



FEDERAL AFFAIRS LIAISON UPDATE

American Physical Therapy Association

July 7, 2017

Congressional Update

Affordable Care Act (Repeal and Replace): Vote on Better Care Reconciliation Action (BCRA) (Senate version of ACA repeal and replace) was delayed until after the July 4th recess, as Majority Leader McConnell did not have the votes to pass the senate bill in its current form. The Senate is re-working the bill, and to date, no new draft has been revealed. APTA will continue to advocate to ensure Essential Health Benefits stay in the bill and are not subject to a waiver process. APTA, as part of the Coalition to Preserve Rehabilitation (CPR), Independence through Enhancement of Medicare and Medicaid (ITEM), and Habilitation Benefits (HAB) coalitions, lobbied members of the Senate to ensure that any health care legislation keeps EHB's in its full form.

Tricare: On June 28th, the House Committee on Armed Services marked up the FY18 National Defense Authorization Act (NDAA). APTA has been working with several Congressional offices to include language that would compel TRICARE to recognize physical therapist assistants and occupational therapy assistants. After negotiations between Representatives Abraham, Gallego, and the committee, report language was drafted and passed as part of an en-bloc package of amendments and added to NDAA. The language directs the Secretary of Defense to submit a report to the committee outlining the process used by the departments to include para health professionals as healthcare providers in the military health system by April 1, 2018. This review shall determine how to incorporate PTAs, OTAs, and other para health professionals. This move is an important step forward that APTA hopes will ultimately lead to coverage of PTAs under Tricare.

ESSA and IDEA Update: Congress has made no movement on these issues. However, on June 30, 2017, the U.S. Department of Education published final regulations under Parts B and C of the *Individuals with Disabilities Education Act (IDEA)* in the *Federal Register*. The final regulations made technical conforming changes needed to implement statutory amendments made to the *IDEA* by the *Elementary and Secondary Education Act (ESEA)* as amended by the *Every Student Succeeds Act (ESSA)*. As you know, the *ESSA*, which was signed into law on December 10, 2015, reauthorized the *ESEA*. The new law made changes to sections 602 and 611 through 614 of the *IDEA*. Consequently, OSEP amended the *IDEA* regulations in Parts 300 and 303 to reflect the conforming changes and to ensure consistency between Title I of the *ESEA* and the *IDEA* Parts B and C regulations.

As explained in the preamble to the final regulations, these changes revise relevant regulations that implement the *IDEA* statutory requirements amended by the *ESSA* that are applicable to children with disabilities. The amendments remove and/or revise *IDEA* definitions based on changes made to the definitions in the *ESEA*, as amended by the *ESSA*. They also update cross-references to the *ESSA* in the *IDEA* regulations. For example, the definitions of the terms “core academic subjects” in §300.10, “highly qualified special education teachers” in §300.18, and “scientifically based research” in 34 CFR §§300.35 and 303.32 have been removed because these terms have been removed from the *ESEA*, as amended by the *ESSA*. OSEP notes, however, that consistent with section 9214(d)(2) of the *ESSA*, we have moved the qualification requirements for special education teachers, including the requirements regarding alternate routes to special education teacher certification, from 34 CFR §300.18(b)(1) and (2) to 34 CFR §300.156(c)(1) and (2). In addition, we have revised the definition of “regular high school diploma” in §300.102(a)(3)(iv) to incorporate the definition of “regular high school diploma” in section 8101(43) of the *ESSA*.

The amendments also made revisions to the alternate assessment requirements in 34 CFR §300.160(c). The changes clarify that if a State has adopted alternate academic achievement standards as permitted under section 1111(b)(1)(E) of the *ESEA*, the State must develop guidelines and conduct alternate assessments that measure the achievement of children with the most significant cognitive disabilities against those standards. To ensure consistency with regulations for Title I of the *ESEA* in 34 CFR §200.6(c), additional revisions have been made to 34 CFR §300.160(d), (e), (f). These clarify information to be provided to individualized education program teams and parents regarding children with disabilities who are students with the most significant cognitive disabilities who take alternate assessments aligned with alternate academic achievement standards, as well as applicable reporting requirements.

Finally, the amendments also include technical corrections to previously published *IDEA* Part B regulations. To assist with your review of the regulations, **please view [this chart](#)** that summarizes each change included in the final regulations. This chart notes the previous regulatory language, includes the new regulatory language or notes the relevant deletion, and provides the reasoning and authority for the change.

Additional Resources: The following links are excellent resources for tracking bill details, including language, committee activity votes, etc.:

www.govtrack.us

www.congress.gov

Regulatory Update

CY 2018 Physician Fee Schedule Proposed Rule

- The 2018 Medicare Physician Fee Schedule is expected to be released soon.
- Following release of the rule, APTA will publish a news story outlining the major provisions within the rule, particularly in regards to the misvalued codes.
- Depending on what's included within the rule, APTA will implement a multi-pronged advocacy strategy to address CMS's proposals.
- APTA will be hosting Insider Intel on July 19th during which time the PFS proposed rule will be discussed, including the misvalued code proposals as well as any other provisions of relevance.

CY 2018 Home Health PPS Proposed Rule

- The CY 2018 Home Health PPS proposed rule is expected to be released within the next week.
- Within the proposed rule, it is possible that CMS will include a proposal to implement (in the near future) the Home Health Grouping Model (HHGM), a new payment model that would modify home health reimbursement.
- Under the HHGM, the number of therapy visits is not used to influence payment. Rather, payment would be based upon patient characteristics.
- The episode would be grouped into 1 of 128 different payment groups; the case-mix weight assigned to each group would be used to adjust the home health base payment rate.
- The home health agency would bill on a monthly basis, similar to hospice and SNFs.

Quality Payment Program Proposed Rule

- Last week, CMS released the Quality Payment Program proposed rule for CY 2018.
- Within the rule, CMS did not state whether or not physical therapists would be included in MIPS beginning in 2019. However, APTA continues to anticipate that CMS will include physical therapists at that time.
- APTA is analyzing the rule and will provide an overview of the rule during Insider Intel on July 19th.

- APTA intends to implement a full education rollout on MIPS and Advanced APMs this fall.
- To view the proposed rule: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-13010.pdf>
- APTA will submit comments on the proposed rule.
- Comments are due August 21, 2017.

Other Proposed Rules

- CMS Proposed Orthotics and Prosthetics Rule – no visible movement or talk on the orthotics and prosthetics rule and whether the agency intends to finalize it. APTA and AOTA are participating in ongoing conversations with CMS about concerns with the proposed rule. APTA's March 10, 2017 letter has been posted for member access under the [Academy Legislative Resources](#).

Key Contacts

If you are interested in becoming a key contact for federal affairs related to pediatrics in your state, please contact me at mjones1@okcu.edu.