

## APTA Advocacy Network Newsletter - January 2022

With the start of 2022, we begin the second year of the 117th U.S. Congress. Thanks to your advocacy, a record number of APTA-led bills were introduced in 2021, covering a wide range of issues including Medicare payment, student loan burden, workforce diversity, telehealth, community health centers, administrative burden, patient access, physical therapist assistants, and more.

In the month before the holidays, we saw a flurry of year-end activity by Congress, as they worked to pass a number of must-pass bills to fund the government and prevent a shut-down, and prevent massive cuts to Medicare. Thanks to your advocacy, Congress passed APTA-supported legislation aimed at offsetting the planned cuts to dozens of providers under Medicare, and also averted an additional 4% across-the-board budget cuts mandated through deficit-reduction budget rules. In addition, the temporary 2% “boost” in payment under Medicare that has been in effect since April 2020 due to suspension of sequestration as part of the CARES Act pandemic relief package was extended until the end of March. [Read more about the legislation.](#)

In December Congress passed the APTA-supported Dr. Lorna Breen Health Care Providers Protection Act aimed at reducing burnout among health care professionals, supporting suicide and burnout prevention training in health professional training programs, and increasing awareness and education about suicide and mental health concerns among health care professionals. This legislation aligns with APTA’s current [“Fit for Practice”](#) initiative that helps PTs, PTAs, and students recover, evolve, and remain resilient as we move forward.

As we begin 2022, pressure is building for Congress to act on a long list of unfinished business, including addressing the PTA payment differential under Medicare. The APTA-supported [Stabilizing Medicare Access to Rehabilitation and Therapy Act](#), or SMART Act (H.R. 5536), is still in play and continues to [build momentum](#). We are grateful to our House sponsors Rep. Bobby Rush, D-Ill., and Rep. Jason Smith, R-Mo., for their [sponsorship](#) of this legislation. In addition, the APTA-supported Allied Health Workforce Diversity Act passed unanimously from the House Energy & Commerce Committee at the end of 2021 and is on deck for a possible passage by the full U.S. House in the near future.

2022 promises to be a year of challenges and opportunities for advancing APTA’s public policy priorities in Congress, and focus is beginning to shift to the upcoming midterm elections this November that will determine control of both the U.S. House and Senate. While this means that partisan wrangling will increase as we get closer to November, APTA will continue to seek bipartisan solutions to the issues facing the physical therapy profession and the patients we serve. The mid-term elections also provide opportunities for PT advocates to be involved in campaigns, attend political fundraisers, and build relationships with both current and potentially future members of Congress. And of course, one of the best ways to support our congressional champions is through involvement with APTA’s [PTPAC](#).

Please know that your voice matters. Last year, whether it was during the APTA Advocacy Day on Capitol Hill, Zoom political events, or meetings with congressional offices on a variety of issues, a common theme heard from members of Congress was, “Oh yes, I’ve heard from the APTA members in my district about this issue.” When it comes to cutting through all the noise on Capitol Hill, your advocacy matters. Thank you for your support, your advocacy, and for being an engaged member of APTA!

Justin Elliott, Vice President, Government Affairs

## Federal Update

**OSHA Vaccine Mandate:** On Jan. 13, the U. S. Supreme Court halted the Occupational Safety and Health Administration mandate requiring employers with 100 or more employees to get their employees vaccinated for COVID-19 or require unvaccinated employees to produce a negative test on at least a weekly basis, pending further evaluation at the Court of Appeals for the Sixth Circuit. SCOTUS held in a 6-3 [opinion](#) that the mandate was not an “everyday exercise of federal power,” but rather “a significant encroachment into the lives — and health — of a vast number of employees.” The court also argued that it was the power of Congress, not the president, to grant an agency powers of “vast economic and political significance” and that the OSHA mandate was not sufficiently tailored to specific workers and workplaces.

**CMS Vaccine Mandate:** Also on Jan. 13, SCOTUS upheld the CMS mandate from the Centers for Medicare & Medicaid Services requiring Medicare and Medicaid provider and supplier types that are certified under the Medicare health and safety standards known as [Conditions of Participation, Conditions for Coverage, or Requirements](#) to require certain staff to get vaccinated for COVID-19, unless an exemption applies. In contrast to its ruling on the OSHA mandate, the court held that the CMS mandate can go into effect pending further evaluation at the Courts of Appeals for the Fifth and Eighth Circuit. The court also lifted any previous lower court injunctions on the CMS mandate. In a 5-4 [opinion](#), with Chief Justice Roberts and Justice Brett Kavanaugh siding with the majority, the court found that the Secretary of Health and Human Services acted within his authority “to impose conditions on the receipt of Medicaid and Medicare funds that the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services.” The court also held that vaccine requirements are common among health care staff and that state laws are a major reason why HHS has not previously adopted vaccine mandates as conditions of participation for health care facilities. Please visit APTA’s website to view the [APTA Practice Advisory on the CMS COVID-19 Health Care Staff Vaccination Rule](#).

**Public Health Emergency:** On Jan. 14, HHS Secretary Xavier Becerra extended the ongoing COVID-19 public health emergency for an additional 90 days. The new expiration date for the PHE is April 16.

**Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Final Rule:** On Dec. 28, 2021, CMS published a DMEPOS [final rule](#), which is effective Feb. 28. The final rule includes provisions that, while not directly related to physical therapy, could impact care: CMS established procedures to include public consultation (through public meetings) in relation to making benefit category and payment determinations for new items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations under Medicare Part B. The public consultation process will be consistent with the process for implementing coding modifications for ICD changes. CMS has been using similar procedures for HCPCS Level II code requests for items and services other than DME since 2005. For more details of the final rule, please see [our story](#) on the APTA website.

**Medicare Advantage Proposed Rule:** On Jan. 12, CMS published a [proposed rule](#) with reforms to the Medicare Advantage (Part C) program and Medicare Prescription Drug Benefit (Part D) program, including reforms related to network adequacy, marketing and communications, medical loss ratio reporting, and special requirements during disasters or public emergencies. This proposed rule would also revise regulations related to special needs plans, including adding social determinants of health in health risk assessments for those plans and expanding coverage for fully and highly integrated dual-eligible plans. APTA will submit comments to this proposed rule, which are due to CMS on March 7.

**IDEA:** The [Early Childhood Technical Assistance Center](#) and [The Center for IDEA Early Childhood Data Systems](#), in collaboration with the [Infant and Toddler Coordinators Association](#), have developed a [resource](#) to support states in securing Medicaid coverage for telepractice as a method of service delivery in IDEA Part C beyond the COVID-19 pandemic. The resource includes tools to help states develop specific policies, procedures, and written guidance for using Medicaid dollars to reimburse for telepractice.

**2022 Medicare Part B and 2022 Medicare Fee Schedule Calculator:** The 2022 APTA Fee Schedule Calculator [is now available](#), as is a summary of [changes to the 2022 Medicare Physician Fee Schedule](#).

**APTA Practice Advisory on New Remote Therapeutic Monitoring Codes:** The Medicare Physician Fee Schedule [final rule](#) for 2022 added five CPT codes for remote therapeutic monitoring. Physical therapists providing outpatient therapy under Medicare Part B may bill these codes under Medicare, and the codes also may be billable under commercial insurance plans. The new codes are available in the Medicine Section of the CPT Manual as of Jan. 1. CMS had originally proposed that PTs could not bill these codes, stating that they represented “incident to” services. APTA challenged that assumption in its comments to CMS, and in the final rule the agency relented, establishing that PTs are permitted to bill the codes. Of the five codes, three reflect RTM services (98975, 98976, 98977), and two are for RTM treatment management services (98980, 98981). APTA has published a [story](#) and [practice advisory](#) on the specific guidelines for use, reporting and billing of these codes, and some case examples.

**APTA Practice Advisory on Good Faith Estimate for Uninsured or Self-Pay Patients:** On Oct. 7, 2021, CMS published an [interim-final rule](#) implementing the No Surprises Act that was enacted by Congress in December 2020. The law is aimed at addressing surprise medical bills that arise typically during emergency situations, and it applies primarily to physicians, hospitals, and air ambulances. However, the interim final rule included a provision that all licensed health care providers regardless of setting or situation must provide a “good faith estimate” of the cost of services to uninsured patients or those who pay cash. APTA published a [practice advisory](#) with details on requirements for providers, components of the good faith estimate, the patient-provider dispute process, and compliance. The association also is working with other provider groups to seek additional clarification and guidance from HHS on this provision.

## Regulatory Update

### Federal Regulatory Advocacy: Make Your Impact

PTs and PTAs should remember to advocate for change in our profession not only to state legislators and Congress, but to federal agencies during the regulatory comment process. While federal laws are enacted by Congress, regulations are issued by executive agencies (such as the Department of Health and Human Services) to clarify and flesh out the statutes. Proposed regulations often come with either a 60- or 90-day period where stakeholders can submit comment, and the agencies are required to consider all comments.

Opportunities to comment on the details within the regulations are crucial opportunities for PTs and PTAs to influence their practices for the better. Examples of recent regulatory wins (thanks to our advocacy) include: [allowing PTs providing outpatient therapy under Medicare Part B to bill RTM codes](#), [exempting certain wheelchair accessories from DMEPOS competitive bidding](#), [delaying the SNF PDP parity adjustment](#), and [raising pay ranges for PTAs in the Veterans Health Administration](#). Check APTA’s [Regulatory Action Center](#) for opportunities to join us in our regulatory advocacy.

Additionally, APTA frequently finds opportunities to nominate members to serve on technical expert panels staffed by various agencies. Make sure you have an updated profile on [APTA Engage](#), and check the site for new nomination opportunities.

## Grassroots Update

### Shape the Future of the PT Profession With the Student Advocacy Challenge

The [Student Advocacy Challenge](#) relaunched for the start of 2022. This contest, for PT and PTA students and programs to participate in advocacy activities, is a first step in career-long advocacy engagement. Activities can be as simple as sending a letter to a member of Congress or as interactive as hosting a member of Congress at their school.

Programs compete against each other by conducting advocacy activities throughout the year. This year's challenge ends on Dec. 31. Students can submit records of their activities on behalf of their school through the Student Advocacy Challenge website or through the APTA Advocacy App.

## PTPAC Update

### Some Things You May Not Know About PTPAC, APTA's Political Action Committee

The [American Physical Therapy Association's Physical Therapy Political Action Committee, PTPAC](#), was formed to empower PTs and PTAs to be more involved in the determination of federal laws and policies. PTPAC provides a mechanism for association members and staff to voice their support or opposition to federal legislation through the election process by helping to elect candidates to Congress who are responsive to the physical therapy profession's goals and viewpoints. A few things to note about PTPAC contributions:

- **Only APTA members and staff are permitted to contribute to PTPAC.**
- **It is illegal for APTA to use association dues for PTPAC donations to candidates**, so all PAC contributions from APTA members must be voluntary and separate from dues payments. That's why on your APTA renewal form there is a separate line item to make a voluntary donation to PTPAC.
- **Political contributions are not tax deductible for federal income tax purposes.**
- **PTPAC wants to hear from APTA members about candidates running for Congress.** APTA members can recommend supporting a specific candidate to PTPAC, but APTA staff determine who will receive PTPAC contributions.
- **Contributions of \$100 or more during a calendar year will be made public** on PTPAC's website. The PAC will honor requests for anonymous contributions.
- **There is no contribution minimum.** All contributions are welcomed and appreciated. The [Century Club](#), at \$100, is the lowest publicly recognized level. Student members have their own club, [Student Stars](#), to which they can join for \$20.

### Personal Versus Corporate Donations

PTPAC can accept either personal (called hard money) or corporate (called soft money) contributions from APTA members and staff. However, PTPAC cannot use the contributions in the same way. In fact, hard money and soft money contributions must be separated and deposited into different banking accounts.

**Contributions that come from a personal checking account or credit card** can be used for campaign contributions to congressional candidates or to political parties. Every dollar — 100% of personal contributions received from APTA members — goes directly to candidates running for Congress who support the physical therapy profession.

**Corporate contributions that come from a business checking account or credit card** can be used only to pay the administrative costs of PTPAC; it is illegal to disburse corporate contributions to federal political campaigns. Administrative costs include telemarketing expenses, staff expenses, incentive gifts to higher club levels, and other expenses; and donations to help defray those costs are accepted and welcomed. Corporate donations must be made by an APTA member.