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On Rounds

Physician Spotlight: Dr. Tracy Ray

Tracy Ray is watchful as he stands on the sidelines — arms across his chest, hands thrust in his pockets. He's wary of each move, every tumble, each tackle made by or to a Samford Bulldog. He'll be one of the first on the field when a Bulldog ... **page 2**



POPTS Battle Continues with Proposed Rule Change

A 2004 ruling by South Carolina's attorney general has rekindled an ongoing debate between private practice physical therapists and physician-owned physical therapy services (POPTS) in Alabama. After years of efforts by the Alabama Board of Physical Therapy to have ... **page 8**



STARR Procedure Offers Less Invasive Option for Treating ODS



There's a new surgical solution to a vexing problem that affects millions of women. Some 16 percent of women in the United States suffer from chronic constipation, and patients who don't ... **page 10**

Reliable FCE System Gets High Marks from Physical Therapists

BY ANN B. DEBELLIS



Without documented reliability, a test's results have no validity. Deborah Lechner first discovered the truth in this statement while doing a research project with colleagues at UAB, a project that required a valid functional capacity evaluation (FCE) protocol. "After extensive investigation and review, we found that none of the commercially available FCE systems met our criteria for a well-designed and validated test," said Lechner, president and founder of ErgoScience™, Inc. As a result, Lechner changed the focus of her research project to develop an FCE protocol and to establish its reliability and validity. The outcome was one of

Continued on page 4

Mending Broken Bones

Stem Cell Technology Promotes Healing

BY JO LYNN CURRY

While controversy continues to rage around embryonic stem cell research, biotech medical products using stem cells from adult donors are racing forward. One area in particular where this technology appears to be meeting with growing interest and success is orthopaedic surgery. Two orthopaedic surgeons in the Birmingham area who have added stem cell technology to their arsenal of surgical tools are Dr. Joseph Sherrill, of the Orthopaedic Sports Medicine Clinic of Alabama, and Dr. Stanley Faulkner, who recently joined Orthopaedic Specialists of Alabama.

Sherrill is board-certified in orthopaedic surgery and hand surgery and has been practicing in the Birmingham area since 1980. In orthopaedic procedures, there's often a need for bone graft, Sherrill says, particularly in situations where there is a fresh fracture with multiple pieces or where there's bone that hasn't healed, which is called a nonunion.

Continued on page 16



Color-enhanced scanning electron micrograph (SEM) of a stem cell collected from human bone marrow.

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Physical Therapy Services Provided through Physician Practices

Physical therapy services provided through physician practices offer significant additional income opportunities for physicians. But based on strict Medicare billing rules, federal and state laws, physician practices must carefully consider how to structure PT services delivered through their practices.



Daniel Murphy

Physician practices can enter into arrangements with physical therapists (PTs) to provide therapy services billable to Medicare in three primary ways. First, the practice can directly bill PT services as "incident to" a physician's services. Under this method, the practice must comply with Medicare's strict "incident to" billing rules. Second, PTs may bill Medicare directly and reassign their benefits to the physician practice. Alternatively, the practice can lease space to the PT clinic and the PT clinic can directly bill Medicare using the provider iden-

tification number (PIN) of the PT rendering the service. It should be noted that private third party payors are not required to follow Medicare guidelines on payment for PT services billed by physician practices, and many do not.

Certain Medicare coverage requirements apply to physical therapy regardless of the setting in which they are provided. For all Medicare physical therapy claims, a patient must be under the care of a physician and the services provided must be specified in a plan of care that must be periodically recertified by a physician.

Services Provided within a Physician Practice

PT services provided within a physician practice may be billed to Medicare in two ways: by the practice as "incident to" services, or directly by the PT rendering the service. A physician can bill Medicare for PT services if they are "incident to" the physician's services and the person providing the service meets certain training and education requirements.

Physician referrals for physical and occupation therapy services provided by the referring physician's practice would normally be prohibited by the Stark Law. However, an exception for in-office ancillary services can be used to permit such arrangements. Services are considered "incident to" those provided by the physician if they meet three primary requirements.

First, the PT services must be commonly furnished in a physician's office and be an integral (but incidental) part of the physician's covered services. "Incident to" services are usually provided either free of charge or included in the physician's bill. Second, the service must be included in the patient treatment plan. The billing physician must personally provide the initial patient service and remain actively involved throughout the course treatment. Lastly, the service must be provided under the direct supervision of a physician.

Direct supervision means that a physician is physically present in the office suite in which the physical therapy is rendered and available to per-

sonally assist the PT if necessary. The physician need not, however, be in the same room as the patient and PT.

The second way in which physicians can provide PT services within their practices is through direct PT billing. Under this model, PTs bill Medicare directly for their services and reassign their benefits to the practice. A PT may obtain his or her own Medicare PIN if he or she holds a state physical therapy license and meets Medicare's coverage guidelines for outpatient physical therapy.

Space Leases from Physician Practices to PT Clinics

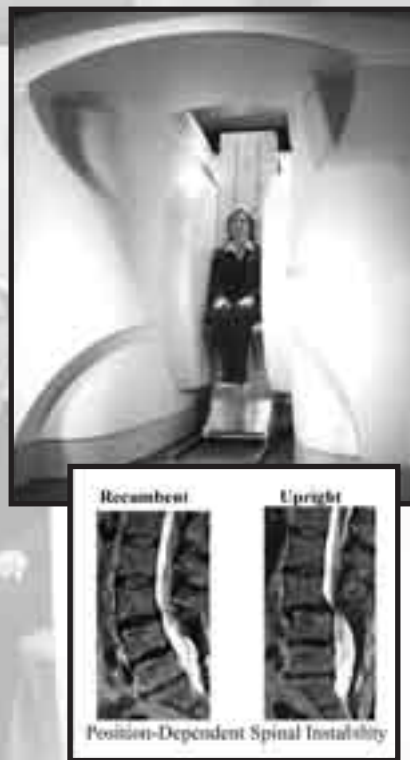
As an alternative to providing PT services within its offices, a practice may choose to lease office space to a PT clinic and have the PTs bill Medicare directly. The Stark Law generally prohibits physicians from referring patients to a PT clinic with which the physician has a financial relationship for physical or occupational therapy. However, an exception to the Stark Law for space leases that meet certain

Continued on page 30

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POPTS Battle Continues, *Continued from page 8*

clinic for therapy, we go out of our way to find one. We're not eliminating that option," he said.

Morris believes the consumer's right to choose a physical therapist is limited by POPTS. "Since no other option is offered, patients may not recognize a loss of choice even exists. Observation of the fiduciary responsibility between the physician and patient is vital to preserving both consumer choice and the autonomous practice of the physical therapist."

Biddy said there are still markets outside of POPTS practices where physical therapists can be successful. "A lot of therapists oppose the rule change because our doctors refer to them on a regular basis," he said. "We have patients from a number of markets where we have no PT services, so we refer to private practice physical therapists in those areas."

Overutilization/Economic Harm to Consumers

Morris cites studies by health policy researchers that demonstrate overutilization arising from the conflict of interest in physical therapy referrals. He said a study in the Journal of the American Medical Association documented greater utilization of physical therapy services by the POPTS. A Florida study found the POPTS physical therapy facilities average 62 percent more visits per full-time equivalent licensed physical therapist than do non-POPTS facilities. "These services rendered an average of 50 percent more visits per year than their private practice counterparts," Morris said. "These facts illustrate an economic and financial impact to consumers."

POPTS supporters say their arrangement results in lower costs because cost-conscious physicians control the frequen-

cy and duration of treatments. "We have benchmarks that we use to measure in our profession and our referral of care numbers are below the benchmark because we get patients in and out," Huber said. "The board thinks that because we're in a physician's office there could be overutilization. We actually have underutilization because our arrangement creates a better situation for the patient. With our team approach, we can better adjust the treatment plan such as setting up a home treatment program."

Making the Decision

Biddy said unprofessional behavior can result in practices on both sides of the issue, and opponents of the ruling feel that the proposed change punishes all POPTS, not just the wrongdoers. "We have plenty of checks and balances on us in our profession," he said. "Iden-

tify the practices that are doing wrong and punish them. Don't create a rule to punish us all."

Christian said it is not the board's wish to harm anyone. "However, in assessing the potential harm that may affect the public and the practice of physical therapy, a tough and difficult decision has to be made," he said. "There is no logical motive to alienate the referral relationship of physicians and the state of Alabama. Physical therapists respect and admire the contributions of physicians and seek to enjoy healthy professional and personal relationships whenever possible."



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Physical Therapy

Services, *Continued from page 29*

criteria allows physicians to legally lease space and make referrals to a PT clinic. Among other requirements, the space lease must be for a minimum of one year. The rent must be consistent with fair market value and not take into account the volume or value of referrals between the parties.

The OIG has been particularly wary of physician/referral source leases, as shown by the Special Fraud Alert related to the anti-kickback statute issued in 2000. The alert identified comprehensive outpatient rehabilitation facilities that lease space from physicians as potentially troublesome. The OIG also used the example of part-time leases from physicians to PTs for unspecified space within a physician office as problematic.

In addition to federal law concerns, the Alabama Board of Physical Therapy recently proposed a rule that would forbid a PT from accepting referrals, regardless of the payor, from a physician landlord unless the rent is set at fair market value and not based on the financial performance of the physical therapy practice. This rule has not been adopted and may be modified or ultimately rejected.

Conclusion

If properly structured to comply with federal and state laws, physicians can provide PT services through their practices and generate substantial ancillary income. However, policymakers have increasingly scrutinized PT services provided in these settings. In addition, many state physical therapy associations across the country are pushing for "direct access" to patients. Direct access is the concept that physician involvement in physical therapy practices is costly and unnecessary.

Daniel Murphy is an attorney in the Healthcare practice at Balch & Bingham.

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