

PHYSICAL THERAPY AND THE 109TH CONGRESS

*Issues Impacting Physical Therapists
and the Patients They Serve*



American Physical Therapy Association
The Science of Healing. The Art of Caring.™



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Who We Are Physical therapists (PTs) are licensed health care professionals who diagnose and manage movement dysfunction and enhance physical and functional status in all age populations. Following an examination of individuals with impairments, functional limitations, and disability or other health-related conditions, physical therapists design individualized plans of physical therapy care and services for each patient. Choosing from a broad array of physical therapy interventions, PTs alleviate impairments and functional limitations as well as promote and maintain optimal fitness, physical function, and quality of life as it relates to movement and health. PTs will also implement services to reduce risk and prevent the onset and progression of impairments, functional limitations, and disabilities that may result from injury, diseases, disorders, and other health conditions.

What We Do Physical therapists provide care to people of all ages who have functional conditions resulting from, for example, back and neck injuries, sprains/strains and fractures, arthritis, burns, amputations, stroke, multiple sclerosis, birth defects such as cerebral palsy and spina bifida, and injuries related to work and sports. Physical therapy care and services are provided by physical therapists and physical therapist assistants who are under the direction and supervision of a physical therapist. Physical therapists evaluate and diagnose movement dysfunction and use interventions to treat patient/clients. Interventions may include therapeutic exercise, functional training, manual therapy techniques, assistive devices and equipment, and physical agents and electrotherapeutic modalities.

Where We Work Physical therapists practice in hospitals, outpatient clinics or offices; inpatient rehabilitation facilities; skilled nursing, extended care, or sub-acute facilities; home health; education or research centers; schools; hospices; industrial, workplace, or other occupational environments; and fitness centers and sports training facilities.

Education & Licensure Requirements The minimum educational requirement to become a physical therapist is a postbaccalaureate degree from an accredited education program. The majority of programs offer a Doctor of Physical Therapy (DPT) degree. After graduation, candidates must pass a state-administered national exam for licensure. State licensure is required in each state in which a physical therapist practices.

American Physical Therapy Association The American Physical Therapy Association (APTA) is a national professional organization representing more than 65,000 members throughout the United States. The Association's efforts are directed toward serving its members and the public by increasing the understanding of the physical therapist's role in the nation's health care system and by fostering advancements in physical therapy education, practice, and research.

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PHYSICAL THERAPY AND THE MEDICARE PROGRAM

Improving Patient Access to Physical Therapist Services Under Medicare

Issue: *Direct Access to Physical Therapist Services*

Background: Currently, the Medicare definition of outpatient physical therapy services (1861p) requires a referral for a patient to access the care and services of physical therapists. This mandated referral impedes access, limits beneficiary choices, and increases program costs. Legislators in 48 states have eliminated the referral requirement to access physical therapists for evaluation, and 39 of those states allow physical therapy treatment following the evaluation.

Summary: The Medicare Patient Access to Physical Therapists Act (HR 1333 and S 647) would eliminate the referral requirement under Medicare Part B as authorized under state law. This legislation has bipartisan support from members of Congress, patient groups, and other providers.

Recommendation: APTA urges Congress to pass the Medicare Patient Access to Physical Therapists Act to improve access to physical therapists under Medicare Part B as authorized by state law.

Eliminating Arbitrary Caps for Rehabilitation Services under Medicare

Issue: *Repeal of the Therapy Caps*

Background: The Balanced Budget Act (BBA) of 1997 imposed an annual financial limit, or cap, on the amount of therapy services Medicare would cover per beneficiary in all outpatient therapy settings except hospital outpatient therapy. The cap initially was set at \$1,500 for physical therapy and speech-language pathology, with a separate \$1,500 cap for occupational therapy, and adjusted annually for inflation beginning in 2002. On January 1, 2006, a \$1,740 per beneficiary annual financial limitation on physical therapy and a separate cap on occupational therapy went into effect. The Deficit Reduction Act of 2005 (PL. 109-171) signed into law on February 8, 2006, authorized the Centers for Medicare & Medicaid Services to outline an exceptions process for medically necessary care that exceeds the cap for 2006.

Summary: The Medicare Access to Rehabilitation Services Act (HR 916 and S. 438) would repeal the therapy caps once and for all. Otherwise, Congress must pass legislation again in 2006 to avoid the implementation of an arbitrary cap without any exceptions for medically necessary rehabilitation services on January 1, 2007. APTA is assessing whether the newly authorized exceptions process ensures that beneficiaries are able to access medically necessary rehabilitation services.

Recommendation: APTA urges Congress to pass the Medicare Access to Rehabilitation Services Act to repeal the Medicare therapy caps and eliminate the threat of arbitrary financial limits on Medicare rehabilitation benefits. Congress must take action this year to protect beneficiaries from arbitrary therapy caps, which could include extending the exceptions process beyond 2006.

Maintaining Adequate Payments to Providers under Medicare

Issue: *Updating Payments Under the Medicare Physician Fee Schedule*

Background: Currently, physical therapists are reimbursed for the services they provide Medicare beneficiaries primarily through the Medicare Physician Fee Schedule. This payment formula is based on the relative value of the services and a conversion factor that factors in other associated costs. Each year the conversion factor is updated to reflect inflation and the increased cost of providing health care services. This formula is flawed, and negative updates of more than 25% over the next 5 years are expected unless Congress changes the fee schedule statute and eliminates the sustainable growth rate (SGR) formula used to adjust the conversion factor on an annual basis.

Summary: In February 2006, Congress passed legislation that froze the fee schedule at 2005 levels, preventing a 4.4% reduction. This legislation did not address the underlying problem with the formula by eliminating the SGR. Legislation is pending in Congress to replace the SGR with an inflation index and transition to a value-based purchasing or pay for performance infrastructure.

Recommendation: APTA recommends that Congress take action this year to correct the formula for calculating the Medicare Physician Fee Schedule conversion factor. Without congressional action, the deep payment cuts that loom for several years threaten access to and quality of care for Medicare beneficiaries. APTA supports elimination of the SGR and a permanent solution to the fee schedule formula, including the use of an inflation index such as the Medicare Economic Index (MEI) to adjust payment on an annual basis.

Inpatient Rehabilitation Facilities (IRFs) Under Medicare

Issue: *Admissions Criteria and Classification for Inpatient Rehabilitation Facilities (IRFs)*

Background: The current admissions criteria and classification for Medicare inpatient rehabilitation facilities (IRFs) requires that 75% of the facility's patient admissions must be under one of 13 specific diagnoses. The Centers of Medicare & Medicaid Services issued regulations in 2004 that would transition to this admissions criteria starting at 50% on July 1, 2004, and transitioning to full implementation of the "75% rule" on July 1, 2007.

Summary: The Deficit Reduction Act of 2005 (PL 109-171) extends the implementation of the 75% rule by 1 year. Rather than increasing IRF compliance to 65% on July 1, 2006, as was originally included in the final rule, the current 60% threshold will be extended until July 1, 2007. The threshold then will increase to 65%, and full implementation of the "75% rule" will be delayed until July 1, 2008.

Recommendation: APTA recommends that the admissions criteria and classification of IRFs be based on clinical conditions that require comprehensive multidisciplinary rehabilitation to meet the needs of the Medicare population. Any clinical panels established to determine clinical criteria for admissions or classification of inpatient rehabilitation facilities must include physical therapists.

Preventing Referral of Physical Therapy Services for Profit

Issue: *Referral for Profit Erodes the Public Trust*

Background: Reacting to evidence of widespread overutilization of unnecessary services due to inappropriate referrals, Congress enacted legislation in 1989 (the "Stark law") to restrict the ability of physicians to refer patients for services in which they have an ownership interest. Congress expanded the "Stark II law" in 1993 to include physical therapy services.

Summary: The Stark II law had a chilling effect on physician ownership of physical therapy services. However, subsequent regulations provided broad definitions for exceptions, leading to an increase in physician-owned physical therapy clinics. In the Medicare Prescription Drug and Modernization Act, Congress imposed an 18-month moratorium on construction of physician-owned specialty hospitals and instructed the Medicare Payment Advisory Commission (MedPAC) to examine these arrangements. In January 2005, MedPAC recommended that Congress extend the current moratorium through 2006. The Deficit Reduction Act of 2005 (PL 109-171) contains language that authorizes a 6-month extension of the Department of Health and Human Services (HHS) policy to suspend issuance of new provider numbers for specialty hospitals or until CMS issues its final report on specialty hospitals. In that report, HHS must devise a strategic plan to address investment and care for low income and uncompensated care.

Recommendation: APTA urges Congress to conduct hearings to investigate the impact of physician ownership of physical therapy services on Medicare beneficiaries and program expenditures.

Delivery of Physical Therapy Services by Qualified Personnel

Issue: *Ensuring Medicare Beneficiaries Receive Therapy Services From Qualified Providers*

Background: Medicare covers physical therapy services provided "incident to" physician services. In 1994, the Department of Health and Human Services' Office of Inspector General released a report that determined that almost 80% of physical therapy reimbursed in physician offices did not represent appropriate physical therapy services and often was provided by unlicensed or unqualified individuals. This resulted in the introduction of the Outpatient Physical Therapy Standards Act in 1997, in order to establish a consistent standard of physical therapy across all Medicare settings and to ensure patient safety and quality of care. In the 2005 Medicare Physician Fee Schedule, the Centers for Medicare & Medicaid Services reaffirmed that physical therapy must be performed by qualified personnel when delivered incident to a physician's professional services.

Summary: APTA feels strongly that physical therapy services must be delivered by licensed physical therapists. Use of unqualified personnel threatens the safety of Medicare beneficiaries, increases costs to the Medicare program, and diminishes the quality of care for seniors and people with disabilities. APTA strongly believes that physical therapy is a unique profession with an established field of expertise and should be provided only by licensed physical therapists.

Recommendation: APTA recommends that Congress hold hearings and consider legislation to eliminate use of unqualified personnel to provide physical therapy services under Medicare. Central to this effort is accurately defining "physical therapists" and "physical therapy services" within the Medicare statute. APTA also recommends that Congress reject attempts to weaken this statute or alter its intent by organizations seeking to circumvent the standards of becoming a qualified provider under Medicare for the purpose of gaining payment.

PHYSICAL THERAPY AND THE MEDICAID PROGRAM

Improving Funding for the Medicaid Program

Issue: *Access to Physical Therapy Services Under the Medicaid Program*

Background: The portion of the Medicaid program funded by the federal government, known as the Federal Medical Assistance Percentage (FMAP), is determined annually for each state by a formula that compares the state's average per capita income level with the national average. States currently are struggling with the fiscal instability of their Medicaid programs as both the cost of services and the number of enrollees increase. Several states have responded to budget deficits by attempting to limit or eliminate physical therapy as a Medicaid benefit. Physical therapy currently is considered an "optional" benefit under the federal Medicaid law. In addition, Congress is considering overall budget caps and/or cuts to the Medicaid program that would seriously jeopardize appropriate access for Medicaid beneficiaries to physical therapy services.

Summary: Congress continues to debate Medicaid reform. Currently, a Medicaid Commission is discussing long-term reform of the program. Physical therapy is an essential rehabilitation service under this program and must not be eliminated from Medicaid. Reducing physical therapy services for the purpose of cost saving will only shift and increase costs for different interventions to address beneficiary needs. As reform is considered, APTA advocates that essential services such as physical therapy be maintained and adequately funded.

Recommendation: APTA urges Congress to maintain physical therapy services under the Medicaid program as it debates how to reform the program. Physical therapy is an essential service to ensure that individuals covered by the program maintain and enhance their function in their daily lives, homes, and communities.

Guaranteeing Access to Physical Therapy Under Medicaid

Issue: *Physical Therapy as a Mandatory Service Under the Medicaid Program*

Background: Medicaid serves a significant segment of the American population. Physical therapy is currently considered an "optional" benefit within Medicaid; however, physical therapy is recognized as an essential component of care required for individuals who suffer from an impairment, illness, or injury.

Summary: Physical therapy should be categorized as a mandatory benefit within federal Medicaid law (Title XIX), ensuring beneficiaries' access to essential services needed to regain function and independence. Physical therapy is a cost-saving service within the health care system, enabling individuals to be productive in their communities and return to work, school, and daily activities.

Recommendation: APTA supports legislation to add physical therapy to the list of mandatory benefits for Medicaid beneficiaries, especially for children ages 3 to 21.

ADVANCING PHYSICAL THERAPY EDUCATION AND RESEARCH

Promoting Rehabilitation Research at the National Institutes of Health (NIH)

Issue: *Reauthorization of the National Institutes of Health (NIH)*

Background: The National Institutes of Health (NIH) was last reauthorized in 1993. NIH is currently funded at more than \$28 billion, dispersed among more than 27 Institutes and Centers. Rehabilitation was funded at approximately \$300 million in 2005 — less than 3% of the NIH budget. This funding occurs across several Institutes. The National Center for Medical Rehabilitation Research (NCMRR), a center under the National Institute of Child Health and Human Development (NICHD), has the primary responsibility for the coordination of rehabilitation throughout NIH. This center currently is funded at about \$75 million dollars annually.

Summary: Rehabilitation is significantly under-funded at NIH. As the agency focuses on improving transparency and coordination, it should recognize rehabilitation as an example of an area that would benefit from collaborative efforts among the Institutes with centralized coordination.

Recommendations: APTA advocates that legislation to reauthorize the National Institutes of Health include language to specifically advance rehabilitation research and ensure that rehabilitation is a coordinated area of focus within the Institutes.

Enhancing Federal Funding for Rehabilitation Research

Issue: *Annual Funding for Physical Therapy and Rehabilitation Research*

Background: In recent years, Congress has increased funding for health care research. Studies that focus on the impact and benefits of rehabilitation on quality of life and health status are important elements of the health care research continuum. Rehabilitation research can be specific to a particular impairment, condition, or disability, such as stroke or arthritis, or to a specific intervention, such as exercise and its impact on functional impairment or deficiencies.

Summary: Rehabilitation research is a part of the efforts of several federal agencies, including the National Institutes of Health, the Department of Education, the Department of Defense, and the Veterans' Affairs Department. Physical therapist researchers are instrumental in these research efforts and are funded through federal grants. Rehabilitation research historically has been under-funded. As the population ages and the percentage of people living productive lives with disability increases, funding for enhanced federal research initiatives focused on rehabilitation should be increased.

Recommendation: APTA urges Congress to increase funding for rehabilitation research in the annual appropriations process. Effective rehabilitation can make a dramatic impact in how individuals function in their homes and communities following disease, disability, or dysfunction. APTA also advocates for increased funding specifically for the National Institutes of Health to expand research focused on rehabilitation.

Advancing Physical Therapy Education

Issue: *Reauthorization of Health Professions Education Through the Public Health Service Act*

Background: Physical therapists currently are defined as “allied health professionals” for the purpose of qualifying for federal funding to support health professions education.

Summary: The current educational background and clinical practice of physical therapists no longer fits within the traditional definition of “allied health.”

Recommendation: APTA recommends that Congress remove physical therapists from the list of allied health professions and establish separate eligibility for “graduate professional programs in physical therapy.”

PHYSICAL THERAPY AND HEALTH CARE REFORM

Ensuring Patient Protections in Health Care

Issue: *Patient Protections Legislation*

Background: In the late 1990s, the health insurance market saw an increase in the number of health management organizations (HMOs) and managed care plans. Many of these plans did not provide essential patient protections or were exempted from state laws by the federal Employee Retirement and Income Security Act (ERISA). Congress considered patient protection legislation with the House and Senate passing different versions. Congress was ultimately unable to reconcile the differences in the legislation, and this issue remains unresolved at the federal level.

Summary: APTA continues to support legislation that does not erode state laws on patient protections. Furthermore, APTA supports federal patient protection legislation that includes the elimination of gag clauses, non-discrimination provisions, a point-of-service option, and access to health care specialists such as physical therapists.

Recommendation: APTA advocates that Congress ensure that all Americans have access to health care providers of their choice through essential non-discrimination language. APTA also urges Congress not to erode existing protections as authorized by state law.

Professional Liability Reform

Issue: *Professional Liability Reform and Patient Safety*

Background: The premiums for professional liability insurance have risen significantly in the past several years due to frivolous lawsuits and medical errors. Congress has repeatedly considered legislation to reform health care liability standards, including capping non-economic damages at \$250,000. In addition, Congress also has passed separate legislation to improve patient safety in health care.

Summary: APTA endorses comprehensive health care liability reform that includes reasonable caps on non-economic damages; protection of awards to plaintiffs to meet the costs and the needs of their long-term care; support for rural areas that have limited resources in personnel and funding; effective self-regulation by provider boards of repeat malpractice offenders; reasonable controls of malpractice insurance premiums; and increased statutory protection for internal medical review and quality improvement data. APTA also supports initiatives to reduce medical errors and improve patient safety.

Recommendation: APTA urges members of Congress to pass meaningful professional liability reform and enhance patient safety protections.

PROMOTING THE PUBLIC HEALTH OF ALL AMERICANS

Advancing Stroke Treatment and Prevention

Issue: *Stroke Treatment and Prevention*

Background: Stroke kills the third-highest number of Americans, behind only heart disease and cancer, and it is a leading cause of long-term disability. There are 4.5 million Americans alive today who have had a stroke, and as many as 30% of them are permanently disabled, requiring extensive care and rehabilitation.

Summary: The Stroke Treatment and Ongoing Prevention (STOP) Stroke Act (HR 1064/S 898) will authorize stroke education campaigns, provide critical resources to implement stroke care systems, and establish a clearinghouse to support communities aiming to improve stroke care. It also will offer health professional development programs in new stroke therapies and make possible valuable stroke care research. The House adopted the STOP Stroke Act in 2004, but the Senate was unable to address the bill before the 108th Congress adjourned.

Recommendation: APTA urges members of Congress to pass the Stroke Treatment and Ongoing Prevention (STOP) Stroke Act (HR 1064/S 898) to advance stroke care.

Increasing Opportunities for Physical Activity for Obesity Prevention

Issue: *Improving Physical Activity Among Americans*

Background: Obesity, especially among children and older Americans, is a public health epidemic. Increasing physical activity is a vital part of reducing obesity and improving the health status of people of all ages. Physical therapists should be involved as an essential element of all physical activity interventions because of their capabilities to provide individualized assessment, prevent related injuries, and consider health factors that might influence the type, intensity, or duration of physical activity.

Summary: APTA supports federal programs and legislation, such as the Improve Nutrition and Physical Activity (IMPACT) bill (S 1325), to improve the physical activity of Americans. APTA advocates that any efforts to promote physical activity use the knowledge and experience of physical therapists as experts in this intervention.

Recommendation: APTA urges Congress to pass legislation promoting physical activity, and urges that all federal programs follow the lead of efforts by the White House and Department of Health & Human Services to promote physical activity.

Improving Pain Care Awareness, Training, and Education

Issue: *Improving Pain Care*

Background: Pain is a major cause of decreased function and quality of life in America. Each year, pain has a dramatic economic and personal impact on the lives of many Americans, yet the cause, identification, and treatment of pain are poorly understood, and no comprehensive and coordinated approach to pain research exists.

Summary: The National Pain Care Policy Act (HR 1020) would establish a White House Conference on Pain, a National Center of Pain and Palliative Care, and initiatives to promote awareness of pain management in federal programs. The establishment of these centers, conferences, and initiatives would result in a collaborative, coordinated approach to improving the lives of people with pain through improved awareness, identification, and treatment programs by health care professionals.

Recommendation: APTA urges Congress to pass the National Pain Care Policy Act (HR 1020) to make pain management a health care priority, including a focus on research.

Physical Therapy Interventions to Prevent Injury Due to Falls

Issue: *Elder Falls Prevention*

Background: Reducing injuries to older Americans due to falls is essential to improving patient safety. Falls are the leading cause of death-related injuries among people older than 65 and result in increased emergency department visits and hospital admissions. Physical therapists play a vital role in falls prevention through treatment plans that improve strength, balance, range of motion, and overall function, as well as by developing comprehensive community-based programs to minimize home and community obstacles that increase the risk of falls.

Summary: The Keeping Seniors Safe from Falls Act (S 1531) would require the Secretary of Health & Human Services (HHS) to oversee a national education campaign focusing on reducing falls among older adults and preventing repeat falls, and award grants to design and carry out local education campaigns. Similar to the Elder Falls Prevention Act introduced in 2003, the bill also would direct HHS to conduct and support research to improve the identification of older adults who have a high risk of falling, improve data collection and analysis to identify fall risk and protective factors, and design, implement, and evaluate the most effective fall prevention interventions. HHS also would be directed to provide professional education for physicians and allied health professionals in fall prevention and to award grants to design, implement, and evaluate fall prevention programs using proven intervention strategies.

Recommendation: APTA urges Congress to pass legislation to provide comprehensive programs to reduce elder falls.

Improving the Health of People With Arthritis

Issue: *Arthritis Prevention and Treatment*

Background: Arthritis affects nearly one in three Americans, or almost 70 million individuals, and results in \$51 billion in health care costs annually. Congress passed the National Arthritis Act in 1974, building on its commitment to adequately fund research and public health activities related to arthritis. Physical therapists play a vital role in the rehabilitation of people with arthritis through interventions to improve strength, balance, range of motion, and overall function.

Summary: The Arthritis Prevention, Control, and Cure Act (HR 583 /S 424) would enhance research and public health activities in the area of arthritis at the Centers for Disease Control & Prevention (CDC), the National Institutes of Health (NIH), and in relation to juvenile arthritis. This legislation also includes a provision to investigate the impact of arthritis in the workplace.

Recommendation: APTA urges Congress to pass the Arthritis Prevention, Control, and Cure Act (HR 583/S 424).



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