

## MPFS Final Rule Cuts Physician Payments

On November 1, 2022, the Centers for Medicare & Medicaid Services (CMS) released its finalized Medicare Physician Fee Schedule (MPFS) for calendar year (CY) 2023. While the finalized fee schedule cuts payments to physicians, there are a number of other (more positive) provisions in the final rule.

### *Payment Rate Updates for MPFS*

For 2023, the conversion factor will decline by \$1.55, to \$33.06 (a 4.48% reduction from 2022).<sup>1</sup> This is nearly the same as the proposed conversion factor of \$33.08.<sup>2</sup> CMS stated the conversion factor accounts for the expiration of the *Protecting Medicare and American Farmers From Sequester Cuts Act's* 3% increase in physician fee schedule payments for 2022, as well as the budget neutrality adjustment for changes in relative value units (RVUs).<sup>3</sup>

### *Significant Changes to the Medicare Shared Savings Program (MSSP)*

In an effort to both combat stagnant growth in the program over the past few years and correct previous “inequitable representation of minority patient groups and higher-spending populations,” CMS finalized several changes to the MSSP, which currently covers in excess of 11 million Medicare beneficiaries and over 500,000 healthcare providers.<sup>4</sup>

In order to provide smaller providers with no previous accountable care organization (ACO) experience more time to acclimate to two-sided risk, CMS extended the amount of time during which these providers may participate in one-sided (no risk) shared savings models, up to seven years.<sup>5</sup>

In furtherance of its focus on health equity,<sup>6</sup> CMS will provide to certain low-revenue ACOs advance shared savings payments, in the form of a \$250,000 one-time payment and quarterly payments for two years thereafter based on “enrollee neediness.”<sup>7</sup> These funds may only be used to improve provider infrastructure, increase staffing, or care for underserved enrollees. These funds would then be repaid to CMS through the ACO’s shared savings (if it earns any – there will be no claw back unless the ACO leaves the five-year agreement early). This will be one of the first times traditional Medicare payments would be permitted for such uses.<sup>8</sup>

CMS also finalized changes to the MSSP’s benchmarks to promote long-term participation.<sup>9</sup> Previously, the benchmarks were adjusted annually based on the

previous year’s metrics, making it progressively harder to hit the ACO’s goals required to receive shared savings. Toward that end, the agency added a prospective (rather than an historical) external factor and included a prior savings adjustment in historical benchmarks.<sup>10</sup> CMS also reduced the cap on negative regional adjustments, from 5% to 1.5% of national per capita expenditures, for Parts A and B services.<sup>11</sup>

Together, “[t]hese policies represent some of the most significant reforms since the program was established in 2011” and are anticipated to result in \$650 million more in shared savings payments to ACOs and a \$15.5 billion decrease in benefits spending (as a result of savings from efficiency).<sup>12</sup>

### *Other Provisions*

CMS finalized several policies related to telehealth, including extending numerous temporarily available telehealth services during the public health emergency (PHE), through at least 2023.<sup>13</sup> The agency incorporated some of the regulations contained in the *Consolidated Appropriations Act of 2021* into its own regulatory guidance and instruction to make for an easier transition at the conclusion of the PHE. The following policies, which are currently in place, will be allowed until 151 days after the end of the PHE:

- (1) Allowing telehealth services to be furnished in any geographic area and in any originating site setting (including the beneficiary’s home);
- (2) Allowing certain services to be furnished via audio-only telecommunications systems; and
- (3) Allowing physical therapists, occupational therapists, speech-language pathologists, and audiologists to furnish telehealth services.<sup>14</sup>

CMS also finalized the relaxation of supervision requirements for behavioral health services in an effort to increase patient access. The agency added an exception to its *direct supervision* requirement, so that a physician or nonphysician practitioner only has to provide *general supervision* of behavioral health services provided by “auxiliary personnel” such as licensed professional counselors or family and marriage therapists.<sup>15</sup>

CMS finalized improved access to screening for colon and rectal cancers, the second leading cause of cancer deaths in 2020.<sup>16</sup> Going forward, Medicare will cover colorectal cancer screening for individuals age 45 and

older (previously, coverage did not start until age 50). Medicare will also start covering, as a preventative service (which allows cost sharing to be waived), “follow-on” screening colonoscopies, to prevent beneficiaries from paying out-of-pocket for multiple tests.<sup>17</sup> As the agency pointed out, this provision “directly supports President Biden’s Cancer Moonshot Goal to cut the death rate from cancer by at least 50%.”<sup>18</sup>

Although “Medicare payment for dental services is generally precluded by statute,” CMS also added certain dental services to its coverage, particularly when the service “is integral to treating a beneficiary’s medical condition.”<sup>19</sup>

#### *Comments from Stakeholders*

Industry trade associations strongly condemned the cuts to physician services contained in the MPFS final rule. The Medical Group Management Association (MGMA) implored Congress to act to avoid cuts to physician payments, citing its own survey that 90% of medical practices believe that the reduction in Medicare payments would reduce patient access to care.<sup>20</sup> Even before the final rule was released, the American Medical Association (AMA) stated that “[m]oving forward with this cut now is wrongheaded and inconceivable. ... Our patients are counting on Congress to agree to a solution, and the clock is ticking.”<sup>21</sup> The trade association is strongly advocating for Congress to stop the payment cut,

“implement an inflationary update for physicians...and waive the four percent PAYGO sequester.”<sup>22</sup>

However, some associations did praise other finalized provisions. The National Association of ACOs President and CEO Clif Gaus stated that “[t]oday’s finalized changes to Medicare’s largest ACO program bring a win to patients and will absolutely help providers deliver accountable care to more patients.”<sup>23</sup>

#### *Conclusion*

According to CMS Administrator Chiquita Brooks-LaSure, “The [MPFS] final rule ensures that the people we serve will experience coordinated care and that they have access to prevention and treatment services for substance use, mental health services, crisis intervention, and pain care.”<sup>24</sup> However, providers believe that cuts to physician payments will in fact have the opposite effect – reduced patient access to care.

While provider trade associations are lobbying the federal government to override the MPFS final rule cuts, whether or not Congress will act has not yet been determined. Congress only has until the end of the calendar year before the cuts will become effective. There does appear to be bipartisan support for addressing these physician payment cuts, as evidenced in a November 2, 2022 letter signed by 46 senators.<sup>25</sup> Whether this rhetoric will translate into action remains to be seen.

1 “Calendar Year (CY) 2023 Medicare Physician Fee Schedule Final Rule - Medicare Shared Savings Program” Centers for Medicare & Medicaid Services, November 1, 2022, <https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-final-rule-medicare-shared-savings-program> (Accessed 11/28/22).

2 “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).

3 “HHS Finalizes Physician Payment Rule Strengthening Access to Behavioral Health Services and Whole-Person Care” Centers for Medicare & Medicaid Services, Press Release, November 1, 2022, <https://www.hhs.gov/about/news/2022/11/01/hhs-finalizes-physician-payment-rule-strengthening-access-behavioral-health-services-whole-person-care.html> (Accessed 11/28/22).

4 *Ibid.*

5 Centers for Medicare & Medicaid Savings, November 1, 2022, <https://edit.cms.gov/files/document/mssp-fact-sheet-cy-2023-pfs-final-rule.pdf> (Accessed 11/28/22).

6 “CMS Outlines Strategy to Advance Health Equity, Challenges Industry Leaders to Address Systemic Inequities” Centers for Medicare & Medicaid Services, April 20, 2022, <https://www.cms.gov/newsroom/press-releases/cms-outlines-strategy-advance-health-equity-challenges-industry-leaders-address-systemic-inequities> (Accessed 7/18/22).

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8 “CMS Proposes Physician Payment Rule to Expand Access to High-Quality Care” Centers for Medicare & Medicaid Services, July 7, 2022, <https://www.cms.gov/newsroom/press-releases/cms-proposes-physician-payment-rule-expand-access-high-quality-care> (Accessed 7/18/22).

9 Centers for Medicare & Medicaid Savings, <https://edit.cms.gov/files/document/mssp-fact-sheet-cy-2023-pfs-final-rule.pdf> (Accessed 11/28/22).

10 *Ibid.*

11 *Ibid.*

12 Centers for Medicare & Medicaid Services, Press Release, November 1, 2022,

<https://www.hhs.gov/about/news/2022/11/01/hhs-finalizes-physician-payment-rule-strengthening-access-behavioral-health-services-whole-person-care.html> (Accessed 11/8/22); “Medicare and Medicaid Programs; CY 2023 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicare and Medicaid Provider Enrollment Policies, Including for Skilled Nursing Facilities; Conditions of Payment for Suppliers of Durable Medicaid Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); and Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs to Provide Refunds with Respect to Discarded Amounts” Proposed Rule (Unpublished Version), available at: <https://public-inspection.federalregister.gov/2022-14562.pdf> (Accessed 7/18/22), p. 629.

13 Centers for Medicare & Medicaid Services, Fact Sheet, November 1, 2022, <https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-final-rule> (Accessed 11/8/22).

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

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<https://www.hhs.gov/about/news/2022/11/01/hhs-finalizes-physician-payment-rule-strengthening-access-behavioral-health-services-whole-person-care.html> (Accessed 11/8/22).

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- 25 Letter Addressed to The Honorable Charles Schumer and The Honorable Mitch McConnell, dated November 2, 2022, available at: <https://www.ama-assn.org/system/files/senate-letter-medicare-physician-payments.pdf> (Accessed 11/28/22).



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