



January 10, 2022

RE: Request for an Immediate Section 1135 COVID-19 Waiver Suspending Medicare Part B Payment Differential for Rehabilitation Therapy Assistants

Dear Directors Blackford and Richter,

On behalf of the undersigned, we are writing to ask you to exercise your 1135 waiver authority to ensure Medicare beneficiaries continue to receive access to essential therapy services, which are at risk of being lost due to COVID-19 and the continued pandemic. The recent surge in variants of COVID is causing therapy practitioner staffing shortages. This, coupled with the harmful impact of the reduction of reimbursement for services provided in part or in whole by physical therapist assistants (PTAs) and occupational therapy assistants (OTAs) as of January 1, 2022, has the potential to cause significant access issues for our most vulnerable Medicare beneficiaries. We request that the Centers for Medicare and Medicaid Services (CMS) act now to protect beneficiary access to therapy services by applying its section 1135 waiver authority and suspending the payment reduction which has gone into effect for services provided by PTAs and OTAs. We ask that CMS rescind the cuts until the end of the calendar year in which the COVID-19 public health emergency (PHE) ends.

The rehabilitation therapy sector is still struggling to recover from the devastating impacts of COVID-19 on both patients and staff as we continue to provide services throughout the PHE. The AMA reported that early in the pandemic, rehabilitation therapy was among the hardest hit specialties paid under the Medicare Physician Fee Schedule -- with up to a 34% drop in spending for services. In the last month, the recent surge of COVID-19 cases due to the Delta and Omicron variants is considerably higher than it was at the peak of the pandemic last January. The significant and consistent uptick in cases, including increased breakthrough cases, which are disproportionately impacting therapy professionals in small, rural, and underserved practices, is causing severe staff shortages.

The drastic surge of Omicron cases has made it significantly challenging for rehabilitation therapy providers to treat Medicare beneficiaries who require in-person care. While providing care via telehealth is an effective option for some, facility-based care includes regular physical contact and proximity when delivering services. To slow the spread of COVID-19 therapists have been proactively restricting the number of providers who enter each facility to limit contact across multiple settings and long-term care facilities. This smart and cautious approach can also have the negative consequence of reducing patient access to care.

While existing COVID-19 waivers permit full payment for services furnished by a therapist via telehealth, under the current therapy assistant adjustment policy, the provider would be subject to a 15% therapy assistant adjustment if the assistant furnished the same services in a face-to-face manner. We believe that under the PHE, when providers are experiencing workforce challenges

and higher costs, the provider should have the option to continue to effectively utilize physical therapist assistants and occupational therapy assistants to deliver therapy services without being penalized financially due to COVID-19 factors beyond their control.

Unfortunately, no one can predict when this current surge will subside, or when and how severe another variant will be. However, the impact of fewer services to beneficiaries can have a long-lasting impact on their ability to regain function and improve their quality of life. Rehabilitation therapy providers can provide these services safely using therapy assistants when necessary due to intervening COVID factors which might limit the therapist's availability. However, the downward therapy assistant adjustment currently in place is reducing clinical care delivery flexibility and is causing financial hardship for providers who are trying to retain and recruit staff while providing the personal protective equipment (PPE) necessary for both the patients and therapists.

Clinicians have been functioning in an exhausting health care environment for the past 22 months. Many have experienced burnout. Even prior to the recent surge in cases many therapists have transitioned out of the therapy profession altogether. Continuing to provide rehabilitation therapy access for patients during a PHE is increasingly difficult, with fewer therapy practitioners available and higher wages due to overtime and premium pay. Thus, this assistant payment reduction hits hardest where therapy assistants are needed most, especially in underserved areas.

As the CDC's interim guidance on management of post-COVID conditions explains, both occupational therapy and physical therapy services will be needed to help COVID-19 long-haulers recover from the long-lingering effects of the disease¹. Furthermore, therapy is recognized as an important alternative to opioids for dealing with acute and chronic pain. However, the capacity to provide physical and occupational therapy care is limited if there are not sufficient therapy providers available to furnish services. All these factors ultimately result in severely limited access to therapy services for Medicare beneficiaries, which warrants HHS' application of an immediate 1135 COVID-19 waiver.

Finally, we believe that under the PHE guidelines² the Department of Health and Human Services and CMS have the authority to issue this requested waiver. As referenced on page 75 in question 5 of the CMS document COVID-19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing, CMS has provided a modifier to waive the telehealth adjustment and allows for full reimbursement of physician fee schedule services provided via telehealth sources³. Our request for a waiver to suspend the payment reduction on services provided by PTAs and OTAs would maintain full reimbursement for these services through the end of the calendar year in which the PHE ends. This urgently needed regulatory flexibility would allow rehabilitation providers to continue to meet beneficiaries' important needs.

Due to the urgency of the current surge, we request an expedited issuance of this waiver. Without such prompt consideration, the impact of the pandemic will exacerbate beneficiaries' conditions, leaving Medicare beneficiaries without access to essential therapy services. Our organizations

¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/post-covid-management.html>

² <https://www.phe.gov/Preparedness/legal/Pages/1135-waivers.aspx>

³ <https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>

have submitted the CMS 1135 Waiver/Flexibility Request and Inquiry form found at https://cmsqualitysupport.servicenowservices.com/cms_1135 on January 5, 2022, Case # CS1516985. We would be happy to meet with you at your convenience to discuss the issues outlined in this letter and to answer any questions you might have regarding the request.

Sincerely,



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