

**National Athletic Trainers' Association (NATA)
Background and Chronology of Medicare Coverage for
Services Provided by Athletics Trainers**

The National Athletic Trainers' Association (NATA) is a professional membership organization composed of 30,000 members, whose mission is to enhance the quality of health care provided by certified athletic trainers.

NATA supports the passage of H.R. 1137, the *Athletic Trainers' Equal Access to Medicare Act of 2009* (ATEAM), and welcomes constructive dialogue with CMS officials in order to bring access to all patients requiring quality rehabilitation services. The following provides background information on the issue and chronology of the efforts made by NATA to ensure that patients have access to quality healthcare services provided by athletic trainers.

Background on Coverage of Athletic Trainers under Medicare

The Health and Human Services Office of the Inspector General released a report in 1994 criticizing the Health Care Financing Administration's (HCFA) oversight of payments for therapy services provided "incident to" in a physician's office. This event led Congress to direct HCFA to establish standards for "incident to" services rendered under the supervision of a physician, in Section 4541(b) of the *Balanced Budget Act of 1997*. Many subsequent OIG reports detail billing issues with therapy services provided in all settings, including physical therapy clinics, outpatient clinics and physician offices.

As part of the proposed changes, CMS was asked to interpret the new policy with the goal of determining who could provide "incident to" therapy services. CMS declined this request, stating, "we deliberately used the term *any individual* so that the physician (or other practitioner), under his or her discretion and license, may use the service of anyone ranging from another physician to a medical assistant." This was in the Federal Register November 1, 2001 CMS final rule on physician payment issues.

CMS announced in the Federal Register that it was considering modifying its policy with regard to therapy services provided "incident to" in a physician's office. CMS stated in the announcement that "...there are currently no national standards for qualifications of individuals providing outpatient therapy services 'incident to' physicians' services."

In a reversal of its previous November 2001 policy, CMS issued a proposed rule in August 2004 allowing *only* physical therapists, occupational therapists, and speech language/hearing pathologists to deliver therapy services provided "incident to". This new rule was announced in November 2004 and became effective on June 6, 2005. Prior to this rule change and the introduction of the ATEAM legislation, NATA has made countless attempts to work with CMS to resolve this issue.

Chronology of Efforts Made to Resolve this Issue

- ❖ August-December 2003: CMS seeks comments on who should be allowed to be reimbursed for therapy-incident to services. In November, CMS announces it will not make a rule change at this time, citing feedback from the physicians, athletic trainers, and others. NATA officials meet with senior staff of the Department of Health and Human Services (HHS) to discuss the issue.

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HHS indicates that further action will be unlikely and that athletic trainers will continue to be able to work incident to physicians. The *Medicare Modernization Act (MMA)* passes without a change in the therapy-incident to rule.

- ❖ August-November 2004: CMS calls for comment proposed therapy-incident to rule change in the Federal Register. NATA submits comments opposing the rule by the September deadline. CMS moves forward with limiting the type of providers who can provide therapy-incident to services in November. CMS schedules the implementation of the new rule for early 2005.
- ❖ December 2004-June 2005: NATA repeatedly meets and discusses with CMS its flawed reinterpretation of the *Balanced Budget Act of 1997*. CMS refuses requests to discuss its reinterpretation that “any individual” can work incident to a physician, which was CMS policy for more than seven years. CMS also disagrees with NATA’s argument that the 2004 rule equates to a policy change that only Congress is authorized to make. CMS refuses to acknowledge that its new interpretation violates a federal statutory provision requiring that final rules not have “significant economic impact on a substantial number of small entities” (5 U.S.C. § 605(b)).
- ❖ May 2005-September 2006: NATA files a lawsuit against CMS to reverse the therapy incident-to rule in May 2005. United States district court dismissed the case due to lack of jurisdiction, on a motion prior to discussion of the merits. The 5th Circuit Court of Appeals affirmed the decision of the district court. NATA chose not to appeal to the Supreme Court, instead preferring to seek a legislative remedy to the issue. Although neither court adjudicated on the merits of the lawsuit, the district court indicated there was substance to the case brought by NATA.
- ❖ 2006: NATA supports the introduction of S. 3963, *Access to Physical Medicine and Rehabilitation Services Improvement Act of 2006*, in the 109th Congress.
- ❖ 2007: NATA supports the introduction of H.R. 1846, *Medicare Access to Physical Medicine and Rehabilitation Services Improvement Act of 2007*, in the 110th Congress.
- ❖ February 2008: NATA meets with Office of Management and Budget on the issue. OMB refers the issue back to Congress for a legislative solution.
- ❖ 2006-2008: NATA continues to comment on issues that affect athletic trainers and related to physician fee schedule, therapy services, hospital conditions of participation, health care reform and other issues.
- ❖ 2009: NATA supports the introduction of H.R. 1137, *Athletic Trainers' Equal Access to Medicare Act of 2009 (ATEAM)*.