

## APTA Strongly Opposes HR 2785

On August 1, 2011, HR 2785 was introduced in the US House of Representatives by Congressman Ed Towns (D-NY). **APTA strongly opposes this legislation.**

In May 2005, the Centers for Medicare and Medicaid Services (CMS) issued regulations to ensure that only qualified individuals deliver and bill for therapy services under the Medicare program, closing a loophole that allowed physicians to bill for therapy services furnished by individuals that are not qualified or licensed to provide physical therapy, occupational therapy or speech language pathology services, such as athletic trainers. This legislation seeks to override that regulation. APTA believes HR 2785 is bad public policy for the following reasons:

- **HR 2785 is Fiscally Irresponsible.** This legislation would allow the billing of the Medicare program for services delivered by individuals that are not qualified to provide physical therapy, occupational therapy, and speech language pathology services. The Office of the Inspector General has identified this as an area of abuse. In addition, this legislation would allow services provided by athletic trainers to apply to the therapy cap, allowing limited resources for therapy services to be expended without Medicare beneficiaries ever seeing a qualified physical therapist.
- **HR 2785 Jeopardizes Patient Safety.** Medicare regulations state that physical therapy services must be delivered by qualified personnel in all outpatient settings. Without enforcement of appropriate qualifications, it would be impossible to ensure that beneficiaries receive, and the Medicare program pays for, an appropriate level of safe, effective care.
- **HR 2785 Dilutes the Quality Care** - Medicare beneficiaries deserve a consistent standard of care that ensures that providers who deliver these services have attained the level of education and qualification necessary to provide them safely and effectively. Without appropriate personnel standards for individuals delivering highly skilled and recognized Medicare services such as physical therapy, the standard of quality is jeopardized. HR 2785 dilutes the quality of care for Medicare beneficiaries by allowing non-qualified individuals to deliver therapy services.

**Background Information:** The CMS rule was based on legislation enacted as part of the 1997 Balanced Budget Act (BBA) that required that therapy services billed "incident to" a physician's services in an office setting meet the same Medicare standards and conditions that apply to outpatient physical therapy, occupational therapy, and speech language pathology services provided in other outpatient therapy settings. This legislation was introduced, in part, in response to a 1994 Department of Health and Human Services' Office of Inspector General (OIG) report that estimated that more than \$47 million in unnecessary therapy services were delivered in physician offices under the old "incident to" rules. In May 2006, the OIG found that 91% of physical therapy services billed by physicians under the old "incident to" rules in the first 6 months of 2002 failed to meet program requirements, resulting in **improper Medicare payments of \$136 million**. In a recent August 2009 OIG study, the OIG continued to find that many physicians were not complying with the current "incident to" guidelines - *Unqualified nonphysicians performed 49 percent of the rehabilitation therapy services that physicians did not perform.*

**HR 2785 is fiscally irresponsible, jeopardizes patient safety, and dilutes the quality of care under Medicare for beneficiaries and their therapy needs.** If you have any questions please contact Mandy Frohlich, at 703/706-8548.