January 7, 2014

The Honorable Joe Pitts, Chairman
The Honorable Frank Pallone, Ranking Member
Health Subcommittee, House Energy and Commerce Committee
U. S. House of Representatives
Washington, DC

Chairman Pitts and Ranking Member Pallone:

Please accept this statement for the record with respect to the hearing convened January 9, 2014, entitled "The Extenders Policies: What Are They and How Should They Continue Under a Permanent SGR Repeal Landscape?"

PTPN is the nation's first and largest specialty network of rehabilitation therapists (PTs, OTs, SLPs) in independent practice. PTPN has led the rehabilitation industry in national contracting, quality assurance and provider credentialing since 1985, elevating the standard of therapy practice. PTPN continued its role as a rehab pioneer by becoming the first organization of its kind to launch a mandatory third-party outcomes measurement program in 2006. PTPN has approximately 900 provider offices (including over 3,000 physical therapists, occupational therapists and speech/language pathologists) in 23 states.

Sustainable Growth Rate (SGR)
On March 31 of this year a congressionally passed waiver of the statutory sustainable growth rate (SGR) formula will expire. Without an extension, or preferably a full repeal and replacement, the physician fee schedule update for the remainder of 2014 will be negative 20.1%. Moreover, because of the cumulative nature of the formula, updates for the foreseeable future will be negative as well.

PTPN commends the House Energy and Commerce Committee which led the formal repeal effort last year by unanimously passing H.R. 2810, the Medicare Patient Access and Quality Improvement Act of 2013, a bipartisan effort to transform the Medicare physician payment system. This bill repeals the flawed SGR formula and replaces it with a stable and more predictable system of payments. Instead of potential annual cuts, therapists and physicians will be rewarded for the quality of care they provide to Medicare beneficiaries. The legislation also includes new transparency and collaboration requirements, as well as directives to solicit input from expert medical organizations and other groups on the development and selection of quality measures.

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The House Ways and Means Committee and the Senate Finance Committee followed suit later in the year with Ways and Means passing a bill similar to Energy and Commerce while the Senate Finance took a broader approach that included repeal of the therapy caps and modification of the geographic practice cost index (GPCI) and other issues.

PTPN is generally pleased with the direction of and progress on SGR reform and applauds Energy and Commerce for leading the way. Of the three SGR measures considered and passed by the committees of jurisdiction, PTPN prefers the Senate Finance version for several reasons, but primarily because of the inclusion of these two above mentioned "extenders."

Therapy Caps

In April of this year, the arbitrary Medicare per beneficiary therapy caps will be fully imposed unless Congress acts to extend the current exceptions process or repeal the caps permanently. For the past eleven years, legislation addressing the SGR has consistently included provisions to avoid application of the arbitrary therapy caps to Medicare beneficiaries. These caps apply to Medicare patients in all outpatient health care settings with the exception of outpatient hospital departments. Beneficiaries who receive Part B rehabilitation services within a skilled nursing facility, a therapist's or physician's office, a home health agency, or a rehabilitation agency are subject to the arbitrary cap.

Some 14.5 percent[1] or 640,000 Medicare beneficiaries who receive outpatient rehabilitation services per year are estimated to exceed the existing statutory therapy cap if Congress does not repeal the cap or extend the exceptions process. Once the limit has been reached, beneficiaries who require additional services are responsible for the total cost. Seniors and individuals with disabilities with the most significant rehabilitation needs will have to decide between foregoing necessary care, changing providers of care, or paying 100 percent of the cost out-of-pocket. Beneficiaries who experience stroke, hip fracture, Parkinson's disease, diabetes, arthritis or osteoporosis are most likely to be negatively affected by the therapy caps. Thus, beneficiaries with impairments and disabilities are adversely and unfairly impacted by this arbitrary payment policy.

The Senate Finance Committee's proposal (S.1871) would repeal the Medicare therapy caps effective upon passage of the legislation, eliminating the requirement for a KX modifier at $1,900 and the need for yearly extensions. It would keep manual medical review at $3,700 through 2014, then transitions to a new medical review program in 2015. The new program would use prior authorization to allow therapists to request blocks of visits. The HHS Secretary would determine the level at which prior authorization applies and what services are subject to review. The bill also calls for a new data collection system to replace current functional limitation reporting procedures to be operational in or around 2017.

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(1) Ciolek, DE, Wenke H. *Utilization Analysis: Characteristics of High Expenditure Users of Outpatient Therapy Services CY 2002.* Final Report to the Centers for Medicare and Medicaid Services. November 22, 2004

The data collection system to be implemented will foster the development of "an alternative payment method" which was envisioned by the Balanced Budget Act of 1997. Ideally, these data will include quality information (e.g., functional outcomes data) which can be used to describe the type and amount of care that is needed by specified patients or groups of patients.

PTPN urges your committee to embrace the approach taken by the Senate Finance Committee. This path leads to a cost-effective replacement for the caps and a payment policy that is patient-centric and provides the best return-on-investment for therapy services under Medicare.

Locum Tenens

PTPN supports HR 3426 the *Prevent Interruptions in Physical Therapy Act*, which adds physical therapists to the statute allowing locum tenens arrangements under Medicare. This bill would modernize the Medicare statute which currently does not include PTs in the list of providers authorized to use this mechanism to ensure continuity of care. PTPN urges the inclusion of this no-cost provision in the Medicare reform legislation**.**

Electronic Health Records

PTPN urges Congress to extend to nonphysician providers the incentives for providers to establish electronic health records. Nonphysician providers such as independent physical therapists were not included in the federal programs that encourage and reward the adoption of health information technology. Yet, our members provide an important and valuable service that should be coordinated and communicated electronically. It makes little sense to develop an information superhighway but limit access to a few types of health care providers. The sooner Congress and the administration can set the standards for an interoperable electronic health records the sooner waste and redundancy can be wrung out of the system.

Offsets

Presently, none of the SGR reform proposals includes budgetary offsets. But it is recognized that funding sources sufficient to pay for these changes to Medicare payment policy are needed. PTPN suggests a change in the physician self-referral statute known as the in-office ancillary services exception (IOASE) which would render upwards of $2 billion. Private, academic and governmental studies alike have shown a considerable propensity for overutilization of services when physicians are allowed to refer to therapy, imaging and laboratory entities in which they have ownership. By removing physical therapy (along with laboratory and imaging) services from the IOASE, inappropriate utilization can be curbed and billions of dollars can be saved.

Physician self-referral has been linked to increased utilization in numerous ways and by several reputable reports. Last fall, the Government Accountability Office (GAO) issued a report showing increased utilization in imaging when physicians own sophisticated imaging equipment. Moreover, the study found that physician utilization behaviors increased dramatically when a physician became an owner or investor in such a service. A GAO study with similar results in the anatomic pathology labs was published in June 2013.

The HHS Inspector General has continued to identify a high rate (78 to 9l percent) of inappropriate billing of physical therapy services billed incident to a physician's professional services. Moreover, both the President's FY2014 budget and the Bowles-Simpson Commission have recommended that the in-office ancillary services exception be eliminated. Elimination of these practices must be addressed in an

effort to provide a sustainable payment system for Medicare Part B and ensure we are paying for only services delivered appropriately by qualified professionals of that discipline.

At a time when fiscal austerity for the nation coincides with the search for ways to curb inappropriate utilization of Medicare services, it is imperative we end this abusive practice of physician self-referral by eliminating the in-office ancillary services exception. PTPN urges Congress to include the above described policy change in legislation to reform Medicare payment.

Conclusion

The above-discussed issues have beneficial effects on the PT providers, the patient, and the Medicare system in the following ways. Repealing the SGR and adding PTs to the locum tenens statute have major impacts on the provider and secondary benefits for the patient. The therapy cap repeal (or the extension of the exceptions process) is primarily a Medicare beneficiary issue. Enabling nonphysician providers to access health information technology is beneficial to both PTs and their patients, and to the degree to which it creates efficiencies, the Medicare program. The benefits of curbing overutilization inure specifically to the Medicare program.

Thank you for the opportunity to provide these comments on the Medicare extenders and other issues of importance as you proceed to enact Medicare payment reform.

Sincerely,

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President/CEO