

*Via Online submission*

**STATEMENT FOR THE RECORD  
HEALTH SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS COMMITTEE:  
Hearing on Expiring Medicare Payment Policies  
September 21, 2011**

Chairman Herger and Distinguished Members of the Health Subcommittee of the House Ways and Means Committee:

The American Occupational Therapy Association (AOTA), the national professional association representing more than 140,000 occupational therapists, occupational therapy assistants and occupational therapy students, across the country, submits this testimony regarding Medicare payment policies that are set to expire at the end of the 2011 calendar year, specifically the exceptions process for the Medicare Part B outpatient therapy caps. AOTA applauds the Committees' commitment to addressing these policies before the end of the year. The "therapy cap" policy sets a harmful and arbitrary annual cap on beneficiary access to essential health and rehabilitation services. Allowing implementation of the therapy caps will negatively affect patient access to critical services while adversely affecting rehabilitation outcomes, beneficiary quality of life, and long term health care and long term care costs. This is not a provider issue; this is a patient access issue that needs to be addressed to insure that our most vulnerable beneficiaries have appropriate access to the full spectrum of medically necessary and essential services including occupational therapy.

Occupational therapy is a patient-centered health, wellness, rehabilitation and habilitation profession dedicated to helping individuals gain, regain, and keep skills that are critical to optimal functional participation in everyday life activities. Occupational therapy services are provided for the purpose of promoting health and wellness to those who have or are at risk for developing or have an injury, illness, disease, disorder, condition, disability, activity limitation, functional limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory and other aspects of functional performance in a variety of contexts and settings to help people achieve a meaningful and rewarding quality of life.

Occupational therapy practitioners provide critical, cost-effective services to Medicare Part B recipients, focused on function, performance, self-care and full participation in their daily lives. Occupational therapy interventions help individuals to remain in their homes and communities while maintaining a high quality of life. An arbitrary cap on these services will yield a burden for Medicare, as beneficiaries will delay or decline treatments necessary to achieving maximum levels of independence, function and productivity, have more health problems and use more health care resources.

Without an exceptions process or other viable alternative in place beneficiaries will not have sufficient access to medically necessary services. The cap will have a negative effect on beneficiaries in need of rehabilitation services with a particularly severe impact on vulnerable populations including older, chronically ill beneficiaries. Lack of a strong exceptions process will yield a decline in health status which can be expected to contribute to a rise in costs to Medicare and Medicaid as more beneficiaries will seek admissions to more costly facilities or will require visits to additional providers to address their increasing unaddressed health care needs.

## **BACKGROUND OF THE OUTPATIENT THERAPY CAPS**

The Medicare Part B Outpatient therapy caps were originally established as part of the Balanced Budget Act of 1997. At that time Congress authorized an arbitrary \$1500 cap on outpatient therapy services in private practice setting, physician offices, skilled nursing facilities (Part B), comprehensive outpatient rehabilitation facilities and rehabilitation agencies. The therapy caps were originally intended to be a temporary measure until the Center for Medicare and Medicaid Services (CMS) designed an alternative methodology for payment and assuring appropriate utilization to be considered by Congress.

Congress has consistently recognized the need to prevent implementation of the therapy caps, passing extensions of the exceptions process on five separate occasions since 2005. The current extension of the exceptions process was part of the Medicare Extenders Act of 2010 and runs until December 31, 2011.

AOTA believes a strong Medicare Part B program is a critical part of our overall health care system and is essential to assuring optimum and cost effective health for our nation's seniors and individuals with disabilities. The policies established by Medicare have a significant impact on payment policies throughout the health care system including private payers, Medicaid, and workers compensation.

## **THERAPY CAP ALTERNATIVES**

As part of the 2010 Medicare Physician Fee Schedule Proposed Rule CMS solicited comments on three short-term options (or combinations thereof) set forth by the agency for discussion as alternatives to the cap on Medicare Part B outpatient occupational therapy services and on outpatient physical therapy and speech-language pathology services. In AOTA's view, portions of the three options could ultimately be part of a viable alternative to the therapy cap; however, as acknowledged by CMS in the preamble, at present there is insufficient or limited data from which to develop a rational alternative payment system at this time. None of the options presented provide a sufficient level of detail for AOTA to fully support any one option or combination of options at this time. AOTA in its comments stressed that any new system must be developed with the appropriate data; some of this data is not currently collected in the system but must be in order to develop a valid alternative.

AOTA staff and volunteer expert members will continue to work with CMS and CMS contractors on the short and long term alternatives to the therapy caps. AOTA is open to considering any alternatives or combination of alternatives that can help control costs while maintaining beneficiary access to the full panoply of necessary and essential care including occupational therapy. The focus of possible alternatives needs to prioritize the provision of high quality, cost effective care based on the judgment, and expertise of qualified health care practitioners and not on an arbitrary cap based solely on cutting costs.

In conjunction with efforts to repeal the cap, AOTA continues to work on the possibility of achieving greater accuracy and savings through changes to the current payment and coding system but urges the Committee to use extreme caution when considering any significant changes to the current system without appropriate planning and implementation. Changes to the current payment and/or coding system must be crafted in such a way as to insure there remains appropriate resources to achieve optimum outcomes which save long term costs for beneficiaries.

In particular, occupational therapy must be treated as the separate benefit it is and paid for as a distinct benefit. Any new payment and/or coding system can not be fashioned like the extremely problematic Multiple Procedure Payment Reduction Policy (MPPR). The MPPR policy fails to recognize the distinction between occupational therapy, physical therapy, and speech language pathology. This distinction needs to be recognized in any new payment and/or coding system to ensure beneficiaries adequate access to all appropriate skilled therapy providers. Medicare law does not currently authorize payment for a broad rehabilitation category; it authorizes payments separately for occupational therapy and physical therapy including speech language pathology services. Any new policy needs to continue this distinct recognition.

AOTA recognizes the need to find a long term solution but does not think the Committee should dismiss the concept of the exceptions process completely. The original intent of the exceptions process as instituted by Congress was to help address perceived overutilization and control costs while providing appropriate and effective care. It was initially considered a potential long term solution for the therapy caps issue. AOTA would support a narrowing of the current exceptions process with more stringent oversight and accountability that would still allow beneficiary access to essential care. Such a permanent extension of a narrowed exceptions process could be a viable long term solution to the therapy caps.

We encourage the Committee to work with the professional associations, consumer advocacy organizations and CMS to refine the exceptions process in such a way that would ensure patient access to covered necessary and essential services beyond an arbitrary cap while also reducing the overall cost to Medicare. A system that ensures beneficiaries are not denied access to medically necessary care is critical to achieving positive and ultimately cost effective long-term solutions. It is critical that treatment decisions are not taken away from patients and their qualified health care providers.

In closing, AOTA is ready to work with the Committee to identify long term solutions for the therapy caps that control costs while maintaining the quality of care. AOTA would once again like to thank the Committee for their work on this critical issue and historic bi-partisan support for acting to avoid implementation of the therapy caps on Medicare beneficiaries. AOTA encourages action to address the caps prior to the deadline for their implementation on January 1, 2011.

Thank you for your time and consideration regarding this critical matter. Please feel free to contact AOTA with any question or concerns regarding this or any other issue.