

Physician Employment of Physical Therapists Answers to your Questions

What's the issue and what needs to be changed?

Orthopaedic surgeons and other physicians diagnose and treat patients with musculoskeletal diseases and conditions. They prescribe physical therapy as an integral part of a treatment plan to enhance healing and improve a patient's outcome. In **47** states Doctors may provide physical therapy through an employee in their practice (PEPT), who delivers care under their direction, just as they do many ancillary services that enhance patient care and make services more convenient for patients.

Yet SC's law, after a controversial court ruling, now says that a physical therapist (PT) cannot work for a doctor in a doctor's office setting. House and Senate Legislation that restores patient choice simply clarifies the law that resulted in policy being set by a divided SC Supreme Court. The effect of the legislation is only to allow a licensed PT another option for employment; it does not affect the status of any PT in SC employed by a chain of independent clinics, hospital, nursing home or other setting.

It is noteworthy that the SC laws that govern provider self-referral and the Physician Practice Act already allow PEPT as the proposed legislation would re-instate.

What matters most is what effect does the current ban have on patients?

As an outlier state, the effect of the SC policy is that 1) Quality of care can be harmed by eliminating the constant line of communication between physician and therapist, 2) Continuity of care is interrupted by making it impossible for the physician, chosen by the patient, to oversee all aspects of treatment when the patient feels that is in their best interest, 3) Convenience of care is undermined when a patient is forced to travel to a separate location for therapy treatment which may be much farther away than their physician's office.

How did we get in this situation and how did this change come about? In 2004 the Physical Therapy Board, based on language with unclear intent inserted in the PT licensing law in 1998, decided to start disciplining licensees that were employed by physicians. This was a reversal of the same board's earlier decision. An Attorney General's opinion centered only on what the language in the law meant, not what was in the best interest of patients or the health care system. A divided Supreme Court ruling in 2006 forced some PTs and physicians to scramble to comply with the ruling while forcing all patients into therapy clinics or settings that may be against their wishes.

Does Federal Law Permit Physicians to Employ Physical Therapists? Yes. In fact both the Federal Self-Referral/Stark Laws and anti-kickback policies and Medicare reimbursement policies permit physicians to employ physical therapists to whom they refer patients and provide therapy incident-to their services within their group practice. Federal laws clearly draw an important distinction between prohibited referrals vs bona fide employment relationships that are an important part of the practice of medicine.

Is physician employment permitted by the physician practice act in South Carolina?

Yes. Similar to other services commonly provided in a physician office including imaging, labs, prescription dispensing, and others, the physician practice act clearly establishes the ability of physicians to provide such services within their practice.

Have other states enacted similar bans at the urging of the PT lobby?

No. The ruling pushed by the PT lobby in SC was seen as the start of a national lobbying campaign to use state licensing laws to force patients out of physicians' offices, yet NO states have followed suit. In fact, states such as Alabama have strengthened their laws to prevent similar actions.

Does physician employment lead to the overutilization of therapy services? The PT lobby has referenced out-dated studies that are questionable in their design to support their assumption that physician employment leads to overutilization of therapy services. We now have definitive proof from Medicare that physician employed physical therapists use less therapy and cost less. Physician Employed Physical Therapy (PEPTs) average reimbursement is \$521.62 per patient episode of care while Physical Therapists in Private Practice is \$870.69. This study showed that patients can expect to spend on average \$349.07 more for the same therapy treatment when receiving care in a Private Physical Therapy Practice versus receiving therapy in their physician's office. Since Medicare pays the same amount per treatment regardless of setting, the only conclusion one can arrive at is that Physical Therapists in Private Practice are more likely to utilize more services than Physical Therapists employed in a physician practice.

How can therapy provided in a physician office be more cost effective than therapy rendered in an independent therapist practice? Through a coordinated team approach a physician has a greater opportunity to interact on a daily basis with a therapist providing services in their office. When the patient has reached the intended goal of the therapy, the physician can discontinue services or modify the original prescription.

Will physician employment of physical therapy drive independent physical therapists out of business? No. According to the same Medicare study, physician employed physical therapy accounts for only 5% of the therapy rendered nationwide while private practice physical therapists account for 28%. Private practice and employed therapists coexist in 47 states across the nation and in all those areas the predominant providers of therapy are therapists in private practice. Since 2006 the number of Private Practice Therapists has increased 31.7% while the number of physician employed therapists has decreased 21.2%.

The physician community fully supports disclosure of financial interests in therapists we may refer to and we support a requirement to provide the patient a full list of all their therapy options in the community for them to make a choice who they want to see. Therapists in private practice will continue to flourish as they have across the nation even if we restore physician rights to employ them in South Carolina.

The PT Lobby has mentioned a study by the Office of the Inspector General that claims some therapy provided by physicians is inappropriate? While they cite alarming statistics in some of their e-mails, a closer look at the results of the study and the corrective action of federal officials make this point irrelevant to this debate. Almost all of the improper payments the study cited were due to documentation errors or physicians not complying with the documentation requirements from Medicare. Corrective action was taken and the OIG did not have to come out with a formal report on this issue. The documentation requirements that resulted in improper payments are required for both for in-house therapy and therapy rendered by independently practicing therapists so this issue is irrelevant to the PEPT issue in South Carolina.

Will physicians have a financial incentive to prescribe more therapy for patients if they employ the therapist providing those services, so called “referral for profit”? While this is a common statement made by the therapy lobby, the data from Medicare actually proves otherwise. In addition, the ability of physicians to order medically unnecessary therapy is governed tightly by the payers and clinical guidelines being developed by professional associations or implemented by health care systems. Medicare has implemented a firm cap on the amount of therapy a Medicare beneficiary can receive in any year. Furthermore, commercial carriers have a wealth of data at their disposal to evaluate practice patterns of physicians, determine those that may be an outlier in their prescribing of therapy, and have the ability to deny claims that fall outside of routine prescription patterns. The entire medical community is moving to evidenced based medicine and clinical guidelines to justify the medical necessity of care rendered.

Does the current prohibition on physician employment work? The Physical Therapy Association claims that legislation is not needed as the current prohibition is “working”. To be sure, many dedicated therapists do a commendable job and coordinate patient care with local physicians. In those communities this legislation would not force any changes. In other areas the outcomes and results are not necessarily “working” and the option should be there for some patients to choose the care that best meets their needs.

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