



December 22, 2020

On December 21, 2020, Congress passed legislation that addresses COVID relief and the 9% cut implemented by the CY 2021 Medicare Physician Fee Schedule. This memo provides highlights of the legislation that are most relevant to private practice physical therapists.

Medicare Payment Adjustments

- The conversion factor for CY2021 is statutorily increased by 3.75%, for only CY2021.
- A 3-year moratorium on the implementation of G2211 (formerly GPC1X) until 1/1/2024 at the earliest.
- The 2% Medicare Sequestration cut moratorium will be extended for three months, making this cut effective April 1st instead of January 1, 2021.
- **Medicare payment adjustment math:** the combined 3.75% Conversion Factor (CF) increase plus budget neutral removal of G2211 (a code used mainly by primary care providers) would result in a CF of about \$34.52 (a 4.5% reduction from CY2020); because of the increase in some of the codes for PT, this would translate to cuts to PT of about 3.6% through March 31, 2021.
- Unless restoring the 2% sequestration cut is delayed, effective April 1, 2021, the cumulative cut to PT will be about 5.6% when compared to 2020.

Topline of relevant provisions of the COVID relief package

Paycheck Protection Program (PPP) & Small Business Support:

- **Business expenses paid for with the proceeds of PPP loans are tax deductible**, consistent with Congressional intent of in the CARES Act in which the forgiven amounts of the PPP loan are not to be taxed. This provision is effective for 2020 tax year and beyond.
- Expands PPP forgivable expenses* to include:
 - o Supplier costs on contracts and purchase orders in effect before the beginning of the covered period.
 - o Costs related to worker protective equipment and adaptive costs related to the maintenance of sanitation, social distancing, or other worker or customer safety requirement related to COVID-19 made in accordance with CDC, OSHA, or state or local government equivalents that were incurred between March 1, 2020 through the end of the COVID Public Health Emergency. Such expenses may include air ventilation or filtration systems, sneeze guards, personal protective equipment, as well expansion of business space.
 - o Technology operations expenditures such as business software or cloud computing service that facilitates business operations, product, or service



delivery; the processing payment or tracking of payroll expenses; or accounting of or tracking supplies, inventory, records, and expenses.

- Additional group insurance payments can be included when calculating PPP payroll costs. This would cover insurance plans such as vision, dental, disability, and life insurance.
- Borrowers can choose the duration of their loan forgiveness covered period—between 8 weeks and 24 weeks.

*These provisions apply retroactively as if included in *CARES Act*, but do not apply to PPP loans which have already been forgiven.

- Eliminates requirement that Economic Injury Disaster Loans (EIDL) advances be subtracted from PPP forgiveness.
- Simplified PPP loan forgiveness process
 - **For borrowers with PPP loans of \$150,000 or less:**
 - **A 1-page form** which must be made available within 24 days of enactment.
 - Required information on the form:
 - Number of employees retained because of PPP loan
 - Estimated amount of PPP loan spend on payroll costs
 - Total loan value
 - Retain supporting employment records for 4 years and supporting expenses documentation for 3 years.
- Allow the hardest-hit small businesses to receive a “**Second Draw**” PPP loan, with the following features:
 - **Eligibility is limited to small businesses with 300 or fewer employees that also have sustained a 25% reduction in gross revenues between comparable quarters in 2019 and 2020.** Provisions are included that allow newer business entities to compare different quarters to one another to show at least a 25% loss compared to a previous quarter.
 - Maximum loan amount is 2.5x a year’s worth of average monthly payments for payroll costs **paid or incurred** by eligible borrower, capped at \$2 million.
 - Forgivable expenses include the expanded payroll, workplace adaptations, and technology operations expenses listed above.
 - Borrowers will receive full forgiveness of Second Draw PPP loans if they spend at least 60% of their Second Draw loan on payroll costs over a time period of their choosing—between 8 weeks and 24 weeks.
 - For businesses with more than 1 physical location, eligibility for Second Draw of PPP is limited to one covered loan.
 - For Second Draw PPP loans of \$150,000 or less, borrowers may be required to provide documentation to substantiate revenue loss requirement.



- Must have used, or will use, the full amount of your previous PPP loan before a second PPP loan can be distributed to you.
- **Set-asides are included to ensure that smaller borrowers and underserved communities get the help they need, such as: first or second-time PPP borrowers with 10 or fewer employees;** for loans made by small community lenders, including Community Development Financial Institutions (CDFIs), credit unions, small community banks, Minority Depository Institutions (MDIs); and for the Minority Business Development Agency.
- Funding for SBA loan products to increase guarantees on SBA 7(a) loans and reduce fees on 7(a) and 504 loans; provide loan subsidies for 7(a) loans; and provide Economic Injury Disaster Loan grant advances.

Unemployment Assistance:

- Extends all pandemic unemployment insurance programs, including Pandemic Unemployment Assistance (PUA) program, with expanded coverage to the self-employed and others in non-traditional employment. Last applications will be accepted on March 14, 2021, program benefits end on April 5, 2021.
 - Effective January 31, 2021, requires:
 - Individuals receiving PUA to submit documentation to substantiate employment or self-employment within 90 days
 - New applicants for PUA to submit documentation to substantiate employment or self-employment within 21 days; the deadline may be extended when an individual has shown good cause.
- Federal supplemental unemployment insurance benefits renewed at an amount of **\$300 per week from December 26, 2020 to March 14, 2021.**
- Increases the maximum number of weeks an individual may claim benefits through regular state unemployment plus the PEUC program, or through the PUA program to 50 weeks.

Provider Relief Fund:

- For all Provider Relief Fund (PRF) payments made before December 22, 2020, a provider may calculate such lost revenues using HHS' FAQ guidance released in June 2020—including the difference between such provider's budgeted and actual revenue budget if such budget had been established and approved prior to March 27, 2020.

Tax Provisions:

- Employee retention tax credit is modified to extend and expand the CARES Act employee retention tax credit (ERTC) and contains technical corrections to the CARES Act.
 - Beginning on January 1, 2021 and through June 30, 2021, the provision:
 - Increases the credit rate to 70% of qualified wages;

PRIVATE PRACTICE SECTION



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- Expands eligibility for the credit by reducing the required year-over-year gross receipts decline to 20% and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility;
- Increases the limit on per-employee creditable wages by four times—to \$10,000 for each quarter instead of *CARES Act*'s \$10,000 for a calendar year;
- Allows businesses with 500 or fewer employees to advance the credit at any point during the quarter for an amount not to exceed 70% of average quarterly wages paid in the same quarter in a previous year;
- Requires the Secretary of the Treasury in coordination with the Administrator of the Small Business Administration to conduct a small business public awareness campaign directed at all businesses with 500 or fewer employees in the form of notice and educational materials regarding availability of the credit.
- Retroactively applied, as if included in the *CARES Act*:
 - Clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance; and
 - Provides that employers who receive PPP loans may still qualify for the ERTC with respect to wages that are not paid for with forgiven PPP proceeds.
- Extends the repayment period of deferred payroll taxes through December 31, 2021. Penalties and interest on deferred unpaid tax liability will not accrue until January 1, 2022.
- The *Families First Coronavirus Response Act* provided a refundable payroll tax credit for the mandated paid sick and family leave. That tax credit is extended through March 2021 for employers that continue to offer paid sick and family leave to their employees.

Direct Payments:

- \$600 in direct Economic Impact Payments for individuals making up to \$75,000 per year and \$1,200 for couples making up to \$150,000 per year, as well as a \$600 payment for each child dependent.

Student Loans:

- A 5-year extension of the allowance for an employer contribution of up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to any student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer on behalf of an employee under current law, through January 1, 2026.