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# MEMORANDUM

TO: APTA Federal Affairs Liaisons

FROM: Justin Elliott, Vice President, Government Affairs

DATE: April 21, 2020

RE: Summary of the CARES Act (COVID Phase 3 package)

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On Friday, March 27, 2020 the $2 trillion stimulus package titled the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) passed by Congress was signed into law by President Trump. The third COVID relief package enacted so far, the legislation includes provisions that are of particular interest to PTs, PTAs, physical therapy students, and physical therapy patients, and reflect some the policy priorities that APTA in support of for inclusion in the CARES Act. The following is a summary of major provisions of interest in the enacted legislation.

**Medicare Payment will Increase**

- Currently the Medicare sequester reduces payments to providers by 2 percent. The legislation temporarily lifts 2% reduction in Medicare payments from May 1 through December 31, 2020, thus boosting payments for physical therapists, hospitals, home health, and other care. The legislation also prevents scheduled reductions in Medicare payments for durable medical equipment, through the length of COVID-19 emergency period.

**Direct Payments to Eligible Medicare Providers**

- The legislation included the Public Health Service Emergency Fund for health care providers. $30 billion in funds are being made available to Medicare-enrolled individual providers and facilities that billed Medicare fee-for-service last year. Many health care providers — including PTs — caring for patients with possible or verified COVID-19 will receive an infusion of cash released as part of the most recent CARES Act pandemic relief package. The direct deposits are part of a $100 billion program that provides cash based on a provider's 2019 Medicare billing, under certain conditions. The money will be distributed proportionally, based on a provider's billing record for 2019. HHS decided on who gets what by determining the percentage that each provider's billing represents in terms of total Medicare payments made last year. A guidance document from HHS states that to qualify for the relief, the provider must currently provide "care for individuals with possible or actual cases of COVID-19," and must not currently be terminated from participation in Medicare or have billing privileges revoked. HHS has indicated that the department is interpreting those terms broadly, believing that "possible or active cases of COVID-19" applies to virtually any provider who treated patients during the pandemic, given the infection's ability to be carried without symptoms. HHS indicated that businesses not currently operating likely would be able to keep any funds they received, given that they likely have lost revenues attributable to the pandemic.

**Potential Expansion of Telehealth**

- ***Expanding Medicare Telehealth***. Expands 1135 waiver authority to the Secretary of Health and Human Services to waive the telehealth requirements during the COVID-19 emergency period. This means that the HHS Secretary will have the authority to waive the restrictions on providers, including physical therapists, who may provide and bill for services provided via telehealth to Medicare beneficiaries. The legislation basically gives the legal authority needed to CMS to add additional providers to telehealth services – whether CMS will do so will be the next step.

- ***Allowing Federally Qualified Health Centers and Rural Health Clinics to Furnish Telehealth in Medicare***. Will allow during the COVID-19 emergency period, Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) to serve as a distant site for telehealth consultations. A distant site is where the practitioner is located during the time of the telehealth service. This will allow FQHCs and RHCs to furnish telehealth services to beneficiaries in their home.

**Student Loans**

- ***Temporary Relief for Federal Student Loan Borrowers.*** Defers student loan payments, principal, and interest for 6 months, through September 30, 2020, without penalty to the borrower for all federally owned loans.

- ***Exclusion for certain employer payments of student loans.*** Enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

**Home Health**

- ***Physician Assistants and Nurse Practitioners to Order Medicare Home Health Services***. Under current law, only physicians are able to certify the need for home health services. The legislation would allow physician assistants, nurse practitioners, and clinical nurse specialists to order home health services for beneficiaries, reducing delays and increasing beneficiary access to care in the safety of their home.

- ***Use of Telecommunications Systems for Home Health Services in Medicare.*** Requires the Secretary of Health and Human Services (HHS) to issue clarifying guidance encouraging the use of telecommunications systems, including remote patient monitoring, to furnish home health services consistent with the beneficiary care plan during the COVID-19 emergency period.

**Inpatient Rehab Facilities**

- During the COVID-19 emergency period, waives requirement that patients of an IRF participate in at least 3 hours of intensive rehabilitation at least 5 days per week to be admitted to an IRF.

**Medicaid**

- ***Extension of Money Follows the Person Demonstration Program*** Extends the Medicaid Money Follows the Person demonstration that helps patients transition from institutional settings such as nursing home to home and community-based settings through November 30, 2020.

**Education**

- ***National Emergency Educational Waivers.*** Provide the Secretary of Education with waiver authority to provide waivers from the Elementary and Secondary Education Act, except civil rights laws that are necessary and appropriate due to the COVID-19 declaration of disaster.

- ***Education Stabilization Fund.*** Includes $30.75 billion for an Education Stabilization Fund that will provide $13.5 billion to local school districts to use for coronavirus-response activities, such as planning for and coordinating during long-term school closures; purchasing educational technology to support online learning for students, among other uses.

- ***Higher Education Relief***. Includes $14.25 billion for higher education emergency relief for institutions of higher education to prevent, prepare for, and response to coronavirus. Funds may be used to defray expenses for institutions of higher education, such as lost revenue, technology costs associated with transition to distance education, and grants to students for food, housing, course materials, technology, health care, and child care.

**Small Business**

- ***Payment Protection Loans,*** The legislation creates a new loan product within the Small Business Administration's 7(a) Loan Program. Both existing SBA lenders and new lenders brought into the program with the assistance of the Department of Treasury will be able offer these loans o eligible small businesses. The new loan will be 100 percent guaranteed by the SBA and have an interest rate of 4%. The new loan will be able to cover payroll costs, including continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, payments of interest on any mortgage obligation, rent, utilities, an interest on any other debt obligation that were incurred before February 15, 2020.

  Businesses and 501(c)(3)s with less than 500 employees will be eligible. Additionally, sole proprietors, independent contractors, and self-employed individuals will also be eligible. The maximum loan amount will be the lesser of $10 million or 2.5 times the average monthly payroll based on the prior year's payroll. All borrowers and lender fees for Paycheck Protection loans will be waived, as well as collateral requirements, the Credit Elsewhere Test, and all requirements for personal guarantees. Built into the loans will be automatic deferrals of principal, interest, and fees for six months.

- ***Emergency Economic Injury Grants***. Legislation includes a provision to provide an advance of $10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL) within three days of applying for the loan. EIDLs are loans of up to $2 million that carry interest rates up to 3.75 percent for companies and up to 2.75 percent for nonprofits, as well as principal and interest deferment for up to 4 years. The loans may be used to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses. The EIDL grant does not need to be repaid, even if the grantee is subsequently denied an EIDL, and may be used to provide paid sick leave to employees, maintaining payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments. Eligible grant recipients must have been in operation on January 31, 2020. The grant is available to small businesses, private nonprofits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses

- ***Debt Relief for Existing and New SBA Borrowers***. The stimulus includes $17 billion in funding for a provision to provide immediate relief to small businesses with standard SBA 7(a), 504, or microloans. Under this provision, SBA will cover all loan payments for existing SBA borrowers, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out an SBA loan within six months after the President signs the bill. The measure also encourages banks to provide further relief to small business borrowers by allowing them to extend the duration of existing loans beyond existing limits; and enables small business lenders to assist more new and existing borrowers by providing a temporary extension on certain reporting requirements. While SBA borrowers are receiving the six months debt relief, they may apply for a PPP loan that provides capital to keep their employees on the job. The six months of SBA payment relief may not be applied to payments on PPP loans.

- ***Employee retention credit for employers subject to closure due to COVID-19***. Provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

- ***Delay of payment of employer payroll taxes.*** The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

- ***Modification of limitation on losses for taxpayers other than corporations.*** Modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

- ***Modification of limitation on business interest.*** Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

- ***Modifications for net operating losses.*** Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The legislation provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

**Recovery Rebates**

- ***2020 recovery rebates for individuals.*** All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.

**Unemployment Insurance**

- Creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency. The legislation provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months. To assist state governments, the legislation provides $100 million in grants to states to support "short-time compensation" programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

Congress has begun work on formulating a COVID Phase 4 relief package that presents another opportunity for APTA to advocate[1] on strategic priorities that will assist our members and the patients we serve. Congress is expected to consider this next legislative package sometime toward the end of April.

[1] See April 14, 2020 letter from APTA President Sharon Dunn to Congress outlining APTA's priorities for the COVID Phase 4 package.