

SELF-REFERRAL IN PHYSICAL THERAPY: Identifies incentive to self-refer among physicians who transition to self-referral model.

BACKGROUND

The Stark laws were initially created to stop referral-for-profit arrangements, curb unnecessary patient referrals, and reduce abuse of the Medicare system. The in-office ancillary services (IOAS) exception to the Stark laws was created to allow for certain services to be provided on the same day while the patient was in the physician office. Unfortunately, this exception was inappropriately expanded to include many services and procedures that are either not same-day services or are too advanced to be completed during the patient's initial visit.

Physical therapy is one such service. It is a skilled service, with examination, evaluation, and interventions that may require a patient to return for multiple visits. In 2010, the Medicare Payment Advisory Commission (MedPAC) found that only 3% of patients receive physical therapist interventions on the date of their initial visit. Including physical therapy in the IOAS exception was a flawed policy decision from the start, as it provides no real convenience for patients. Furthermore, inclusion of physical therapy in the exception allows self-referral arrangements to flourish—which is exactly what the original Stark laws were designed to stop.

The inclusion of physical therapy and other specific services in the IOAS exception prompted Congress to ask the Government Accountability Office (GAO) to review the practice of self-referral. GAO has now completed 4 reports. Those reports studied self-referral in physical therapy, advanced diagnostic imaging, radiation therapy, and anatomic pathology. In that time, several policy groups have also recommended that this loophole be closed, and the Administration has twice called on Congress to remove specific services, including physical therapy, from the IOAS exception.

SWITCHERS

The GAO report on physical therapy raised 2 significant issues. The first was analysis of physicians that transitioned their practices to be self-referring. These providers are commonly referred to as "switchers." GAO compared the average number of physical therapist service referrals made by providers who began self-referring beneficiaries for physical therapy services in 2009 and continued in 2010 ("switchers") with the average number of service referrals made by providers who were not self-referring in that time. The percentage increase in average physical therapist service referrals for "switchers" between 2008 and 2010 ranged from 7% for orthopedic surgeons to 33% for family practice physicians, while non-self-referring providers saw increases of 4% and 14%, respectively. This difference for switchers is further evidence, also identified in previous self-referral reports, that the incentive to self-refer for profit exists and that certain providers are abusing the IOAS exception.

"I work in coordinated care models not impacted by physician ownership of physical therapist services. In these relationships both parties are willing to practice at the top of their license with the **patient's interest coming first**. This commitment changes the dynamic of the relationship from ownership to partnership and allows the focus to be on delivering high-value, patient-centered care."

—Jason, Tennessee Physical Therapist

"GAO: Physical therapy service referrals increased the year after a provider began to self-refer at a higher relative rate to the non self-referring providers of the same specialty."

METHODOLOGY CHALLENGES

Another critical issue raised by the report concerns the methodology challenges of the study. GAO acknowledged it was limited in its ability to fully identify providers that self-refer and also concluded that further study regarding medical necessity, clinical appropriateness, and effectiveness of physical therapist services in self-referral arrangements was necessary.

GAO compared self-referrers' billed physical therapist services with those of non-self-referrers. Initial data concluded that self-referring providers use less services per beneficiary, though they referred more beneficiaries overall. While frequency and expenditures for services is relevant, it is necessary to also examine other factors, such as patient condition, impairments, and comorbidities. In its report on behalf of CMS in 2008, the Computer Sciences Corporation stated that it is notable that physician settings "commonly provide single discipline services to individual beneficiaries who may have less complex clinical conditions, which may account, in part, for the lower payments." Without meaningful patient information, it is difficult to draw conclusions about the actual impact of self-referral arrangements.

Furthermore, GAO included outpatient services delivered in institutional settings, such as hospitals or skilled nursing facilities, as non-self-referred services, while the self-referring category included only services in private practice. This data was used to estimate distribution of services provided by non-self-referrers. This is problematic, because 40% of outpatient physical therapy expenditures under Medicare are billed by skilled nursing facilities. These facilities are more likely to treat patients with more complex conditions than those in self-referring private practices.

"I previously worked in a clinic that switched to being a physician-owned practice. The line of practice delineation was immediately clear. When I came into work one Monday, I was told I would see each of my patients 3 times a week regardless of their diagnosis or my clinical decision making. I left the practice."

—Mae, Utah Physical Therapist

"Patients often don't realize that they have a choice in which physical therapist they see. They also aren't always treated fairly if they choose to see a physical therapist outside of a physician-owned clinic. I know one patient that went to her primary care physician for back pain and was referred to the physician's physical therapy clinic for 10 physical therapy visits. She decided that she wanted to go to a different physical therapy clinic but only received a referral for 4 visits when she decided to seek her care outside of the physician-owned clinic."

—Ricci, Oregon Physical Therapist

RECOMMENDATIONS

APTA continues to believe that self-referral of physical therapist services creates an inappropriate incentive to refer services in house and limits patient choice. The association will continue to work to remove physical therapy from the IOAS exception to the Stark Law, an exception created to allow for the delivery of same-day services in a physician office. Physical therapy is not a same-day service and should not have been included in the IOAS exception. APTA recommends that policy makers and self-referring providers also immediately implement the following:

- Require self-referring providers to notify patients of their right to obtain physical therapist services from any provider they choose
- Require self-referring providers to give patients a list of local, alternative physical therapy providers
- Require Medicare claim forms to include a unique modifier that indicates if services were received via a self-referral arrangement

APTA believes this will better allow for further study of the impact of these arrangements, which is necessary given issues raised in the GAO report.