

Congress of the United States
Washington, DC 20515

April 27, 2022

The Honorable Rosa L. DeLauro
Chairwoman
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
H-307, U.S. Capitol
Washington, DC 20515

The Honorable Tom Cole
Ranking Member
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
1016 Longworth House Office Building
Washington, DC 20515

Dear Chairwoman DeLauro and Ranking Member Cole:

As you prepare the Fiscal Year 2022 Labor, Health and Human Services, Education, and Related Agencies appropriations bill, we urge you to include report language clarifying Congressional intent surrounding supervision requirements for therapy personnel that are involved in the delivery of outpatient therapy services.

Physical and occupational therapists are licensed in all states, the District of Columbia, and the U.S. Virgin Islands. Physical and occupational therapist assistants (PTA/OTA) are either licensed or certified in those same locations. The Medicare program currently allows for the “general supervision” of PTAs and OTAs in *every* setting, *except for those therapists that operate outpatient private practice clinics*.

This inconsistency is not only bad policy, it conflicts with the Centers of Medicare and Medicaid Services’ (CMS) own enabling statute and regulations. Specifically, 42 C.F.R. 410.60(a)(3)(ii) states that Medicare is intended to cover outpatient physical therapy services furnished by individuals “*under the supervision of*” a physical therapist and 42 C.F.R. 410.59 establishes that Medicare is intended to cover outpatient occupational therapy services furnished by individuals “*under the supervision of*” an occupational therapist. These heightened supervision requirements were imposed unilaterally by CMS, on its own without authorization from Congress, for outpatient therapy services and conflict with the supervision laws in 44 states, which allow for general supervision.

Aside from these legal deficiencies, CMS’s supervision policies are impeding timely access to outpatient care for Medicare Part B patients and imposing additional costs on outpatient therapy providers. A physical therapist may only provide care to Medicare beneficiaries during their hours worked; thus, patient care suffers if the supervising physical therapist is unavailable or unable to provide direct supervision. Furthermore, these restrictions are on top of an ill-conceived 15 percent cut to reimbursement for outpatient physical and occupational therapy services furnished in whole or in part by PTAs and OTAs that went into effect earlier this year and which further jeopardize access to care.

These supervision policies are further troubling since they disproportionately target those professional groups, who represent some of the most racially and culturally diverse groups in health care. These policies not only jeopardize the employment opportunities for these

professionals, but also the needs of our Medicare-aged population in minority and rural communities that rely so heavily on their services.

The current Medicare supervision policies in the private practice setting are harmful to Medicare beneficiaries' long-term functional outcomes and quality of life. We request that Congress urge CMS to recognize the value and benefit of permanently modifying the supervision requirement from direct to general for PTAs and OTAs in private practice settings; this modification would better promote unrestricted, timely access to physical and occupational therapy interventions.

As such, we strongly support including the following report language as part of any upcoming continuing resolution or omnibus package.

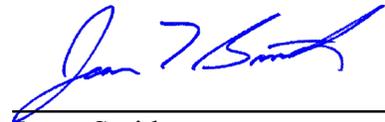
"In reference to 42 U.S.C. § 1395x(p)(4)(B), it is the intent of Congress that CMS shall not limit access or alter reimbursement for outpatient therapy services by imposing supervision requirements for personnel in outpatient settings that are more stringent than what is required by state law. CMS policies, such as those contained in Chapter 15, Sections 220, 2301.1, and 230.4 of the Medicare Benefit Policy Manual, that preempt state supervision requirements or otherwise reduce or limit reimbursement for such services are inconsistent with this law and Congress's intent and should be eliminated."

Thank you for the consideration of this request.

Sincerely,



Bobby L. Rush
Member of Congress



Jason Smith
Member of Congress



Steve Cohen
Member of Congress



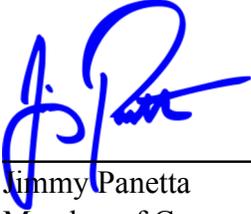
David B. McKinley P.E.
Member of Congress



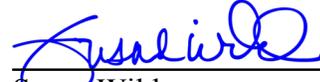
Ted Budd
Member of Congress



A. Donald McEachin
Member of Congress



Jimmy Panetta
Member of Congress



Susan Wild
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Steven Horsford
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Lucy McBath
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