PRIVATE PRACTICE SECTION, APTA

APTA
American Physical Therapy Association

1055 N. Fairfax Street, Suite 100, Alexandria, VA 22314, TEL (703) 299-2410, (800) 517-1167 FAX (703) 299-2411 WEBSITE www.ppsapta.org

March 6, 2012

The Honorable Wally Herger
The Honorable Pete Stark
Subcommittee on Health
House Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Herger and Ranking Member Stark:

On behalf of the Private Practice Section (PPS) of the American Physical Therapy Association (APTA), and its over 4000 members who function as small businesses, we are pleased to offer this statement to the Health Subcommittee of the House Committee on Ways and Means germane to the March 6 hearing examining the effects of the Independent Payment Advisory Board (IPAB) under the Medicare program.

PPS members provide a valuable service to communities across the nation and they do so in a convenient, cost-effective manner. But as is typical for small businesses, narrow margins are jeopardized when a significant sector of its market cuts reimbursement without regard to the value of the service provided. Moreover, when such an action is unpredictable and is taken by an influential payer such as Medicare, the effect is to negatively influence the business environment and create an untenable situation for the providers. More importantly, the Medicare beneficiaries are left in a vulnerable position, unable to depend on the access to convenient, cost-effective, high-quality care to which they have become accustomed.

Physical therapists in private practice provide critical health care services to beneficiaries under Medicare Part B to enable individuals to return to their highest functional potential. We are pleased to submit this statement for the record in advance of the March 6 subcommittee hearing to discuss the repeal of Sec. 3403. Independent Medicare Advisory Board (as modified by sec. 10320) of the Patient Protection and Affordable Care Act.

PPS/APTA supports HR 452 the Medicare Decisions Accountability Act of 2011. This bill would repeal sections of the Patient Protection and Affordable Care (PPACA) that establishes an Independent Payment Advisory Board (IPAB) to develop and submit detailed proposals to reduce the per capita rate of growth in Medicare spending to the President for Congress to consider.

Background

In response, in part, to overall growth in Medicare program expenditures and growth in expenditures per Medicare beneficiary, the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148, as amended) created the Independent Payment Advisory Board (IPAB) and charged the Board with developing proposals to "reduce the per capita rate of growth in Medicare spending." The Secretary of Health and Human Services (the Secretary) is directed to implement the Board's proposals automatically unless Congress affirmatively acts to alter the Board's proposals or to discontinue the automatic implementation of such proposals.

Annually, starting April 30, 2013, with the Medicare Chief Actuary will calculate a Medicare per capita growth rate and a Medicare per capita target growth rate. If the Chief Actuary determines that the growth rate exceeds target growth rate, the Actuary would identify the amount by which the Board must reduce future spending. This determination by the Chief Actuary also triggers a requirement that the Board prepare a proposal to reduce the growth in the Medicare per capita growth rate by the applicable savings target. The Board cannot ration care, raise premiums, increase cost sharing, or otherwise restrict benefits or modify eligibility. In generating its proposals, the Board is directed to consider, among other things, Medicare solvency, quality and access to care, the effects of changes in payments to providers, and those dually eligible for Medicare and Medicaid. If the Board fails to act, the Secretary is directed to prepare a proposal.

Board proposals must be submitted to the Secretary by September 1 of each year and will be "fast-tracked" in Congress. More importantly, IPAB proposals go into force automatically unless Congress affirmatively acts to amend or block them within a stated period of time and under circumstances specified in the Act.[1]

The IPAB will be composed of 15 members appointed by the President with the advice and consent of the Senate, will serve six year terms, and shall have varied professional and geographic representation and include representatives of consumers and the elderly. Board members will be full time government employees.[2]

Impact

The Congressional Budget Office projects that the Board's potential impact on particular Medicare providers or suppliers including private practice physical therapists may be significant, particularly if the Board alters payment mechanisms, which is among its options. Moreover, the IPAB's impact may be larger if private insurers continue to track Medicare payment policies and adopt similar reductions in payments to their providers and suppliers,[3] such as private practice PTs, may be significant, particularly if the Board alters payment mechanisms. Finally, the IPAB's impact may be larger if private insurers continue to track Medicare payment policies and adopt similar reductions in payments to their providers and suppliers, which is typical. TriCare patients will definitely be impacted since reimbursement in that program is benchmarked to Medicare.

When Medicare growth exceeds the given target, then the IPAB must put forth a proposal to reduce Medicare spending without causing a reduction in patient benefits. This effectively means IPAB's focus will be on reductions to physician and therapist reimbursements.

Objections

The power of the IPAB to determine cuts to Medicare payment rates will remove this authority from elected officials which deprives stakeholders of normal recourse such as lobbying and petitioning members of Congress in other ways. The ultimate responsibility for the Medicare program is vested in the elected legislators and should not be delegated to appointed, unaccountable, full time government employees.

The impact of IPAB deliberations will be far more profound for Part B providers such as private practice physical therapists because hospitals, hospice, and inpatient rehabilitation facilities are exempt from the actions of the IPAB until 2020.[2] If these carve outs are left unaddressed, that means the entities responsible for two-thirds of Medicare spending are exempt from payment cuts until 2020.

Physical therapists in private practice are already subject to an expenditure target known as the sustainable growth rate and other payment reductions as the result of the Medicare physician payment formula. Creating and empowering the IPAB would subject PTPPs two separate expenditure targets while at the same time exempting large segments of Medicare providers who are subject to no target at all.

Moreover, since the IPAB is a 15-member independent body comprised of unelected officials, with broad discretionary authority to make radical changes in the structure of the Medicare program, IPAB recommendations should require an affirmative vote by Congress before they can be implemented.

To subject outpatient Part B provider and suppliers to payment cuts while holding other parts of the Medicare system harmless will have a dampening effect on the vibrancy of the physical therapy providers who function as small businesses, are more economical, more cost conscious, more convenient and more innovative. In essence, this could be seen as encouraging patients to once again seek and obtain care in institutions, a pattern that our system has been evolving from for over three decades.

The end result of this will mean a further reduction in the already below market reimbursement rates for therapists and physicians who treat Medicare and TriCare patients and make up less than 10 percent of total Medicare expenditures.

Conclusion

For the above reasons, PPS/APTA believes the inclusion of the Independent Payment Advisory Commission in the PPACA is a dangerous and unprecedented abrogation of congressional authority to an unelected, unaccountable body of so-called experts. To empower a mindless rate-cutting machine comprised of 15 unelected members, strips members of Congress of their constitutional duty and creates a volatile and unpredictable marketplace for those community-based health care providers, including physical therapists in private practice who operate as small businesses. Moreover, it sets the Medicare program up for unsustainable cuts that will endanger the health of America's seniors, people with disabilities and TriCare beneficiaries. PPS/APTA strongly urges Congress to repeal Sec. 3403. Independent Medicare Advisory Board (as modified by sec. 10320) of the Patient Protection and Affordable Care Act.

On behalf of the Private Practice Section of APTA, thank you for your continued efforts to create a more stable, predictable and effective Medicare system and for your vigilance in monitoring the effects of public policy on Medicare beneficiaries and independent physical therapists who operate as small businesses.

Sincerely,

Tom DiAngelis, PT, DPT
President
Private Practice Section / APTA

1. Patient Protection and Affordable Care Act, Section 3403(c)(2)(A)(iii).
2. Congressional Research Service, The Independent Payment Advisory Board, November 30, 2010.
3. Congressional Budget Office, Scoring of Proposed Changes to the Independent Payment Advisory Board, May 13, 2011.