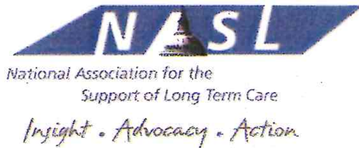

Issue Brief

Extend Outpatient Therapy Caps Exceptions Process to Improve the Medicare Physician Payment System

Congress is working to repeal the Sustainable Growth Rate (SGR) formula – the mechanism that sets Medicare physician and other practitioner's payments under Medicare Part B that are contained in the Physician Fee Schedule. Current legislative proposals would transition from fee-for-service (FFS) to alternative payment models over time that promote efficiency and reward care based on quality and value, rather than volume. In addition to physicians, many other practitioners – including Medicare's Part B outpatient therapy providers – are reimbursed according to the Physician Fee Schedule. The current payment system, which dictates annual payment updates based on the SGR, threatens a 24.4 percent reduction in reimbursements, unless Congress acts by January 1, 2014.

Medicare's Part B outpatient therapy benefit is complicated – it is delivered in many different settings, to a cross-section of beneficiaries who have varying acuity levels and who may require treatment involving any or all three distinct disciplines – physical therapy, occupational therapy, and speech language pathology.

Background In 1997, Congress passed the Balanced Budget Act (BBA) that created an annual arbitrary financial cap or limit on physical therapy and speech-language pathology services and a separate cap on occupational therapy for most outpatient settings including nursing facilities. In 2006, Congress mandated that the Centers for Medicare & Medicaid Services (CMS) develop an exceptions process for Medicare beneficiaries with certain conditions who require therapy services that would exceed the cap. In total, Congress has extended the exceptions policy 10 times since the caps were enacted – to allow the most vulnerable Medicare beneficiaries to receive medically necessary therapy above the arbitrary therapy cap amounts. Most recently, the therapy caps exceptions process was extended as part of the *American Taxpayer Relief Act of 2012 (ATRA P.L. 112-240)* which extended the exceptions process through December 31, 2013.

ATRA requires a new Manual Medical Review (MMR) of claims for patients whose therapy treatments exceeds a threshold of $3,700 for either OT or for both PT and SLP services. The process implemented by CMS and its contractors has been an administrative nightmare, as reflected in recent the Medicare Payment Advisory Commission (MedPAC) and Government Accountability Office (GAO) reports. It has been over a year since the MMR process was implemented in October 2012, yet to this day, providers receive inconsistent and inefficient

Ask Congress

To extend the therapy cap exceptions process until a new payment system for all care settings is established.

Key Facts

Arbitrary, annual caps on therapy services discriminate against the oldest, sickest Medicare patients, who require the most therapy for their care.

About 16% of nursing facility patients received Part B outpatient therapy– 31% of those patients exceeded the PT/SLP cap & 71% exceeded the OT cap. Even greater percentages hit the new thresholds.

Medicare patients cared for in areas with high-cost labor markets hit the therapy cap more quickly than those in low-cost labor markets because payments are wage-adjusted – the caps

instructions, often wait weeks to months beyond the required ten day review window to receive a payment decision, and often wait even longer to receive payments.

Arbitrary, annual caps on a patient's access to therapy services discriminate against the oldest, sickest Medicare beneficiaries. The current cap on therapy services stands at $1,900 a year for occupational therapy (OT) alone, or for a combination of physical therapy (PT) and speech language pathology (SLP). These caps do not differentiate by the acuity of the patient or a Medicare beneficiary's need for therapy. An estimated 5.6 million beneficiaries received therapy under Medicare Part B in 2010. NASL analysis developed by The Moran Company shows that 31% of the Medicare patients who received rehabilitative therapy in nursing facilities exceeded the PT/SLP cap and 71% exceeded the OT cap. Even greater percentages of patients exceeded the new $3,700 threshold triggering Manual Medical Review. For these patients, loss of the exceptions process could mean an interruption or stoppage in therapy that could be detrimental to their recovery.

The Moran Company's analysis of episodes of Part B therapy in the nursing facility setting found that patients who required multi-disciplinary therapy services tended to have more complex diagnoses, indicating that their medical conditions were considerably different than those who received only one type of therapy. Because patients who receive therapy in nursing facilities typically have more medically complex conditions, they are disproportionately and negatively affected by this unwise therapy cap policy.

<u>NASL Asks Congress</u>:

- **Support a the development of a new payment system that would apply to all care settings and reflect key factors around clinical diagnoses, complexity of rehabilitative treatments and duration of an episode of care.** Until there is such a system, Congress should continue to extend the therapy cap exceptions process so that Medicare beneficiaries will continue to have access to medically necessary therapy services they need.
- **Include a Long-Term Solution for Therapy Caps in SGR Package.** If Congress passes legislation addressing the SGR formula, but does not include a repeal of the Medicare therapy cap, the exceptions process could also lapse. Also, if a SGR package and the "therapy cap" extenders move in January 2014, rather than prior to the end of the year, it is likely that beneficiaries will face a hard cap on outpatient therapy services.
- **Show their support by cosponsoring the Medicare Access to Rehabilitation Services Act (H.R. 713/S. 367) which would repeal this harmful cap.**