

To : Congressman Charles Boustany
Mr Jeff Dobrozsi, Chief of Staff

From : Paul A Fontana, OTR, FAOTA
314 Chastant Blvd
Lafayette, LA 70508

RE : HR 1846
Introduced By Congressman Edolphus "Ed" Towns (D-NY)
Medicare Access to Physical Medicine and Rehabilitation Services
Improvement Act (HR 1846).

This legislation would overturn the current Medicare "incident-to" rule and recognize athletic trainers and lymphedema "therapists" as covered providers under Medicare. I believe that Congressional staff are being misinformed about what this legislation actually accomplishes.

Both the American Occupational Therapy Association and the Louisiana Occupational Therapy Association, along with the American Physical Therapy Association strongly opposes this legislation (HR 1846) and supports Medicare's ability to require qualification standards for therapy services provided "incident to" a physician's professional services. In November 2004, the Centers for Medicare and Medicaid Services (CMS) included provisions in the final rule for the 2005 Medicare physician fee schedule that established qualifications and clinical preparation standards for individuals who provide Occupational and Physical therapy services "incident to" a physician's professional services. These provisions implement requirements adopted by Congress in 1997 to protect patient safety, ensure the appropriate use of Medicare resources, and guarantee the delivery of occupational and physical therapy services by qualified graduates / licensed occupational and physical therapists. Opponents of these regulations were unsuccessful in their attempts to have CMS rescind the rule implemented in May 2005. These organizations also filed a federal lawsuit attempting to force their withdrawal, and a US Court of Appeals upheld a district court decision dismissing the litigation.

It is my position, and one that Congressman Boustany has supported in the past, that only graduates who are licensed to practice occupational or physical therapy in the states are the qualified professionals who can / should provide occupational and physical therapy services: examinations, evaluations, diagnoses, prognoses, and interventions. Interventions should be represented and reimbursed as occupational or physical therapy only when performed by a licensed occupational or physical therapist or by a licensed occupational or physical therapist assistant under the direction and supervision of an Occupational Therapist or Physical Therapist. Physicians should not allow non trained, none schooled, non professionals treat individuals with significant medical injuries and illnesses and bill it as viable therapy services.

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This is another attempt to circumvent this rule by allowing athletic trainers and lymphedema “therapists” to bill under Medicare for services a physician deems they are qualified to do, when state law allows. Thus, the national Athletic Trainer Association has a nation wide effort to change the definition of an athlete.

During this past legislative session, a bill was introduced in the Louisiana legislature (Senate Bill 110) that attempted to redefine who an athlete is. The bill called for athletes to no longer be considered one who participates in a sporting event but rather redefines the athlete to "**an individual that participates in any activity that requires physical strength, agility, flexibility, speed, stamina, or range of motion, or a condition identified by a licensed physician as benefitting from athletic training services**". Thus if the individual was not comatose, then they would be considered an athlete had this bill passed. With this bill you will have the industrial athlete, the home maker athlete, the pre school athlete, the head injury athlete, ... All of these persons are involved with activities requiring strength, agility, ROM, stamina. So they will be treating everyone from stroke patients, industrial accidents (carpal tunnel, back injuries, knee injuries, head injuries, doing ergonomic programs, ...). Senate Bill 110 was quickly withdrawn once the Senator who introduced it was explained what its true intent was.

Similarly in Minnesota, a bill was introduced to change the scope of practice for athletic trainers in that state. The bill sought to drop the term “athletic” from the definition and simply state the ATC could treat injuries then change the term “athlete” to “patient”. This bill was also wisely defeated. The same thing has occurred in various other states; Kentucky and Ohio to name a few.

I have no problem with the Louisiana athletic trainer practice act as it reads today – it states that ATCs are **not licensed healthcare professionals** but rather certified individuals who are able to treat injured athletes. This bill however seeks to redefine an athlete as anyone who moves. The following is taken directly from information / material from the LSU Dept of Kinesiology for the undergraduate athletic trainer program:

"An athletic trainer is a qualified allied health care professional educated and experienced in the management of health care **problems associated with sports participation**. In cooperation with physicians, physical therapists and other health care personnel, the athletic trainer functions as an **integral member of the athletic health care team** in schools, colleges, professional sports programs, sports medicine clinic and other **athletic health care settings**."

The National Athletic Trainer Association code of ethics states: "Members shall abide by all National Athletic Trainers guidelines, ... **practices related to athletic training** ...

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The National Certification Process for Athletic Trainers Law in LA states the athletic trainer, under direct supervision of physicians, provide physical rehab of **injuries by athletes participating in athletic competition or events... working with coaches on conditioning programs ...**

All of which clearly states the obvious: **athletic trainers are trained to treat athletes and sports related injuries under the direction of a physician or Physical Therapist.** The curriculum for an athletic trainer at LSU only touches on the healthy athlete, not pathology, neurology or other orthopedic or medical problems that affect the new born, neonates, developmentally disabled, aging population, mental illness, visual or perceptual difficulties, autism, etc. It certainly does NOT address the stroke, Alzheimer's, developmental delays in our children, amputation, severe head injury or spinal cord injury, ...

However, passage of the federal legislation, HR 1846, would set in motion to change all this by allowing the athletic trainers and lymphedema "therapists" to bill under medicare for these services. At the Fontana Center I have employees with degrees in exercise science and exercise physiology working in my OT and PT clinics as **technicians** while they try to get into OT or PT school. If they do not get in to therapy school these individuals are then getting their training hours from local physical therapists while working with local high school level sports teams as a trainer, then attempting to pass the athletic training certification exam. There is a tremendous difference in the training of the exercise science / ATC person who then gets a certain number of training hours under the supervision of a PT while working with the local high school football team treating ankle sprains and that which one gets in OT and PT school. I would trust an ATC working under the supervision of a physician or a Physical Therapist to treat my child's sports related muscle strains and sprains. However, these individuals are absolutely not skilled in the treatment of stroke, spinal cord injuries, peripheral neuropathies, MR and CP children, organic brain issues, or even industrial injuries such as repetitive motion injuries, degenerative disc disease, discogenic pain problems, or setting up ergonomic programs.

I have been called to testify before the United States Senate on Ergonomic issues, before OSHA on ergonomic issues, in state and federal courts as an expert on ergonomic issues, and served on at the request of the U S Secretary of Labor on the National Advisory Committee on Ergonomics. There were NO athletic Trainers on this committee nor testifying before any of these committees. That is because the training they undergo does NOT qualify them to treat nor work in the ergonomic field. Yet this bill will allow them to treat all of the above.

The athletic trainers are seeking to expand their practice act because they are tired of

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having to work under a physician or PT in the sports field. They want to work independently and bill for these services in the medical model. This will certainly not protect the consumer who will think they are getting the same professional evaluation and treatment services they would receive from a licensed Occupational Therapist or Physical Therapist at 1/3 the cost. A physical or occupational therapist makes \$ 70,000 a year whereas an ATC working for the local PT clinic and servicing the local high school makes about \$ 18,000 / year. Because they are working as a technician under the direction of the physical therapist. If they were able to bill Medicare for services to treat "injured patients" who move, they would then be able to bill for all of the services I mentioned earlier (stroke rehab, spinal cord rehab, developmental delays, etc. To the unschooled public, they would think they are getting the same quality care one has come to expect from a licensed occupational or physical therapist but at a much cheaper rate. These individuals simply do not have the anatomy and physiology, medical conditions, orthopedic and neurological courses to the level that the OT and PT has that would allow them to use good clinical reasoning skills and make good clinical judgment outside the **healthy** athlete who has an injury.

I hope that you will work to defeat this bill wherever it is in the system. Please keep me informed where it is in the process. If you need me to come and testify as an expert in Occupational Therapy and Ergonomics in the workplace, please do not hesitate to give me a call. Thank you for your assistance in this matter and I look forward to hearing from you.

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Additional Information to support action against HR 1846

Patient Safety - The “incident to” regulations standardize existing Medicare requirements that occupational and physical therapy services must be delivered by qualified personnel in all outpatient settings. There is no evidence that these standards have restricted the delivery of occupational and / or physical therapy in physician offices. Without enforcement of appropriate qualification standards, it would be impossible to ensure that Medicare beneficiaries receive and the Medicare program pays for an appropriate level of safe and effective care delivered by an individual qualified to provide occupational and / or physical therapy. HR 1846 jeopardizes the health, safety and welfare of Medicare beneficiaries by allowing non-qualified individuals to provide therapy services.

I have yet to find what any qualified agency has accepted as credentials and training for a lymphedema “therapists”. Just because a group of individuals say they can do something does not make it a qualified “therapy”.

Cost-effectiveness -In a report issued in May 2006, the Office of Inspector General (OIG) of the Department of Health and Human Services found that 91% of occupational and / or physical therapy services billed by physicians under the old “incident to” rules in the first 6 months of 2002 failed to meet program requirements, resulting in improper Medicare payments of \$136 million. The Inspector General found that the total payments for occupational and / or physical therapy claims from physicians skyrocketed from \$353 million in 2002 to \$509 million in 2004, and that the number of physicians billing the program for more than \$1 million in occupational and / or physical therapy more than doubled in that two-year period. The bottom line is, physicians were using unqualified / untrained individuals and billing for occupational or physical therapy services because they could. The same thing will happen if HR 1846 passes.

This follows a report done in 1994 by the OIG that estimated that more than \$47 million in unnecessary therapy services were delivered in physician offices under the old “incident to” rules. As a result of the 1994 report, Congress passed the Outpatient Occupational and / or physical therapy Standards Act of 1997 as part of the Balanced Budget Act. This legislation established a standard for occupational and / or physical therapy delivered in a physician’s office consistent with that in all other outpatient settings, and the regulations promulgated by CMS in 2004 implement these standards in keeping with the intent of Congress. HR 1846 is fiscally irresponsible and will cost taxpayers due to inappropriate billing of therapy services by non-qualified individuals.

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Quality Care - Medicare beneficiaries deserve a consistent standard of care that ensures that providers who deliver these services have attained the level of education and qualification necessary to provide them safely and effectively. Without appropriate personnel standards for individuals delivering highly skilled and recognized Medicare services such as occupational and / or physical therapy, the standard of quality is jeopardized. HR 1846 dilutes the quality of care for Medicare beneficiaries by allowing non-qualified individuals to deliver therapy services.