

Eli's Rehab Report

Compliance: Don't Get Burned by a Good Thing--Direct Access, That Is

Know the ins and outs of your state's restrictions if you have direct access

States have been passing direct access laws for physical therapists left and right in recent decades, which is exciting news for most physical therapists--but that doesn't mean PTs in direct access states should just put a sign on their office windows and start seeing patients off the street.

Reality: "Approximately 17 states have what you could call fairly unrestricted direct access," but in the remaining states, "there is a wide range of variation in direct access limitations," says **Dave Mason**, vice president of government affairs for the American Physical Therapy Association.

With that in mind, you'll want to comb your state practice act very carefully to find out when, if and how you may see patients without a physician referral.

Get a Sampling of Common Restrictions

If your state does have direct access, some common restrictions are as follows.

- **Experience requirements.** "Some states require that you have been in practice for a certain number of years before you can practice without a referral," says **Ken Maily, PT**, partner in Maily & Inglett Consulting in Wayne, N.J.
- **Setting stipulations.** "Some states may also allow direct access in certain settings, but not others," Maily says. For example, you might be restricted from practice without referral in a hospital setting but not in a private-practice setting.
- **Patient notification requirements.** Some states require the physical therapist to advise the patient in writing prior to treatment of the possibility that the patient's insurance may not cover the treatment without a referral from a physician, says **Donna Thiel**, an attorney with Latham & Watkins LLP in Washington, D.C.
- **Time restrictions:** Kansas, which just passed its direct access law, places a limit of 30 days on the direct access visits.

But this list does not begin to include some of the more complex provisions that exist in direct access. With that in mind, do your homework, and at least know what you can do, realizing you have the option to leave direct access out of your picture. You may discover direct access provisions in your state to be more trouble than they're worth or even a burden to your bottom line. On the other hand, you may find that direct access could lead you on a very rewarding path both professionally and financially.

Always Follow Your Scope of Practice

Often, therapists think that having direct access means that they have to treat patients who come to them without a referral. But "that is a very dangerous misconception from a medical, legal and liability standpoint," Maily says.

Regardless of whether your state allows direct access, you could land in some hot water if you do not abide by your scope of practice. "The scope of practice is defined in law," Thiel says. "If a physical therapist is not competent to provide a service that he is legally allowed to provide, then the therapist may not provide that service."

Result: If you practice outside your personal scope of competence--even if you're following your direct access provisions to a tee--"you could be charged with misconduct under licensure laws, and malpractice is an issue as well," Thiel says.

Meanwhile, the Political Powers Are at Work

In addition to creating more hoops for you to jump through, varying restrictions often create a challenge in passing direct access legislation. "Individual state dynamics, different interest groups that weigh in to the legislative process, and different lobbying activities that go on" are all factors that contribute to the complexity--and the time it takes to pass--a direct access law, Mason says.

And restrictions may crop up in negotiations with different interest groups. "We obviously prefer to keep patient access as unrestricted as possible, but it is sometimes necessary to engage in negotiations to move the legislation forward." Mason says.

On the horizon: APTA is currently working with the six remaining states without direct access to help pass legislation, according to Mason. And those states with heavy restrictions often re-visit their legislation to further narrow the restrictions on direct access that are currently in their practice acts, he adds. (For a quick glance at states with and without direct access, see the shaded U.S. map contained in the next article.)

Note: For more details on direct access, go to www.apta.org, click on "advocacy," then "state government affairs," then "current issues in the statehouse."