HEALTHCARE REGULATORY ROUND-UP - Episode #42

Consolidated Appropriations Act, 2023: Impact on Healthcare Providers

January 25, 2023

Introductions

Martie Ross, JD
mross@pyapc.com
Director, PYA Center for Rural Health Advancement

Kathy Reep, MBA
kreep@pyapc.com
Senior Manager – Business Development

pyapc.com
800.270.9629

CAA23

- Bill text released on December 20; passed by the House on December 22; passed the Senate on December 23; signed into law December 29
- $1.7 trillion package to fund federal government operations through September 30, 2023
  - Annual regular appropriations bill + kitchen sink (e.g., aid for Ukraine, natural relief supplemental appropriations, electoral reform, no TikTok on government devices, protections for North Atlantic right whales)
- Division FF – Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022
  - Title 1 – Restoring Hope for Mental Health and Well-Being (passed the House in June 2022)
  - Title 2 – Prepare for and Respond to Existing Viruses, Emerging New Threats (PREVENT) Pandemics Act
  - Title 3 – Food & Drug Administration
  - Title 4 – Medicare
  - Title 5 – Medicaid and CHIP Provisions
  - Title 6 – Human Services

Agenda

1. Statutory Pay-As-You-Go (PAYGO) Sequestration
2. Medicare Physician Fee Schedule Conversion Factor
3. Quality Payment Program – Qualifying APM Participant Bonus Payment
4. Telehealth Flexibilities
5. Rural Extenders
6. Medicaid & CHIP
7. Access to Behavioral Health Services
8. Other Provisions

1. Statutory Pay-As-You-Go Act (PAYGO) Sequestration

- Under PAYGO, American Rescue Plan triggered automatic 4% cut in non-exempt spending (including Medicare payments)
  - Protecting Medicare and American Farmers from Sequester Cuts Act of 2022 delayed cuts until 2023
- CAA23 further delays cuts until 2025 (by pushing out payment schedule)
  - Versus exempting ARP from PAYGO (as Congress did with other COVID-19 relief legislation) and thus eliminating any future cuts
  - What will happen in late 2024??
- CAA23 also extends current 2% sequestration under Budget Control Act of 2011 into 2032 (and thus eliminates scheduled increase for 2030 and 2031)

2. 2023 MPFS Conversion Factor

- CMS finalized 4.5% cut to MPFS conversion factor for 2023
  - Sunset of one-year 3% increase in Protecting Medicare and American Farmers from Sequester Cuts Act of 2022
  - Additional 1.5% reduction due to budget neutrality requirements (re-valuation of E/M codes)
- CAA23 provides 2.5% increase for 2023 (resulting in 2% reduction from 2022) and 1.5% increase for 2024 (resulting in 3% reduction from 2022)
  - Due to budget neutrality requirements, any re-valuation of existing codes or new reimbursement may result in larger reduction in 2024 MPFS conversion factor
  - What will happen in late 2024??

3. Quality Payment Program –
Qualifying APM Participant Bonus

- Medicare Access and CHIP Reauthorization Act of 2015 created Quality Payment Program
  - Option 1: Merit-Based Incentive Payment System (MIPS): MPFS payment adjustments (+/-) based on performance score (quality, cost, improvement activities, promoting interoperability)
  - Option 2: Qualifying APM Participant
    - Through 2024 – 5% bonus payment (based on status 2 years earlier)
    - 2025 and 2026 – No bonus payment
    - 2027 and thereafter – 0.75% increase in conversion factor
- CAA23 provides 3.5% bonus for 2025 (i.e., for those that meet definition of Qualifying APM Participant in 2023)
  - And then what happens?

4. Telehealth Flexibilities

- Extends expanded Medicare reimbursement through end of 2024
  - ✓ Continuation of waiver of geographic and location requirements
  - ✓ Continuation of reimbursement for PT, OT, S/L pathologist, and audiologist telehealth services
  - ✓ Continuation of reimbursement for audio-only services
  - ✓ Continuation of FQHCs and RHCs for telehealth services
  - ✓ Continuation of use of telehealth to recertify eligibility for hospice
  - ✓ Delay in in-person requirement for initiation of tele-behavioral health services
  - ✓ Directs study on impact of telehealth on Medicare program integrity
- Unanswered questions (Interim Final Rule?)
  - Expanded list of telehealth services?
  - Payment at non-facility rate? Use of modifier 95?
  - OCR and OIG notices of enforcement discretion?
  - Use of telehealth for direct supervision?
  - Reimbursement for hospital outpatient dep't and CAH (Method 1 billing) services furnished via telehealth?
  - Use of telehealth for in-person medical evaluation prior to prescribing controlled substances?

5. Rural Extenders

- Continuation of Medicare Dependent Hospital Program and Low Volume Hospital Program through September 30, 2024
- Continuation of 1% rural home health add-on payment through 2023
- Continuation of 1% rural ground ambulance add-on payment through 2024
- Rural hospitals to receive at least 10% of 200 new residency slots (100 of those slots to be for psychiatry or psychiatry subspecialties; distribution begins in FY 2026)
- Creation of CDC Office of Rural Health
- Funding increases for existing rural health grant programs (e.g., FLEX)

6. Medicaid and CHIP

Unwinding of Continuous Coverage Requirement

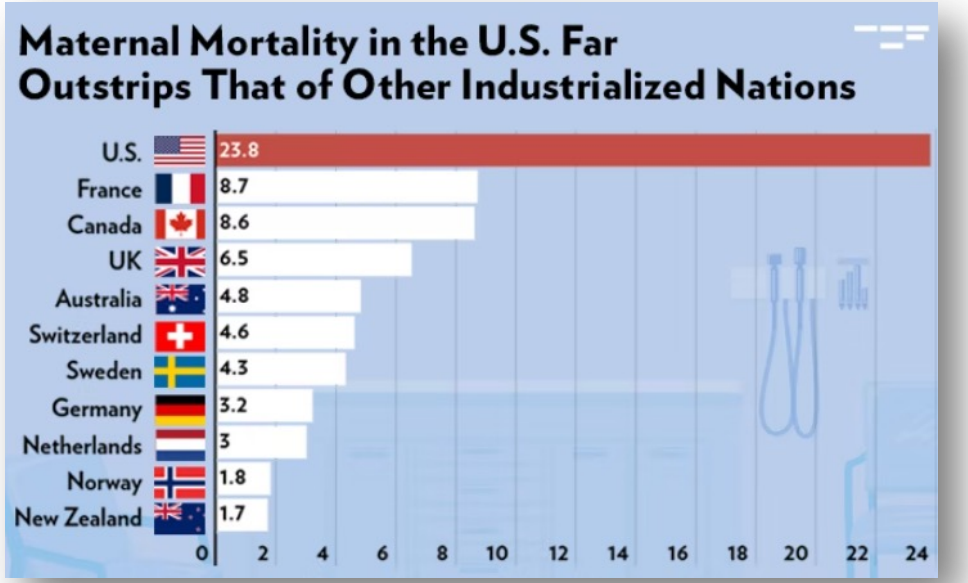
- Phase down of Families First FMAP increases

	Medicaid Matching Rate Increase (Percentage Points)	CHIP Matching Rate Increase (Percentage Points)
January 1 - March 31, 2023	6.2	4.34
April 1 - June 30, 2023	5.0	3.5
July 1 – September 30, 2023	2.5	1.75
October 1 – December 31, 2023	1.5	1.05

- Continuous coverage requirement ends on March 31, 2023, and states will have one year to initiate all renewals (with two additional months to complete process)
  - As a condition of receiving phased down FMAP, states must adhere to federal requirements to avoid procedural disenrollments
  - States must meet monthly data reporting requirements or lose up to 1% of regular FMAP
- Estimated that 19 million likely to become uninsured through renewal process (not eligible for other coverage)

6. Medicaid and CHIP - Other Provisions

- Makes permanent state plan option to provide 12 months of postpartum coverage in Medicaid and CHIP
- Makes permanent requirement for all states to provide 12 months of continuous coverage for all children under age 19 in Medicaid and CHIP effective January 1, 2024
- Extends CHIP funding for two years (through September 20, 2029)
- Provides 4-year extension of Medicaid Money Follows the Person demonstration project



7. Access to Behavioral Health Services

- New Medicare Part B coverage for marriage and family therapist services and mental health counselor services
- Adjusts Medicare's partial hospitalization services to include intensive outpatient mental health services
- Increases by 50% reimbursement for psychotherapy crisis services provided in mobile unit
- Requires HHS to update methodology and data used to set inpatient psych PPS rates (FFY 2025)
- Funds several new and existing grant programs (e.g., state block grants, community behavioral health clinics, integrated care model, peer-supported mental health services)
- Guidance and technical assistance to states for continuum of crisis response services
- New Stark Law exception for physician participation in evidence-based programs to improve mental health, increase resiliency, and prevent suicide

7. Other Provisions

- Provides separate payment under OPPS for non-opioid pain treatment from 2025-2027 (currently packaged with surgical services)
  - Capped at 18% of estimated OPPS rate for services with which non-opioid used
- Delays certain CLIA requirements for one year
  - PAMA-mandated pending payment reductions and reporting requirements
- Extends Medicare Acute Hospital Care at Home program through end of 2024
- Requires HRSA to provide Congressional briefing on actions taken to safeguard 340B covered entities' "lawful access" to discounted drugs
- Includes numerous organizational changes to improve preparedness for future public health emergencies (PREVENT Pandemic Act)

7. Other Provisions (continued)

- Eliminates annual cap on total payments for nursing and allied health education programs
- Provides for 200 new Medicare-supported GME slots (2026)
  - Half allocated for psychiatry and psychiatric subspecialties
  - 10% of slots allocated for –
    - Rural hospitals
    - Hospitals above their cap
    - Hospitals in states with new medical schools
    - Hospitals in HPSAs

Our Next Healthcare Regulatory Round-Up:

So Many Proposed Rules, So Little Time

February 8, 2023