

APTA Advocacy Network Quarterly Newsletter



April 2021

A Letter From Justin Elliott, Vice President of Government Affairs

Dear APTA Advocate,

Millions of cases of COVID-19 and hundreds of thousands of resulting deaths in the United States have spotlighted challenges to our nation's health care system. Individuals with diabetes, obesity, and other chronic conditions, and those living in congregate settings, were affirmed to be at higher risk for severe cases of the disease. The impact on the physical therapy profession and the patients we serve has been one of the toughest challenges we have faced in recent history — but working together we persevered and are on the road to recovery.

As we begin to recover from the pandemic, APTA's vision of transforming society by optimizing movement to improve the human experience is critical now more than ever. To help guide the association's efforts in making the vision a reality, every two years APTA publishes its public policy priorities in conjunction with each new session of Congress. If you have not had a chance to check out ["APTA's Public Policy Priorities, 2021-2022" you can download a copy.](#)

The new 117th U.S. Congress is under way, and with it several APTA-supported bills have been reintroduced or will be in the near future, covering issues important to the profession: from student debt and administrative burden to telehealth and access to care. Of course, this year a major focus will be (again) defending payment for therapy services from cuts. It is becoming clear to policymakers that widespread reform is needed with Medicare payment. Providers cannot continue to function when faced with so many payment challenges — challenges that **you** rose to the occasion to advocate for. Thanks to **your** advocacy, Congress intervened in December 2020 and mitigated what would have been a 9% cut to the Medicare Physician Fee Schedule down to 3%. In March, **your** advocacy paid off again, when the Senate passed legislation extending the moratorium on Medicare sequestration till Dec. 31. Of course, no cut of any kind is ever acceptable, and our work continues as we face new challenges in 2021 to fight possible additional Medicare cuts in 2022. We are also working to avert or delay the anticipated payment differential when services are provided by physical therapist assistants. In addition, amid regulatory pressures to move closer to a one-size-fits-all payment system across post-acute care settings, [a massive new study sponsored by APTA and the American Occupational Therapy Association](#) is calling for policy-makers to take a more careful approach.

At the state level, APTA chapters are busy introducing bills in statehouses across the country to modernize and advance the PT scope of practice. Hats off to APTA North Dakota — on March 31 North Dakota Gov. Burgum signed S.B. 2122 that will allow PTs in that state to order x-rays. APTA is working with other chapters in anticipation of them taking up similar legislation. In addition, three jurisdictions have enacted legislation so far this year to join the [Physical Therapy Compact](#): Alabama, Ohio, and the District of Columbia.

As vaccinations continue and the end is in sight for the current pandemic, the year ahead has new challenges. Thanks to your support and advocacy, we will meet these challenges head on. Thank you for your membership in APTA — we are #BetterTogether.

Sincerely,

Justin Elliott

Vice President, Government Affairs, APTA

Congressional Update

Locum Tenens Bill Introduction

On March 8, H.R. 1611, the Prevent Interruptions in Physical Therapy Act, was introduced in the U.S. House of Representatives.

A limited version of this law was included in the 21st Century Cures Act of 2016, permitting physical therapists in rural, medically underserved, and health professional shortage areas to use locum tenens arrangements to ensure that their patients continue to receive quality care during a temporary absence. [H.R. 1611 would extend the same flexibility to all physical therapists and patients nationwide](#). Please visit the Legislative Action Center and ask your House representative to cosponsor this legislation.

Medicare Opt-Out Legislation Reintroduced

On March 18, the Medicare Patient Empowerment Act (S. 826), legislation that would permit physical therapists to privately contract with Medicare beneficiaries for items or services covered by Medicare, was reintroduced by Sens. Rand Paul, R-Ky., and Lisa Murkowski, R-Alaska, on March 18. Currently, Medicare beneficiaries are allowed to enter into direct contracts only with physicians and certain other providers, such as physician assistants, dentists, podiatrists, optometrists, social workers, psychologists, nurse midwives, and dietitians. The [Medicare Patient Empowerment Act](#) would modernize the Medicare statute by including physical therapists as eligible providers.

Telehealth Bill Introduction

APTA supports the Expanded Telehealth Access Act of 2021 (H.R. 2168), legislation that would add physical therapists and physical therapist assistants as permanent authorized providers of telehealth under the Medicare program. H.R. 2168 was introduced on March 23 by Reps. Mikie Sherrill, D-N.J., and David McKinley, R-W.Va.

The ongoing coronavirus pandemic has highlighted the need for health systems and providers to rapidly modify the way care is delivered to their patients. The list of telehealth providers was waived during the public health emergency, permitting PTs and PTAs to treat patients via telehealth. This expansion of payment and practice has demonstrated that many needs can be safely and effectively met via telehealth and that patients can have improved access to rehabilitation services.

Evidence indicates that telehealth can empower both patients and health care providers to offer the best approaches to care that consider patient demographics, location, and diagnoses; provide high-quality, cost-effective care; and reduce disparities in care, especially in rural communities. Telehealth services furnished by physical therapists offer cost savings, allow for coordination of care, and may improve adherence and patient satisfaction. Many studies have illustrated the clinical benefit of telerehabilitation for a variety of conditions, including pelvic floor dysfunction and multiple sclerosis.

The Expanded Telehealth Access Act would make permanent the 1330 waiver under the public health emergency. The bill lists physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, audiologists, and speech language pathologists as authorized providers of telehealth under Medicare.

In addition to APTA, the following organizations endorse the bill: American Telemedicine Association, American Speech-Language-Hearing Association, American Occupational Therapy Association, eHealth Initiative and Foundation, Healthcare Information and Management Systems Society, Inc., Personal Connected Health Alliance, and Alliance for Connected Care.

Senate Acts To Extend Sequestration Moratorium

The 2011 Budget Control Act introduced federal spending deficit reduction mechanisms that have been in place across Medicare (and other government programs) since 2013. These mechanisms included a 2% reduction in across-the-board payments in Medicare, referred to as sequestration. Last year Congress passed the CARES Act in March 2020 — the first major COVID-19-related relief legislation — which included a temporary moratorium on the 2% sequestration reduction, with an initial Dec. 31, 2020, expiration date. The intent was to give providers and facilities a temporary boost in their Medicare payments to help get through the pandemic, and providers and facilities should have been seeing a 2% increase in Medicare payment since April 2020. In December 2020, Congress extended the expiration date to March 31, 2021, and that extension has ended. Congress now is looking to extend the moratorium again for providers, given their ongoing economic recovery. [APTA-backed legislation](#) has already passed the Senate on March 25, 2021 to extend the moratorium until Dec. 31; the House is expected to act on it when they return to session in mid-April.

#FightTheCut Update

In December Congress approved a new omnibus and COVID-19 relief package that reduced — but didn't eliminate — scheduled cuts to 36 providers under the 2021 Medicare fee schedule. The bill includes provisions that, combined, reduced the magnitude of the cuts from a projected 9% to something closer to 3% for physical therapy in 2021. Congressional intervention was the last avenue in 2020 for a fix to the cuts that CMS finalized in the 2021 fee schedule, and it was the focus of intense advocacy efforts by APTA and organizations affiliated with the 36 other professions also slated for cuts. The reduced payment rates went into effect on Jan. 1, 2021.

Relief from the cuts was brought about in large part by historic levels of participation by APTA members and supporters who generated more than 120,000 communications to members of Congress. Efforts to fight the cut were supported by large groups of bipartisan lawmakers in both chambers. Beyond its advocacy for short-term solutions, APTA is also looking at the big picture and challenging the viability of the entire Medicare Physician Fee Schedule as the best approach to establishing payment.

Unfortunately, additional proposed Medicare cuts to the 36 providers groups, including physical therapy, are on the horizon for 2022. Once again APTA will strongly advocate against them — stay tuned for additional details on how to #FightTheCut.

Regulatory Update

Specialized Instructional Support Personnel Appreciation Week

Mark your calendars: April 26 through April 30 is Specialized Instructional Support Personnel Week. SISP are professionals who provide and support school-based prevention and intervention services to address barriers to educational success, ensure positive conditions for learning, and help all students achieve academically and ultimately become productive citizens. SISP work with teachers, administrators, and parents to ensure that all students are successful in school. Physical therapists and physical therapist assistants who work in schools are SISP, as are nurses, psychologists, OTs, SLPs, social workers, art therapists, and other non-teacher professionals working in schools. APTA has long advocated for our members in this setting and is a key member of the most influential coalition advocating for SISP, the National Alliance of Specialized Instructional Support Personnel.

The last week in April will be a congressionally recognized week of appreciation for these professionals who provide critical services to students with disabilities. NASISP will hold a virtual briefing to educate members of Congress and their staff about the role SISP play in education and will host activities on social media to raise public awareness. Follow @CoalitionNASISP on Twitter to stay up to date, or visit NASISP.org for more information. Also, did you know APTA Pediatrics has a special interest group devoted to school-based physical therapy? Check out the I SIG at pediatricapta.org

How Does the Regulatory Process Work?

Most Americans have a general understanding of how a law is developed. A congressperson and their staff draft a bill and introduce it. Then Congress votes, with both the House of Representatives and the Senate must pass the same bill before it can be sent to the president to sign into law. But what happens next? How does a law go from being words on a piece of paper to being something as complex as the Medicare Physician Fee Schedule? The answer is the regulatory process.

Before a law can impact the day-to-day lives of Americans, it must be implemented. That's the job of the executive branch of government, which includes the president and the various administrative agencies such as the Department of Health and Human Services, Veterans Affairs, and Department of Defense. Each department is tasked with implementing and enforcing certain laws passed by Congress. To make laws understandable, and to clarify the details of how laws will operate in practice, these departments draft and implement regulations. Agencies must follow an [open public process when they issue regulations](#). According to the Supreme Court, regulations have "the force and effect of law," meaning violating a regulation is just as serious as violating a law. And any participant in the Medicare or Medicaid program knows just how important it is to have a good understanding of the regulations, as well as the statutes.

So how does a regulation come to be? Once a law is passed and signed by the president, the department(s) responsible for implementation and enforcement get to work. Often, the law directs the department to issue a specific regulation. For example, the Social Security Act directs the Department of Health and Human Services, through its sub-agency, the Centers for Medicare & Medicaid Services, to issue the Medicare Physician Fee Schedule, detailing how Medicare services will be reimbursed. Accordingly, every year, CMS drafts the proposed fee schedule in the form of a proposed rule. Then, as required by law, CMS publishes the proposed rule via notice and comment rulemaking so that the public may inspect and provide comment on it. This is an important step in the process, as it not only allows transparency and forewarning of potential changes in the regulations, but also allows the public to indicate their approval or objection to a proposed regulation. APTA always reviews proposed rules and provides lengthy, detailed comments to the federal agency to ensure that they are aware of the impact the proposal will have on the profession. We also encourage our members to submit comments on these proposed rules to ensure that the agency thoroughly understands the scale of the impact. Comment periods are usually between 30 and 60 days, with more complex rules getting longer comment periods.

Once the comment period closes, the department is required to review and consider every comment before issuing the final rule. The department may adjust the revisions to the regulations and posts the final rule along with an effective date. The final rule usually addresses comments and explains the department's reasoning for either accepting the comment's suggestion or refusing to incorporate it. Some regulations, such as the fee schedule, are revisited periodically, so the public knows that they will have another opportunity to influence change. Others are amended only when a new law is passed, a Supreme Court decision requires a new interpretation, or a new administration wants to take a new direction.

APTA's Policy and Regulatory Affairs team consistently monitors proposed regulations and drafts APTA's official comments on rules that impact the profession. We also inform and empowered our members to participate in the regulatory process through alerts and template comments via the [Regulatory Action Center](#).

Information Blocking

An example of how a law was implemented via regulation is the new information blocking regulations, which took effect April 5.

The 21st Century Cures Act included a prohibition on information blocking and directed the Department of Health and Human Services to promulgate regulations. The law defines information blocking as business, technical, and organizational practices that prevent or materially discourage the access, exchange, or use of electronic health information when an actor knows or, for some actors, should know, that these practices are likely to interfere with access, exchange, or use of electronic health information. On March 4, 2019, the HHS Office of the National Coordinator for Health Information Technology issued a proposed rule on information blocking for public comment. APTA and approximately 2,000 other stakeholders responded. ONC released a final rule in March 2020.

The power of written comments on a proposed rule is not to be understated; due to the persuasiveness of the public comments received, the agency revised many of the regulations that they had initially proposed.

Within the rule, ONC finalized new information blocking regulations. They clarified which entities constitute "actors" (those subject to the regulation) and defined electronic health information. The purpose of these regulations is to make information available to patients and requesters as soon as possible after a request with as few extra steps or delays possible.

Actors are health care providers, including therapists, physicians, other practitioners, skilled nursing facilities, hospitals, home health agencies, and group practices; developers of certified health IT; and health information networks and health information exchanges. Beginning April 5, 2021, an actor must respond to a request to access, exchange, or use electronic health information with, at a minimum, all requested EHI identified by the data elements represented in the U.S. Core Data for Interoperability. (Beginning Oct. 6, 2022, actors must respond to a request for EHI with all electronic protected health information included in a designated record set.)

The information blocking regulations are designed to improve the sharing of electronic information with patients and between organizations. Under the new rules, if an actor receives a request for EHI, and the request isn't prohibited under federal and state law (including HIPAA), then they are now required to do so to avoid potential penalties or disincentives, with a few exceptions. This is a positive development for person-centered care, but it also increases the importance of physical therapists and physical therapist assistants understanding these regulations to remain compliant. Interested in learning more? Check out [APTA's Practice Advisory on Information Blocking](#).

Grassroots Update

Become an APTA Key Contact

Want to take the next step in your advocacy involvement? Become an APTA Key Contact! No advocacy experience is required, just a willingness to participate. Key Contacts form and build relationships with their members of Congress and their staff. By creating connections and sharing your story as part of the physical therapy profession and a constituent, you are an integral and essential part of APTA's advocacy efforts. Roles and responsibilities include:

- Establishing and maintaining a relationship with members of Congress and their staff.
- Providing information on critical physical therapy issues to members of Congress.
- Developing a network of physical therapists that live in your state/congressional district who will write letters or make telephone calls to legislators in support of APTA's public policy priorities.

August recess, the district work period each summer when members of Congress go home for the month, is an opportunity for APTA Key Contacts to meet with the legislator and their staff. There can be more than one Key Contact in a congressional district, and there are training materials if you've never been involved in this type of activity.

Interested? Either reply to this newsletter with your contact information or reach out to [APTA's advocacy staff](mailto:advocacy@apta.org) at advocacy@apta.org.

PTPAC Update

PTPAC 2019-2020 Election Cycle Report Available

PTPAC is an integral part in our advocacy work. The 2019-2020 election cycle was successful, with 94% of PTPAC-supported candidates winning on Election Day 2020. [Check out the election cycle report for PTPAC and learn more.](#)