staff on appropriate coding. Electronic health record system vendors need time to program, test, and finalize their systems. Medicare Administrative Contractors will need to interpret CMS' guidance and to program and update their systems accordingly. History has shown that hastily implemented policy has been a conduit for costly mistakes during implementation.

The pending Medicare payment differential for therapy services furnished by an assistant compounds other recent significant payment reductions to therapy services under the fee schedule, which range from 3.5% to 3.9% for 2022¹. These multiple cuts are being implemented at the same time practices and facilities are trying to recover from the effects of the pandemic, and — along with the current 50% MPPR reduction policy and anticipated return of the 2% Medicare sequestration — are simply not sustainable for therapy services.

COVID-19's detrimental impact on providers of therapy, especially in settings treating Medicare beneficiaries, was not contemplated when Congress passed this policy four years ago. Providers of occupational therapy and physical therapy have been significantly challenged by the pandemic to keep their patients and staff safe, given the need for regular physical contact and close proximity in delivering services. Clinicians are burned out from an exhausting care environment and are moving out of the profession. Continuing to treat patients during a public health emergency is difficult, and clinician availability is becoming limited. These reductions hit hardest where therapy assistants are needed most — in underserved areas both rural urban areas.

¹ AMA Table, *Combined Impact of Proposed Rule and Conversion Factor Reduction for 2022*, https://netforum.avectra.com/Public/DocumentGenerate.aspx?wbn_key=d6f42a3e-2856-4995-8225-eeeea99c649e.pdf

Additionally, both occupational therapy and physical therapy services will be needed to help COVID-19 long-haulers recover from the long-lingering effects of the disease (as [CDC's interim guidance on management of post-COVID conditions explains](#)), and is an important alternative to opioids for dealing with acute and chronic pain. However, these will not be possible if we do not have the therapy providers to furnish these services.

With these serious concerns in mind, we ask that Congress delay implementation of this differential provision by one year, to Jan. 1, 2023, to allow CMS to finalize regulations on this provision at the end of 2021 and then give time to providers to train staff on the new requirements and prepare for the change.

Provide an Exemption to the 15% Payment Differential for Rural and Underserved Areas

We also ask for your support in exempting rural and underserved areas from the pending 15% payment differential for services furnished by PTA and OTAs. Access to health care is already dwindling in rural localities. Occupational therapists, occupational therapy assistants, physical therapists, and physical therapist assistants work as teams, playing a crucial role in bridging these gaps in access to care in rural and other areas with limited availability of clinicians; however, the payment reduction puts at risk the financial viability of physical and occupational therapy businesses in these areas. Absent action by CMS or intervention by Congress, the therapy assistant payment differential will exacerbate the growing problem of limited access to medical care throughout much of rural America.

We urge Congress to persuade CMS to use its authority via the 2022 fee schedule rule to mitigate the harm to Medicare beneficiaries in rural communities that would otherwise result from the 15% payment differential for therapy assistant services.

Reduce Current Burdensome Direct Supervision Regulatory Requirements of Therapy Assistants in Private Practice Settings

Finally, amending the current burdensome supervision requirement of PTAs and OTAs in private practices will help to ensure continued patient access to needed therapy services. It would also assist in the ongoing recovery from the COVID-19 pandemic and provide support for small outpatient therapy businesses that are facing multiple cuts.

Amending the current Medicare regulation related to supervision requirements of OTAs and PTAs to align with state laws would help to better ensure continued patient access. Under current Medicare regulations, the level and frequency of therapy assistant supervision differs by setting and by state or local law. Medicare currently allows for general supervision for PTAs and OTAs in all settings except for private practice, which requires direct supervision. On the other hand, 44 states call for general supervision of PTAs and 49 states call for general supervision of OTAs in private practice settings. Therapists must abide by the more stringent of either Medicare or their state practice act, yet nearly all states clearly believe general supervision in private practice is safe and in the best interest of their consumers. Medicare needs to follow suit.

CMS has the requisite authority to amend the supervision requirements of occupational and physical therapy services furnished in private practice under Medicare but has not done so. Given the impending 15% cut to therapy services provided by assistants, we strongly urge Congress to intervene via legislation and provide support and flexibility to small therapy businesses by modifying the supervision requirements for PTAs and OTAs in private practice from direct to general.

Conclusion

Access to health care services is critical to good health, yet Medicare beneficiaries, particularly those who reside in rural and underserved areas, face a variety of barriers. Access to physical therapy and occupational therapy in rural, medically underserved, and health professional shortage areas often depends on the availability of physical therapist assistants and occupational therapy assistants. Unfortunately, the 15% Medicare Physician Fee Schedule payment reduction for services furnished by physical therapist assistants and occupational therapy assistants will have a detrimental impact on the ability of therapy providers, particularly in rural areas, to continue to deliver care.

Thank you for your consideration of our request as we work to ensure beneficiaries have access to critical occupational therapy and physical therapy services. The recommended measures will shield beneficiaries from the impact of these reductions and make certain they have the services they need to regain and function, and improve their quality of life. Our collective efforts will ensure Medicare beneficiaries have appropriate access to these services during challenging times.

Sincerely,



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