

## Statement for the Record

July 19, 2017

The Honorable Michael Burgess  
The Honorable Gene Green  
Subcommittee on Health  
House Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

Re: Medicare Therapy Caps

Dear Chairman Burgess and Ranking Member Green:

On behalf of Focus On Therapeutic Outcomes, Inc., (FOTO) I am pleased to submit this statement for the record pertaining to the Medicare Therapy Caps, one of the topics to be addressed by the House Energy and Commerce Health Subcommittee on July 20.

As the leading developer of quality and outcomes measurement systems for outpatient rehabilitation therapies, FOTO serves providers and facilities nationwide. For over eighteen years, FOTO has been developing, improving, perfecting and providing valid and reliable methods for the assessment of function in patients receiving outpatient physical and occupational therapy services. Using data gathered from over 3,900 clinical practice locations, FOTO has developed a robust database of over 3.1 million episodes of therapy and has advanced user-friendly, economical methods for collecting, analyzing and utilizing functional status measures.

FOTO's measures have been endorsed by the National Quality Forum (NQF) and FOTO is a certified registry recognized by the Centers for Medicare and Medicaid Services (CMS) for data collection and transmission in compliance with the Physician Quality Reporting System (PQRS). In 2006, FOTO conducted a feasibility study for CMS entitled "Pay-for-Performance for Physical Therapy and Occupational Therapy: Medicare Part B Services." (Grant #18-P-93066/9-01). The purpose of this project was to implement a pay-for-performance simulation, which would align financial incentives with the achievement of better clinical outcomes. The project was designed to demonstrate the feasibility of implementing a pay-for-performance process in outpatient physical and occupational therapy, provide information to Medicare concerning payment policy for outpatient physical and occupational therapy, and discuss implications for the development of an alternative payment method as required by Balanced Budget Amendment of 1997.

More recently, in September 2015, the American Physical Therapy Association selected FOTO to contribute its outcomes measures as one of the primary global outcomes measures to be used for the Physical Therapy Outcomes Registry. Outcomes are being used to develop new value-based payment models and enable physical therapists to prove their value to payers and enhance patient care. The registry will serve to inform payment for physical therapy services, improve practice, fulfill quality reporting requirements and promote research.

FOTO strongly endorses the bipartisan *Medicare Access to Rehabilitation Services Act* (H.R.807) which currently has [173](#) cosponsors. (The Senate companion bill [S.253] has garnered [26](#) cosponsors to date). This legislation would permanently repeal the \$1,980/year arbitrary therapy cap imposed on each Medicare beneficiary. Because the current exceptions mechanism expires on December 31, 2017, corrective legislation must be passed before the end of this year.

The Medicare therapy cap was included in the Balanced Budget Act of 1997 and since then has regularly been altered by Congress by the use of waivers or exceptions processes. This is because shortly after passage Congress heard from Medicare beneficiaries all over the country who were adversely affected by this provision.

This therapy cap was part of a budget gimmick that solved a government budget problem but created a health policy nightmare for seniors most of whom have more than three chronic conditions. Physical therapy is the solution to keeping these individuals functioning independently, enjoying their lives and contributing to society.

There are numerous ways to repeal this outdated policy and replace it with contemporary methods utilized in the private sector in the 21<sup>st</sup> century. These include recognized and accepted practices that were embraced in a Senate amendment (introduced by Sen. Ben Cardin in 2015) that garnered the bipartisan support of 58 senators (thus falling just two votes shy of the 60 vote threshold required during that debate). These include:

- Per episode (rather than per year) limits with continuation allowed upon demonstration of progress toward rehabilitation goals
- Automatic exceptions for patients who need more than one type of rehabilitation therapy (e.g., physical and speech therapy)
- Targeted medical review of therapy services
- CMS monitoring of medical reviewers for accountability
- Prior authorization of services in certain circumstances
- Mandatory objective reporting on the patient's **physical function** upon patient intake and patient discharge from a course of outpatient therapy services to demonstrate effectiveness of services received
- Improvement of data collection on patient function during course of outpatient therapy services. This should include updating of the functional limitation reporting currently required but not being utilized by Medicare to perform predictive analytics which contemporary methods now make possible.

FOTO commends Chairman Burgess and the Energy and Commerce Health Subcommittee for holding this July 20 hearing and for your leadership efforts to relieve this burden from the Medicare beneficiaries who are so unfairly impacted by the current law. And we urge Congress to use the important findings from FOTO's pay-for-performance feasibility study conducted for CMS to implement an effective and updated therapy policy that allows our nation's seniors to access the type and amount of care that enable them to achieve and maintain optimal function.

Thank you for your consideration of our comments. FOTO stands ready to work with Congress and CMS in any constructive way to advance the most cost-effective and sound policy with respect to this old policy that negatively impacts thousands of Medicare beneficiaries every year.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben E. Johnston, Jr.", with a stylized flourish at the end.

Ben E. Johnston, Jr., PT  
General Manager  
Focus On Therapeutic Outcomes, Inc.  
P. O. Box 11444  
Knoxville, TN 37939  
800-450-9699