

Law Introduced to Stop Medicare Physician Pay Cuts

On September 13, 2022, Representatives Ami Berra (D-CA-7) and Larry Bucshon (R-IN-8) introduced the Supporting Medicare Providers Act of 2022 (H.R. 8800), which aims to infuse the Medicare Physician Fee Schedule (MPFS) with a 4.42% funding increase for 2023.¹ With a bipartisan coalition of 12 co-sponsors, the bill would have the practical effect of negating the impending 4.42% cut to the MPFS conversion factor. This Health Capital Topics article will review the bill, discuss its support, and examine its potential implications.

Physician fee schedule payments are calculated according to Medicare's Resource Based Relative Value Scales (RBRVS) system, which was designed with the intent of bringing medical practice payment more in line with a prospective payment system and away from a purely fee-for-service (FFS) system. The RBRVS system assigns relative value units (RVUs) to individual procedures based on the resources required to perform each procedure. Under this system, each procedure in the MPFS is assigned RVUs for three categories of resources: (1) physician work (wRVUs); (2) practice expense (PE RVUs); and, (3) malpractice expense (MP RVUs). Further, each procedure's RVUs are adjusted for local geographic differences using geographic practice cost indexes (GPCIs) for each RVU component.

Once the procedure's RVUs have been modified for geographic variance, they are summed, and the total is then multiplied by a conversion factor to obtain the dollar amount of governmental reimbursement. The conversion factor is a monetary amount that is multiplied by the RVU to determine the payment amount for a given service.² This conversion factor is updated yearly by a formula that takes into account: (1) the previous year's conversion factor; (2) the estimated percentage increase in the Medicare Economic Index (MEI) for the year (which accounts for inflationary changes in office expenses and physician earnings); and, (3) an updated adjustment factor.³ Notably, the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) contains a predetermined schedule of updates to the MPFS conversion factor. However, these annual updates have been relatively small, with an update of 0.5% from 2016 to 2019, and an update of 0% for years 2020 through 2025.⁴

For 2023, the Centers for Medicare & Medicaid Services (CMS) proposed decreasing the conversion factor by 4.42% from the 2022 conversion factor of \$34.61, which would have been a second straight year of conversion factor decreases.⁵ These conversion factor decreases emanate from MACRA's statutory update of 0%, the end of the temporary 3% payment rate bump for 2022 pursuant to the *Protecting Medicare and American Farmers from Sequester Cuts Act*, and budget neutrality adjustments.⁶ Further, as pointed out by the Medical Group Management Association (MGMA) in response to the proposed rule, the conversion factor could be further reduced by the impending Pay-As-You-Go Act (PAYGO) sequestration, which is scheduled to take effect on January 1, 2023. PAYGO requires that "all new legislation changing taxes, fees, or mandatory expenditures, taken together...not increase projected deficits" and "is enforced by the threat of automatic across-the-board cuts in selected mandatory programs [including most Medicare payments] in the event that legislation taken as a whole does not meet the PAYGO standard."⁷ Consequently, Medicare payments could be cut by an additional 4% (the maximum amount allowed by law) for the next several years, barring congressional intervention.⁸

Since the release of the 2023 MPFS proposed rule, physicians and their professional trade associations have lobbied furiously to educate lawmakers on what is at stake should these Medicare physicians payments be cut by 8.42% (a combination of the reduced conversation factor and the implementation of PAYGO), amid "rising costs, staff shortages and record inflation."⁹ To provide "a unique perspective into the real-world consequences such dramatic physician payment cuts would have on physician practices' ability to treat patients," MGMA surveyed its members, which "offer[ed] an alarming look into the projected impact."¹⁰ Of the 517 medical group respondents, 92% reported that in 2022 (before the cuts even occur), Medicare reimbursement has not adequately covered the cost of care provided.¹¹ According to the survey (which was published prior to the introduction of the Act), providers are considering a number of options to offset the payment reductions:

- "58% are considering limiting the number of new Medicare patients;
- 66% are considering reducing charity care;

- 58% are considering reducing the number of clinical staff; and
- 29% are considering closing satellite locations.”¹²

As a result of these actions, MGMA listed its predictions of five practice themes that will emerge, should the cuts go into effect:

1. “Reducing or eliminating the number of Medicare beneficiaries served”;
2. “Projected delays in scheduling care, resulting in up to 6 months’ wait for visits”;
3. “Decreased ability to recruit staff at all levels, including physicians, clinical support staff, and administrative staff, especially in rural areas”;
4. “Reduced participation in value-based payment contracts as limited resources and revenue are diverted away from non-essential practice activities”;
5. “Closing satellite offices or selling the practice due to insufficient revenue streams.”¹³

In response to the introduction of the Act, while MGMA stated that it “strongly supports” the proposed funding, it noted that “[e]ven with the stabilization offered by this bill, the Medicare conversion factor will be the lowest it has been in ten years at a time when medical groups face runaway inflation and significant workforce shortages. Freezes to Medicare payment rates have caused reimbursement to fall far below the true cost of furnishing care.”¹⁴ In addition, MGMA has asked Congress authorize to an inflationary update based on the MEI and “waive the 4% PAYGO sequester,” pointing out that the legislation that triggered PAYGO was unrelated to Medicare.¹⁵

Other physician trade associations shared MGMA’s sentiments. The Surgical Care Coalition (SCC) commended lawmakers for introducing the legislation and “also urge[d] lawmakers to support solutions to stop the pending 4% PAYGO cut and address the stagnant payment that has failed to keep pace with inflation for years to further stabilize the Medicare system and ensure patients have access to the high-quality care they deserve.”¹⁶ The College of American Pathologists (CAP) and American Physical Therapy Association (APTA) echoed the SCC’s statements.¹⁷

Interestingly, the Act is reminiscent of past congressional “Horatius at the Bridge”¹⁸ interventions related to the sustainable growth rate (SGR) formula. Prior to the implementation of MACRA, the SGR formula was utilized to provide annual target updates to the MPFS, based on a number of estimates. However, the SGR formula indicated downward adjustments to the MPFS every year since 2002, requiring Congress to repeatedly intervene and override the MPFS decreases to the conversion factor, sometimes replacing scheduled cuts with increases in payment.¹⁹

While the 2023 MPFS is typically finalized in November or December of each year, an additional layer of urgency is added to this year’s update, as the Act is going through the legislative process in the shadow of the federal government’s September 30th funding deadline, by which date Congress must pass a continuing resolution (CR) to avoid shutting down the government. There are a number of healthcare issues included in current CR discussions. In addition to the Act, supplemental COVID-19 funding, as well as a five-year reauthorization of the U.S. Food & Drug Administration’s (FDA) user fee and an overhaul of the FDA diagnostic, dietary supplement and cosmetic regulations, are being discussed.²⁰ These significant healthcare issues on the congressional negotiating table as part of the CR makes an otherwise boring lame duck session one to watch.

1 “H.R.8800 - Supporting Medicare Providers Act of 2022” Congress.gov, <https://www.congress.gov/bill/117th-congress/house-bill/8800/text?r=1&s=1> (Accessed 9/22/22).

2 “Physician Reimbursement Under Medicare” By Alan M. Scarrow, MD., Neurosurgical Focus, Vol. 12, No. 4: Article 8 (April 2002), p. 2.

3 “Part B Payments: General Limits and Payment Rules” In “2009 Master Medicare Guide” CCH Health Editorial, Wolters Kluwer, 2009, p. 901.

4 “Medicare Access and CHIP Reauthorization Act of 2015” Pub. L. No. 114-10, § 101, 129 Stat. 87, 89-90.

5 “Calendar Year (CY) 2023 Medicare Physician Fee Schedule Proposed Rule” Centers for Medicare & Medicaid Services, July 7, 2022, <https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-proposed-rule> (Accessed 7/18/22); “Physicians brace for 8.42% cut to CMS rates; many consider dropping Medicare patients” By Alan Condon, Becker’s ASC, September 21, 2022, https://www.beckersasc.com/asc-news/physicians-brace-for-8-42-cut-to-cms-rates-many-consider-dropping-medicare-patients.html?origin=ASCE&utm_source=ASCE&utm_medium=email&utm_content=newsletter&oly_enc_id=9207F7402078E2D (Accessed 9/22/22).

6 Centers for Medicare & Medicaid Services, July 7, 2022.

7 “The Statutory Pay-As-You-Go Act of 2010: A Description” Office of Management and Budget, The White House,

https://obamawhitehouse.archives.gov/omb/paygo_description/ (Accessed 11/17/21).

8 It is worth noting, however, that the PAYGO sequester has never gone into effect. “Medicare Sequester Cuts Possible Without Congressional Action” JD Supra, November 10, 2021, <https://www.jdsupra.com/legalnews/medicare-sequester-cuts-possible-5800140/> (Accessed 11/16/21).

9 Condon, Becker’s ASC, September 21, 2022.

10 “MGMA statement on Medicare payment reduction findings” By Anders Gilberg, Press Statement, Medical Group Management Association, September 20, 2022, <https://www.mgma.com/advocacy/advocacy-statements-letters/advocacy-statements/september-21,-2022-mgma-statement-on-medicare-paym> (Accessed 9/22/22).

11 “Impact of Payment Reductions to Medicare Rates in 2023” Medical Group Management Association, <https://mgma.com/getmedia/b0716bbf-d21f-4ead-b1cb-9371485e62ff/09-21-2022-Impact-of-Payment-Reductions-to-Medicare-Rates-in-2023-Full-Report.pdf.aspx> (Accessed 9/22/22).

12 *Ibid.*

13 *Ibid.*

14 “September 13, 2022: MGMA statement on the Supporting Medicare Providers Act of 2022” Medical Group Management Association, Press Statement, September 13, 2022, <https://www.mgma.com/advocacy/advocacy-statements->

- letters/advocacy-statements/september-13,-2022-mgma-statement-on-the-supportin (Accessed 9/22/22).
- 15 "Impact of Payment Reductions to Medicare Rates in 2023" Medical Group Management Association, <https://mgma.com/getmedia/b0716bbf-d21f-4ead-b1cb-9371485e62ff/09-21-2022-Impact-of-Payment-Reductions-to-Medicare-Rates-in-2023-Full-Report.pdf.aspx> (Accessed 9/22/22).
 - 16 "Surgical Care Coalition Statement on Supporting Medicare Providers Act of 2022" Press Release, Cision PR Newswire, September 3, 2022, <https://www.prnewswire.com/news-releases/surgical-care-coalition-statement-on-supporting-medicare-providers-act-of-2022-301623712.html> (Accessed 9/22/22).
 - 17 "The CAP Commends the Introduction of Supporting Medicare Providers Act of 2022" College of American Pathologists, September 16, 2022, <https://newsroom.cap.org/latest-news/the-cap-commends-the-introduction-of-supporting-medicare-providers-act-of-2022/s/4be14f2f-a6d4-4b9f-b361-f5fa1f65cfd7> (Accessed 9/22/22); "Potential Fee Schedule Reprieve Introduced in U.S. House" American Physical Therapy Association, September 14, 2022, <https://www.apta.org/news/2022/09/14/fee-schedule-legislation> (Accessed 9/22/22).
 - 18 Publius Horatius Cocles was an ancient Roman officer who defended the Pons Sublicuis, the bridge that allowed entry into Rome, from the invading army of Clusium (an ancient city in Italy).
 - 19 "Medicare Physician Payment Updates and the Sustainable Growth Rate (SGR) System" By Jim Hahn, Congressional Research Service, June 12, 2014, http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/R40907_gb.pdf (Accessed 3/12/15), p. 1, 6-7.
 - 20 "H&K Health Dose: September 21, 2022" By Suzanne Michelle Joy & Miranda A. Franco, Holland & Knight, <https://www.hklaw.com/-/media/files/insights/publications/2022/09/healthdose092122.pdf?la=en> (Accessed 9/22/22).

FREE EBOOK DOWNLOAD

HEALTH CAPITAL
Topics
2021

DOWNLOAD HERE



(800)FYI - VALU

*Providing Solutions
in the Era of
Healthcare Reform*

Founded in 1993, HCC is a nationally recognized healthcare economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients & Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

HCC Services

- [Valuation Consulting](#)
- [Commercial Reasonableness Opinions](#)
- [Commercial Payor Reimbursement Benchmarking](#)
- [Litigation Support & Expert Witness](#)
- [Financial Feasibility Analysis & Modeling](#)
- [Intermediary Services](#)
- [Certificate of Need](#)
- [ACO Value Metrics & Capital Formation](#)
- [Strategic Consulting](#)
- [Industry Research Services](#)



[Todd A. Zigrang](#), MBA, MHA, CVA, ASA, FACHE, 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](#)" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); American Health Lawyers Associate (AHLA); the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); 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 Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).



[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.