



CMS Issues 2024 Physician Fee Schedule Proposed Rule

On July 13, 2023, the Centers for Medicare & Medicaid Services (CMS) released its proposed Medicare Physician Fee Schedule (MPFS) for calendar year (CY) 2024. In addition to the agency's suggested cut to physician payments, the proposed rule announced changes in policies for the advancement of health equity, as well as the expansion of access to critical behavioral health and oral health services.¹ According to CMS, "if finalized, the proposals in this rule ensure the people we serve experience coordinated care focused on treating the whole person, considering each person's unique story and individualized needs," including physical, oral, and behavioral health, as well as the social determinants of health.²

For CY 2024, CMS proposes to *decrease* the MPFS conversion factor by \$1.14, to \$32.75 (a 3.34% reduction from the 2023 conversion factor of \$33.89).³ Conversion factors are applied to relative value units (RVUs), i.e., the resources required to furnish a service, to become payment rates. This decrease reflects: the expiration of the 0.00% conversion factor update under the Medicare Access and CHIP Reauthorization Act (MACRA); a -2.17% adjustment for budget neutrality; a 1.25% statutory increase in payment for CY 2024; and the end of the one-year 2.5% statutory increase for CY 2023.⁴

In addition to payment rate changes, CMS proposes delaying definitional changes to evaluation and management (E/M) visits. E/M codes capture time the healthcare provider spent in a hospital or other facility setting (not in the office) "evaluating or managing a patient's health;"⁵ E/M services are often performed by both a physician and an advanced practice clinician (APC), such as a nurse practitioner or a physician assistant. Who can bill for the time spent evaluating and managing a patient is important because only one provider can bill for the service, and Medicare reimburses physicians a higher rate for E/M services than APCs. CMS requires that the provider who performs a "substantive portion" of a shared (or split) E/M visit bill for their time (at their rate).⁶ Previously, "substantive portion" was defined as: (1) "one of the three key E/M components," i.e., history, exam, or medical decision making, or (2) whomever spent more than half of the total time of the visit with the patient.⁷ Under the new policy introduced in the CY 2023 MPFS final rule, the term "substantive portion" is simply defined as more than half of the total time of the visit with the patient.⁸ If the APC

is the practitioner who performs more than half of the E/M visit, Medicare would only pay 85% of the physician payment rate for the entirety of the E/M visit.⁹ For now, however, CMS proposes to continue using the current definition of "substantive portion" through December 31, 2024.¹⁰

Further, the agency seeks to extend flexibilities for certain assessments furnished via audio-only communication, through the end of CY 2024.¹¹ If finalized, opioid treatment programs (OTPs) would be allowed to bill Medicare when video is not available, using technology permitted by the Drug Enforcement Administration (DEA) and the Substance Abuse and Mental Health Administration (SAMHSA).¹² This extension would equalize telehealth flexibilities across providers of care and negate potential service disruptions due to the end of the COVID-19 public health emergency (PHE).¹³

In the wake of the end of the COVID-19 PHE, which ended a number of regulatory flexibilities and waivers, CMS proposes several additions to covered telehealth services under the MPFS, as well as an extension of several telehealth provisions from the Consolidated Appropriations Act (CAA) of 2023.¹⁴ Proposed changes include the add-on of health and well-being coaching services on a temporary basis, as well as a refined process to review requests to add services to the Medicare Telehealth Services List.¹⁵ Telehealth provisions extended through December 31, 2024, will include:

- The temporary expansion of the scope of sites where telehealth is furnished from, to include any location in the U.S. where a beneficiary may reside;
- A change in definition of telehealth providers to include qualified audiologists, speech-language pathologists, occupational therapists, and physical therapists;
- Continued payment for telehealth services provided by federally qualified health centers (FQHCs) and rural health centers (RHCs);
- Delaying requirements for beneficiaries to meet with practitioners six months before initiating mental health telehealth services;
- Allowing physicians in teaching environments to use video and audio communications when a resident is furnishing Medicare telehealth services; and
- Continued payment and coverage of telehealth services that are included on the Medicare Telehealth Services List.¹⁶

The proposed rule also includes changes to behavioral health, health-related social needs, and accountable care. CMS makes a number of suggestions related to behavioral health services, hoping to advance beneficiary accessibility.¹⁷ The proposed rule includes a new benefit category wherein family therapists, marriage therapists, and mental health counselors would be able to bill Medicare.¹⁸ Additionally, CMS proposes changes in payment and coding to account for resources utilized in the delivery of care involving a multidisciplinary clinical team and other staff members.¹⁹ Further, Community Health Integration, Principal Illness Navigation, and Social Determinants of Health Risk Assessments would all receive separate payments to account for clinicians utilizing community health workers and peer support specialists in delivering patient care.²⁰ CMS also proposes changes in methodology for assignment that would promote access to accountable care for beneficiaries that rely on nurse practitioners, clinical nurse specialists, and physician assistants for their primary care needs.²¹ Another proposal would change methodology for financial benchmarking, and encourage ACOs that serve complex populations to participate in the Medicare Shared Savings Program (MSSP).²² The aforementioned proposals are expected to increase MSSP participation by approximately 10% to 20%.²³

A number of healthcare stakeholders have expressed concerns about the proposed changes to the MPFS. The American Medical Association (AMA) called for a congressional response to the proposed rule, stating that: “[t]he proposed Medicare physician payment schedule

released today is a critical reminder that patients and physicians desperately need Congress to develop a permanent solution that addresses the financial instability and threatens access to care.”²⁴ The AMA also asserted that Medicare payments failed to respond to the growing costs of physician practices, as well as growing inflation and the pandemic.²⁵ Similarly, the Medical Group Management Association (MGMA) is concerned about the likely impact of the proposed reduction to the conversion factor, maintaining that this reduction causes significant concern for medical groups, as the gap between Medicare reimbursement rates and the expenses of physician practices is increasing.²⁶ Similar to the AMA, MGMA also called on Congress to “reexamine existing law to provide an annual physician payment update commensurate with inflation and do away with Medicare’s ‘robbing Peter to pay Paul’ budget neutrality requirements to provide much-needed financial stability for medical practices.”²⁷ In contrast, the National Association of Accountable Care Organizations (NAACOs) commended CMS for “showing its commitment to value-based care and growing participation in accountable care organizations in this proposed rule.”²⁸

While proposed payment changes in the CY 2024 MPFS were not well-accepted by stakeholders given the current healthcare environment, many applauded CMS for the other, non-payment-related, proposed changes. CMS will receive comments on the proposed changes until September 11, 2023, and the final rule will be released sometime thereafter.²⁹

1 “CMS Physician Payment Rule Advances Health Equity” Centers for Medicare and Medicaid Services, July 13, 2023, <https://www.cms.gov/newsroom/press-releases/cms-physician-payment-rule-advances-health-equity#:~:text=CMS%20is%20also%20proposing%20increases,3.34%25%2C%20from%20CY%202023.> (Accessed 7/14/23).
2 *Ibid.*
3 “Calendar Year (CY) 2024 Medicare Physician Fee Schedule Proposed Rule” Centers for Medicare and Medicaid Services, July 13, 2023, <https://www.cms.gov/newsroom/factsheets/calendar-year-cy-2024-medicare-physician-fee-schedule-proposed-rule> (Accessed 7/14/23).
4 “CMS issues CY 2024 physician fee schedule proposed rule” American Hospital Association, July 13, 2023, <https://www.aha.org/news/headline/2023-07-13-cms-issues-cy-2024-physician-fee-schedule-proposed-rule> (Accessed 7/14/23).
5 “Evaluation and Management (E/M) Coding” American Medical Association, 2023, <https://www.ama-assn.org/topics/evaluation-and-management-em-coding#> (Accessed 7/26/23).
6 American Hospital Association, July 13, 2023.
7 *Ibid.*
8 *Ibid.*
9 “CMS issues CY 2024 physician fee schedule proposed rule” American Hospital Association, July 13, 2023, <https://www.aha.org/news/headline/2023-07-13-cms-issues-cy-2024-physician-fee-schedule-proposed-rule> (Accessed 7/14/23).
10 “Calendar Year (CY) 2024 Medicare Physician Fee Schedule Proposed Rule” Centers for Medicare and Medicaid Services, July 13, 2023, <https://www.cms.gov/newsroom/factsheets/calendar-year-cy-2024-medicare-physician-fee-schedule-proposed-rule> (Accessed 7/26/23).
11 *Ibid.*
12 *Ibid.*
13 *Ibid.*
14 *Ibid.*
15 *Ibid.*

16 *Ibid.*
17 American Hospital Association, July 13, 2023.
18 *Ibid.*
19 Centers for Medicare and Medicaid Services, July 13, 2023.
20 *Ibid.*
21 *Ibid.*
22 “CMS Physician Payment Rule Advances Health Equity” Centers for Medicare and Medicaid Services, July 13, 2023, <https://www.cms.gov/newsroom/press-releases/cms-physician-payment-rule-advances-health-equity#:~:text=CMS%20is%20also%20proposing%20increases,3.34%25%2C%20from%20CY%202023.> (Accessed 7/14/23).
23 *Ibid.*
24 “AMA: Medicare physician payment proposal a wake-up call for Congress” American Medical Association, July 13, 2023, <https://www.ama-assn.org/press-center/press-releases/ama-medicare-physician-payment-proposal-wake-call-congress> (Accessed 7/14/23).
25 *Ibid.*
26 “July 13, 2023: MGMA statement on proposed 2024 Medicare Physician Fee Schedule” By Anders Gilberg, Medical Group Management Association, July 13, 2023, <https://mgma.com/press-statements/july-13-2023-mgma-statement-on-proposed-2024-medicare-physician-fee-schedule> (Accessed 7/14/23).
27 *Ibid.*
28 “NAACOS Statement on Proposed 2024 Medicare Physician Fee Schedule” By Clif Gaus, National Association of ACOs, July 13, 2023, <https://www.naacos.com/naacos-statement-on-proposed-2024-medicare-physician-fee-schedule> (Accessed 7/14/23).
29 “CMS issues CY 2024 physician fee schedule proposed rule” American Hospital Association, July 13, 2023, <https://www.aha.org/news/headline/2023-07-13-cms-issues-cy-2024-physician-fee-schedule-proposed-rule> (Accessed 7/14/23).



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Todd A. Zigrang, MBA, MHA, FACHE, CVA, ASA, ABV, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.



Mr. Zigrang is the co-author of *“The Adviser’s Guide to Healthcare - 2nd Edition”* [AICPA - 2015], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Guide to Valuing Physician Compensation and Healthcare Service Arrangements (BVR/AHLA)*; *The Accountant’s Business Manual (AICPA)*; *Valuing Professional Practices and Licenses (Aspen Publishers)*; *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. Additionally, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); the National Association of Certified Valuators and Analysts (NACVA); the American Health Lawyers Association (AHLA); the American Bar Association (ABA); the Association of International Certified Professional Accountants (AICPA); the Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Certified Valuation Analyst (CVA) designation from NACVA. Mr. Zigrang also holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter. He is also a member of the American Association of Provider Compensation Professionals (AAPCP), AHLA, AICPA, NACVA, NSCHBC, and, the Society of OMS Administrators (SOMSA).



Jessica L. Bailey-Wheaton, Esq., is Senior Vice President and General Counsel of HCC. Her work focuses on the areas of Certificate of Need (CON) preparation and consulting, as well as project management and consulting services related to the impact of both federal and state regulations on healthcare transactions. In that role, Ms. Bailey-Wheaton provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.



Additionally, Ms. Bailey-Wheaton heads HCC’s CON and regulatory consulting service line. In this role, she prepares CON applications, including providing services such as: health planning; researching, developing, documenting, and reporting the market utilization demand and “need” for the proposed services in the subject market service area(s); researching and assisting legal counsel in meeting regulatory requirements relating to licensing and CON application development; and, providing any requested support services required in litigation challenging rules or decisions promulgated by a state agency. Ms. Bailey-Wheaton has also been engaged by both state government agencies and CON applicants to conduct an independent review of one or more CON applications and provide opinions on a variety of areas related to healthcare planning. She has been certified as an expert in healthcare planning in the State of Alabama.

Ms. Bailey-Wheaton is the co-author of numerous peer-reviewed and industry articles in publications such as: *The Health Lawyer*; *Physician Leadership Journal*; *The Journal of Vascular Surgery*; *St. Louis Metropolitan Medicine*; *Chicago Medicine*; *The Value Examiner*; and *QuickRead*. She has previously presented before the ABA, the NACVA, and the NSCHBC. She serves on the editorial boards of NACVA’s *QuickRead* and AHLA’s *Journal of Health & Life Sciences Law*.



Janvi R. Shah, MBA, MSF, serves as Senior Financial Analyst of HCC. Mrs. Shah holds a M.S. in Finance from Washington University Saint Louis. She develops fair market value and commercial reasonableness opinions related to healthcare enterprises, assets, and services. In addition she prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services and applies utilization demand and reimbursement trends to project professional medical revenue streams and ancillary services and technical component (ASTC) revenue streams.



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