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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:

As the nation's first and largest specialty network of rehabilitation therapists in independent practice, PTPN and its members who function as small businesses are pleased to offer this statement to the Health Subcommittee of the House Ways and Means Committee as it convenes the hearing March 6 to examine how the Independent Payment Advisory Board (IPAB) will impact the Medicare program, its beneficiaries, and health care providers.

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. The network has approximately 1,000 provider offices (with close to 3,000 physical therapists, occupational therapists and speech/language pathologists) in 23 states. PTPN contracts with most of the major managed care organizations in the nation, including insurers, workers' compensation companies, PPOs, HMOs, medical groups and IPAs. All members of PTPN must be independent practitioners who own their own practices.

**PTPN supports HR 452** which would repeal the Independent Payment Advisory Board. We believe this legislation is needed for a number of reasons:

#### **The Problem**

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.

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Annually, beginning in April 2013, 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 triggers a requirement that the Board prepare a proposal to reduce the growth in the Medicare per capita growth rate by the proscribed amount. Nearly the only power the Board has is to cut payments to providers, specifically outpatient Part B providers and suppliers. If the Board fails to act, the Secretary is directed to prepare a proposal.

The 15 Board members will be full-time government employees who are not accountable to the public. If members do not perform, the public has no recourse. The IPAB will be appointed by the President with the advice and consent of the Senate; members will serve six year terms.

### **The 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, such as PTPN member clinics, particularly if the Board alters payment mechanisms. 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.

### **PTPN 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 subrogated to appointed, unaccountable, full time government employees.

Because hospitals, hospice, and inpatient rehabilitation facilities are exempt from the actions of the IPAB until 2020, the impact of IPAB deliberations will be far more profound for Part B providers such as private practice rehabilitation therapists (including PTPN members). If these carve outs are left unaddressed, the entities responsible for two-thirds of Medicare spending are exempt from payment cuts for the remainder of this decade.

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PTPN member clinics are already subject to an expenditure target known as the sustainable growth rate (SGR) and other payment reductions as the result of the Medicare physician payment formula. Creating and empowering the IPAB would subject PTPN members two separate expenditure targets while at the same time exempting large segments of Medicare providers who are subject to no target at all. The end result of this will mean a further reduction in the already below market reimbursement rates for rehabilitation therapists and physicians who treat Medicare and TriCare patients and yet make up less than 10 percent of total Medicare expenditures.

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, and 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 higher cost institutions, a pattern that our system has been evolving from for over three decades. This will lead to a spiral of having to further cut reimbursement to lower cost private practice therapy to make up the difference as more and more patients go to higher cost institutional therapy.

### **Conclusion**

For the above reasons, PTPN 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. Empowering a mindless rate-cutting machine of 15 unelected members, strips members of Congress of their constitutional duty and creates a volatile and unpredictable marketplace for PTPN member clinics 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. **PTPN strongly urges Congress to repeal Sec. 3403. Independent Medicare Advisory Board (as modified by sec. 10320) of the Patient Protection and Affordable Care Act.**

HR 452, in its present form, is a vehicle for such repeal that PTPN finds acceptable. However, we note that the legislation is a "repeal only" endeavor, thus identifying no offsets. If, at any point, offsets are added to the legislation, we reserve the right reconsider this position based on the palatability of the total legislative package.

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Thank you for holding a hearing on the Independent Payment Advisory Board. It is important to PTPN that the statutory provision authorizing this Board be repealed.

As you proceed with your efforts to reform and ensure stability of the Medicare program -- in particular the Physician Fee Schedule -- we would urge you to be continuously mindful of the independent rehabilitation therapy providers and suppliers who function as small businesses and who are an important, integral element of our delivery system. PTPN 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.

Sincerely,



Michael Weinper, MPH, PT, DPT  
President/CEO