



FAL Briefing Memo

June 2022

Federal Agencies

- **OSHA:** On April 21, APTA submitted comments to the Occupational Safety and Health Administration (OSHA) in response to its reopened comment period for its interim final rule establishing an Emergency Temporary Standard (ETS), “Occupational Exposure to COVID-19 in healthcare settings.” OSHA sought feedback on potential deviations from the ETS considered in its development of a permanent standard, as required by law. Certain changes under consideration would expand coverage under the permanent standard to ambulatory care providers, including physical therapists, who are largely exempt under the current ETS. APTA's comments generally: (1) request additional time to provide feedback on potential changes to the ETS in development of a permanent standard; (2) seek clarification on the expiration date and effective provisions of the current ETS; (3) detail operational challenges of potential modifications described in the notice; and (4) address concerns over administrative burden under the standard.
- **Prior Authorization:** In its [April 2022 report](#) titled “*Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care*,” the HHS Office of Inspector General (OIG) found that 13% of prior authorizations denied in a one-week period analyzed by the office met Medicare coverage rules and 18% of denied payments during that week also met those requirements. OIG looked at a random sample of denials during a week in June 2019 from 15 of the largest Medicare Advantage Organizations to estimate the rate of prior authorization denials and payment denials that met Medicare coverage rules. The report also found that Medicare Advantage (MA) plans denied the prior authorization requests in many cases by applying plan clinical criteria not required by Medicare. Additionally, OIG found that 18% of pay denials were for claims that met Medicare coverage rules and MA plan billing rules, “which delayed or prevented payments for services that providers had already delivered.” The report also notes that MA plans denied payments to providers because of human error during manual reviews or inaccurate programming of claims processing systems. Among the denied requests for prior authorizations and payments that met Medicare coverage rules and MAO (Medicare Advantage Organizations) billing rules, OIG said imaging services, stays in post-acute facilities and injections were three prominent service types. OIG recommends that CMS issue new guidance on the appropriate use of MA plan clinical criteria in medical necessity reviews; update the agency’s audit protocols to deal with the issues identified in the report, such as MA plans’ use of clinical criteria, or examine particular service types; and tell plans to take steps to identify and fix vulnerabilities that can lead to manual review errors and system errors. CMS agreed with all three recommendations.

The report has highlighted the APTA-endorsed [Improving Seniors' Timely Access to Care Act \(H.R. 3173/S. 3018\)](#) which aims to address prior authorization under MA plans. Reps. Suzan DelBene (D-WA), Mike Kelly (R-PA), Ami Bera (D-CA) and Larry Bucshon (R-IN), who are sponsors of the bill, called the OIG report scathing, and say it “underscores the need for reforms in the current prior authorization system.” To view the OIG report [click HERE](#) and watch the [OIG VIDEO](#) on the report.

U.S. Congress

- **PTAs:** On April 23, 2022, Rep. Bobby Rush (D-IL) led a bipartisan letter to the U.S. House Appropriations Committee requesting that the committee include report language in the upcoming annual appropriations bill clarifying Congressional intent surrounding supervision requirements for PTAs and OTAs. The report language directs CMS not to limit access or alter reimbursement for outpatient therapy services by imposing supervision requirements for assistants in outpatient settings that are more stringent than what is required by state law. Rep. Rush was joined by Rep. Jason Smith (R-MO), along with Representatives Budd (R-NC), Carter (D-LA), Cohen (D-TN), Horsfield (D-NV), McBath (D-GA), McEachin (D-VA), McKinley (R-WV), Panetta (D-CA), and Wild (D-PA). Read the letter [HERE](#).
- **Pelvic Health:** Rep. Jamie Herrera Beutler (R-WA) and Rep. Lisa Blunt Rochester (D-DE) plan to introduce the *Optimizing Postpartum Outcomes Act* in the near future. This bipartisan legislation instructs the Centers for Medicare and Medicaid Services (CMS) to issue guidance on coverage under Medicaid and CHIP (Children's Health Insurance Program) for pelvic floor services, including pelvic floor physical therapy, performed during the postpartum or neonatal period. The legislation also requires Government Accountability Office (GAO) to conduct a study on pelvic floor programs that address gaps in coverage for covered pelvic health services, including pelvic floor physical therapy, for postpartum individuals and other services postpartum women received during their pregnancies. Additionally, the bill instructs the HHS Secretary to carry out a program to educate and train health professionals on the benefits of pelvic floor physical therapy and to educate postpartum women on the importance of pelvic floor examinations and physical therapy, what pelvic floor examinations and physical therapy are, and how to obtain an examination for pelvic physical therapy. APTA Government Affairs and representatives from APTA Academy of Pelvic Health worked with Rep. Herrera Beutler's office in the drafting of the legislation.
- **School-Based Therapy:** Rep. Jahana Hayes (D-CT) and Rep. Brian Fitzpatrick (R-PA) introduced bipartisan [resolution](#) designating and celebrating the week of April 25 through April 29, 2022, as “[National Specialized Instructional Support Personnel Appreciation Week](#).” Schools are home to more than one million specialized instructional support personnel across the United States, including physical therapists, nurses, speech-language pathologists, audiologists, and more. This resolution builds on the [Save Education Jobs Act](#), an APTA-endorsed bill introduced by Rep Hayes to help mitigate the impacts of students' learning loss as a result of the COVID-19 pandemic and support specialized instructional support personnel, including physical therapists.

Commercial Payers

- **PTA Differential:** APTA is aware of two commercial payers that are implementing the PTA differential for their Medicare Advantage plans. These include Wellmark (Iowa) and Highmark (PA). APTA is working on tools to assist chapters with advocacy efforts including template letters and talking points.