

March 21, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-0053-P
P.O. Box 8013
Baltimore, MD 21244-1850

Submitted electronically

RE: Administrative Simplification: Adoption of Standards for Health Care Attachments Transactions and Electronic Signatures, and Modification to Referral Certification and Authorization Transaction Standard

Dear Administrator Brooks-LaSure:

On behalf of the almost 4,000 members of APTA Private Practice, a Section of the 100,000+ member American Physical Therapy Association (APTA), I write to provide feedback on the Centers for Medicare and Medicaid Services' (CMS) Administrative Simplification: Adoption of Standards for Health Care Attachments Transactions and Electronic Signatures, and Modification to Referral Certification and Authorization Transaction Standard (the "[Regulation](#)"). APTA Private Practice is an organization of physical therapists in private practice who use our expertise to restore function, improve mobility, relieve pain, and prevent or limit permanent physical disabilities in patients with injury or disease. The rehabilitative, maintenance, and habilitative care that we provide restores, maintains, and promotes overall fitness and health across the age span to a range of patient types.

Representing physical therapists who are also independent small business owners, APTA Private Practice encourages and supports policies that enable our members to focus on providing high-quality, cost-effective, and clinically appropriate outpatient physical therapy. Our members are proud of the quality of care they provide, but as small business owners are quick to realize the impact of deleterious administrative hurdles they encounter after providing clinically appropriate care covered by federally-financed health care programs. They chafe at burdensome and duplicative administrative tasks as the time they spend on these unnecessary tasks is time they are not able to care for their patients. If they had more time to care for patients, physical therapists know that the care they provide would improve overall health, decrease pain, and prevent the need for avoidable health care services.

APTA Private Practice

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The Regulation would implement requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Patient Protection and Affordable Care Act, as amended by the HealthCare and Education Reconciliation Act of 2010, enacted on March 30, 2010— collectively, the Affordable Care Act. Specifically, this proposed rule would adopt standards for “health care attachments” transactions, which would support both health care claims and prior authorization transactions, and a standard for electronic signatures to be used in conjunction with health care attachments transactions. To better support the use of the proposed standards for attachments transactions with prior authorization transactions, this rule also proposes to adopt a modification to the standard for the referral certification and authorization transaction (X12 278) to move from Version 5010 to Version 6020. The letter is structured to respond to each relevant section of the Regulation.

Initially, we note that Medicare is not the only payer using these standard transaction sets. Every payer in the US uses them. We urge CMS to do everything in its power to demand that every payer using standard transactions be required to follow CMS guidelines. Unfortunately, at this time, CMS rules allow for significant deviation from standards as individual payers choose. As an example, one payer recently made a change in their electronic claim format that is non-standard. As a result, one practice reports that it has electronic secondary claims backed up for more than six months to this payer. This issue arose because the payer made a minor change in how information is required to come across to them. Practices across the country deal with the fallout when a payer decides they want something different than what these standards require. As a bottom line, we believe that because these standards have been implemented by Medicare for years, the entire industry should be required to follow CMS Guidelines. CMS has many tools to make this happen and we respectfully urge the agency to use them.

In addition, the regulation notes that a Council for Affordable Quality Healthcare (CAQH) analysis predicts that implementation of the Regulation will lead to almost half a billion dollars in savings to the “health care industry.” The WEDI analysis distinguishes savings for physicians and dentists, but does not include an analysis of the impact on private practice physical therapists. Nevertheless, the estimation of 11 minutes of staff time for the submission of a paper record versus 3 minutes for the submission of an electronic attachment comports with PT practice experience, and we support this analysis. We also support and agree with the 2020 CAQH Index, which estimates that, on average, providers spent about 20 minutes and \$10.26 per transaction to conduct a prior authorization manually, and about 13 minutes and \$7.07 via a partially electronic web portal in 2020. These costs compare with an average cost of \$3.64 per fully electronic transaction. CAQH estimates that, based on 2020 survey data, switching to fully electronic transactions could yield an additional \$417 million in annual administrative cost savings. Those savings would be split between health care providers (\$322 million or 77 percent) and health plans (\$95 million or 23 percent). In any event, as the result of any final rule, it is imperative that savings accrue to those who actually provide care, not the organizations who often stand in the way of paying for the provision of care.

Additionally, we urge CMS to recognize that while we are supportive of the implementation of new standards for electronic signatures, nothing we note in this regulatory comment should be interpreted to militate against our advocacy efforts with Congress and the Administration to

eliminate the need for “wet” signatures between PTs and prescribing providers. We note that CMS specifically excludes referral certifications and authorizations from the impact of the electronic signature changes in the Regulation at 87 Fed Reg 78444, but would also urge CMS to revisit its reliance on the need for wet signatures. As we have noted on many occasions and in many venues, the burden of chasing prescribing providers for their signed approval of plans of care harms patients because it almost always delays care. It is one of the chief administrative burdens APTA Private Practice is prioritizing in our advocacy efforts as it does not reflect the reality of practice in every state in the country, each of which now allows for some form of PT First without the need for a referral from another provider. CMS rules and regulations are the only remaining barrier to better patient care through increased access to PT, because they create a roadblock to timely care through the imposition of a requirement that wet signatures be obtained.

While we support the Regulation, it must be noted that PT practices have been excluded from incentive payment under the HITECH Act and thus, we urge CMS to do everything in its power to ease the transition to this new, more costly component of HIT systems for private practice PTs. It was an unfortunate Congressional oversight that PT practices were excluded from the original legislation, but building in even more functionality into health IT systems will put the cost of these systems out of reach for even more small PT practices, and will create an even wider equity and access gulf between patients seeking care from practices in underserved areas and other practices.

Finally, few other provider groups are as familiar as Private Practice Physical Therapists with the workers’ compensation system (see 87 Fed Reg 78459). Our experience with this system and its treatment of health care data transactions suggests that PT practices will be well-served by the new standards being established through regulation by CMS. We support the implementation of the Regulation.

Thank you for the opportunity to comment on the Regulation. We hope our insight and perspective will prompt CMS to strengthen patient protections available to beneficiaries and patients. APTA Private Practice welcomes the opportunity to work with CMS to identify solutions that will safeguard the financial health of the Medicare and Medicaid programs while ensuring that beneficiaries and patients have adequate access to high-quality physical therapy services in safe, cost-effective community-based settings.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Horsfield". The signature is written in a cursive, flowing style.

Mike Horsfield, PT, MBA
President, Private Practice: a Section of the American Physical Therapy Association