PRIVATE PRACTICE SECTION
PPS
American Physical Therapy Association

PPS State of Affairs

With information changing by the day, it is difficult to keep abreast of the many topics impacting the private practitioner within the COVID-19 arena. Albeit not all-inclusive, this document is meant to serve as a living guide displaying the most current information on evolving topics, and reflects the input of several key experts, namely PPS lobbyist Alpha Lillstrom Cheng, Rob Worth of the PPS Board of Directors, Mark Reitz of the PPS Government Affairs Committee, and COVID Advisory Committee member Kristen Wilson. While not meant to serve as legal or financial advice, the intent of this publication is to provide guidance for navigating the murky waters that lie ahead and quell anxieties about the volume of information that remains unknown. PPS will release an updated version of this document each Monday with the newest information highlighted in red to allow for efficient use.

Date of release: October 26, 2020

The **Public Health Emergency (PHE) has been extended** again, effective October 23rd. This renewal is effective for 90 days (until January 21, 2021) and means that PTs and PTAs in private practice will continue to have access to the temporary PHE-related Medicare regulatory waivers and new rules that afford providers flexibility to respond to COVID-19 pandemic, including telehealth coverage.

Topic: Paycheck Protection Program (PPP) Loans

What We Know:

- The SBA has provided an EZ Loan Forgiveness Application found at: https://www.sba.gov/sites/default/files/2020-06/PPP%20Forgiveness%20Application%203508EZ%20%28%20Revised%2006.16.2020%29%20Fillable-508.pdf
- SBA's instructions for the EZ PPP loan forgiveness application: https://www.sba.gov/document/sba-form-paycheck-protection-program-ez-loan-forgiveness-application-instructions-borrowers
- On July 4th, legislation to extend the deadline for applying to the PPP until August 8, 2020 was signed into law.
- On June 5th, the Paycheck Protection Program Flexibility Act (PPPFA), H.R.7010 was signed into law. With the enactment of the PPPFA, the following changes will go into effect:
    - PPP Loan Forgiveness

        - PPP loan forgiveness period is extended from 8 to 24 weeks from the date of the loan origination OR to December 31, 2020, whichever is earlier.
            - Those who already have a PPP loan, can elect to maintain the 8-week forgiveness period.
        - A borrower who is unable to meet the employee FTE retention threshold because they have difficulty rehiring employees or hiring new qualified employees, may be exempt from a reduction in the forgiven amount IF they can certify in good faith ONE of the following:
            - Documented inability to rehire employees who worked for the borrower on February 15, 2020; or
            - Documented inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
            - Documented inability to return to the same level of business activity as before February 15, 2020 due to standards established by HHS, the CDC, or OSHA from March 1-December 31, 2020 related to sanitation, social distancing, and other COVID-19 safety requirements.
        - PPPFA adjusts the allocation of forgivable expenses by requiring a minimum of **60% of the forgiven loan amount must be used toward payroll** which allows for up to 40% of the forgiven amount to be used for other eligible forgivable expenses of rent, mortgage interest payments, utilities and the like. The legislation does not change CARES Act parameters for how unforgiven proceeds of the loan must be used.
        - Despite the extension of the covered period, SBA has limited the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C or F to either eight weeks' worth (8/52) of 2019 net profit (up to $15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to $20,833) for a 24-week covered period per owner in total across all businesses.
        - All accrued interest is forgivable under the program. (Interest would only be due on the "unforgiven" balance).
    - <u>PPP Loan Terms</u>
        - Extends the minimum maturity period for PPP loans received <u>after</u> the PPPFA is enacted from 2 years to 5 years. The maximum loan term remains 10 years.
        - While the extended minimum maturity period does NOT automatically apply to existing PPP loans, the legislation does allow borrowers and lenders to negotiate to extend the minimum maturity period of existing loans from 2 to 5 years.
        - Extends the covered period of the PPP loan from June 30, 2020 to December 31, 2020. The legislation maintains the requirement to rehire employees to be eligible for forgiveness, but extends a safe harbor

        rehiring deadline to December 31, 2020. As noted above, there are also factors under which the rehiring requirements may be reduced in your case.
    - Extends the deferral date of the loan.
        - CARES Act allowed for a 6-month deferral before payments towards the remaining PPP loan amount were required.
        - Under the PPPFA, borrowers are not required to make any loan payments until their loan forgiveness amount or denial of forgiveness is determined by the SBA.
        - If a borrower fails to apply for forgiveness within 10 months of the last day of the covered period of the loan, the borrower must start making payments of principal, interest, and fees beginning after 10 months of the last day of the covered period (December 31, 2020).
        - Permits borrowers to delay the payment of employer payroll taxes incurred between March 27, 2020 and December 31, 2020 until December 31, 2021 (with respect to up to 50% of the amounts due) and December 31, 2022 (with respect to the remaining amounts due up to 50%).
        - Borrowers were previously prohibited by CARES Act from using this benefit if their PPP loans were forgiven in whole or in part.
- SBA provides a loan calculator: https://www.sba.gov/document/support-how-calculate-ppp-loan-amounts
- In cases of partnerships, previously approved loan amounts can be increased to include compensation of the partners, as long as the SBA Form 1502 has yet not been submitted.
- First round of applications/payments have been processed and the money was exhausted by 4/16. $310 billion more was released for PPP on 4/24/2020.
    - Local lenders, online banks, and credit unions may be more accessible for completing outstanding loan applications
- Money can be used to pay for up to 24 weeks of expenses (from the date of the loan origination OR to December 31, 2020, whichever is earlier) for payroll and its associated costs, mortgage interest, rent, and utilities
    - Payroll costs include cash, stipends, health benefits, and other compensation elements
        - The exclusion of compensation in excess of $100K/employee annually applies only to cash compensation. It does not apply to non-cash benefits including:
            - Retirement contributions
            - Payment of group healthcare coverage (including insurance premiums), or
            - Payment of state and local taxes assessed on compensation of employees.

    - 1 FTE= anyone >30 hours-this now has new options under application information
    - Up to 24-week time period which begins the date of loan's first disbursement
    - Money not forgiven will be financed at 1% interest rate, with a up to a 5 year term.
        - All new PPP loans issued on or after June 4, 2020 will have a 5-year term
        - PPP borrowers with loans issued before June 4, 2020 are empowered by the PPPFA to negotiate with lenders to negotiate a 5-year maturity period.
- Forgiveness requirements/Information
    - 60% of costs must be used to cover payroll and payroll costs
        - Use Gross Payroll cost when calculating forgivable amount (taxes included)
        - Remaining 40% may be forgiven if used for rent, mortgage interest, and utilities
    - Forgiveness amount is reduced if the number of FTEs decreases or if any employee is paid >25% reduction in pay
        - With the enactment of the PPPFA, there is a safe-harbor IF the borrower can certify in good faith ONE of the following:
            - Documented inability to rehire employees who worked for the borrower on February 15, 2020; or
            - Documented inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
            - Documented inability to return to the same level of business activity as before February 15, 2020 due to standards established by HHS, the CDC, or OSHA from March 1-December 31, 2020 related to sanitation, social distancing, and other COVID-19 safety requirements.
        - PPP borrowers that apply early for loan forgiveness forfeit the full value of the safe-harbor provision allowing them to restore salaries or wages by Dec. 31 and avoid reductions in the loan forgiveness they receive. For example, if a borrower has a 24-week period that ends in November but wants to apply in September, any wage reduction in excess of 25% as of September would be calculated for the entire 24-week period even if the borrower restores salaries by Dec. 31. **Example:** A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25% of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $1,200 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by 24 weeks). If the borrower applies for

            forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling $1,200).
        - Must apply for forgiveness within 10 months of the last day of the covered period of the loan The lender must issue a decision re: loan forgiveness within 60 days
    - IRS regulation states that forgivable expenses under PPP are not allowed to be included as expenses when determining net income. Legislators have stated that this is not consistent with their intent. A challenge to the regulation is possible, but it was not addressed in the PPPFA.
- Resources:
    - Department of Treasury resources for small businesses: https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses
    - Please see SBA Loan Forgiveness Application (revised June 16, 2020) and FAQs
    - SBA's PPP info landing page: https://www.sba.gov/document?program=PPP
    - Please reference guidance by Tucker and Arensberg
    - NFIB **PPP Loan Forgiveness EZ Application Step-by-Step** webinar (available on-demand):
- Required documentation/Record keeping
    - Documentation of payroll including #FTEs and pay rates during covered period including federal and state tax filings
        - *Gross payroll reports
        - Federal/State/Local tax filings (employer contributions)
        - *Health insurance coverage receipts/withholdings
        - *Paid PTO
        - Retirement plan receipts/withholdings/matches
        - Student loan contributions

        * Contributions limited to 100K/employee
    - Receipts of payments for rent, mortgage interest and utilities
    - Copies of rent agreements or mortgage documents
    - Certification statement
    - Any requested supporting documents
    - Lenders are the ones making the forgiveness determination so follow your lender's guidelines for documentation requirements
    - Borrowers and lenders may rely on the laws, rules, and guidance available at the time their loans were processed.
- Audits
    - Borrowers of less than $2M are deemed to have met the need certification
    - Borrowers of greater than $2M will have to justify the business need

What We Don't Know

- Whether or not Congress will act to override the IRS guidance which stated that provider relief funds were to be treated as taxable. See below for an advocacy opportunity.
- If student loan contributions (up to $5250 which CARES allowed to be paid by employers through the end of the year and treated as tax-free (instead of income) for employees) are considered a payroll cost, and if so, if this is included in the 100K limit. A PPS member reported SBA in favor of using up to $5250 for student loan payback as part of the 60% payroll portion. Contact your PPP lender and reference section 2206 of the Cares Act to get their guidance.
- Whether there is a penalty if the forgiveness documentation does not justify an expense as forgivable
- Final decision on payments made for forgivable funds is considered deductible for year-end taxes
- If funds used to pay interest on non-mortgage-related debts is forgivable
    - Funds are permitted to be used to pay these interests, but no clarification was made on if that amount is forgivable
- What the audit process will look like

What You Can Do Now:

- **Advocacy Opportunity:** Contact your member of Congress and ask them to cosponsor *The Paycheck Protection Small Business Forgiveness Act* (S.4117/H.R.7777) which would provide automatic forgiveness of a PPP loan of $150,000 or less if the recipient submits a one-page form. S.4117 now has 31 cosponsors; H.R.7777 has 130 cosponsors.
    - One page summary of the bill is posted on the PPS Advocacy page: https://ppsapta.org/pdfs/advocacy/EZ%20Forgiveness%20for%20Small%20PPP%20Loans.S4117.HR7777.pdf
    - Find your Representative: https://www.house.gov/representatives/find-your-representative
    - Find your Senators: https://www.senate.gov/senators/index.htm
- If you are a current PPP loan holder, PPPFA allows borrowers and lenders to negotiate extending the maturity period of existing loans from 2 to 5 years. If this is of interest, reach out to your lender.
- Given that the PPPFA also makes changes to the forgiveness policy, when you are ready, ask your lender to share the most recent and relevant forgiveness application.
- Track your expense information during the up to 24 weeks on the Funding Tracking Tool (download the Excel sheet here) on the PPS Website.
    - Calculate 60% of your loan amount to ensure the amount required for payroll costs to maximize forgiveness.
        - Determine the 25% salary reduction threshold for each employee you intend to reduce pay for in order to reduce risk for reduction in forgiveness

        - Document your FTEs/pay period and attempt to restore numbers to previous amounts to reduce risk for reduction in forgiveness.
        - Document your attempts to re-hire or high similarly skilled replacement employees
        - If relevant, document your inability to return to the same level of business activity as before February 15, 2020 due to standards established by HHS, the CDC, or OSHA from March 1-December 31, 2020 related to sanitation, social distancing, and other COVID-19 safety requirements.
        - Consider holding full disbursement of funds until end of the covered period to allow manipulation of percentages if law allows
    - Utilize funds to pay rent/utilities during the period (ie, postpone abatement)
- Compile supporting documents in folders broken down by Payroll costs and Non-payroll costs.
- Determine your tolerance for utilizing the funds as per forgiveness guidelines during the 8 weeks versus accepting funds as non-forgiven at 1% interest rate.

Topic: HHS Stimulus Payment (aka Provider Relief Fund)

What We Know:

- Proceeds are a payment, not a loan.
- HHS will be distributing another $20 billion in provider relief funds through a Phase 3 General Distribution allocation.
    - You **must apply to receive additional funds**. The application **portal opens October 5th and closes November 6th**.
    - Those eligible for Phase 3 General Distribution:
        - Providers who previously received, rejected or accepted a General Distribution Provider Relief Fund payment
        - Providers that have already received payments of approximately 2% of annual revenue from patient care may submit more information to become eligible for an additional payment
        - Previously ineligible providers, such as those who began practicing in 2020
    - Phase 3 General Distribution is “designed to balance an equitable payment of 2 percent of annual revenue from patient care for all applicants plus an add-on payment to account for revenue losses and expenses attributable to COVID-19.”
    - HHS press release for additional details: https://www.hhs.gov/about/news/2020/10/1/trump-administration-announces-20-billion-in-new-phase-3-provider-relief-funding.html

- The IRS has announced that the CARES Act Provider Relief Funds are considered taxable income.
    - For more information check out: https://www.irs.gov/newsroom/frequently-asked-questions-about-taxation-of-provider-relief-payments
    - On June 25th, PPS and 18 other organizations sent a letter to Congressional leadership which asked for legislation to state that Provider Relief Funds are non-taxable and that entities receiving the funds can maintain their deductions.
- On October 22nd, the U.S. Department of Health and Human Services (HHS) again updated the Provider Relief Fund (PRF) reporting guidance and materials. These guidelines build off of the 2-page framework released on July 20, 2020. **The reporting portal is set to open Jan. 15, with the first reporting deadline scheduled for Feb. 15.**
    - These **reporting obligations are applicable to any provider that received one or more PRF payments exceeding $10,000 in the aggregate.**
    - Recipients will report their use of PRF payments using their normal method of accounting (cash or accrual basis), by submitting the following information:
        - Healthcare related expenses attributable to coronavirus that another source has not reimbursed and is not obligated to reimburse, which may include General and Administrative (G&A) or healthcare related operating expenses.
        - PRF payment amounts not fully expended on healthcare related expenses attributable to coronavirus are then applied to patient care lost revenues, net of the healthcare related expenses attributable to coronavirus calculated under step 1. Recipients may apply PRF payments toward lost revenue, up to the amount of the difference between their 2019 and 2020 actual patient care revenue.
    - If recipients do not expend PRF funds in full by the end of calendar year 2020, they will have an additional six months in which to use remaining amounts toward expenses attributable to coronavirus but not reimbursed by other sources, or to apply toward lost revenues in an amount not to exceed the difference between 2019 and 2021 actual revenue. For example, the reporting period January – June 2021 will be compared to the same period in 2019, or January – March 2021 will be compared to the same quarter in 2019.
    - Recipients will report their use of PRF payments by submitting the following information:
        - Healthcare related expenses attributable to coronavirus that another source has not reimbursed and is not obligated to reimburse, which may include:
            - General and Administrative (G&A) **incurred over and above what has been reimbursed by other sources.**
                - Mortgage/Rent

        - Insurance: Premiums paid for property, malpractice, business insurance, or other insurance relevant to operations.
        - Personnel: Workforce-related actual expenses paid to prevent, prepare for, or respond to the coronavirus during the reporting period, such as workforce training, staffing, temporary employee or contractor payroll, overhead employees, or security personnel.
        - Fringe Benefits: Extra benefits supplementing an employee's salary, which may include hazard pay, travel reimbursement, employee health insurance, etc.
        - Lease Payments: new equipment or software lease.
        - Utilities/Operations: Lighting, cooling/ventilation, cleaning, or additional third party vendor services not included in "Personnel".
        - Other General and Administrative Expenses: Costs not captured above that are generally considered part of overhead structure.
    - Or healthcare related operating expenses:
        - **Supplies** such as personal protective equipment (PPE), hand sanitizer, or supplies for patient screening.
        - **Equipment** used to prevent, prepare for, or respond to the coronavirus during the reporting period, such as ventilators, updates to HVAC systems, etc.
        - **Information Technology or interoperability systems** to expand or preserve care delivery during the reporting period, such as electronic health record licensing fees, telehealth infrastructure, increased bandwidth, and teleworking to support remote workforce.
        - **Facility-related costs** such as lease or purchase of permanent or temporary structures, or to modify facilities to accommodate patient treatment practices revised due to coronavirus.
        - Other Healthcare Related Expenses not previously captured above, that were paid to prevent, prepare for, or respond to the coronavirus.
- <u>Required Data Elements</u>
    - Demographic Information
        - Reporting Entity
        - Tax Identification Number (TIN): Reporting Entity's primary TIN associated with the provider who received the funds and accepted the PRF payment during attestation (the recipient). For some recipients, this may be analogous to

    Social Security number (SSN) or Employer Identification Number (EIN).
    - National Provider Identifier (NPI) [optional]
    - Fiscal Year-End Date of reporting entity
    - Federal Tax Classification: Designated business type associated with the Reporting Entity's primary TIN used for filing taxes. Classifications include Sole Proprietor, Limited Liability Corporation (LLC), Partnership, C Corporation, S Corporation, Trust or Estate, or a tax-exempt organization or entity.
  - Expenses Attributable to Coronavirus Not Reimbursed by Other Sources (2020 only)
    - Reporting Entities that **received between $10,000 and $499,999 in aggregated PRF payments** are required to report healthcare related expenses attributable to coronavirus, net of other reimbursed sources in two aggregated categories: G&A expenses and other healthcare related expenses. *These are the actual expenses incurred over and above what has been reimbursed by other sources.*
    - Recipients who **received $500,000 or more in PRF payments** are required to report healthcare related expenses attributable to coronavirus, net of other reimbursed sources, and they must do so by reporting more detailed information within the two categories of G&A expenses and other healthcare related expenses.
    - Reporting Entities that **expended $750,000 or more in aggregated federal financial assistance** in 2020 (including PRF payments and other federal financial assistance) are subject to Single Audit requirements.
- Lost Revenues Attributable to Coronavirus
  - Once revenue information is provided, cost/expense impacts will be calculated based upon a calendar year comparison of year-over-year healthcare expenses to determine net operating income. Revenues and expenses in this section include all lost patient care revenues and patient care cost/expense impacts.
  - Total Revenue/Net Charges from Patient Care Related Sources (2019 and 2020): Revenue/net charges from patient care (prior to netting with expenses) for the calendar years 2019 and 2020 (entered by quarter). Note: Reporting Entities with unused funds after December 31, 2020, must submit a second and final report no later than July 31, 2021 that includes patient care related revenue amounts earned January 1–June 30, 2021.

        - Revenue from Patient Care Payer Mix (2019 and 2020)
            - Medicare Part A+B
            - Medicare Part C
            - Medicaid/Children's Health Insurance Program (CHIP)
            - Commercial Insurance
            - Self-Pay (No Insurance)
            - The actual gross revenues/net charges from other sources received for patient care services and not included in the list above for the calendar year.
        - Other Assistance Received (2020)
            - Treasury, Small Business Administration (SBA), and CARES Act/Paycheck Protection Program (PPP)
            - FEMA via CARES Act
            - CARES Act Testing: Total amount of relief received from HHS for coronavirus testing-related activities.
            - Local, State, and Tribal Government Assistance
            - Business Insurance
            - Other Assistance: Total amount of other federal and/or coronavirus-related assistance received by the recipient and the other TINs included in its report as of the reporting period end date.
        - Additional non-financial data re: Facility, Staffing and Patient Carewill also be collected (per quarter)
            - Personnel Metrics
            - Patient Metrics
            - Facility Metrics
    - **Payments for Providers Who Had a Change in Ownership:**
        - As previously noted, HHS relied on 2019 CMS payment data on file to determine automatic payments for $30 billion of the $50 billion Phase 1 Medicare General Distribution. Accordingly, some providers or provider practices that experienced a change in ownership in 2020 missed out on payments as the payments were distributed to the previous owners. Prior owners are required to return the payments to HHS, if they cannot attest to providing diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020.
        - Instead of reissuing returned payments to the new owners, HHS requires new owners to apply for provider relief funding.
        - If change in Ownership, Reporting Entities that acquired or divested of related subsidiaries must indicate the change in ownership by providing the following data points for each relevant TIN:
            - Date of acquisition/divestiture
            - TIN(s) included in the acquisition/divestiture

        - Percent of ownership for acquisition/divestitured. Did/do you hold a controlling interest in this entity? (Y/N)
        - Note: If the Reporting Entity itself was acquired or divested, it should self-report the change in ownership to HRSA.

- Money was issued to offset the financial hardship from COVID-19 and may not be used for duplicate reasons associated with other funding (PPP, EIDL, etc)
- Recipients must maintain all records pertaining to expenditures under the Provider Relief Fund payment for three years from the date of the final expenditure
- Physical therapists who have lost revenue as a result of COVID-19 are considered impacted providers and have been permitted access to the money
- First round of General Fund money, $30billion, was issued in April via direct deposit or paper check and was calculated based on the 2019 Medicare fee-for-service payments as well as certification of anticipated lost revenue in March and April of 2020.
- However, provider's allocation from the entire $50 billion General Fund distribution is a portion of provider's 2018 net patient revenue across all payer sources. Payment for the second round was to be adjusted to reflect the amount of first round payment.
    - If a provider believes it was overpaid or may have received a payment in error
        - Use the CARES Act Attestation Portal to reject the entire General Distribution payment within 90 days of receiving payment.
        - If payment was received electronically, providers should contact their financial institution to initiate an ACH return using return code "R23 - Credit Entry Refused by Receiver". Payments received by check must be returned by check.
        - Submit the appropriate revenue documents through the General Distribution Portal to facilitate HHS determining their correct payment.
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        - Providers will receive notification from HHS as to the status of applications.
- General Fund payment permitted uses: to prevent, prepare for, and respond to COVID-19; to reimburse for healthcare related expenses or lost revenues attributable to COVID-19. However, none of the funds can be used to pay for the salary of an individual who makes $197,300 or more, excluding fringe benefits and indirect costs.

- See PPS FAQ Document
- HHS FAQs re Provider Relief Fund: https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/faqs/index.html and hhs.gov/providerrelief
- HHS Provider Relief Fund (for providers) webpage: https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/for-providers/index.html
- HHS General Distribution Portal FAQs: https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf

What We Don't Know:

- Whether or not Congress will act to override the IRS guidance which stated that provider relief funds were to be treated as taxable. See below for an advocacy opportunity.
- CMS has yet to issue guidance about how Provider Relief Fund payments should be treated for purposes of uncompensated care and how it should be reported on cost reports.

What You Can Do Now:

- **Advocacy Opportunity:** Contact your member of Congress and ask them to cosponsor the *Eliminating Provider Relief Fund Tax Penalties Act* (S.4525, H.R.7819) which would override the IRS guidance which stated provider relief fund grants are to be treated as gross income and therefore taxable in order to ensure that Provider Relief Funds are truly tax-free grants and thereby provide the maximum impact to the recipients. H.R.7819 has 24 cosponsors and the companion bill S.4525 is being carried by Sen. Marsha Blackburn (R-TN).
    - One page summary of the bill is posted on the PPS Advocacy page: https://ppsapta.org/pdfs/advocacy/Eliminating%20Provider%20Relief%20Fund%20Tax%20Penalties.HR7819.S4525.pdf
    - Find your Representative: https://www.house.gov/representatives/find-your-representative
    - Find your Senators: https://www.senate.gov/senators/index.htm
- Ensure that funds received do not exceed your allocated portion of your 2018 net patient revenue lost revenue and increased expenses that are the result of COVID-19.
- Segregate your General Fund payment for ease of tracking usage of funds
- Maintain appropriate records of expenditures made with General Fund monies in order to prove that they were used for allowable costs
    - Ensure funds are not used to pay for expenses paid under the PPP or EIDL
    - Ensure funds fall under permitted uses:
    - Specific expenses related to preventing, preparing for, and responding to COVID-19 (PPE, training, etc)
        - A/R write-offs and lost revenues related to COVID-19 care (Financial hardship, Non covered services, etc)
- Retain records for at least 3 years

Topic: EIDL (Disaster Loans)

What We Know:

- CARES Act allowed for those economically injured by COVID-19 to be considered eligible to use the existing EIDL program
- Application process is directly through the SBA and is independent of the PPP
    - Can apply for an emergency grant of up to $10K when applying. If you also apply for a PPP, the amount of your EIDL grant will be deducted from your PPP forgivable amount. Emergency grant amount is available within 3 days
    - Maximum loan amount of $2 million.
    - Eligible grant recipients must have been in operation on January 31, 2020. The grant is available to small businesses, private nonprofits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses.
- A business that receives an EIDL between Jan. 31 and June 30, 2020, as a result of a COVID-19 disaster declaration is eligible to apply for:
    - a Paycheck Protection Program loan **OR**
    - the business may refinance their EIDL into a Paycheck Protection Program loan,
    - **Note: **Funds must be used for different expenses than the PPP.** Since there is not a date range specified for when expenses paid with the EIDL are incurred, borrowers need to keep records to ensure that the EIDL funds are used for different expenses than the PPP.
- Finance rates, terms, and loan amounts vary
    - Typical payback begins 12 months post loan origination
- On 4/24/2020 $10 billion was added to the EIDL grant fund and $50 billion to the EIDL loan fund
    - Those with pending applications should remain in queue since funds will be distributed based on application date
    - As of June 16th, the EIDL application portal has been open to all eligible borrowers.

What We Don't Know:

- If even more money will be issued and if parameters will change
- If there is a penalty for prepayment on loan repayment
- If funds can be used for PPP expenses (payroll, rent, utilities, etc) after the 8 week PPP period

What You Can Do Now:

- Track expenses paid with EIDL on PPS Funding Tracking spreadsheet (Excel download) and ensure they are different from PPP
- Compile receipts and supporting documents of expenses paid
- Review your terms and conditions to evaluate your interest rate, payback date, and other loan terms
- Discuss with your financial advisor how best to use funds to minimize interest and maximize cash

Topic: Medicare Coverage of Telehealth

What We Know:

- Physical therapists are eligible to provide and bill for Medicare services, as of 4/30/20 with a retroactive coverage date for claims beginning March 1, 2020 through the end of the public health emergency declaration period.
- As of May 27th: Outpatient therapy services that are furnished via telehealth, and are separately paid and not included as part of a bundled institutional payment, can be reported on institutional claims with the "-95" modifier applied to the service line. This includes care provided by SNFs, HHAs and ORFs. However, agencies may separately provide and bill for outpatient PT/OT/SLP services to persons in their homes only if such patients are not under a home health plan of care.
- Codes eligible to be billed:
    - 97161- 97164, 97110, 97112, 97116, 97150, 97530, 97535, 97542, 97750, 97755, 97760, and 97761.
    - Full list of telehealth codes: https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes
- Patients may be either new or established.
- These visits are for the same services as would be provided during an in-person visit and are paid at the same rate.
- Patients may be located in any geographic area (not just those designated as rural), and in any health care facility or in their home.
- Evisit claims have been denied by MACs throughout the country despite accurate billing practices
- Claims coded for 97000 codes with Office (11) Place of Service and Modifier 95 have been paid

- If you previously collected cash from a Medicare beneficiary for telehealth services (with or without administration of an ABN), funds should be refunded to the beneficiary, and charges should be submitted to Medicare for the service provided.
- See CMS FAQ: https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf. Outpatient Therapy Services section begins on page 70.
- HHS' Office of Inspector General announced plans in October to study and evaluate the use of Medicare Telehealth Services during the COVID-19 Pandemic. The planned release date is sometime in 2021.

What We Don't Know:

- When/If/How MACs will audit
- When MACs will be prepared to pay for Evisit codes
- If MACs will be prepared to pay for telehealth codes right away

What You Can Do Now:

- Submit claims for telehealth or evisit services provided from March 1 to current with appropriate place of service and modifier
    - Research your local MAC to determine how to code your claims correctly since each MAC may have different requirements
- Contact your local MAC and determine if they are prepared to accept and pay eVisit and telehealth codes
- Maximize A/R collections from other sources
    - Call patients with outstanding balances and take payment over the phone
    - Review outstanding claims prior to COVID and follow up on necessary reprocessing
    - Submit all claims for telehealth that is accepted and covered by other payers
    - Optimize your cash-pay program
- Refund any cash collected for telehealth services provided to Medicare beneficiaries and submit claims for the services provided between March 1st and current date.

TOPIC: Private Payer Coverage of Telehealth

What We Know:

Not all federal, state or payer telehealth policies are in alignment, and PPS is working hard to make sure the flexibilities that have been recently granted stay in place as long as possible. Currently the "big five" payers have extended their policies until the following deadlines:

Aetna – announced extension to December 31

Anthem – announced extension through December 31 (Anthem California deadline is “until further notice”). But starting October 1, patients enrolled in fully-insured employer and individual plans will generally face cost-sharing for non-Covid-19 virtual video visits with network providers. Telephone visits—with no video—will remain free of charge at least until the end of the year. The insurer’s Medicare Advantage enrollees will also have no cost-sharing on video or phone visits at least until next year.
CIGNA – announced extension through December 31
Humana – coverage extended through December 31
United Health Care – extended through **December 31** for COVID-related visits, **October 22** for non-COVID visits. As of October 1, United now charges co-pays for in-network non-Covid-19 visits for people with Medicare Advantage and fully-insured employer and individual plans.

What We Don't Know:

Whether policies will be extended beyond the deadlines above remains unknown, even though they have been modified repeatedly. Perhaps more importantly, there is an interaction between federal, state and payer policy that can make even the above deadlines inoperative in some cases. State rules have generally required even further extensions, and the federal public health emergency has been officially extended. Wide variation by payers, state rules and regulations, and federal deadlines create needless uncertainty that we urge PPS members to push back against.

What You Can Do Now:

We recommend using these resources in your advocacy.

- **Advocacy Opportunity:** Contact your member of Congress and ask them to cosponsor the *Outpatient Therapy Modernization and Stabilization Act (H.R. 7154)* because it provides a permanent policy solution to allow PT, OT, and SLP professionals, and facilities that provide outpatient therapy to bill Medicare for outpatient therapy services furnished via telehealth. Physical therapists in private practice and outpatient therapy providers that bill on an institutional claim form are currently recognized as eligible to furnish and bill for telehealth services provided to Medicare beneficiaries--but only for the duration of the public health emergency. H.R.7154 would amend federal statute to permanently allow PTs (and therapy providers that bill on an institutional claim form) to bill for services furnished via telehealth to Medicare beneficiaries. H.R.7154 now has 14 cosponsors.
  - One page summary of the bill is posted on the PPS Advocacy page: https://ppsapta.org/pdfs/advocacy/Therapy%20Modernization%20and%20Stabilization%20Act.HR7154.pdf
  - Find your Representative: https://www.house.gov/representatives/find-your-representative
  - Find your Senators: https://www.senate.gov/senators/index.htm

Topic: Private Payer Reimbursement Code for PPE (99072)

What We Know:

PPS members completed an AMA survey designed to examine the costs associated with in-office treatment within CDC guidelines during the COVID pandemic. This survey was submitted to AMA and helped inform the valuation of a new code announced in a September AMA publication on coding. Further information on this CPT code, 99072, visit this link.

What We Don't Know:

Even though the code has been approved by AMA, it is unclear which payers are accepting the code when billed. Certain payers have affirmatively stated that they will not pay for supplies, while others appear to be paying for the code. Check with your local payer to confirm whether they will accept the code for reimbursement.

Topic: Medicare Accelerated and Advance Payment program loans

What We Know:

- These are advance payments that must be repaid. They are not a grant.
- The Medicare Accelerated and Advance Payment program was suspended by CMS on April 26, 2020. As of October 8, 2020, CMS will no longer accept applications for accelerated or advance payments as they relate to the COVID-19 PHE.
- CMS has stated that it will permit the “$175 billion in Provider Relief funds” to be used “towards repayment of these Medicare loans.” However, details have yet to be released.
- Terms of these loans were clarified in the Continuing Resolution that became law on September 30, 2020:
    - Provider repayment will “begin one year from the issuance date of each provider or supplier’s accelerated or advance payment”
      You have one year after the loan was issued before beginning repayment (instead of the original terms of 120 days)
    - Maximum of 29 months total time to pay back the loan--clock starts with date of first payment
    - Repayment will be made by way of withholdings on Medicare reimbursement
    - Phased-in repayment:
        - 25% of claims for the first 11 months of repayment
        - 50% of claims for the next 6 months of repayment

- Remaining 25% of claims for the last 12 months of repayment
- Extended repayment plans beyond 20 months will have a 4% interest rate
- An Extended Repayment Schedule (ERS) of up to 5 years can be requested for providers and suppliers who are experiencing financial hardships. See the CMS fact sheet below.
- Providers and suppliers can submit one or more lump sum payments to pay the loan off manually and faster than the above schedule. Please contact your MAC for more instructions on how to make a lump sum payment, especially if payment will be made after the repayment time frame begins.
- Note: any other existing Medicare debt will not be subject to the special repayment terms for accelerated and advance payments.
- CMS Fact sheet on Accelerated and Advanced Payments (dated October 8, 2020): https://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf
- FAQs (dated October 8, 2020): https://www.cms.gov/files/document/covid-advance-accelerated-payment-faqs.pdf

What We Don't Know:

- How CMS will permit the "$175 billion in Provider Relief funds" to be used "towards repayment of these Medicare loans." Details have yet to be released.

Topic: Main Street Loans

What We Know:

- The Federal Reserve recently created 3 new Main Street Loan Facilities that will be available through September 30, 2020. The terms of these loans were updated effective July 28, 2020.
  - Eligible Borrowers are established businesses established prior to March 13, 2020 which have 15,000 employees or fewer OR 2019 annual revenue of $5 billion or less.
  - Common Terms across all 3 types of loans:
    - 5-year maturity
    - Adjustable rate of LIBOR (1 or 3 months) + 300 basis points
    - 15% due at end of 3rd year; 15% due at end of 4th year; 70% due at end of 5th year
    - Principal payments deferred for 2 years and interest payments deferred for 1 year (unpaid interest will be capitalized)

        - Prepayment permitted without penalty
        - Until the upsized tranche of the Main Street Loan is repaid in full
            - Payback of Main Street Loan must be primary—until the Main Street Loan is repaid, borrower may only pay mandatory minimum and interest payments for other outstanding debts
            - Borrower "should make commercially reasonable efforts to maintain its payroll and retain employees" for the duration of the Main Street Loan.
    - Key differences (effective July 28, 2020):
        - Main Street New Loan Facility (term sheet: https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a3.pdf, effective 7/28/2020)
            - Minimum loan size:$250,000
            - Maximum loan size: lesser of $35 million or 4 x borrower's 2019 EBITDA
            - New loan that originated after April 24, 2020
        - Main Street Priority Loan Facility (term sheet:https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a2.pdf, effective 7/28/2020)
            - Minimum loan size: $250,000
            - Maximum loan size: lesser of $50 million or 6 x borrower's 2019 EBITDA
            - New loan that originated after April 24, 2020
        - Main Street Expanded Loan Facility (term sheet:https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a5.pdf, effective 7/28/2020)
            - Minimum loan size of $10 million
            - Maximum loan size: lesser of $300 million or 6 x borrower's 2019 EBITDA
            - Used to "upsize" an existing loan that originated on or before April 24, 2020.
- A Business that receives a PPP or EIDL loan can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria. (see pp. 31 of FAQs: For-Profit Frequently Asked Questions (July 31, 2020))
- The Program loan participation agreement, form borrower and lender certifications, and other required form agreements for all five facilities can be found on the Federal Reserve Bank of Boston's Main Street Lending Program

Forms and Agreements website. These forms have been updated as of July 31, 2020, and lenders should generally use the updated versions.

- Federal Reserve FAQs: For-Profit Frequently Asked Questions (September 18, 2020) (PDF)
- Federal Reserve archived webinar for Main Street Loan borrowers: https://www.webcaster4.com/Webcast/Page/584/35296
- Stakeholders are asking for more flexibility in the program so as to allow it to be a useful tool for more borrowers: https://www.ahla.com/sites/default/files/Hotel%20Industry%20Letter%20Requesting%20MSLP%20Changes.pdf

What We Don't Know

- Whether or not the fact that the Main Street Loan debt must be repaid before other outstanding debt principals would be an acceptable limitation for your practice's business model
- Depending on the structure of a member's practice, the limitations on stock repurchase, capital distributions (and in the case of S-corps or pass-through entities potential limitation on distributions in excess of tax liabilities) could hamstring a business.

What You Can Do Now:

- Check out the Federal Reserve Bank of Boston Information for Borrowers website for more information for eligible borrowers, including a listing of registered lenders, who are accepting new customers and have elected to be listed.