

December 31, 2019

Seema Verma, MPH  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services                      Attention: CMS-1720-P  
Room 445-G  
Hubert Humphrey Building  
200 Independence Ave, SW  
Washington, DC 20201

***Submitted electronically***

RE: Medicare Program; Modernizing and Clarifying the Physician Self-Referral Regulations [CMS-1720-P]

Dear Administrator Verma:

On behalf of the over 4,000 members of the Private Practice Section (PPS) of the 100,000 member American Physical Therapy Association (APTA), I write to provide input and feedback on the Center for Medicare and Medicaid Services proposed rule, “Medicare Program; Modernizing and Clarifying the Physician Self-Referral Regulations”.

PPS is an organization of physical therapists in private practice who use their expertise to restore function, improve mobility, relieve pain, and prevent or limit permanent physical disabilities in patients with injury or disease. The rehabilitative and habilitative care they provide restores, maintains, and promotes overall fitness and health. Representing independent small business owners we are interested in policies that will allow Medicare patients to seek physical therapy services from the provider of their choice and are wary of policies and regulations which impede patients from choosing to receive affordable, high-quality, and clinically appropriate outpatient physical therapy care in an independent small business setting.

PPS strongly urges CMS to consider the following recommendations when evaluating how to use its regulatory authority to modernize and reduce administrative burdens for Medicare-enrolled providers and suppliers to participate in bundled and alternative payment arrangements in a way that will ensure patient choice and reduce waste to the federal taxpayers. Below please find suggestions based upon experiences of private practice physical therapists who provide care to Medicare and Medicaid beneficiaries. PPS hopes that the experiences and expertise shared will be helpful.

**Remove Physical Therapy from the In-Office Ancillary Services Exception**

While the Stark law prohibits a physician from making referrals for designated health care

services to an entity with which he or she (or an immediate family member) has a financial relationship, PPS is concerned that the Agency does not fully appreciate the impact of the statutory and regulatory exceptions such as the in-office ancillary services (IOAS) exception and waivers granted for CMS led models.

PPS agrees that in order to pursue care coordination to achieve value-based care, the current exceptions to the Stark law must be examined and revised. At the same time, it is important to make sure that there is proper oversight of exceptions and evaluation of whether or not the care which takes place via the IOAS exception is also based on value. Of concern is that the IOAS exception includes physical therapy even though physical therapy is generally not a same-day service, and it is certainly not possible to complete a care plan in one day. According to a 2010 MedPAC report, only three percent of outpatient physical therapy services were provided on the same day as an office visit, only nine percent within seven days of an office visit, and only fourteen percent within fourteen days of an office visit. Physical therapy services, while important to achieve positive outcomes, are not integral to the physician's initial diagnosis and do not improve patient convenience because patients must receive physical therapy treatments over the course of many days or weeks. Furthermore, CBO's analysis of the President's FY17 budget includes savings of \$3.3 billion over ten years if the IOAS exception loophole were to be closed.

The IOAS exception in its current form only bolsters the continuation of questionable utilization patterns of these services in fee-for-service Medicare and conflicts with the goals of coordinated care and value-based payment models. Alternative payment models (APMs) will not be successful if overutilization continues to be incentivized in the Medicare program. PPS suggests that in pursuit of the goal of coordinated care and payments based on value, the final rule should revise the Stark law's self-referral prohibitions; to further encourage physician participation in APMs, PPS recommends removing advanced diagnostic imaging, anatomic pathology, physical therapy, and radiation therapy services from the list of designed health services protected under the IOAS exception.

#### ***The Promoting Integrity in Medicare Act (H.R.2143)***

Should CMS determine that it doesn't have the regulatory authority to remove physical therapy from the in-office ancillary services exception to the Medicare self-referral law, PPS strongly suggests that the Agency support and encourage lawmakers to pass the *Promoting Integrity in Medicare Act* (H.R.2143) which seeks to protect the integrity of the Medicare program by addressing current and ongoing self-referral practices in advanced diagnostic imaging, anatomic pathology, physical therapy, and radiation therapy. By removing these four services from the IOAS exception, the *Promoting Integrity in Medicare Act* will realign provider incentives, which is in the best interests of Medicare beneficiaries, taxpayers, and American health care system overall.

PPS believes that narrowing the IOAS exception to exclude physical therapy and the other specified services will improve patient care and coordination, while preserving valuable Medicare resources and the integrity of the program. The intention of the IOAS exception is to promote patient convenience by allowing physicians to self-refer for certain services furnished in their group practices, particularly those which are used for diagnostic purposes. However, it is

important to recognize that the current use of this exception goes well beyond its objective. Advanced diagnostic imaging, anatomic pathology, physical therapy, and radiation therapy services are rarely furnished and completed on the same day as the initial appointment and are not services that are provided in a physician practice solely for patient convenience. Additionally, based on numerous GAO and peer reviewed studies that continue to mount, abuse of the IOAS exception has led to significant overutilization of these services.

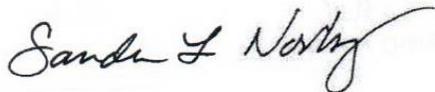
As a solution, PPS requests the Agency fully support the enactment of the *Promoting Integrity in Medicare Act of 2019* as this legislation reflects the findings of the Government Accountability Office, the Office of the Inspector General of the U.S. Department of Health and Human Services, academic studies, as well as the positions of several bipartisan groups such as the Moment of Truth Project and the Bipartisan Policy Group. All of these findings point to the need to narrow the IOAS exception. As stated above, if H.R.2143 were to be enacted, the Medicare program will save \$3.3 billion over ten years. Enacting this legislation will preserve the ability of all providers to render the highest quality, safest, and most appropriate care to all patients while saving taxpayer dollars.

By ensuring that only physicians participating in approved alternative payment models and other truly integrated medical groups focusing on quality can self-refer under the IOAS exception, the *Promoting Integrity in Medicare Act* will both root out abuse in the fee-for-service system while accelerating participation in alternative payment models. Such efforts will further the goals of higher quality health care at lower cost, resulting in better outcomes.

### **Conclusion**

PPS appreciates the opportunity to weigh in on CMS's proposal to modernize the physician self-referral law. We hope our insight and perspective, especially regarding changes that should be made to the in-office ancillary services exception, will be helpful as CMS considers which improvements to make to the current system that will allow for greater patient choice as well as efficiency within the delivery system that is seeking to achieve both quality and cost savings while improving patient outcomes.

Sincerely,



Sandra Norby, PT, DPT  
President, Private Practice Section of APTA