

## Congress Overrides Some – But Not All – Medicare Physician Payment Cuts

On December 20, 2022, the U.S. Congress announced its deal to fund the federal government through 2023, averting an imminent government shutdown. The 4,155-page, \$1.7 trillion spending bill spans a vast array of funding initiatives and other bipartisan measures, including a number of noteworthy healthcare provisions. Perhaps most significantly, Congress intervened in the impending cuts to the Medicare Physician Fee Schedule (MPFS), overriding some, but not all, of the payment reductions. This Health Capital Topics article will discuss the congressional measures to ameliorate the payment cuts to physicians in 2023, as well as the other healthcare provisions included in the omnibus spending bill.

### *MPFS Payment Cuts Reduced*

For 2023, the Centers for Medicare & Medicaid Services (CMS) reduced the MPFS conversion factor by 4.48% (to \$33.06),<sup>1</sup> a second straight year of conversion factor decreases.<sup>2</sup> This decrease emanates 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.<sup>3</sup> CMS stated the conversion factor decrease is due to 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>4</sup>

Physicians facing the threat of a 4.48% cut in Medicare funding have pleaded with Congress to cancel the cuts outright, and lawmakers ultimately met them in the middle. Section 4112 of the bill, *Extension of Support for Physicians and Other Professionals in Adjusting to Medicare Payment Changes*, dictates that physicians will see a 2% payment cut in 2023, and a 1.25% cut in 2024.<sup>5</sup>

### *Other Healthcare Provisions*

As a result of the COVID-19 public health emergency (PHE), state Medicaid programs were prohibited from removing individuals from Medicaid enrollment, even if they were no longer eligible. This resulted in a record-high number of Medicaid enrollees.<sup>6</sup> States had agreed (by accepting additional federal funding) to hold off reviewing their Medicaid rolls, and removing ineligible enrollees, until the end of the PHE.<sup>7</sup> However, the spending bill accelerates that timeline, disassociating the

Medicaid enrollment pause from the PHE (so that states may take these actions any time after April 1, 2023).<sup>8</sup> The process would not be instantaneous, so all ineligible enrollees will not be kicked off of Medicaid at once; instead, ineligible enrollees would be bumped off over a one-year period.<sup>9</sup>

The spending bill also extends current Medicare telehealth flexibilities, which were put in place as part of the 2020 CARES Act, for an additional two years, to December 31, 2024.<sup>10</sup> Previously, the flexibilities would have expired 151 days after the end of the PHE.<sup>11</sup> Some of those flexibilities include a relaxation of the requirement that patients and treating physicians be located in the same state, which types of providers who can provide telehealth, and prohibitions on audio-only telehealth services.<sup>12</sup>

### *Stakeholder Responses*

Physicians and their professional trade associations have been lobbying furiously over the past few months to educate lawmakers on what is at stake should Medicare physician payments be cut amid “rising costs, staff shortages and record inflation.”<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup> According to the survey, 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.”<sup>16</sup>

While the spending bill does not alleviate all of providers’ concerns, the reduced cuts are an improvement over the 2023 MPFS final rule and serves as a compromise. Jack Resneck, Jr., MD, President of the American Medical Association (AMA), expressed disappointment and disapproval with Congress, as they

only partially allayed concerns of physicians. He also raised the prospect that some practices may cease any enrollment of new Medicare patients due to this legislation.<sup>17</sup> Anders Gilberg, Senior Vice President of Government Affairs at the Medical Group Management Association (MGMA), expressed concern over the physician cuts as well, calling the spending bill a failure in its treatment of payment cuts, and asserting that medical practices are not immune to economic impacts.<sup>18</sup>

Lawmakers have a strict deadline of December 23, 2022, to ensure the 2023 Omnibus Appropriations Bill is cleared.<sup>19</sup> Without this package, consisting of twelve annual appropriation bills, federal funding will run out, and key federal agencies and programs would be forced to cease operations.

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- 4 “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).
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- 11 *Ibid.*
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- 13 “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](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).
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- 16 *Ibid.*
- 17 Knight, et al., Axios Health, December 20, 2022.
- 18 Medical Group Management Association, Immediate Press Release, December 20, 2022.
- 19 “Congress’ Last-Minute \$1.7 Trillion Omnibus Package: 8 Healthcare Takeaways” by Molly Gamble, Becker’s Hospital CFO Report, Health Finance, December 20, 2022, [https://www.beckershospitalreview.com/finance/congress-last-minute-1-7-trillion-omnibus-package-8-healthcare-takeaways.html?origin=BHRE&utm\\_source=BHRE&utm\\_medium=email&utm\\_content=newsletter&oly\\_enc\\_id=9207F7402078E2D](https://www.beckershospitalreview.com/finance/congress-last-minute-1-7-trillion-omnibus-package-8-healthcare-takeaways.html?origin=BHRE&utm_source=BHRE&utm_medium=email&utm_content=newsletter&oly_enc_id=9207F7402078E2D) (Accessed 12/20/22).



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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 America 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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