



# FAL Briefing Memo

## September 2020

### PROPOSED 2021 MEDICARE FEE SCHEDULE:

- Thank you to all the APTA members, patients, and supporters who submitted emails/letters to Congress during the APTA Virtual Capitol Hill Rally on September 10-11. Final total of emails sent from the Rally was 53,871.
- APTA submitted their first of two comment letters to CMS responding to the 2021 PFS proposed rule, specifically in regards to the estimated 9% cut to physical therapy services. PT comment letters submitted to CMS: 8,000 as of 9/22/2020. If you haven't yet submitted comments to CMS, the deadline is October 5. To submit comments: <https://www.apta.org/advocacy/take-action/regulatory>
- Save the Date: October 1, 2021 - APTA #FightTheCut Rally on letters to CMS. Join us for a kick-off rally and then participate with your colleagues and patients for a major, one-day push on October 1 to generate as many messages to Medicare as possible. Check out live online opportunities to learn why it's so important we contact Medicare—and get others to do the same. <https://www.apta.org/your-career/courses-and-events/calendar-of-events/2020/09/30/apta-rally-take-fightthecut-to-medicare>
- APTA sent a letter to the Veterans Administration to bring to their attention our concerns with the Centers for Medicare & Medicaid Services' proposal to implement cuts to multiple health professions' Medicare reimbursements, including a 9% cut targeting physical therapy, occupational therapy, and speech-language pathology services, beginning January 1, 2021.
- APTA sent a letter to Defense Health Agency outlining our concerns with the Centers for Medicare & Medicaid Services' proposal to implement cuts to multiple health professions' Medicare reimbursements, including a 9% cut targeting physical therapy, occupational therapy, and speech-language pathology services, beginning January 1, 2021.
- Committees of jurisdiction (House Ways & Means, Energy & Commerce, and Senate Finance) continue to seek possible policy options for legislative intervention. Any policy solution would likely be considered by Congress in the lame-duck session (after the November election).
- A House sign-on letter led by Rep. Roger Marshall (R-KS), along with Reps. Bobby Rush (D-IL), Brad Wenstrup (R-OH), Terri Sewell (D-AL), David McKinley (R-WV) and Tom O'Halleran (D-AZ) and co-signed by 151 bipartisan House members was sent to HHS Secretary Azar and CMS Administrator Seema Verma outlining the impact that the proposed fee schedule cuts will have on providers and patient access, and urging the agency to re-consider the EM code proposal in the 2021 Medicare Fee Schedule.
- A new House sign-on letter, this one aimed at House leadership and urging the House to include a fix to the proposed fee scheduled cuts in any upcoming legislative vehicle was launched this 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 letter is expected to remain open for House members to sign-on to until early October. Contact your House member today and ask them to sign-on to the "Bera/Bucshon Dear Colleague letter" on the proposed Medicare cuts.
- Rep. Burgess (R-TX) unveiled legislation (bill number TBA) that would provide a one-year delay in the cuts by utilizing funds from the Pandemic Provider Relief Fund as a pay-for.
- Keep updated at: [www.apta.org/FightTheCut](http://www.apta.org/FightTheCut)

**NCCI EDITS:** In a troubling surprise move, CMS announced that effective October 1, it will reverse course and reinstate previously deleted coding "edits" for code pairs that represent common and appropriate physical therapy practice. APTA has since submitted a letter to CMS and Capitol Bridge, LLC, the contractor handling the edits, requesting a halt to the reinstatement of the edits. At issue are edits made as part of the CMS [National Correct Coding Initiative](#) that required the use of the 59 modifier or applicable X modifier to make a claim for reimbursement for many code pairings commonly used in physical therapy on the same day—for example, 97530 (therapeutic activities) and 97116 (therapeutic procedure). A strong advocacy effort by APTA members and others helped to convince CMS to reverse that decision [in April](#). Now it appears CMS is moving ahead, providing no opportunities for input on its decision to reinstate. The code pair prohibitions include the following: for which the edits are expected to be reinstated:

97530 with 97116  
97530 with 97164  
97161 with 97140  
97162 with 97140  
97163 with 97140  
99281-99285 with 97161-97168  
97110 with 97164  
97112 with 97164  
97113 with 97164  
97116 with 97164  
97140 with 97164  
97150 with 97110  
97150 with 97112  
97150 with 97116  
97150 with 97164

Pairs with an indicator of 0 are disallowed, and those with an indicator of 1 would require [Modifier 59 or applicable X modifier to be appended](#). The full list of edits for physical therapists in private practice and facility-based providers that will take effect on October 1, 2020 are listed in excel spreadsheets found on the [CMS NCCI webpage](#). APTA will keep members informed of the results of our efforts.

#### **TELEHEALTH LEGISLATION ROUND-UP:**

***CONNECT for Health Act (S.2741/H.R.4932)*** sponsored by Sen Brian Schatz (D-HI)/Sen Roger Wicker (R-MS), and Rep. Mike Thompson (D-CA). Rep. Schweikert (R-AZ).

- Expands the use of telehealth through a waiver program to providers who apply and are granted authorization by the Secretary of HHS.

***Telehealth Modernization Act (S.4375)*** sponsored by Sen. Lamar Alexander (R-TN).

- Expands the list of practitioners who can provide telehealth under Medicare by granting broad authority to the HHS Secretary to, in consultation with stakeholders, add new providers via regulation who are eligible to furnish telehealth services.

**Rep. Mickie Sherrill's (D-NJ) proposed bill** (not introduced yet)

- This bill expands the scope of practitioners eligible for payment for telehealth services under the Medicare program by explicitly adding PTs, PTAs, OTs, OTAs, Audiologists, and SLPs as eligible providers in the Medicare statute.
- This bill, unlike the top two bills, is not left up to the discretion of the Secretary but specifically lists the therapy professionals as authorized providers of telehealth by adding them to the statute.

**Rep. Nunes's (R-CA) proposed bill** (not introduced yet).

- This legislation expands the list of practitioners eligible to furnish telehealth services and specifically lists out PTs, OTs and SLPs.

**WORKERS COMP:** Report released from Workers Compensation Research Institute (WCRI): [The Timing of Physical Therapy for Low Back Pain: Does It Matter in Workers' Compensation?](#)

- As an increasing number of workers with injuries are receiving physical therapy (PT), this new study examines whether early initiation of PT is associated with lower utilization and costs of medical services and shorter duration of temporary disability (TD) for workers with low back pain (LBP) only injuries.
- Based on the fully-adjusted results the report finds that utilization, overall medical costs per claim, and temporary disability (TD) duration were significantly lower or shorter for claims in the earlier PT groups (within 3 days of injury and 4–7 days) compared with those in the later PT groups, especially the group with PT after 30 days postinjury. The statistical adjustment reduced the size of the estimated effect of early PT on outcomes we studied, but the direction remains the same.
- WCRI sent a request to APTA in May 2020 requesting a review of the draft of the executive summary and report. The authors of the report incorporated APTA's staff and member experts comments and recommendations into the final report and expressed appreciation for the recommendations.

**APTA'S INSIDER INTEL:** The September 23 edition of *Insider Intel* 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>