



# Rehab Report

The Practical Advisor on Reimbursement, Regulations & Business Strategies for Rehab Facilities

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## Regulations

# New Legislation Takes On Therapy Cap

If passed, bill would permanently repeal \$1,870 ceiling for therapy services.

Lawmakers are out to eliminate the cap on therapy services once and for all.

Senators **Ben Cardin** (D-Md) and **Susan Collins** (R-Maine) and Representatives **Jim Gerlach** (R-Pa) and **Xavier Becerra** (D-Calif) have introduced the "Medicare Access to Rehabilitation Services Act" (S 829/H.R. 1546). If passed, the bill will permanently repeal the \$1,870 cap imposed on therapy services.

"Arbitrary caps on vital Medicare services like outpatient therapy have no place in medicine," Sen. Cardin stated on his website. "These caps fail to take into account patients' medical needs. If Congress fails to act, they will have a serious effect on the progress of seniors who are recovering from strokes, hip fractures, or other serious medical conditions," he wrote.

This legislation is supported by associations like the **American Physical Therapy Association**, the **American Occupational Therapy Association**, and the **American Association of Homes & Services for the Aging**.

"The detrimental effects of the therapy caps on patients are well-documented," said APTA president **R. Scott Ward, PT**. For instance, when the cap nears, patients "often begin rationing their care to avoid exhausting their benefits," and eventually forgo treatment altogether, he notes.

Currently, Congress acts annually to extend cap exceptions for Medicare beneficiaries, but the exceptions expire at the end of each year. Without Congressional intervention, the exceptions cap will be replaced by a hard cap for Medicare-covered physical therapy, occupational therapy, and speech-language pathology services.

**Reality:** "It's unlikely Congress will repeal the cap without having something else in its place," says **Fran Fowler**, president of **Fowler Healthcare Association** in Atlanta. "The climate just isn't right for them to take it away without another way to keep costs low," she asserts.

"While anything is possible, Congress is operating in an era of fiscal austerity," points out **Michael Weiner, PT, MPH**, president of **PTPN**, a network of rehab professionals in private practice. "Cutting the nation's debt is a top congressional priority — even privatizing Medicare is under consideration," he notes.

Repealing the cap is destined to be a "continual political fight" for the rehab industry, Ward agrees. "Every member of Congress that we meet with agrees the cap is unfair and capricious; the problem is these same representatives always look at the estimated cost of the repeal and become concerned about where the dollars will come from to cover the repeal," he shares with **Eli**.

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**In dollars:** “The nonpartisan Congressional Budget Office estimates that the repeal would cost about \$9 billion over ten years,” Weinper says. “Before it can repeal the cap, Congress must find offsets” to account for the increased care that will result from removing the cap, he notes.

For a future cap repeal, the industry must find a way to control escalating therapy costs, Fowler says. Without something better, Congress with stick with the cap,” she adds.

Congress will also need a plan to “write off” the debt that has accumulated due to a flawed Medicare payment system, Weinper says. The full repeal of the cap plus that flawed system will cost more than \$340 billion — a staggering amount even in better economic times.

**Stop gap:** Though the therapy cap legislation will likely fail to pass, “introducing these bills to repeal the therapy caps is the right strategy,” Weinper advises. The industry must “keep the pressure on Congress until they do something about this policy that is bad for beneficiaries,” he says.

Therapists and advocates should continue to lobby for the exceptions process, experts agree. “Any delay in implementing the true caps is very meaningful to Medicare beneficiaries in need of physical therapy,” Ward affirms. □

## Compliance

## Rely On One Patient Summary To Ace Your Next Joint Commission Survey

### Multiple forms won't suffice when surveyors come knocking.

You can spend weeks preparing for a joint commission survey, but you should still expect a citation if therapy patients' records are missing one key item — a summary list of treatment information.

**What it is:** The summary is a document that is “readily available to all practitioners and updated whenever there is a change in diagnosis, medications or allergies and whenever a procedure is performed,” the **Joint Commission** states in an FAQ on its website.

Though the summary requires more time, the end result is important, stresses **Agnes Papa, PT**, director of rehab for **Bert Fish Medical Center** in New Smyrna Beach, Fla. “This list ensures that, in case of emergency, there is a summary of the medical history along with all information about the current condition you are treating,” she says. The list also provides a structured process for noting and escalating any emerging problems or conditions.

**Important:** Having all the pertinent information on several different forms won't work, notes **Mark Dwyer, PT, MHA**, director of rehab services for **Olathe Medical Center** in Kansas. Surveyors “want all the data on one form,” he says. If a surveyor has to search for the information, then so will your staffers — and that could lead to crucial data getting overlooked.

Luckily, creating and maintaining a patient summary list isn't that difficult — though the process can be redundant. Here's help:

## Start Your Summary at the Evaluation Stage

Your clients' records may already have a patient summary. If so, your job is simply to keep the summary updated. But if the records don't bear a summary, you have only three visits to create one, the commission states.

**Best bet:** "We initiate the patient summary at evaluation," Papa shares. This way, treatment kicks off with all the available information — and the form ensures communication across disciplines, she says.

Give patients and their families a questionnaire that asks for surgical and medical history as well as a list of medications. Combine that information with any data contained in an electronic medical record.

**Next step:** Create your list from the information on the questionnaire and what your staff uncovered during the evaluation. Initial and date each entry.

### Put Therapist — Only — In Charge of Summary

Though your registration staff could gather the information you'll need for the patient summary, a therapist is the best person for the job.

**Why:** A therapist is trained to spot potential problems and will know the next best steps to take after getting in-depth background information on a patient, Papa states. The therapist will also know whether another diagnosis is necessary or when to flag other disciplines.

**Bonus:** Therapists can use this time to ask questions that might root out problems, notes **Laurie Martin**, senior director for **Bluffton Medical Services** in South Carolina. "We've trained therapists to use our form to screen for any unfinished home health episodes," she says.

If it appears the patient hasn't yet been discharged from an episode, the therapist then helps the home health agency with care coordination so the patient can be seen as an outpatient. The patient may also choose to delay treatment until they are discharged, she says.

### Standardize Your Summary Location, Too

Once the therapist has combined all the crucial information, ask that the list be stored in a standard location in patients' records so that it's easily accessible, Dwyer suggests.

**Example:** "We attach a hard copy of the summary to the back page of the paper chart," Papa says. After discharge, the summary and all other paper documentation is scanned into the electronic records system.

If you don't use paper records, you could maintain the form electronically — but each staffer involved in patients' care must know exactly where and how to access it, Dwyer notes. Otherwise, your surveyors won't be satisfied that they can act fast when an emergency arises.

**Resource:** See a sample patient summary list on page 37. For more information about the Joint Commission's requirements, go to [www.jointcommission.org](http://www.jointcommission.org). □

## Privacy

# Have Patient Data? You Can Still Travel Safely

Just make sure you maintain your HIPAA compliance on the road.

Protecting your clients' private medication information may seem like old hat, but breaches continue to make headlines.

**Consider this:** The **Office for Civil Rights** reported 16 privacy breaches affecting at least 500 individuals in the past month and a half. On average, the OCR has reported an average of 18 breaches per month since February of last year — and the majority of those were the result of stolen laptops or misplaced files.

**Example:** OCR recently fined the General Hospital Corporation and Massachusetts General Physicians Organization Inc. in Boston to the tune of \$1 million after a Mass General employee left files on a subway train that were never recovered.

The last thing you need is for a staffer to accidentally expose a client's confidential information to an unauthorized person. Unfortunately, if you work with patients in their homes or several patients back-to-back in your office, your likelihood for a breach skyrockets.

Use this expert advice to make sure your therapists are able to keep information under wraps — especially when they're on the go.

### Warning: There Are Ears In The Room

You can't always clear the room of your patient's family members or visitors, but you can protect yourself if and when

protected health information (PHI) is overheard, points out **Lee Kelly**, senior security consultant with **Fortrex Technologies** in Frederick, Md.

**Good idea:** Explain to your patient that by having other people milling around, his or her PHI could be overheard. If he refuses to clear the area, ask him to sign an acknowledgement form that states he is willing to accept that risk.

In the same vein, you should never discuss others' PHI when visiting a patient's home, experts note. If you make or accept a phone call about another patient, "leave the room or limit what you say," stresses Kelly. "There's still a chance someone will overhear you, but you've done your best to protect the other client," he explains.

### Stay Organized To Eliminate Security Risks

The only file you should have with you in a patient's home is the one you need to treat that patient, notes **Brian Gradle**, an attorney with Washington, DC's **Hogan & Hartson**. Any other patient files should remain locked in a safe place like the trunk of your car, she says. Likewise, when you enter a room to treat your patient in your office, come prepared with only his or her data.

And if you're working from a laptop or other portable device, make sure you have only that patient's file open, Gradle says. That way, even in a worst case scenario, the only information that can be spotted by anyone other than you will be that of the patient you're visiting, he notes.

**Remember:** When you use a laptop — whether in a client's home or in the office — you have to take measures to keep the electronic PHI from inappropriate access. "Use password-protected screen savers" and set them to kick in after five minutes of inactivity at the most, Gradle recommends.

Like your patients' paper files, when not in use, a laptop should be kept locked up. You can choose the truck of your car, a closet in your home, or a filing cabinet in the office, Kelly advises. "You want to keep it someplace where someone can't look in a window or over a counter and see it."

### Educate Your Patients, Too

If your staffers spend most of their time in patients' homes, you should probably take a little time to teach them how to keep their own information secure. "We recommend that patients keep their personal medical information in a drawer or another place that's not open to everyone," shares **Brenda Butte, PT**, compliance director for **Alliance Physical Therapy** in Minneapolis.

Even if you aren't worried that your client will expose information, teaching them "the rules" will help them better

understand the precautions your staffers must take, Butte notes. For instance, if they know that you are trying to keep their data safe, they'll be more understanding when you must continually enter passwords or ask others to leave the room.

**Good idea:** Use your notice of privacy practices to initiate a conversation on how to keep medical information out of unauthorized hands, Butte advises.

### The Bottom Line

You can't control everything that happens in your patients' homes, but you can decrease the chances that your patients' PHI will be inappropriately disclosed, experts agree. You have more control in the office, but that doesn't mean you can relax.

**Plan of action:** Ask a senior staff member to accompany a newer member on her first round of home visits to ensure patients are given enough information to keep their own medical data safe, Gradle recommends.

If you can't go with your newer staff to each home visit, you could try including privacy- and security-related questions on your annual patient satisfaction survey, experts suggest. This will help you find out who's slacking.

**Drive the point home:** "One way to get staff to understand what can happen is to share what we call 'the wall of shame,'" which is the government's website that lists the covered entities that had to report a breach, advises **William Oravec**, chief analyst for **HITECH Answers**, and managing partner of **WTO Associates**, a healthcare technology and IT solutions company. "You can see what places have been cited and for what."

**Resource:** View the listing at [www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/breachtool.html](http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/breachtool.html). □

## Focus On Your Laptop's Physical Security

You can minimize the risk of people inadvertently seeing protected health information on your laptop or mobile device. Here's how:

- » Set up your station in a low-traffic area (ideally with a door).
- » Don't keep your back to passers-by.
- » Password-protect your computer.
- » Log out instead of leaving your machine idle.
- » Set your password-protected screensaver to come on after a short period of inactivity.
- » Lock removable media in a desk or cabinet. □



## Reader Questions

## Simplify Your Timed Code Treatment Specifics

Distinguish between required and voluntary reporting for timed codes.

**Question:**

*Currently, we document how many minutes we perform each therapy modality, such as 15 minutes spent performing manual therapy. Should we more specific? For instance, does the Centers for Medicare & Medicaid Services prefer that we document we spent five minutes on one technique and 10 minutes on another?*

**Answer:**

No, and your documentation is already more specific than it needs to be, says **Rick Gawenda**, president of **Gawenda Seminars & Consulting**.

Medicare requires that you report the total treatment minutes for the timed code and then the total minutes you provided treatment, which includes both the timed and untimed codes. You shouldn't include minutes for any non-billable time, such as rest periods.

For instance, any time spent in evaluation shouldn't be billed as treatment time. However, those minutes are included in the total treatment minutes.

**Important:** Though Medicare doesn't require you to include any unbilled services in your total treatment time, you can choose to report them to give a more accurate description of the treatment you provided, show consistency with the plan of care, or comply with state or local policies, CMS states.

**The bottom line:** You can note the amount of time for each specific intervention or modality you provide — but that information is not required.

**Resource:** For more information about timed versus untimed codes, check Chapter 15 of the Medicare Benefit Policy Manual at [www.cms.gov/manuals/Downloads/bp102c15.pdf](http://www.cms.gov/manuals/Downloads/bp102c15.pdf) □

## Look To Your State Law For Timely Filing Rules

But don't just disregard payer policies.

**Question:**

*One of our commercial payers has a timely filing rule that says we have to file a claim within 60 days of the date of service. I was told at a conference that we may not have to abide by that rule, however. Can I disregard the payer policy?*

**Answer:**

You shouldn't simply disregard the rule. If your payer has a timely filing rule, you should be aware of it and in many cases you are subject to the payer's policy. In some states, however, there is a state law that will supersede your payer's rule. Florida is such a state.

In Florida, there is a state statute that says you have 180 days from the date of service (or inpatient discharge) to file a claim.

Therefore, you can require that the commercial payer allow you the full 180 days.

Other states have similar laws as well. For example, in New Hampshire you would have 90 days from the date of service per the state timely filing rules. Be sure to check your individual state laws to figure out if you have more time to file a claim than your payers say you have.

**Caution:** There are some health plans that do not fall under state law, such as Medicare plans and Employee Retirement Income Security Act (ERISA) plans, so be sure you know who you are billing to and which laws apply. □

## Queries, Suggestions or Comments?



If you have a question or comment about what you've read here, please contact the Editor, **Kelly Quinones Miller**, at: [kellyq@eliresearch.com](mailto:kellyq@eliresearch.com)

## News

## Expect FISS Payment Adjustments Coming Soon

CMS is correcting therapy claims submitted after Jan. 1, 2011.

If you noticed something off with your reimbursement for therapy claims submitted earlier this year, then you won't be surprised to find out that the **Centers for Medicare & Medicaid Services** has instructed Medicare contractors to make adjustments.

**Problem:** The Fiscal Intermediary Shared System (FISS) applied the Multiple Procedure Payment Reduction on therapy claims regardless of when the services were provided, CMS explained in an April 12 release. The error applies to claims processed between Jan. 1 and Feb. 6, 2011.

Also, FISS used a rate file that reflected a 20-percent reduction rather than the appropriate 25 percent that applies to institutional claims, CMS stated.

**The fix:** CMS has already given Medicare contractors the go-ahead to adjust claims for the correct amount by June 30, 2011. You may need to resubmit claims if you suspect one has fallen under the radar. □

## Medicare Fraud Lands Therapy Clinic Owners In The Slammer

Court doubles down — owners must also pay \$345K each in restitution.

You'd better provide the therapy services you bill for or the feds will catch up with you — and the fallout won't be pretty.

That's the lesson **Aaron and Michelle Clark** of **Superior Physical Therapy** in Sault Ste. Marie, Mich., have learned after a U.S. District Court sentenced the couple to jail time and steep fines for defrauding Medicare and **Blue Cross Blue Shield of Michigan** (BCBSM), the *Associated Press* reports.

In a written plea agreement, Aaron Clark admitted to a felony charge of health care fraud and Michelle Clark admitted to a misdemeanor charge of theft from a health care benefit program after allegations that the couple used different schemes

to obtain payment for services they either didn't provide or that didn't qualify as physical therapy.

**Price tag:** Aaron Clark will spend two years in prison followed by three years of supervised release. He must pay \$345,000 in restitution. Michelle will spend 90 days in prison with one year of supervised release. She, too, must pay back \$345,000, according to a press release by the **Federal Bureau of Investigation**.

The fraud was uncovered by a joint investigation by the FBI, the Office of Inspector General for the **Department of Health and Human Services**, and BCBSM officials. □

## Your Facebook Posts Can Come Back To Haunt You

Don't risk patients' privacy just to blow off steam.

The last thing your practice needs is to deal with the fallout from a therapist turning to social media to blow off steam after working with your clients.

Think it won't happen? Think again. **Alexandra Thran** of **Westerly Hospital** took to her **Facebook** account to recount a few of her emergency room encounters. Though she was careful not to reveal any patient names, people still figured out who she was talking about, according to a **Rhode Island Department of Health** press release.

After realizing her mistake, Thran shut down her account, but the damage had been done. She was fired from the hospital and forced to pay a \$500 administrative fee.

**Lesson learned:** Even if your therapists have placed strict controls on who can view their Facebook pages, their friends and family members will still have access to any content they post — including any patient information they share.

Coach your staffers to never take to social media when they need to deal with work stress. Facebook, **Twitter**, and other networking sites are never truly private. □

# Rehab Report

We would love to hear from you. Please send your comments, questions, tips, cases, and suggestions for articles related to *Rehab Report and reimbursement* to the Editor indicated below.

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