



FAL Briefing Memo

January 2022

Congress

- **APTA Advocacy Awards:** Nominations are open for the Federal Government Affairs Leadership Award and the Public Service Award. Both awards will be presented at the 2022 APTA Leadership Congress in Washington, DC. The [Federal Government Affairs Leadership Award](#) is presented to an APTA member who has made significant contributions to APTA's federal government affairs efforts and has shown exemplary leadership in furthering the association's objectives. [If you know someone who deserves a nomination, learn more and submit a nomination here.](#) The [Public Service Award](#) is presented to someone who has demonstrated distinctive support for the physical therapy profession at the national level. This person can be a member of Congress or congressional staff, federal agency officials, etc. [Visit our website to learn more](#) and [submit your nomination today](#). Nominations for both awards are due no later than **Monday, January 31, 2022**. For questions, please reach out to Laura Keivel at laurakeivel@apta.org.

Federal Agencies

- **OSHA Vaccine Mandate:** On January 13, 2022, the United States Supreme Court halted the Occupational Safety and Health Administration (OSHA) mandate requiring employers with 100 or more employees to get their employees vaccinated for COVID-19 or require unvaccinated employees to produce a negative test on at least a weekly basis, pending further evaluation at the Court of Appeals for the Sixth Circuit. The Court held in a 6-3 [opinion](#) that the mandate was not an "everyday exercise of federal power," but rather "a significant encroachment into the lives—and health—of a vast number of employees." The Court also argued that it was the power of Congress, not the President, to grant an agency powers of "vast economic and political significance," and that the OSHA mandate was not sufficiently tailored to specific workers and workplaces.
- **CMS Vaccine Mandate:** On January 13, 2022, the United States Supreme Court upheld the CMS mandate requiring Medicare and Medicaid provider and supplier types that are certified under the Medicare health and safety standards known as [Conditions of Participation, Conditions for Coverage, or Requirements](#) to require certain staff to get vaccinated for COVID-19, unless an exemption applies. In contrast to its ruling on the OSHA mandate, the Court held that the CMS mandate can go into effect pending further evaluation at the Courts of Appeals for the Fifth and Eighth Circuit, and the Court also lifted any previous lower court injunctions on the CMS mandate. In a 5-4 [opinion](#), with Chief Justice Roberts and Justice Brett Kavanaugh siding with the majority, the Court found that the Secretary of Health and Human Services (HHS) acted within his authority "to impose conditions on the receipt of Medicaid and Medicare funds that the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services." The Court also held vaccine requirements are common among healthcare staff, and that state laws are a major reason why HHS has not previously adopted vaccine mandates as conditions of participation for

healthcare facilities. Please visit APTA's website to view the [APTA Practice Advisory on the CMS COVID-19 Health Care Staff Vaccination Rule](#).

- **Public Health Emergency:** On January 14, 2022, U.S. Department of Health & Human Services Secretary Xavier Becerra extended the ongoing COVID-19 public health emergency (PHE) for an additional 90 days. The new expiration date for the COVID-19 PHE is Saturday, April 16, 2022.
- **Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Final Rule:** On December 28, 2021, CMS published a DMEPOS [final rule](#), which is effective February 28, 2022. The final rule includes provisions that, while not directly related to physical therapy, could impact care. In the final rule, CMS established procedures to include public consultation (through public meetings) in relation to making benefit category and payment determinations for new items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations under Medicare Part B. The public consultation process will be consistent with the process for implementing coding modifications for ICD changes. CMS has been using similar procedures for HCPCS Level II code requests for items and services other than DME since 2005. For more details of the final rule, please see [our story](#) on the APTA website.
- **Medicare Advantage Proposed Rule:** On January 12, 2022, CMS published a [proposed rule](#) that makes reforms to the Medicare Advantage (Part C) program and Medicare Prescription Drug Benefit (Part D) program, including reforms related to network adequacy, marketing and communications, medical loss ratio reporting, and special requirements during disasters or public emergencies. This proposed rule would also revise regulations related to special needs plans (SNPs), including adding social determinants of health in health risk assessments for SNPs and expanding coverage for fully and highly integrated dual eligible SNPs. APTA will be submitting comments to this proposed rule, which are due to CMS on March 7, 2022.
- **IDEA:** The [Early Childhood Technical Assistance Center \(ECTA\)](#) and The Center for IDEA Early Childhood Data Systems (DaSY), in collaboration with the [Infant and Toddler Coordinators Association \(ITCA\)](#), have developed a [resource](#) to support states in securing Medicaid coverage for telepractice as a method of service delivery in IDEA Part C beyond the COVID-19 pandemic. The resource includes tools to help States develop their own State-specific policies, procedures, and written guidance for using Medicaid dollars to reimburse for telepractice.

Communications & Resources

- **2022 Medicare Part B:** A summary of changes to the 2022 Medicare Fee Schedule can be found at: [Medicare Payment Changes: 2022 | APTA](#)
- **2022 Medicare Fee Schedule Calculator:** The new 2022 APTA Fee Schedule Calculator is now posted on the APTA website at: [Outpatient Therapy Medicare Physician Fee Schedule Calculator | APTA](#)

- **[APTA Practice Advisory on new Remote Therapeutic Monitoring \(RTM\) Codes](#)**. The Medicare Physician Fee Schedule [final rule](#) for 2022 added five CPT codes for remote therapeutic monitoring. Physical therapists providing outpatient therapy under Medicare Part B may bill these codes under Medicare, and the codes also may be billable under commercial insurance plans. The new codes are available in the Medicine Section of the CPT Manual as of January 1, 2022. CMS had originally proposed that PTs could not bill these codes, stating that they represented “incident to” services. But APTA challenged that assumption in its comments to CMS, and in the final rule the agency relented, establishing that PTs are permitted to bill the codes. Of the five codes, three reflect RTM services (98975, 98976, 98977), and two are for RTM treatment management services (98980, 98981). APTA has published a [story](#) and [practice advisory](#) on the specific guidelines for use, reporting and billing of these codes, along with some case examples.
- **[APTA Practice Advisory on Good Faith Estimate \(GFE\) for Uninsured or Self-pay Patients](#)**. On October 7, 2021, CMS published an [interim-final rule](#) implementing the *No Surprises Act* that was enacted by Congress in December 2020. The *No Surprises Act* is aimed at addressing surprise medical bills that arise typically during emergency situations and applies primarily to physicians, hospitals, and air ambulances. However, the interim final rule included a provision that all licensed health care providers regardless of setting or situation must provide a ‘good faith estimate’ (GFE) of the cost of services to uninsured patients or those who pay cash. APTA has published a [practice advisory](#) with details on requirements for providers, components of the good faith estimate, the patient-provider dispute process, and compliance, and is working with other provider groups to seek additional clarification and guidance from HHS on this provision.