

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

SEAN WELLS and UNITED  
PHYSICAL THERAPY  
ASSOCIATION,

Plaintiffs,

v.

ROBERT F. KENNEDY, in his  
official capacity as Secretary of  
HEALTH AND HUMAN  
SERVICES,

Defendant.

Civil Action No.

**Complaint Challenging the  
Constitutionality of  
42 U.S.C. § 1395a(b)**

**Declaratory and Permanent  
Injunctive Relief Requested**

**INTRODUCTION**

1. After a sports injury in his youth, Dr. Sean Wells experienced firsthand how physical therapy could restore independence and transform a life. That experience inspired him to build a career helping others achieve the same kind of recovery.

2. He pursued that goal from an early age, interning in physical therapy clinics while still in high school and ultimately earning his doctorate in the field. For more than a decade, Dr. Wells has devoted his practice to helping patients regain their mobility, reduce pain, and reclaim their quality of life.

3. Today, Dr. Wells runs a mobile physical therapy practice in Florida, bringing care directly to patients who cannot easily travel to a clinic.

4. Many of the people who call him for help are Medicare beneficiaries who want to pay out-of-pocket for his services. But because physical therapists are excluded from Medicare's opt-out provisions, the federal government forces him to turn Medicare patients away even if they are willing to pay for his services themselves.

5. Dr. Wells has even lost long-time patients, satisfied with his treatment, simply because they became Medicare-eligible. And he has seen firsthand the effect that lack of quality care can have on people in need of physical therapy.

6. Physical therapists like Dr. Wells and the other members of the United Physical Therapy Association (UPTA) are licensed in every state, hold doctoral degrees, and are trusted under state law to treat patients directly without physician oversight. Yet, under Medicare, physical therapists are uniquely barred from entering into private contracts with Medicare enrollees.

7. Unlike physicians—and even other healthcare professionals—physical therapists who don't submit claims to Medicare cannot perform Medicare-covered services with Medicare enrollees. This prohibition applies even when those patients lack access to Medicare providers in their area, are dissatisfied with the care they're receiving from Medicare providers, or who otherwise wish to pay out-of-pocket to see a non-Medicare provider.

8. Relatedly, Medicare beneficiaries who need physical therapy cannot choose their preferred physical therapist. Though they can pay out-of-pocket for healthcare as wide-ranging as family therapy, mental health counseling, or dietitian services, their only access to physical therapy is to use a Medicare-enrolled physical therapist.

9. For physical therapists, this creates an impossible choice: enroll in Medicare, accept reimbursement rates that often fail to cover the cost of care, and comply with extensive red tape, or refuse to participate and turn away even those Medicare beneficiaries who wish to pay them outside of the Medicare system.

10. Excluding physical therapists from Medicare's opt-out provisions does nothing to protect patients, prevent fraud, or expand access to care. It serves only to impose an unnecessary and discriminatory burden on physical therapists and to deny access to patients who want their services.

11. This unequal treatment violates the Fifth Amendment's guarantees of equal protection and due process. The federal government has no legitimate reason to exclude physical therapists from opting out while allowing nearly every other similarly situated healthcare profession to do so. Their exclusion is arbitrary, irrational, outdated, and affirmatively harms patients.

12. It also exceeds Congress's power under the Interstate Commerce Clause. Congress does not have the power to regulate wholly intrastate activity that, even in the aggregate, has no substantial effect on interstate commerce.

13. Dr. Wells and the members of UPTA bring this action to end that unlawful and unequal treatment. They seek a declaration that the exclusion of physical therapists from Medicare's opt-out provisions violates the Fifth Amendment's guarantees of equal protection and due process and the Interstate Commerce Clause and an injunction prohibiting its enforcement.

14. Restoring their constitutional right to earn a living and to form contracts with willing patients will allow physical therapists to serve their communities, expand access to care, and end a senseless barrier that no comparable healthcare profession faces.

### **JURISDICTION AND VENUE**

15. This action arises under the Fifth Amendment to the U.S. Constitution and is brought pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act).

16. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Plaintiff Sean Wells resides in this district and a substantial part of the events giving rise to the claims occurred in this district.

## **PARTIES**

17. Plaintiff Dr. Sean Wells is a licensed physical therapist in Florida and a member of UPTA. He has operated a private mobile practice since 2011, providing home-based therapy to primarily elderly patients.

18. Because of Medicare's exclusionary policies, Dr. Wells is forced to refuse treatment to Medicare beneficiaries, including those with whom he had an existing provider-patient relationship.

19. Plaintiff United Physical Therapy Association (UPTA) is a nonprofit professional association of licensed physical therapists organized under section 501(c)(6) of the Internal Revenue Code.

20. UPTA's mission is to eliminate unnecessary barriers that prevent physical therapists from practicing their profession and serving their patients. Many of its members, including Dr. Wells, are directly harmed by the exclusion of physical therapists from Medicare's opt-out provisions.

21. Defendant Robert F. Kennedy is the Secretary of the United States Department of Health and Human Services (HHS). He is responsible for implementing and enforcing the Medicare statute, including the restrictions at issue in this case. He is sued in his official capacity only.

## **FACTUAL BACKGROUND**

### **The Medicare Act’s Opt-Out Provisions (42 U.S.C. § 1395a(b))**

22. The Medicare Act permits certain non-physician healthcare professionals—called “practitioners”—to opt out of the program while still retaining the ability to privately contract with beneficiaries. 42 U.S.C. § 1395a(b).

23. Practitioners who opt out may set their own rates, operate free from Medicare’s billing requirements, and even provide free or discounted care.

24. These practitioners remain fully regulated under state law, including licensing requirements, patient protection statutes, and criminal prohibitions on fraud and abuse.

25. Congress has defined “practitioner” to include a wide range of non-physician providers, including social workers, physician assistants, nurse practitioners, dietitians, nurse anesthetists, nurse midwives, psychologists, marriage and family therapists, mental health counselors, and registered dietitians. 42 U.S.C. § 1395u(b)(18)(C)(i).

26. Despite holding doctoral degrees, state licenses, and the ability to practice independently in all 50 states, physical therapists are categorically excluded from the opt-out provisions. Physical therapy is the only doctorate-level clinical service excluded from the opt-out provisions.

27. Because of this exclusion, physical therapists are barred from entering into private contracts with Medicare beneficiaries for covered services—even when those patients wish to pay out-of-pocket, continue receiving care from their existing providers, or receive care at a discounted rate.

28. Providing services to Medicare beneficiaries in violation of the opt-out provisions can result in serious administrative penalties, including fines up to \$20,000 per violation and exclusion from Medicare. 42 U.S.C. § 1320a-7a.

29. Adjusted for inflation, Medicare reimbursements for physical therapy services have generally decreased or remained stagnant for over two decades.

30. For many physical therapists, especially those practicing in rural areas with small patient populations, Medicare reimbursement rates do not cover the cost of providing care.

31. Despite low reimbursement rates, the Medicare program requires strict adherence to complex and burdensome documentation, billing, and compliance rules. It also bars physical therapists from operating independently from a physician's oversight, even if state law allows unsupervised practice.

32. These requirements increase administrative costs and liability risk for providers, leading many physical therapists to seek straightforward out-of-pocket payment relationships with patients that comply with state law.

33. These requirements also funnel Medicare beneficiaries into high-volume practices where physical therapists must see as many patients as possible, reducing individualized care and, in many cases, the quality of treatment.

34. In some rural areas, there may be no Medicare-enrolled providers at all, leaving Medicare beneficiaries with no local options for care. In other areas, there may not be enough providers to offer adequate care to Medicare enrollees. In still others, Medicare beneficiaries may simply prefer care from non-Medicare physical therapists because they had a pre-existing relationship, or believe it's the best care available.

35. Many physical therapists, including Dr. Wells, choose not to participate in Medicare. But physical therapists who choose not to enroll or to accept its reimbursement rates and burdensome compliance requirements must turn away Medicare patients entirely. Even those who would pay out-of-pocket.

36. This exclusion from the opt-out provisions disrupts the continuity of care for many patients. It forces physical therapists to cease providing services once their patients age into Medicare. It also prevents patients who have been receiving physical therapy services that are not covered by Medicare, like strength training, from continuing to receive Medicare-covered services once they need them.



37. There is no evidence that physical therapists are more prone to fraud than other providers who are permitted to opt out. Data collected by the Centers for Medicare and Medicaid Services has never indicated any pattern of disproportionate fraud, abuse, or overbilling among physical therapists.

38. Physical therapy services are governed by highly specific state licensing standards, scope of practice limits, and professional ethics rules that operate independently of Medicare's enrollment requirements.

39. Far from expanding access to care, the challenged exclusion reduces access by cutting off patients from qualified and willing providers who are legally prohibited from helping them.

40. By blocking physical therapists from opting out, the government serves only to coerce patient participation in a dysfunctional system, even when it harms them. Instead of allowing private arrangements between physical therapists and their patients, federal law forces providers either into the Medicare program or bans them from serving the Medicare population entirely—harming both therapists and the patients who depend on them.

### **The Effects of the Opt-Out Exclusion on Plaintiffs**

#### **UPTA**

41. Licensed physical therapist, Dr. Scott Gardner, founded UPTA in 2024 to advance the profession of physical therapy through advocacy, education, and research.

42. Dr. Gardner has been a doctoral-level physical therapist since 2007. He has operated his own practice since 2011. His dedication to helping patients recover from injuries and regain their mobility eventually led him to public advocacy. Frustrated by years of political inaction on the regulatory barriers facing physical therapists, he founded the UPTA to fight for reform.

43. Since its founding, UPTA has grown quickly, representing hundreds of member physical therapists across all 50 states. Its members include many licensed physical therapists who operate cash-based practices that cannot sustainably participate in Medicare.

44. The opt-out exclusion forces those unwilling to participate in Medicare to turn away elderly patients and renders some rural practices economically non-viable. It also prevents them from donating their services to Medicare beneficiaries who desperately need care.

45. Some Medicare providers would opt out and provide more flexible payment models if they were not forced to participate in the program.

46. The organization was founded in part in response to the burdens caused by the Medicare opt-out restrictions. Recognizing the value of flexibility, autonomous practice, and independent providers, UPTA and its members directly advocate for the elimination of Medicare's unfair opt-out policies.

47. UPTA fights against professional burnout, low reimbursement, and declining access—challenges that are especially severe in rural areas.

48. UPTA is also concerned that Medicare's opt-out restriction worsens public health outcomes by driving up opioid use, increasing avoidable injuries for patients who cannot find local or mobile therapy options, and leading to unnecessary surgeries for conditions that could be resolved with physical therapy.

49. UPTA members regularly encounter Medicare beneficiaries who are confused and distressed to learn they cannot pay privately for physical therapy. Many of these patients want continuity of care with physical therapists they know and trust; others simply wish to avoid Medicare's restrictive reimbursement limits, which may cap the number of covered visits. Under the current policy, they are denied that choice.

50. The exclusion even prevents UPTA's members from offering free or charitable care to Medicare beneficiaries if they wish to do so. This restriction frustrates physical therapists who want to donate their time and expertise to elderly patients in need, forcing them to choose between violating federal law or refusing to help those who cannot afford care.

**Dr. Sean Wells**

51. Inspired by UPTA's mission, Dr. Wells joined the organization and continues to personally advocate for the elimination of the exclusive opt-out policy.

52. Dr. Wells is a licensed physical therapist in Florida and has been in private practice since 2011. He and his four contracting physical therapists run a mobile therapy business that brings care directly into patients' homes—many of them elderly and homebound.

53. Dr. Wells treats a wide range of patients, including those recovering from orthopedic injuries, stroke survivors relearning basic functions, and patients with chronic pain who require long-term therapy.

54. He finds his work rewarding because he enjoys seeing his patients improve steadily over time, often with dramatic results that restore their independence, mobility, and quality of life.

55. Many of Dr. Wells's patients are able to reduce or eliminate their reliance on pain medications or antidepressants as their physical function improves. For him, helping patients achieve these milestones is one of the most meaningful aspects of his profession.

56. Dr. Wells has provided discounted care to patients in financial hardship. Yet Medicare's opt-out restriction prevents him from extending that same flexibility to Medicare beneficiaries, even when they are willing to pay privately or accept discounted care.

57. Dr. Wells and his contractors do not accept Medicare or any private insurance. Instead, their patients pay out-of-pocket, allowing him to avoid unnecessary administrative costs and offer individualized rates, including

discounts when needed. Medicare's exclusion deprives him of the ability to extend that same model of care to Medicare beneficiaries.

58. Dr. Wells routinely receives calls from Medicare beneficiaries who want to pay him privately because they value the one-on-one, individualized care he provides. But federal law prohibits him from accepting their money, even if he wishes to discount his services. It also prohibits him from providing care for free.

59. This exclusion has forced Dr. Wells to turn away patients he is uniquely qualified to help. And it has prevented him from continuing to treat long-time patients once they become Medicare beneficiaries, even when both he and the patient want to maintain the therapeutic relationship.

60. For example, Dr. Wells was contacted by the daughter of an 83-year-old stroke survivor who suffered from dementia and had recently been hospitalized.

61. The patient had made substantial progress in inpatient rehab, regaining the ability to walk, transfer, and perform basic mobility tasks. Upon discharge from inpatient rehabilitation, the patient began receiving physical therapy services through a Medicare-certified home health agency. But the patient resided in a remote area, limiting the frequency and quality of the care he received from his Medicare provider.

62. The patient's daughter became concerned that her father was declining due to both the poor quality and infrequency of the Medicare-provided therapy. She sought out Dr. Wells to provide maintenance care to prevent further decline and improve her father's functional abilities.

63. After conducting an initial evaluation, Dr. Wells determined that the patient was still receiving services through a Medicare home health agency. Because Medicare prohibits physical therapists from opting out and contracting privately with patients, Dr. Wells was required by law to suspend his services until the Medicare home health agency formally discharged the patient.

64. During the several weeks that Dr. Wells was barred from treating the patient, the patient's condition deteriorated significantly. The patient lost much of the functional progress he had gained during inpatient rehab and ultimately required maximal assistance to stand and get out of bed.

65. Once the Medicare home health agency discharged the patient, Dr. Wells was finally able to begin treatment. After approximately nine weeks of one-on-one therapy with Dr. Wells, the patient regained the functional abilities he had previously achieved in inpatient rehab.

66. This patient's experience illustrates the direct harm caused by the Medicare opt-out exclusion: it delayed effective care, caused preventable decline, and forced both patient and provider to wait while bureaucratic

requirements overrode Dr. Well's medical judgment and the patient's best interests.

67. Examples like this are common, but it is impossible to quantify the full impact that this has on Dr. Wells's business and his patients. He is forced to turn away roughly one-third of patients who contact him due to the opt-out policies.

68. Dr. Wells' business website even contains a disclaimer stating that he cannot serve Medicare beneficiaries—a notice that deters many potential patients from reaching out.

69. The opt-out policy imposes enormous economic costs on Dr. Wells and other UPTA members by depriving them of the ability to serve a large population of potential patients who regularly need physical therapy services. As a result, Dr. Wells and other physical therapists are unable to fully exercise their professional judgment and meet their patients' needs.

70. Instead, the federal government has created a captive class of patients—Medicare-eligible seniors—who are locked into the program regardless of whether it serves them well.

71. But the interests of Dr. Wells and other members of UPTA are not purely economic. They seek to restore professional autonomy and serve their patients without an arbitrary government barrier standing between them and those who need their care.

72. For physical therapists like Dr. Wells, this policy is a professional insult. Physical therapists who hold doctoral degrees and are licensed in every state are told that they are less trustworthy than dietitians, social workers, marriage and family therapists, and the many other providers who may opt out. Those professionals are allowed to privately contract with patients; physical therapists are not.

73. Physical therapists' professional judgment and their ability to help their patients, as well as those patients' well-being, is subordinated to Medicare bureaucracy. UPTA members describe the exclusion as "demeaning" and "un-American." These arbitrary rules reduce their profession to second-class status within the healthcare system with no benefit to patient or provider.

74. UPTA and its members believe that physical therapists should not be forced to either surrender to Medicare or abandon their patients. No other similarly trained and licensed healthcare professionals must face this unfair choice.

75. UPTA brings this case to vindicate the rights of physical therapists and the patients they serve. They seek nothing more than what Congress has already granted to virtually every other healthcare profession: the freedom to contract privately with willing patients.



## **CLAIMS FOR RELIEF**

### **First Cause of Action - Violation of Equal Protection (U.S. Const. amend. V)**

76. The Fifth Amendment prohibits the federal government from arbitrarily treating similarly situated individuals differently.

77. Marriage and family therapists, mental health counselors, dietitians, and many other providers—all of whom provide services outside of traditional physician care—may opt out of Medicare.

78. Physical therapists, who undergo years of advanced education and are extensively regulated by state law, are excluded.

79. This exclusion does nothing to protect patients, to prevent fraud, or to improve care. It simply traps providers and patients in a broken system.

80. Medicare's exclusion of physical therapists from Medicare's opt-out provision, while allowing virtually every other comparable profession to do so, is arbitrary and irrational.

81. Physical therapists are similarly situated to other non-physician practitioners who may opt out. They hold doctoral degrees, are licensed and regulated by state law, and independently provide covered healthcare services to Medicare beneficiaries without physician oversight.

82. The exclusion of physical therapists is wholly without reason and cannot be explained by any risk unique to physical therapists. In fact, physical

therapists are more trained than many professionals permitted to opt out and are the only doctoral-level healthcare professional denied the ability to opt out.

83. By singling out physical therapists for exclusion while allowing comparable providers to opt out, the federal government has arbitrarily and irrationally denied physical therapists and their patients equal protection under the law.

**Second Cause of Action - Violation of Due Process  
(U.S. Const. amend. V)**

84. The Fifth Amendment's Due Process Clause protects the right of individuals to pursue their chosen occupation and to enter into contracts—considered fundamental rights at common law—free from arbitrary and irrational government interference.

85. Physical therapists have a right to practice their profession and enter into voluntary, private contracts with their patients.

86. Congress's categorical exclusion of physical therapists from the opt-out provision unreasonably interferes with this right, forcing them to either participate in Medicare on unfavorable terms or forfeit their ability to treat Medicare beneficiaries entirely.

87. This exclusion does not serve any legitimate public purpose. It is not tied to patient safety, fraud prevention, or any other valid regulatory goal. Instead, it functions as an arbitrary barrier.

88. The exclusion of physical therapists from the opt-out provision is an irrational restriction that unlawfully infringes on the right of physical therapists to practice their profession and to enter contracts with willing patients.

**Third Cause of Action - Violation of the Interstate Commerce Clause  
(U.S. Const. art. I, § 8, cl. 3)**

89. The Interstate Commerce Clause authorizes Congress to regulate commerce among the several states.

90. The exclusion of PTs from Medicare's opt-out provisions exceed that authority because they do not regulate the channels or instrumentalities of interstate commerce or persons or things in interstate commerce, nor do they regulate intrastate economic activity that, in the aggregate, substantially affects interstate commerce.

91. The opt-out provisions target inactivity: the decision not to participate in Medicare.

92. Even if considered activity, intrastate transactions between PTs and Medicare enrollees are intrastate commerce. They do not use federal funds or involve interstate trade.

93. The opt-out provisions do not regulate activity that, in the aggregate, substantially affects interstate commerce because there is no interstate market for local physical therapy services.

94. Nor do the challenged provisions regulate activity that, in the aggregate, would undercut a comprehensive federal regulatory scheme.

95. The relationship between medical providers and their patients, free of any tie to Medicare or federal funds, has historically been the prerogative of the states.

96. The challenged provisions exceed Congress's authority under the Commerce Clause.

### **PRAYER FOR RELIEF**

Plaintiffs respectfully request that this Court:

- A. Declare that the exclusion of physical therapists from Medicare's opt-out provision violates the Fifth Amendment's guarantees of equal protection and due process and the Commerce Clause of the U.S. Constitution;
- B. Enjoin Defendants from enforcing the penalties set forth in 42 U.S.C. § 1320a-7a for violating the opt-out provisions and require that physical therapists be permitted to opt out of Medicare and privately contract with beneficiaries on the same terms as other eligible practitioners;
- C. Award Plaintiffs reasonable attorney fees and costs under §1983 or any other applicable law; and
- D. Grant such other and further relief as the Court deems just and proper.

DATED: August 12, 2025.

Respectfully submitted,

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*\*Special Admission Motion Filed*