

Congress of the United States
Washington, DC 20515

May 14, 2021

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Becerra:

We write to ask your consideration for exempting rural areas from the pending Medicare payment differential for services furnished in whole or in part by physical therapist assistants and occupational therapy assistants. Access to medical care is already dwindling in rural localities. Physical therapists, occupational therapists, and their assistants play a crucial role in bridging these gaps in access to care. But the payment reduction puts at risk the financial viability of physical and occupational therapy businesses in rural and underserved areas. Absent action by the Centers for Medicare & Medicaid Services, the therapy assistant payment reduction will exacerbate the growing problem of limited access to medical care throughout much of rural America.

We recommend that CMS use its authority to mitigate the harm to Medicare beneficiaries in rural communities that would otherwise result from the 15% reduction for physical and occupational therapy services furnished in whole or part by physical therapist assistants and occupational therapy assistants, which is scheduled to take effect Jan. 1, 2022, through 1 of 2 mechanisms:

1. Create a class-specific geographic index for physical and occupational therapy services furnished by physical therapist assistants and occupational therapy assistants to offset the payment reduction in rural areas.
2. Establish incentive payments for RVU data collected from rural physical and occupational therapists to offset the physical therapist assistant and occupational therapy assistant payment reduction in rural areas.

Should CMS determine it does not have the authority to exempt rural areas from the pending differential, then we implore CMS to consider changing its supervision policy for physical therapist assistants and occupational therapy assistants in private practice via the Calendar Year 2022 Medicare Physician Fee Schedule rulemaking. Amending the supervision requirement for private practices will help to ensure continued patient access to needed therapy services, assist in the ongoing recovery from the COVID-19 pandemic, and provide support for small outpatient therapy businesses that are facing a 15% cut to services provided in whole or in part by physical therapist assistants or occupational therapy assistants beginning in 2022.

With the pending Medicare payment differential for therapist services furnished by an assistant effective Jan. 1, 2022, in addition to other recent payment reductions to therapy services under the MPFS, we have serious concerns about the future of Medicare beneficiary access to necessary therapy services, especially in rural and underserved areas. Amending the current Medicare regulation related to supervision requirements of physical therapist assistants and occupational therapy assistant to better align with state law 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. Physical therapists and occupational therapists are licensed (and physical therapist assistants and occupational therapy assistants are either licensed or certified) in all states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Medicare currently allows for general supervision for physical therapist assistants and occupational therapy assistants in all settings except for private practice, which requires direct supervision. However, if state or local practice requirements are more stringent, the therapist must comply with their state practice act. Currently, 44 states call for general supervision of physical therapist assistants and 49 states call for general supervision of occupational therapy assistants.

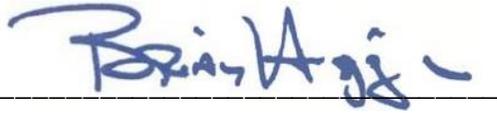
Access to health care services is critical to good health, yet Medicare beneficiaries, particularly those who reside in rural areas, face a variety of access barriers. Access to physical and occupational therapy in rural, medically underserved, and health professional shortage areas often depends on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

The Social Security Act 1861(p) outlines general parameters for outpatient physical and occupational therapy services. While the statute does not discuss supervision requirements, the Secretary has promulgated regulations defining the supervision requirements of physical and occupational therapy services furnished in private practice. The regulation at 42 C.F.R. 410.60 states that physical therapy services must be performed by, or under the direct supervision of a physical therapist in private practice; 42 C.F.R. 410.59 states that occupational therapy services must be furnished by, or under the direct supervision of an occupational therapist in private practice.

CMS has the requisite authority to amend the supervision requirements of therapy services furnished in private practice under Medicare. Given the impending 15% cut to therapy services provided in whole or in part by assistants, we strongly recommend that CMS provide support and flexibility to small therapy businesses by modifying the supervision requirements for physical therapist assistants and occupational therapy assistants from direct to general in private practice via the 2022 MPFS rulemaking. At a minimum, we recommend that CMS amend the regulation to allow direct supervision of physical therapist assistants and occupational therapy assistants to be satisfied through virtual means on a permanent basis.

Thank you for your consideration of our request. Our collective efforts are crucial to ensuring that Medicare beneficiaries have access to appropriate therapy service during these challenging times.

Sincerely,

A handwritten signature in blue ink that reads "Brian Higgins". The signature is written in a cursive style and is positioned above a horizontal line.

Brian Higgins
Member of Congress

_____/s/_____
Blaine Luetkemeyer
Member of Congress

_____/s/_____
Paul Tonko
Member of Congress

_____/s/_____
Ann McLane Kuster
Member of Congress

_____/s/_____
John Joyce, M.D.
Member of Congress

Cc: Elizabeth Richter, Acting Administrator, Centers for Medicare & Medicaid Services