

2023 Medicare Update: Omnibus Impact and PHE Considerations

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Agenda

- **Omnibus Spending Bill Impacts to Medicare Fee Schedule**
 - **Conversion Factor**
 - **PAYGO Cuts**
 - **Telehealth**
 - **AAPM QPP Incentive Payment**
- **End of COVID-19 PHE Declaration**
 - **Updates**
 - **Considerations**

Omnibus Updates



Omnibus Updates

In late December of 2022, Congress passed fiscal spending bill to set appropriation levels and allocations for the remainder of 2023

This legislation included several healthcare provisions impacting Medicare reimbursement:

- **Conversion Factor (CF) Increase**
- **“PAYGO” Cut Delay**
- **Extended telehealth flexibilities**
- **Advanced APM Incentive Payment extension**

Omnibus Updates – CF Increase

The **conversion factor (CF)** is a multiplier used by **Medicare** applied to relative value units (RVUs) to calculate reimbursement for a particular service using the following formula:

Medicare PFS Payment Rates Formula

$$\text{Payment} = \left(\text{Work RVU x Work GPCI} + \text{PE RVU x PE GPCI} + \text{MP RVU x MP GPCI} \right) \times \text{CF}$$

- Updates to the CF apply to ***all*** procedures paid by Medicare
- Updates to RVUs apply to specific procedures

Omnibus Updates - CF Increase

• 2023 Final MPFS Conversation Factor

2022 Final* CF		\$34.61
*This is the 2022 CF of 33.59 + 3% increase from Protecting Medicare and American Farmers from Sequester Cuts Act.		
Statutory Update	0%	
2023 Budget Neutrality Adjustment	-1.55%	
2023 Final Conversion Factor		\$33.06
2022 to 2023 Difference		-1.55
2022 to 2023 % Difference		~-4.48%

Released via the Medicare Physician Fee Schedule Final Rule: November 2022

Omnibus Updates - CF Increase

- Omnibus bill provides **+2.5%** bump for 2023

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*This is the 2022 CF of 33.59 + 3% increase from Protecting Medicare and American Farmers from Sequester Cuts Act.		
Statutory Update	0%	
2023 Budget Neutrality Adjustment	-1.55%	
2023 Final MPFS Conversion Factor		\$33.06
Omnibus Increase to CF:		+2.5%
2023 FINAL Conversion Factor (with Omnibus Increase):		\$33.88
2022 to 2023 Difference		-0.73
2022 to 2023 % Difference		~ 1.98%

Omnibus Updates – PAYGO Delay

PAYGO (pay as you go) is a budget control mechanism which triggers a “sequestration” if a bill is passed that would increase the projected debt for the following year

- Passage of the ***American Rescue Plan*** contained several provisions for Medicare which ***triggered*** the PAYGO rule
 - These PAYGO cuts would have begun in 2022, but congressional action delayed until 2023
- Omnibus Bill further delayed PAYGO until **2025**
- Sequestration triggered by PAYGO can not be more than **-4%**
 - This is in addition to the -2% Medicare sequester cut which fully resumed in July of 2022

Omnibus Updates – Telehealth

The Consolidated Appropriations Act of 2022 (CCA) preserved flexibilities for **151 days beyond** the end of the public health emergency, specifically:

- Allowing telehealth services to be furnished in any geographic area and in any originating site setting, including the beneficiary's home
- Allowing certain services to be furnished via audio-only telecommunications systems
- Extend the duration of temporary codes on the CMS telehealth list for 151 days beyond end of PHE
- Delays the in-person visit requirements for mental health services furnished via telehealth until **152** days after the end of the PHE.

Omnibus Updates – Telehealth

With the passage of the Omnibus bill, these flexibilities will now remain in place until **December 31st, 2024**

- Gives Congress more time to pass legislation to address telehealth policies restricting care (absent of the PHE)
- Keep an eye out for action related to geographical site requirements, reimbursement, and HIPAA compliant telehealth platforms in the next few years

Omnibus Updates – AAPM Incentive

CMS Quality Payment Program (QPP) has two tracks:



Omnibus Updates – AAPM Incentive

- Medicare providers who achieve ‘sufficient participation’ in an Alternative Payment Model are exempt from MIPS
 - Also qualified for a **5% lump sum** incentive payment
- MACRA legislation establishing QPP originally expired the 5% payment in 2022 to shift to an increase to Medicare CF beginning 2024
 - 2023 would be ‘skipped’ as far as incentives
- Omnibus bill adds in a **3.5% lump sum** AAPM payment for 2023 only

COVID-19 PHE Declaration



Disclaimer:

The content presented within this webinar *is not an* exhaustive list of all regulatory items reliant on the declaration of the public health emergency. Please consult national/state guidance for the most up-to-date policies.



COVID-19 PHE Declaration

Announced January 30th the declaration of the COVID-19 public health emergency will end on **May 11th 2023**

- HHS cites significant decreases in daily cases, COVID deaths, and hospitalization as factor in decision
- Announcement fulfills promise from CMS/HHS to provide a minimum 60 day notice ahead of PHE expiring

COVID-19 PHE Declaration

Unless made permanent through rulemaking or otherwise extended with separate legislation, *flexibilities* granted during COVID rely on the **duration** of the PHE declaration

Highlights include:

- **Medicare Waivers**
- **Physician Supervision**
- **Medicare Reimbursement**
- **Regulatory Considerations**

Medicare/Medicaid Waivers

CMS has utilized their authority granted under Section 1135 of the Social Security Act to provide federal 'blanket waivers' within the following categories:

- Conditions of participation or other certification requirements
- Program participation and similar requirements
- Preapproval requirements
- Requirements that physicians and other health care professionals be licensed in the State in which they are providing services, so long as they have equivalent licensing in another State
 - (this waiver is for purposes of Medicare, Medicaid, and CHIP reimbursement only – state law governs whether a non-Federal provider is authorized to provide services in the state without state licensure)

Medicare/Medicaid Waivers

Continued:

- Emergency Medical Treatment and Labor Act (EMTALA)
- Sanctions under the physician self-referral law (also known as the “Stark Law”)
- Performance deadlines and timetables may be adjusted (but not waived)
- Limitations on payment for health care items and services furnished to Medicare Advantage enrollees by non-network providers

Medicare/Medicaid Waivers

Active CMS Waivers (Updated 10/13/2022) Available Here:

<https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf>

Waivers may be active until:

- End of the emergency period
 - 60 days after the waiver or modification was first published
 - At the end of the year the PHE expires
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- **Duration is specific to the waiver itself**
 - **CMS opted to terminate some waivers already**
 - **Recommend reviewing any waivers currently being used to create transition plan if needed**

Physician Supervision

Level 2 Physician Supervision Via Audio/Video Communication

In the 2023 final rule, CMS announced that there will **not** be an extension of current PHE flexibility to allow physicians to provide level 2 supervision via audio/video communication.

After December 31 of the year in which the PHE ends, the pre-PHE rules for direct supervision will apply (**January 2024**)

Medicare/Medicaid Reimbursement

Ending with the PHE (May 11th):

- **20% increase DRG weighting for COVID positive inpatients**
 - In place since September 1st, 2020 – reimbursement increase given to reflect costs/resources for caring for COVID patients
- **99072 CPT – Used to report additional expenses related to supplies and staff time for non-facility settings**
 - Reportable once per in-person patient encounter during an active PHE

Reminder:

- **Medicare Sequestration**
 - Full (-2%) restarted in July of 2022

Regulatory Considerations

- **Medicare Appropriate Use Criteria (PAMA) Mandate**
 - Last mention of program in rulemaking *delayed* penalty phase delayed until **January 1st, 2023 OR the first year following the end of the PHE (whichever the latter)**
 - However, CMS released the following notice this past Summer:

NOTICE: The payment penalty phase will not begin January 1, 2023 even if the PHE for COVID-19 ends in 2022. Until further notice, the educational and operations testing period will continue. CMS is unable to forecast when the payment penalty phase will begin.

NOTICE: All CDSMs and PLEs qualified as of July 2022 will remain qualified through this cycle. Applications for initial qualification or re-qualification will not be accepted for the 2023 application cycle.

Regulatory Considerations

- **Medicare Appropriate Use Criteria (PAMA) Mandate**
 - The PHE will no longer hold back the start of the penalty phase
 - Unclear **exactly** when this phase will begin
 - Keep an eye out for updates on CMS policy page or in next proposed rule (this Summer)
 - <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/appropriate-use-criteria-program>

Regulatory Considerations

Quality Payment Program (QPP) offered various flexibilities for participants during PHE:

- **Merit-Based Incentive Payment Program (MIPS) Track**
 - **2019** – Automatic EUC policy applied to individuals
 - **2020/2021** – EUC Hardship applications for COVID opened for applications, automatic EUC applied to individuals, COST category reweighted
 - **2022** – COVID EUC Hardship applications opened again
 - **Complex PT bonus expanded 2020 PY**
- **Advanced APM (AAPM) Track**
 - Qualifying participant thresholds frozen until after 2023

QPP Participants should plan on full program participation following the end of the PHE

Summary



Summary

- **The COVID Public Health Emergency Declaration will end MAY 11th 2023**
- **Practices should use the remaining time to plan for ‘return to normal’**
 - **Waivers/Flexibilities**
 - **Reimbursement**
 - **Regulatory Programs**

Thanks!

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