*Submitted electronically via **Seema.verma@cms.hhs.gov***

January 19, 2018

Ms. Seema Verma
Administrator, Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue SW
Washington, DC 20201

Re: Application of the Medicare outpatient therapy payment limitations

Dear Administrator Verma,

On behalf of outpatient rehabilitation therapy providers, consumer groups, patient groups, and physical therapy (PT), occupational therapy (OT), and speech-language pathology (SLP) professionals, we request that the Centers of Medicare and Medicaid Services (CMS) immediately suspend the application of the Medicare outpatient therapy payment limitations, commonly referred to as the "therapy caps" until such time that CMS provides adequate instruction to beneficiaries, providers, and contractors regarding the policy.

As you recall, the Medicare Part B outpatient therapy caps limit the amount of PT, OT, and SLP services Medicare will cover per year. These caps were first implemented in 1999 and were enforced for limited periods through 2005. Since 2006, an exceptions process was enacted allowing for medically necessary therapy services above the cap amounts. However, due to recent Congressional inaction, the exceptions process provisions have ended.

Beginning January 1, 2018, and unless/until Congress acts, Medicare will only cover $2,010 of PT/SLP services combined, and $2,010 of OT services per year. While it appears that some beneficiaries may be able to access outpatient therapies above the cap limits from outpatient hospitals in 2018, Medicare consolidated billing requirements prevent skilled nursing facility (SNF) long-stay residents to access such services. There are no exceptions - even if therapy is urgently needed for a beneficiary to restore function to remain home, return home, or to maintain their quality of life.

As of January 19, 2018, a Senate bill to repeal the caps (S.253) is currently co-sponsored by 38 Senators, while a House bill (H.R.807) is co-sponsored by a majority of Representatives (233). Additionally, Congress is currently considering bipartisan and bicameral agreed-upon language that is supported by professional, provider and consumer organizations that would permanently repeal the therapy caps and replace them with a rational targeted review program.

Based upon a recent analysis commissioned by the American Occupational Therapy Association, nearly six million Medicare beneficiaries accessed outpatient therapy services in 2015, and of these, nearly one million surpassed the PT/SLP cap limit while nearly one-quarter million surpassed the OT cap limit.

Medicare beneficiaries that require extended outpatient therapy services typically have mobility deficits and multiple chronic conditions. This often puts them at higher risk for further deterioration without periodic skilled therapy services to restore or maintain function in domains such as mobility, self-care, swallowing, and communication. Many beneficiaries with such complex and chronic conditions may reach their annual cap limits within weeks of starting therapy, which if untreated, may result in avoidable functional decline and costlier inpatient, post-acute, and long-term care.

Since early December 2017, many of our stakeholder organizations have contacted CMS and its contractors requesting information on how the therapy caps would be applied in 2018. On January 16, on its Fee-For-Service Provider webpage[1], CMS announced that it is *"…taking steps to limit the impact on Medicare beneficiaries by holding claims affected by the therapy caps exceptions process expiration for a short period of time beginning on January 1, 2018."* Similar announcements were issued by several Medicare Administrative Contractors (MACs) as well. We appreciate the further clarification released on January 17th related to the use of the KX modifier and the holding of claims. While this action may provide an additional two weeks for Congress to address the therapy cap policy legislatively to restore this important benefit to Medicare beneficiaries, we do not believe it is a sufficient action.

As of today, nothing has been posted on the Medicare.gov website indicating to beneficiaries that the therapy caps now apply without an exceptions process. Additionally, there is insufficient guidance on the CMS.gov website instructing providers on how to issue appropriate beneficiary notifications of noncoverage (ABN) when the $2,010 cap has been reached when there is no exceptions process. For example, the CMS Therapy Caps ABN FAQ document provides the following inaccurate guidance:

> *Q6: For services above the cap that are medically reasonable and necessary, can a provider transfer liability to a beneficiary?*
> *A6: No, Medicare covers therapy services above the cap that are medically reasonable and necessary. The beneficiary would be liable for applicable co-pays and deductibles.*

Additionally, several of our coalition members report that providers have been receiving conflicting and inaccurate information from their Medicare Administrative Contractors (MACs) regarding whether hospitals or critical access hospitals are exempt from the therapy caps in 2018.

As you can see, there is a great deal of uncertainty regarding the application of the Medicare outpatient therapy caps in 2018, and due to Congressional inaction, CMS has not had adequate time to educate consumers, providers, or the MACs regarding how the therapy caps will be applied in 2018. In the past, the agency has suspended application of the caps pending clarification of the policy, so that beneficiary access to necessary services is maintained, and beneficiaries and providers are not unfairly penalized due to the current lack of updated policy guidance.

[1] https://www.cms.gov/Center/Provider-Type/All-Fee-For-Service-Providers-Center.html

In summary, until the disruptive therapy cap policy is addressed by Congress, we request that CMS immediately suspend application of the Medicare outpatient therapy caps until such time that CMS and its contractors provide adequate instruction to beneficiaries, providers, and contractors regarding the policy.

Thank you in advance for your timely consideration of and response to this request.

Sincerely,

AARP
American College of Rheumatology
American Health Care Association
American Heart Association/American Stroke Association
American Hospital Association
American Medical Rehabilitation Providers Association
American Occupational Therapy Association
American Physical Therapy Association
American Speech–Language–Hearing Association
Amputee Coalition
Arthritis Foundation
Brain Injury Association of America
Center for Medicare Advocacy
Easterseals
Falling Forward Foundation
Focus on Therapeutic Outcomes, Inc.
Hydrocephalus Association
Jewish Federation
Leading Age
Medicare Rights Center
The Michael J Fox Foundation for Parkinson's Research
National Association for the Support of Long Term Care
National Association of Rehabilitation Providers and Agencies
National Center for Assisted Living
National Disability Rights Network
National MS Society
National Stroke Association
National Stroke Association
Private Practice Section of the American Physical Therapy Association
Society for Post-Acute and Long-Term Care Medicine
The ALS Association
United Spinal Association

CC:
Chairman Greg Walden
Ranking Member Frank Pallone, Jr.

Chairman Kevin Brady
Ranking Member Richard Neal
Chairman Orrin Hatch
Ranking Member Ron Wyden
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