FAL Briefing Memo

March 2022

White House

- **Long COVID:** Following the President Biden's State of the Union Address, the White House released a new National COVID-19 Preparedness Plan to direct the next phase of the nation's COVID response. The announcement from the White House and the full 100-page plan can be found can be found here. Of note is language about Long COVID research (beginning on p. 53 in the full plan), that calls for a "national research agenda to advance efforts to detect, prevent, and treat Long COVID. To accelerate scientific progress, the President will direct the federal interagency to develop a *National Research Action Plan on Long COVID.* For the first time, agencies – HHS, VA, DoD, and other key partners – will put forward a comprehensive plan to advance research efforts and data sharing across the federal government and in collaboration with academic and industry partners." The plan also states that Agency for Healthcare Research and Quality (AHRQ) will propose and seek funding for a program funding Long COVID centers of excellence, which will study and promote evidence-based care for Long COVID. Last March, APTA joined the American Academy of Physical Medicine and Rehabilitation in calling on President Biden, his administration, and Congress to establish a national plan to address the needs of the growing number of individuals with Long COVID. APTA will identify opportunities for engagement and collaboration with the federal interagency as it begins its work.

Federal Agencies

- **HHS (Information Blocking):** On February 28, 2022, HHS released a study compiling information blocking complaints. According to HHS, most of the complaints came from patients and were predominantly aimed at providers, rather than at health IT developers or other stakeholders. The report reveals that while there hasn't been an avalanche of complaints so far, among the 299 received, nearly all — 274 — were deemed to be on-target as claims of possible information blocking. An overwhelming majority (176) of the complaints were registered by patients. Health care providers were the targets of the most complaints, at 211. Physical therapists are among the "actors" subject to compliance with the info blocking regulations. However, exemptions are possible if a PT meets one of eight criteria. The APTA practice advisory was developed soon after the rollout of the rules and includes background on the issue, definitions, compliance tips, and links to HHS resources. While HHS states in its regulations that there will be "appropriate disincentives" for providers found to be engaged in info blocking, details on what those might be have yet to be fleshed out. For more details on this report and APTA's information blocking resources, see our story on APTA's website.

- **CMS (Medicare Advantage).** On March 3, 2022, APTA submitted comments to CMS' proposed rule on Medicare Advantage for contract year 2023. APTA recommended that for CY 2023 and beyond, CMS consider reducing the MOOP limit and/or advising a different cost-sharing mechanism for physical therapy. APTA also supported CMS' plan

for increased transparency in medical loss ratio reporting and encouraged CMS to further promote transparency around quality improvement activities (QIAs) through this and future rulemaking. APTA also expressed concern that CMS is removing the cap on "fraud reduction expenses" used in QIA, and that as an unintended consequence, insurance companies will abuse the lack of a cap to spend significant amounts on unrelated audits in the name of "fraud reduction expenses." APTA advised CMS to further define fraud and fraud reduction expenses, so that issuers are not given audit powers that target erroneous but nonfraudulent provider claims submissions. Additionally, APTA recommended a host of prior authorization reforms to Medicare Advantage.

- **CMS (Enrollment):** The Centers for Medicare & Medicaid Services (CMS) released the latest enrollment figures for Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). As of November 2021, 64.1 million people are enrolled in Medicare. This is an increase of nearly 111,000 since the last report. Detailed enrollment data can be viewed here. 36.2 million are enrolled in Original Medicare; 28.0 million are enrolled in Medicare Advantage or other health plans. This includes enrollment in Medicare Advantage plans with and without prescription drug coverage; 49.1 million are enrolled in Medicare Part D. This includes enrollment in stand-alone prescription drug plans as well as Medicare Advantage plans that offer prescription drug coverage.

  As of September 2021, 84,828,543 of people are enrolled in Medicaid and CHIP. This is an increase of 1,213,766 since the last report. 77,879,760 are enrolled in Medicaid; 6,948,783 are enrolled in CHIP For more information on Medicaid/CHIP enrollment, including enrollment trends, visit https://www.medicaid.gov/medicaid/program-information/medicaid-chip-enrollment-data/medicaid-and-chip-enrollment-trend-snapshot/index.html

- **DEPT OF EDUCATION (IDEA)**: On March 7, 2022, APTA staff attended a listening session hosted by the Office of Special Education Programs (OSEP) focused on IDEA Part C eligibility process. In collaboration with the Academy of Pediatric Physical Therapy's Early Intervention Special Interest Group, APTA expressed to OSEP the greatest challenges PTs face in Part C eligibility, including the need for personnel preparation, more regulatory flexibility and better education among referral sources.

- **DEPT OF EDUCATION (IDEA):** On March 3, 2022, APTA staff and a representative of the Academy of Pediatric Physical Therapy attended a meeting with Office of Special Education Programs (OSEP) and the Office of Special Education and Rehabilitation Services (OSERS) to discuss their policy priorities and the needs for further guidance. Current issues with compensatory services, the unrealistic demands placed on Specialized Instructional Support Personnel (SISP) and the call for SISP to act as substitute teachers were discussed. APTA also encouraged OSEP to seek more opportunities to collaborate with other agencies, including the CDC and their recently released "Learn the Signs. Act Early" resource.

- **SAMHSA (Opioids).** The Substance Abuse and Mental Health Services Administration (SAMHSA) convened a public meeting of the Interdepartmental Substance Use Disorders Coordinating Committee on March 16. On March 4, 2022, APTA submitted written comments ahead of SAMHSA's public meeting, and addressed recommendations for improving programs for treating and recovering from opioid use disorder. Among other things, APTA submitted comments on the need for: promoting physical therapy as

a nonpharmacological alternative to opioids for pain management; implementing appropriate payment for physical therapy as an alternative to opioids; including physical therapy within the definition of Federally Qualified Health Center and Rural Health Clinic services; and modification of payment and regulatory design to promote early and direct access to physical therapy.

Congress

- **Omnibus Spending Deal**: On March 11, 2022, Congress approved a $1.5 billion spending package that will fund the federal government through Sept. 30. Support for the plan was bipartisan in both chambers, with the House of Representatives passing the legislation by wide majorities, and the U.S. Senate approving the measure 68 to 31, with 18 Republicans siding with all Democrats in the vote. Of note for physical therapy are the following provisions that were included and not included in the final package:

  - PTA Differential (SMART Act – H.R. 5536) **-** Despite bipartisan support and pressure from multiple professional and patient advocacy organizations including APTA, legislation that aims to address the PTA and occupational therapy assistant payment differential was not included in the final package. The Stabilizing Medicare Access to Rehabilitation and Therapy Act — SMART, for short — would pause the payment differential until 2023, create a permanent exemption for rural and underserved areas, and relax direct supervision requirements for PTAs under Medicare. H.R. 5536, The SMART Act still exists as a piece of legislation and continues to gain cosponsors, and there will be other opportunities later this year to advance the bill. Rep. Bobby Rush, D-Ill, led a letter to House Speaker Nancy Pelosi, D-Calif., and Minority Leader Kevin McCarthy, R-Calif., and joined by Reps. G.K. Butterfield, D-N.C., Kurt Schraeder, D-Conn., David McKinley, R-W.V., Debbie Lesko, R-Ariz., and Tom O'Halleran, D-Ill., making the case for including the SMART Act in the Congressional omnibus spending package. All five representatives who joined the letter are cosponsors of the bill and sit on the House Energy & Commerce Committee. Copy of the letter can be viewed HERE.

  - Telehealth **–** the package includes a provision that allows PTs to continue providing services via telehealth under Medicare for an additional five months past the end of the public health emergency. Prior to the pandemic, therapists were not included in the list of authorized providers under Medicare to provide services via telehealth, but those restrictions have been temporarily waived as part of the health emergency. Along with including PTs, occupational therapists, speech pathologists, and audiologists as telehealth providers, the 151-day extension also applies to relaxed requirements around where patients and providers must be located for telehealth services. During the emergency, rules were changed to include telehealth services to Medicare beneficiaries in their homes and across all geographic regions. Indications are that the public health emergency could end as early as July, which would mean that the five-month extension would stretch into mid-December of 2022. The extra time gives us a significant opportunity to continue to build momentum and support around making telehealth permanent for PTs and PTAs under Medicare.

- Sequestration Moratorium - the spending package comes up short on another provision advocated by APTA and multiple other organizations including the American Medical Association and the American Nurses Association: the continuation of the temporary moratorium on federally mandated sequestration cuts. Lawmakers failed to extend the moratorium, paving the way for the return of the reductions, albeit in a phased-in approach that will levy a 1% cut in April before restoring the full 2% cut in July.

- **Workforce Diversity**: On Wednesday, March 9, 2022, Chairwoman Patty Murray, D-Wa., of the Senate Health, Education, and Labor Committee (HELP) and Ranking Member Richard Burr, R- N.C., released the *PREVENT Pandemics Act,* bipartisan legislation focused on strengthening the nation's public health and medical preparedness and response systems in the wake of the COVID-19 pandemic. **Of note -** language from APTA's *Allied Health Workforce Diversity Act* (Senate Bill 1679) is included in the *PREVENT Pandemics Act* legislative package. Our senate sponsors (Casey and Murkowski who also sit on the HELP Cmte) were able to get our bill language into the legislative package. On Tuesday, March 15, 2022, the Senate HELP Committee passed the *PREVENT Pandemics Act.* Additional details HERE.

- **Social Determinants of Health**: The above mentioned *PREVENT Pandemics Act* includes language from the APTA-endorsed *Improving Social Determinants of Health Act* (S. 104) which requires the Centers for Disease Control and Prevention (CDC) to establish a program to improve health outcomes and reduce health inequities by coordinating activities across the CDC. As part of the program, the CDC must award grants to eligible organizations to build capacity to address social determinants of health. On Tuesday, March 15, 2022, the Senate HELP Committee passed the *PREVENT Pandemics Act.* Additional details HERE.

- **Long COVID**: On March 2, 2022, Sen. Tim Kaine, D-Va., introduced the *Comprehensive Access to Resources and Education (CARE) for Long COVID Act* (S.3726). If enacted, the legislation would centralize data regarding long COVID patient experiences; expand research to provide recommendations to improve the health care system's response to long COVID; require CDC to develop and provide the public with information on common symptoms, treatment, and other related illnesses; and facilitate interagency coordination to educate employers and schools on the impact of long COVID and employment, disability, and education rights for people with long COVID. APTA has endorsed S. 3726, and staff is working with Sen. Kaine's office to serve as a resource and provide opportunities for member-engagement as the bill moves forward.

- **Fee Schedule**: On February 25, 2022, APTA along with 96 organizations sent a letter to Congressional committee leaders to "immediately initiate formal proceedings (hearings, roundtables, expert panels, etc.) to discuss potential reforms to the Medicare physician payment system to ensure continued beneficiary access to care." The letter targets both the fee schedule and the Quality Payment Program (QPP), as fundamentally flawed systems in need of overhaul. The letter highlights the fee schedule's budget neutrality requirements and lack of annual inflation-related increases as particularly problematic; it also characterized the QPP's Merit-based Incentive Payment System, or MIPS, as a program that has never delivered on its promise of incentive payments sufficient to buffer the impact of fee schedule cuts. Copy of the letter can be viewed HERE.

Member Engagement & Events

- APTA and the Private Practice Section have developed a new member benefit to ease administrative burden so physical therapists can spend more time caring for patients. The State Payer Advocacy Resource Center is aimed at addressing state-level administrative burden and utilization management issues with commercial payers, state Medicaid programs, and more. APTA and PPS collaborated on this suite of payment advocacy tools, hosted as a resource center on the PPS website and available free to all APTA members. This payment resource center is the latest of several newly developed tools aimed at state advocacy on payment. It follows the release earlier this year of the new state legislative payment resource to assist chapters pursue state legislation on payment issues, including model state bills addressing prior authorization, utilization management, prepayment review, and more (copy is posted to the HUB). Please review the letter from APTA president Roger Herr, PT, MPA, and PPS President Michael Horsfield, PT, MBA, regarding the new resource.