April 29, 2020

Alex Azar
Secretary
U.S. Department of Health & Human Services
Services
200 Independence Ave., S.W.
Washington, DC 20201

Seema Verma
Administrator
Centers for Medicare and Medicaid

200 Independence Ave., S.W.
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

On behalf of the more than 100,000 member physical therapists, physical therapist assistants, and students of physical therapy represented by the American Physical Therapy Association and the more than 4,000 members of the Private Practice Section of the American Physical Therapy Association, we appreciate the work of the US Department of Health and Human Services and the Centers for Medicare and Medicaid Services to combat the spread of COVID-19. In accordance with the waiver authority afforded to the agency under Social Security Act Section 1135, APTA and its Private Practice Section (PPS) strongly encourage HHS and CMS to immediately take additional steps to ensure patient safety and protect health care providers by waiving additional program participation and similar requirements.

The COVID-19 pandemic demands that health care providers, as well as payers, rethink how care is delivered to reduce the risk of further spreading infection while also ensuring that limited health care resources are efficiently used to combat the public health emergency. In addition to addressing the crisis, it is crucial that strategies are put in place to ensure the continued delivery of health care that is unrelated to COVID-19. Therapy interventions, when accessed early and without administrative barriers, are both safe and decrease downstream health care resource utilization.[1] With intensifying concerns surrounding the COVID-19 pandemic, we encourage CMS to waive the following specific Medicare coverage requirements for physical therapist services. Doing so will not only alleviate stress on physicians trying to manage the pandemic but will also allow physical therapists and

[1] Three studies: Kazis LE, et al. "Observational retrospective study of the association of initial healthcare provider for new-onset low back pain with early and long-term opioid use." *BMJ Open.* September 20, 2019. https://bmjopen.bmj.com/. Sun E, et al. "Association of Early Physical Therapy With Long-term Opioid Use Among Opioid-Naive Patients With Musculoskeletal Pain." *JAMA Network Open.* December 14, 2018. https://jamanetwork.com/. Garrity B, et al. "Unrestricted Direct Access to Physical Therapist Services Is Associated With Lower Health Care Utilization and Costs in Patients With New-Onset Low Back Pain." *Phys Ther*. 2019 Oct 30. https://www.ncbi.nlm.nih.gov/pubmed/31665461.

physical therapist assistants to provide care to Medicare beneficiaries at the full ability of their education and license.

Eliminate Therapy Plan of Care Certification Requirement

Pursuant to Medicare Benefit Policy Manual Chapter 15 Section 220, a plan of care must contain diagnoses, long-term treatment goals, and type, amount, duration, and frequency of therapy services. CMS requires physicians or nonphysician practitioners to certify a patient's therapy plan of care, with a dated signature on the plan of care or with another document that indicates approval of the plan of care. The manual states that it is not appropriate for a physician or NPP to certify a plan of care if the patient was not under the care of some physician or NPP at the time of the treatment, or if the patient did not need the treatment. By certifying an outpatient plan of care for therapy, a physician or NPP is certifying that: services are or were required because the individual needed therapy; a plan for furnishing therapy has either been established by a physician or NPP or by the therapist providing such services and is periodically reviewed by a physician; and services are or were furnished while the individual was under the care of a physician. Chapter 15 further states that there is no Medicare requirement for an order. However, "when documented in the medical record, an order provides evidence that the patient both needs therapy services and is under the care of a physician." The manual also states that **if the signed order includes a plan of care, no further certification of the plan is required** (emphasis added).

Compliance with the physician signature requirement imposes a significant logistical and administrative burden for both therapy providers and physicians, taking valuable time and resources away from delivering patient care. This burden is magnified as a result of the public health crisis. Although an unintended consequence, care is frequently delayed while awaiting a physician signature — often after multiple requests — placing the beneficiary's health at risk due to the delay. During the current public health emergency, physicians are already stretched to capacity. Understandably, signing plans of care is simply not their priority; however, this exacerbates delays of care.

During normal circumstances, there are delays and frequently a lack of physician response. Despite the physical therapist having performed due diligence in requesting a physician signature, the therapist is left with an inadequate paper trail of the interaction and the financial burden falls on the physical therapist if a signature is not obtained. Moreover, in instances of delayed certifications, the therapist must identify and compile evidence that is necessary to justify the delay, further increasing his or her administrative burden. While the medical record may illustrate the medical necessity of therapy services, CMS contractors will deny payment or seek recoupment if the plan of care is missing a signature, if the signature was not obtained within the required timeframe, or even if the signature is of marginal or questionable legibility.

Even under normal circumstances, the administrative burden of this regulation is untenable. Patients should not suffer a delay in care, and physical therapists and other therapy providers

should not be held responsible and possibly subject to medical review due to a physician's inaction. Moreover, the plan of care signature requirement is at odds with contemporary physical therapist practice. Every state, the District of Columbia, and the U.S. Virgin Islands (USVI) have removed from their statutes all or some of the referral requirements or order provisions for physical therapist evaluation and treatment. Physical therapists are highly educated health care professionals who can provide evaluation and treatment services within their respective disciplines without the need for an order or referral from any other health care professional; this has been recognized by state laws.

Forcing physical therapists to develop the plan of care and then to send it to the physician for signature is a process that during normal circumstances often takes weeks. It is a process that is both burdensome and unnecessary. Moreover, in some instances, physicians ask beneficiaries to come to their office for a visit before they sign the plan of care. This visit typically results in checking of vital signs, medication review, and a request for a referral. Beneficiaries have voiced frustration that this requested visit results in out-of-pocket costs for the beneficiary and a cost to Medicare– but provides no clinical benefit—it is for the sole purpose of obtaining an approval to activate their right to therapy services. At this time when beneficiaries are wary of unnecessary exposure and many primary care providers are not available, this burden and waste of time and resources is magnified.

Accordingly, especially in this time of public health uncertainty, APTA and PPS strongly recommend that CMS eliminate the plan of care certification requirement during the COVID-19 pandemic.

Implement General Supervision Requirement of Physical Therapist Assistants in Private Practice

Additional steps should be taken to allow greater flexibility for health care services delivered to Medicare beneficiaries, especially when those flexibilities can help people comply with the CDC's recommendations for dealing with the pandemic, like social distancing. As always, physical therapists are responsible for providing safe, accessible, cost-effective, and evidence-based services. Services are rendered directly by the physical therapist and with responsible utilization of physical therapist assistants under the direction and supervision of the physical therapist. The physical therapist's practice responsibility for patient and client management includes examination, evaluation, diagnosis, prognosis, intervention, and outcomes. Physical therapists may use physical therapist assistants in components of intervention and in collection of selected examination and outcomes data.

Under Medicare, the level and frequency of physical therapist assistant supervision differs by setting and by state or local law. Physical therapists are licensed (and physical therapist assistants are either licensed or certified) in all states, the District of Columbia, and the USVI. Medicare currently requires general supervision for physical therapist assistants in all settings except for private practice, which requires direct supervision. However, if state or

local practice requirements are more stringent, the physical therapist and physical therapist assistant must comply with their state practice act.

Currently, 44 states call for general supervision; in six states, supervision level differs by settings; the District of Columbia requires onsite supervision; and in both Puerto Rico and the USVI, the supervision level is undetermined.[2] **APTA and PPS encourage CMS to recognize the value and benefit of modifying the supervision requirement from direct to general for physical therapist assistants in private practice, as such modification would better promote unrestricted, non-delayed access to therapy interventions.** Adjusting this Medicare policy would have an immediate impact in those 44 states which permit general supervision, because the only obstacle at this time is Medicare's direct supervision requirement; without a waiver of this limitation, an assistant is limited to the hours the physical therapist works when treating Medicare beneficiaries. The practice is then severely limited if the physical therapist is sick or in quarantine. Without the physical therapist on site, the physical therapist assistant cannot treat Medicare patients. Furthermore, this prevents staff from practicing a form of social distancing where only some staff physically attend work each day, because the policy requires the physical presence of the physical therapist in order for the physical therapist assistant to do their job. **Delays in care may be harmful to functional outcomes and quality of life. Modifying the supervision requirement would better align with state law. Therefore, APTA and PPS recommend that CMS allow general, not direct, supervision of physical therapist assistants in private practice.**

APTA and PPS' Requests Would Further CMS' Goals of Reducing Burden and Improving Care

In September 2019, CMS finalized a rule that "reforms Medicare regulations that are identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers" and "increases the ability of health care professionals to devote resources to improving patient care by eliminating or reducing requirements that impede quality patient care or that divert resources away from furnishing high quality patient care."[3] The elimination of the therapy plan of care certification requirement, and implementing general supervision of physical therapist assistants in private practice, would further CMS' goals of removing burdensome, unnecessary requirements on providers and improving quality of care.

Thank you for your consideration. We look forward to continuing to work with you during this critical time to protect the health of our nation. If you would like additional information,

[2] Federation of State Boards of Physical Therapy Jurisdiction Licensure Reference Guide https://www.fsbpt.net/lrg/Home/SupervisionRequirementLevelsBySetting.

[3] Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Fire Safety Requirements for Certain Dialysis Facilities; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care. September 30, 2019, at 51732. https://www.govinfo.gov/content/pkg/FR-2019-09-30/pdf/2019-20736.pdf.

please contact Kara Gainer, Director of Regulatory affairs, at karagainer@apta.org or Alpha Lillstrom Cheng, PPS Lobbyist, at alpha@lillstrom.com.

Sincerely,

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