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August 21, 2018

Electronic Submission

http://www.regulations.gov/

Centers for Medicare & Medicaid Services

Department of Health and Human Services

Attention: CMS-1720-NC

This letter is submitted on behalf of Northwest Surgical Specialists, dba Rebound Orthopedics & Neurosurgery which is a group of physicians, physician assistants, physical therapists and occupational therapists who all work together to provide the high quality, comprehensive and coordinated orthopaedic care to our patients.

We appreciate the opportunity to submit comments to CMS and the Health Subcommittee of the House Committee on Ways and Means regarding "Modernizing Stark Law to Ensure the Successful Transition from Volume to Value in the Medicare Program".

We specifically would like to correct the record with respect to comments submitted by the American Physical Therapy Association (APTA) dated July 17, 2018 (the "APTA Comments").

The APTA has waged a decades long campaign against physical therapists who work in physician groups because the APTA is governed by physical therapists who own private practices and wish to avoid any competition from physician groups. Instead of advocating for modification of Stark Law restrictions that prevent physician groups and other providers from most efficiency coordinating care under APMs, the APTA Comments recommend imposition of additional Stark Law restrictions that would severely impact care coordination and quality of care.

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ORTHOPEDICS & NEUROSURGERY
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The APTA Comments state that:

> Allowing physicians to self-refer to physical therapy services intended to reduce burden on patients has instead led to inappropriate utilization of such services. There is no prevailing quality of care need or added patient convenience realized by including physical therapy as a designated health services (sic) under the IOAS exception. This has resulted in increased financial gain for physician-owned practices while creating higher costs to patients by limiting patient choice.

In support of its position, the APTA cites studies by Jean Mitchell, PhD of Georgetown University. Among other omissions and misrepresentations, the APTA fails to disclose that its Foundation funded Dr. Mitchell's studies which is disclosed in both of her published studies.

The APTA Comments refer to two Mitchell studies for the proposition that physical therapists who are members of physician groups provide inefficient, unnecessary and substandard care. In fact, a complete reading of these studies shows exactly the opposite despite that fact that the APTA funded both studies. Both studies actually showed that physical therapists who are members of physician groups actually provide less costly care on an episodic basis which is a fundamental purpose of APMs. Dr. Mitchell's study of treatment for low back pain (referred to in the APTA Comments as the *Health Economics* study) found that physical therapists who are members of physician groups see patients for fewer procedures per episode than private physical therapy ("PT") practices. More specifically, this study found that PT provided within physician groups averaged 27% fewer visits per episode, 34% fewer procedures per episode, and 9% fewer procedures per visit. [1]

The other Mitchell study referred to in the APTA Comments (referred to as the *Health Services Research* study) found that physical therapists who are members of physician groups averaged 49 procedures per episode while other PT providers averaged over 55 procedures per episode, representing a 12% difference.[2] Although this study did not specify the episodic cost difference, PT is typically paid on a per procedure basis and based on average

RVUs/episode in each setting and Medicare allowable rates, the average course of treatment would have cost $822 in a physician group setting while costing close to $938 in other PT settings, showing a 12% savings by physical therapists who are members of physician groups.

In both of her studies, Mitchell tried to justify the higher costs in a private PT practice by contending that the PT delivered in private practices was more "intensive" and therefore more skilled than PT delivered within physician groups. For example, in the *Health Services Research* study, she contends that the higher proportion of therapeutic exercise (97110) billed by private PT practices indicates more individualized care. In fact, this indicates exactly the opposite. Therapeutic exercise is billed when patients are using exercise equipment, such as an elliptical or recumbent bike, while therapists may be treating other patients. Mitchell and the APTA dismiss the higher proportion of hands-on manual therapy (97140) and dynamic activities to improve functional performance (97530) provided by therapists within physician groups.[3] Contrary to her conclusion, Mitchell's data indicates that therapists working within physician groups actually delivered a higher level of skilled care than therapists in private practice.

The APTA Comments also misrepresent the conclusions of a GAO study on whether physician-based PT results in higher Medicare costs. The APTA Comments cite this GAO study as support for the conclusion that allowing physical therapists to work within physician groups "has resulted in increased financial gain for physician-owned practices while creating higher costs to patients by limiting patient choice."

In fact, the GAO concluded exactly the opposite. Based on its thorough analysis of 2004-2010 Medicare data, the GAO found that:

(a) The average number of PT procedures per 1,000 patients treated by physical therapists who are members of physician groups generally remained the same from 2004 through 2010, while the number of procedures per 1,000 patients treated by other PT providers grew by 41%.

(b) During the same period, total Medicare expenditures for PT by therapists who are members of physician groups increased by

only 10% while expenditures for patients treated by other PT providers increased by 57%.

(c) PT providers in physician groups averaged fewer PT procedures per patient than other PT providers.

The GAO concluded that PT provided outside of physician groups was the primary driver of a substantial increase in PT utilization and expenditures. These results differed from the GAO's prior studies on self-referral of other Medicare services—namely, advanced imaging, anatomic pathology, and intensity-modulated radiation therapy—in which it found that self-referred services and expenditures grew faster than non-self-referred services and expenditures. The GAO stated that a potential reason for this difference is that PT in private practices is performed by therapists who can directly influence the amount, duration, and frequency of PT services.[4]

In other words, the GAO surmised that therapists in private practice and other settings outside of physician groups largely influence the amount of PT delivered and have used that influence to increase PT visits, procedures and costs at a much higher rate than physicians and therapists providing PT within a physician group.

In addition to misrepresenting the conclusions of the GAO study and the APTA-funded Mitchell studies, the APTA Comments fail to mention another study that it funded. In January 2013, the Journal of Occupational Rehabilitation published a study of 2009-11 workers' compensation claims covering over 70,000 patients. This study found that physical therapists who are members of physician groups averaged about 10.5 visits and 42.7 procedures per patient while (a) private PT practices averaged over 12 visits and 51 procedures per patient-which represents 16.3% more visits and 22.2% more procedures per patient than physical therapists who are members of physician groups and (b) corporate PT clinics averaged over 13 visits and close to 67 procedures per patient-which represents 25% more visits and 56.3% more procedures than physical therapists who are members of physician groups. [5]

The APTA's claim that physicians are "referring for profit" is simply not supported by the evidence. The GAO, Beattie and Mitchell studies all show

that, as compared to private PT practices, PT delivered within integrated physician groups averages fewer procedures per visit, fewer procedures per episode and lower costs per episode.

As a group of orthopaedic physicians, physician assistants, physical therapists and occupational therapists, we are uniquely able to coordinate orthopaedic care to achieve the best outcomes at the lowest cost. We urge CMS to support removing any Stark Law restrictions that restrict our ability to deliver coordinated care to our patients, and to avoid imposing additional restrictions on Physical Therapy delivered within medical group practices.

Sincerely,

John R. Bauman

Executive Director

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[1] Mitchell, Reschovsky, Franzini and Reicherter, *Physician Self-Referral of Physical Therapy Services for Patients with Low Back Pain: Implications for Use, Types of Treatments Received and Expenditures*, Forum for Health Economics and Policy (2015).

[2] Mitchell, Reschovsky and Reicherter, *Use of Physical Therapy Following Total Knee Replacement Surgery: Implications of Orthopedic Surgeons Ownership of Physical Therapy Services*, Health Services Research (2016).

[3] Id. at 14-15.

[4] U.S. Government Accountability Office. (2014, June). *Medicare Physical Therapy, Self-Referring Providers Generally Referred More Beneficiaries but Fewer Services per Beneficiary*. (Publication No. GAO-14-270).

[5] Beattie, Nelson and Basile, *Differences among Health Care Settings in Utilization and Type of Physical Rehabilitation Administered to Patients Receiving Workers Compensation for Musculoskeletal Disorders*, Journal of Occupational Rehabilitation (January 2013).