

ACA Files Comments on Potential Changes to Medicare 'Incident To' Standards

October 6, 2003

Ms. Dorothy Shannon
Centers for Medicare & Medicaid Services
Room 445G, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: CMS-1476-P "Incident to" Therapy Discussion

Dear Ms. Shannon:

The American Chiropractic Association, representing doctors of chiropractic, chiropractic students and chiropractic patients nationwide, respectfully responds to the request for comment pertaining to outpatient physical therapy services performed "incident to" physician services as noticed in the April 15, 2003 edition of the Federal Register, page 49059.

The ACA believes the proposed adoptions of standards similar to §484.4 for individuals providing "incident to" physical therapy services are not necessary. Rather, we believe the existing requirements as outlined in §2050.1 of the Medicare Carrier's Manual -- which provide that such "incident to" services are an integral, although incidental, part of the physician's personal professional services in the course of diagnosis and treatment of an injury or illness -- already establish the primary responsibility of the physician to assure that the individual providing such incident to service is adequately trained and proficient in providing such service. Indeed, Carrier Manual instructions also provide that the billing for such services are to be submitted by the physician and outline specific requirements for the type of "direct personal supervision" that is required to assure that appropriate care is provided to the Medicare beneficiary. We therefore submit that additional requirements and standards are not necessary given the existing requirement for supervision and the overall responsibility of the physician in the supervision of "incident to" services by auxiliary personnel.

However, in order to be responsive to the "discussion only" request of the Department, the ACA would point out that the standards for qualification of individuals providing outpatient physical therapy services as outlined in §484.4 are inadequate in that they fail to identify the education and training in physical therapy received by doctors of chiropractic and other health care providers. If the department were to establish such standards, we believe that it would be incumbent upon it to include the recognition of such education currently provided by the nation's chiropractic colleges. Doctors of chiropractic receive extensive education and training in physical therapy services and routinely provide such services to patients in virtually all states. We would, therefore, suggest that if such standards were in fact to be considered by the Department, there

should be parallel language similar to the existing standards for a physical therapist in §484.4 which would recognize a person who has graduated after 1974 from a doctor of chiropractic curriculum at a chiropractic college accredited by the Council on Chiropractic Education ("CCE"), recognized by the U.S. Department of Education. Prior to 1974 (the date of recognition of the CCE by the U.S. Department of Education), the standards should recognize individuals who were admitted to membership by the American Chiropractic Association.

Again, we believe such parallel regulatory construct recognizing the extensive education and training received by doctors of chiropractic in chiropractic colleges is appropriate, if in fact the Department decides to go forward with the types of standards similar to those currently outlined in §484.4.

We again, however, would respectfully stress that we believe any additional requirements to be unnecessary. The ultimate responsibility should remain that of the physician in selecting and training personnel to provide "incident to" physical therapy services. We believe the proposed regulation adds another level of unneeded regulatory burden to Medicare providers who are already submerged in the weight of regulatory, billing, privacy and other compliance requirements.

We thank the Department for this opportunity to comment in its discussion only process and we look forward to future dialog on this important topic.

Sincerely,

Garrett F. Cuneo
Executive Vice President