

December 17, 2018

Robert Wilkie Jr
Secretary
Department of Veterans Affairs
RIN 2900-AP46
810 Vermont Avenue, NW
Washington, DC 20420

Submitted electronically

RE: Supplemental Notice of Proposed Rulemaking: Prosthetic and Rehabilitative Items and Services (RIN 2900-AP46)

Dear Secretary Wilkie:

On behalf of our more than 100,000 member physical therapists, physical therapist assistants, and students of physical therapy, the American Physical Therapy Association (APTA) is pleased to submit the following comments in response to the Department of Veterans Affairs' (VA) Supplemental Notice of Proposed Rulemaking (SNPRM): Prosthetics and Rehabilitative Items and Services. The mission of APTA is to build a community to advance the physical therapy profession to improve the health of society. Physical therapists play a unique role in society in prevention, wellness, fitness, health promotion, and management of disease and disability by serving as a dynamic bridge between health and health services delivery for individuals across the age span. While physical therapists are experts in rehabilitation and habilitation, they also have the expertise and the opportunity to help individuals improve overall health and prevent the need for avoidable health care services. Physical therapists' roles may include education, direct intervention, research, advocacy, and collaborative consultation. These roles are essential to the profession's vision of transforming society by optimizing movement to improve the human experience.

Physical therapy is a dynamic profession with an established theoretical and scientific basis for therapeutic interventions capable of restoring, maintaining, and promoting optimal physical function. Physical therapists work both independently and as members of multidisciplinary health care teams to enhance the health, well-being, and quality of life of their patients, who present with a wide range of conditions including those that commonly cause pain. The clinical judgment and expertise of the physical therapist is critical in selecting particular prosthetics and orthotics for the patient, and is based on the physical therapist's evaluation of the patient. These services, which include determining the appropriate prosthetics, orthotics, and supplies for a

patient, are crucial to expanding a patient's ability to function and maintain productivity, and to improving the quality of health outcomes. Access to the appropriate prosthetics and rehabilitative items and services also helps to ensure that patients can safely and productively continue their activities of daily living. These services and supplies are particularly important for veterans, who often are dealing with multiple health issues and comorbidities that impact their quality of life. Proper provision and access to prosthetics and rehabilitative items and services reduce medical complications, clinical interventions, hospitalizations, institutionalization, caregiver assistance, and other health care costs.

APTA thanks VA for attempting to clarify the effect of proposed regulation 38 CFR §17.3240, propose edits to the regulation, and explain current practices and processes related to such provision. Approximately 2,300 physical therapists and 500 physical therapist assistants are employed by VA; additionally, a significant number of physical therapists and physical therapists participate in the VA's community care programs. As such, the proposed regulation(s) directly impact the physical therapy profession. We support VA's efforts to clarify that the decision about what item or service VA will provide to the veteran "is a clinical decision made by the veteran's health care provider, in consultation with the veteran, which results in a medical prescription. Additionally, there is a related decision about how VA will provide the prescribed items and services (whether by VA or by a VA-authorized vendor). The veteran's clinical needs will drive this determination." We also appreciate VA's statement that the proposed rule and SNPRM would not result in a different experience for most veterans receiving prosthetics and related care from VA. Please find below our detailed comments on the SNPRM outlined below.

Corrections to Proposed 38 CFR §17.3240

VA proposes to revise the language of 38 CFR §17.3240 to state that VA providers will prescribe items and services based on the veteran's clinical needs and will do so in consultation with the veteran. Once the prescribed item or service is determined to be authorized under 38 CFR 38 CFR §17.3230, VA will determine whether VA or a VA-authorized vendor will furnish authorized items and services under §17.3230 to veterans eligible for such items and services under 38 CFR §17.3220. VA also would add paragraph (a)(2) to 38 CFR §17.3240 to state that this determination on whether VA or a VA-authorized vendor will furnish the authorized item or service under §17.3230 will be based on, but not limited to, such factors as the veteran's clinical needs, VA capacity and availability, geographic availability, and cost.

APTA appreciates VA's proposal to modify the language of the regulations in Title 38 Chapter 17 regarding the provision of prosthetics and rehabilitative items and services. The proposed revisions will help to ensure that veterans continue to have the ability to engage in the decision-making process regarding where, when, and from whom they obtain prosthetics and rehabilitative items and services. However, APTA seeks clarification from VA regarding where and from whom a veteran may obtain a prosthetic or rehabilitative item or service in instances in which a non-VA provider, such as under the Veterans Choice Program or Patient-Centered Community Care (PC3) program, prescribes a prosthetic or rehabilitative item or service to the veteran. Additionally, APTA requests that VA clarify in final rulemaking the mechanisms it will employ to determine, and ensure that, it is the veteran's clinical needs that drive the decision-

making of the agency when determining whether VA can directly provide the prescribed item or service or will use an authorized provider.

Further, while we recognize VA's authority to determine whether it or a VA-authorized vendor will furnish the service based on administrative factors, APTA has concerns that in certain instances, cost savings will be placed ahead of optimal, timely, efficient care, to the detriment of veterans. We request VA to clarify in final rulemaking that when cost is used as a factor in determining whether VA or an authorized VA vendor provides the prescribed item or service, the veteran will receive the prescribed item, of the same quality, caliber, and effectiveness, regardless of which entity furnishes it. Additionally, we urge VA to adopt a policy of affording greater weight to a veteran's preferences in cases in which cost is the sole "administrative factor" considered and the veteran's preferences do not align with the VA's determination. It is critical that an assessment of cost does not negatively impact the receipt of such item or service.

Moreover, we request that as VA revises its regulations due to the enactment of the VA Mission Act of 2018, it develop and implement meaningful rules, regulations, and policies designed to limit disruption or delay in the delivery of care that also do not impose undue financial and administrative burdens on VA-authorized vendors.

Finally, as VA undertakes implementation of the Mission Act of 2018, given the significant volume of need in the community for physical therapist services for the treatment of a multitude of conditions, APTA recommends that VA consider how it may incentivize more community-based physical therapists and physical therapist assistants to partner with VA in the future. It is critical that veterans seeking care from community providers can successfully access comprehensive, high-quality health care services, including physical therapy, in a timely manner. We also recommend that each Veterans Integrated Service Network (VISN) include a therapist on the leadership team who can offer guidance and expertise on the provision of therapy services in the community, as this will help to ensure that veterans receive the right care at the right time in the right setting.

Conclusion

APTA thanks VA for the opportunity to offer comments on the SNPRM on prosthetics and rehabilitative items and services. If you have any questions regarding our comments, please contact Kara Gainer, director of regulatory affairs, at karagainer@apta.org or 703/706-8547. Thank you for your consideration.

Sincerely,



Sharon L. Dunn, PT, PhD
Board-Certified Clinical Specialist in Orthopaedic Physical Therapy
President

SLD: krg