



FAL Briefing Memo

October 2020

PROPOSED 2021 MEDICARE FEE SCHEDULE:

- APTA submitted extensive comment letters to CMS responding to the 2021 PFS proposed rule, specifically in regards to the estimated 9% cut to physical therapy services and the MIPS program.
- APTA and 46 other organizations representing 1.4 million physician and non-physician providers submitted a joint comment letter to CMS on the proposed 2021 fee schedule outlining the collective concerns about the EM code proposal and deep cuts to providers. *
- More than 25,000 comments were submitted to CMS on the 2021 Medicare fee schedule proposed rule, with a large percentage submitted by the physical therapy community opposing the proposed 9% cut.
- Congress (House Ways & Means, Energy & Commerce, and Senate Finance) continue to explore policy options for legislative intervention. Any policy solution would likely be considered by Congress in the lame-duck session (after the November election).
- A new sign-on letter, this one directed to House leadership and urging the House to include a fix to the proposed fee schedule cuts in any upcoming legislative vehicle was launched last week by Rep. Larry Bucshon (R-IN) and Rep. Ami Bera (D-CA). Co-leads for the letter also include Abby Finkenauer (D-IA), George Holding (R-NC), Brendon Boyle (D-PA), Brad Wenstrup, DPM, (R-OH), Roger Marshall, MD, (R-KS), and Raul Ruiz, MD, (D-CA). The deadline to sign-on to the letter for Hill office is October 16.
- Sen Susan Collins (R-ME) [sent a letter](#) to senate leadership urging action by the senate to address the fee schedule cuts.
- Rep. Burgess (R-TX) unveiled legislation (HR 8505) that would provide a one-year delay in the cuts by utilizing funds from the Pandemic Provider Relief Fund as a pay-for.
- We expect a second legislative vehicle to be introduced in the near future from Rep. Bera (D-CA) and Rep. Bucshon (R-IN) to address the fee schedule cuts.
- Keep updated at: www.apta.org/FightTheCut

Medicare Loan Repayment Dates Pushed Back

A recently enacted emergency spending bill to keep the federal government open includes some good news for providers, including PTs, who received loans from Medicare: Payback deadlines have been postponed.

Renewal of Public Health Emergency

On Friday, October 2, HHS Secretary Alex Azar [announced via Twitter](#) that he is [extending the public health emergency declaration, effective October 23, 2020](#). This is the third time Secretary Azar has extended the public health emergency declaration, which must be renewed every 90 days. This renewal, in conjunction with the national health emergency declaration issued by the President on March 13, 2020, means that PTs and PTAs in private practice and facility-based physical therapy providers will continue to have access to the temporary Medicare regulatory waivers and new rules that afford providers flexibility to respond to COVID-19 pandemic, including telehealth coverage.

HHS Provider Relief Funds

The HHS portal will be open for 30 days beginning Jan. 15, and providers will have to adopt a new way of calculating revenues lost due to the pandemic. PT providers should monitor APTA's weekly

Wednesday and Friday email alerts, regularly check the [HHS CARES Act Provider Relief Fund webpage](#), and sign up to receive HHS press releases, [an option available near the bottom of the HHS News webpage](#).

Labor Dept. Proposes to Change "Employee" vs. "Contractor" Distinctions

The U.S. Labor Department has released a plan to revise how it determines whether a worker is considered an employee or independent contractor under the Fair Labor Standards Act — both statuses are common arrangements under which PTs and PTAs provide services. The agency says the new rule will increase clarity regarding who can make claims around minimum wage, overtime, and other benefits that employees must receive; critics of the plan argue that it weakens worker protections by lowering the bar for what qualifies as contractor work. The proposal adopts what DOL calls a two-factor "economic reality" test to determine a worker's status: the nature and degree of the worker's control over the work, and the worker's opportunity for profit or loss based on the initiative or investment. Other factors that would be considered include the amount of skill required for the work, the degree of permanence of the working relationship, and whether the work is part of an "integrated unit of production." The agency will be [accepting comments](#) until Oct. 26, 2020. If adopted, the new rule could go into effect as early as Jan. 1, 2021.

APTA'S Payment and Regulatory Update: The September 23 edition of *Payment and Regulatory Updates* covered HHS Provider Relief Funds; Dept. of Labor revisions to FFCRA leave regulations; TRICARE low back pain demonstration; Medicaid, NCCI edits, and commercial payment updates; and FY 2021 inpatient rehabilitation facility & skilled nursing facility final rule. View the recording at: <https://www.apta.org/your-practice/payment/payment-regulatory-updates/payment-regulatory-update-sep-23-20>