March 18, 2022: National Advocacy Update

AMA asks Congress not to adopt MedPAC recommendation to continue Medicare physician payment freeze

This week, the AMA sent a letter to Congressional leaders (PDF) underscoring the systemic shortcomings of the current Medicare physician payment system that are highlighted in a new report from the Medicare Payment Advisory Commission (MedPAC).

The AMA comments stress the importance of Congress not adopting MedPAC’s recommendation to allow the freeze in Medicare fee for service physician payment rates provided by current law to continue and instead asks Congress to establish a stable, annual payment update that keeps pace with practice cost inflation, similar to other Medicare providers and Medicare benefit categories. Medicare Advantage plans, for example, are projected to see nearly an 8% payment increase in 2023.

Following are highlights of the AMA’s comprehensive response to the MedPAC report:

- The AMA comments highlight that data from the Medicare Trustees indicate that Medicare physician payment has been reduced 20%, when adjusted for inflation, from 2001–2021, establishing a widening gap between physician payment rates and rising medical practice costs.
- The letter stresses that Medicare spending per enrollee has been falling for physician payment schedule services even as it has risen steeply for other Medicare benefits.
- The comments highlight that the statutory freeze in annual Medicare physician payments is scheduled to last until 2026, when updates resume at a rate of only 0.25% a year indefinitely, well below the rate of medical or consumer price index inflation.
- The AMA also stresses that physicians are being asked to do more with fewer resources each year and continue to face significant clinical and financial disruptions during the COVID-19 pandemic.

Also of note, most physicians have not had opportunities to transition to value-based Medicare Advanced Alternative Payment Models, as Congress intended, and must comply with the costly and burdensome Medicare Merit-Based Incentive Payment System.
Prevalence of medical liability premium increases unseen since 2000s continues for third consecutive year

Using data from the Annual Rate Survey Issues of the Medical Liability Monitor (MLM), this report (PDF) summarizes changes in medical liability premiums from 2012 to 2021. The most significant findings are that in 2020, 31.1% of the premiums reported to the MLM increased from the previous year. Once again, and despite a small dip in 2021, almost 30% (29.5%) of premiums went up from those in 2020. In fact, more premiums increased in 2020 and 2021 than in any year since 2006. Although there is not a hard market yet in the U.S. as a whole, there appears to be a hard market in certain areas of the country.

Together with state medical societies, the AMA is pursuing both traditional and innovative medical liability reforms to preserve premium stability and meet the needs of millions of Americans who need affordable, accessible medical care. For more information on AMA solutions to reshape the current medical liability system to better serve both physicians and patients, please read Medical Liability Reform Now! (PDF).

Read the full press release.

Physician experts to discuss overdose epidemic’s effects on children and families, patients with pain

Most descriptions of the nation’s worsening drug-related overdose epidemic highlight the more than 100,000 individuals who have died in the past year. Broad solutions supported by the AMA and many others point to the need to remove all barriers to medications to treat opioid use disorder, enforce mental health and substance use disorder parity laws, and greatly increase access to harm reduction efforts such as fentanyl test strips and naloxone.

Within the tragic mortality figures, however, are unique effects of the epidemic on children and adolescents, historically marginalized and minoritized individuals, and patients with pain.

As part of its AMA Advocacy Insights series, a new AMA webinar, “The nation’s drug overdose epidemic: Helping children and families, patients with pain,” on Tuesday, April 5, at 1 p.m. Central, will look closely at each of these areas from the perspectives of physicians who provide care to these patient populations. Register now.

Hosted by Bobby Mukkamala, MD, chair of the AMA Board of Trustees, the webinar will include the
following panelists:

- Rita Agarwal, MD, clinical professor, anesthesiology, Stanford University, School of Medicine and past president, Society for Pediatric Pain Medicine
- Edwin C. Chapman, MD, founding member and secretary of the board of directors, Leadership Council for Healthy Communities
- Cara Sedney, MD, MA, associate professor and residency program director, Department of Neurosurgery, West Virginia University

### 2022 AMA Awards for Outstanding Government Service recipients announced

The American Medical Association solicits annual nominations for the American Medical Association Awards for Outstanding Government Service—considered one of the most prestigious awards honoring elected officials and career government employees. These awards aim to recognize significant accomplishments to advance public health.

The 2022 American Medical Association Awards for Outstanding Government Service recipients were just announced:

- Roy Blunt, United States senator, State of Missouri
- Peter Marks, MD, PhD, director, Center for Biologics Evaluation and Research, U.S. Food and Drug Administration
- Cindy F. Friedman, state senator, Commonwealth of Massachusetts
- Nirav Shah, MD, JD, director, Maine Center for Disease Control and Prevention
- Travis A. Gayles, MD, PhD, chief health officer (2017–2021), Montgomery County Department of Health and Human Services
- Sam L. Page, MD, county executive, St. Louis County, Missouri

View a video honoring the 2022 award recipients, and learn more about each recipient.

### PREVENT Pandemics Act moves to full Senate for consideration

On March 15, 2022, the Senate Health, Education, Labor and Pensions Committee passed S. 3799,
the PREVENT Pandemics Act, out of committee by a vote of 20-2. The bill, which was amended during the Executive Session, is the culmination of a year of work between Chair Patty Murray (D-WA) and Ranking Member Richard Burr (R-NC). Chair Murray and Ranking Member Burr worked in a bipartisan way with 35 members of Congress and incorporates 41 bills.

The bill includes a broad range of AMA priorities, including bolstering public health preparedness, improving and strengthening public health systems, and improving social determinants of health. On Feb. 4, 2022, the AMA sent initial comments (PDF) on what was the draft language of the bill. S. 3799 will now be sent to the full Senate for consideration.

**Bipartisan House members press HHS for APM improvements**

The AMA remains strongly committed to advancing value-based care and promoting different alternative payment models (APM) to lower Medicare spending and improve patient outcomes. Yet, overly prescriptive rules and regulations issued by the Centers for Medicare & Medicaid Services (CMS) and Center for Medicare & Medicaid Innovation (CMMI) have made it difficult for physicians to either create or join established APMs, including Accountable Care Organizations (ACO) participating in the federal government’s Medicare Shared Savings Program (MSSP).

Recognizing these difficulties, Representatives Suzan DelBene (D-WA), Peter Welch (D-VT), Markwayne Mullin (R-OK), Ami Bera, MD (D-CA), Mike Kelly (R-PA), Darin LaHood (R-IL) and Brad Wenstrup (R-OH) spearheaded a letter urging the secretary of Health and Human Services (HHS) to make key alterations to the MSSP in hopes of increasing participation rates.

The letter (PDF), which garnered 41 bipartisan cosigners, specifically requests HHS to:

- Encourage participation in the MSSP by restoring the percent of shared savings beginner participants receive at least 50%.
- Modify risk adjustment to be more realistic and better reflect factors participants encounter, like health and other risk variables in their communities.
- Remove the arbitrary high- and low-revenue ACO distinction in hopes of avoiding an inordinate amount of financial risk.
- Correct the “rural glitch” by modifying the existing benchmarks and performance metrics to ensure ACOs are not competing against themselves.
- Resume and enhance technical support to ACOs.
- Minimize overlap in various APMs.

With CMMI announcing in October 2021 that part of its “strategy refresh” will focus on having all Medicare and most Medicaid enrollees participating in some form of accountable care relationship by


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2030, it is imperative that CMS begin using all policy tools at its disposal to facilitate physicians’ transition to value-based care.

Each regulatory change touted in the Congressional letter is also included in H.R. 4587, the Value in Health Care Act, bipartisan legislation introduced by Reps. Welch, DelBene, LaHood and Wenstrup to streamline and improve MSSP methodologies and policies. H.R. 4587 also includes two other key policies supported by the AMA that necessitate legislative action: retention of the current 50% Advanced APM Qualifying Participant threshold and a six-year extension of the 5% annual lump sum ACO bonus payment through 2028.

AMA appreciates Reps. DelBene and Welch’s leadership on this letter and will continue to work with bipartisan members of Congress to advance H.R. 4587 this Congress.

**Newly proposed measure aims to address social determinants of health**

The NCQA recently proposed a new measure for use within its HEDIS program, starting in 2023 on Social Need Screening and Intervention (SNS-E). The measure would assess health plans on the percentage of members who were screened, using prespecified instruments, at least once during the measurement period for unmet food, housing and transportation needs, and received a corresponding intervention if they screened positive.

The AMA’s comments (PDF) highlighted that health plans can play a critical role in addressing the social needs of patients and supportive of the initial set of factors for screenings and interventions (food, housing and transportation), as they clearly impact an individual’s health outcomes and by holding health plans accountable for screening beneficiaries, it would better ensure the necessary resources and tools are available to assess and address a patient’s social needs. However, as indicated in the draft materials, of the three social risk domains, only food insecurity has been finalized, while housing instability and transportation remain in a draft phase.

The sharing of these data points across providers and settings is integral to ensuring that physicians, practices, health plans and other stakeholders are coordinating efforts; the AMA believes data standards that enable interoperability are imperative to the success of these measurement efforts to ensure that they remain in sync with these activities. Therefore, the AMA urges NCQA to consider further staging on the implementation of all three factors as it is important that the data collected and reported be standardized and align with the work of the Health Level 7 Gravity Project.

Lastly, the AMA believes that applying the measure to an intervention is appropriate and encourages NCQA to monitor the timeframe with evaluation and adjustment, if warranted, to better take into
consideration the processing time required to close the loop on a social care referral.

Comment letter supports Medicare Advantage policy proposals

The AMA is calling for CMS (PDF) to finalize key proposed policy changes for 2023 that were announced in a Medicare Advantage (MA) and Part D proposed rule. Under the proposal, MA plans will need to prove to CMS that their physician networks meet network adequacy standards before their applications for new or expanded MA plans can be approved.

In response to increasing complaints from patient advocates, CMS also proposed changes to better regulate third-party marketing and communications, which the AMA is supporting. For the Medicare prescription drug benefit, the AMA is asking CMS to finalize its proposal to include all pharmacy price concessions in the definition of "negotiated price" in order to help lower patients' prescription drug cost-sharing at the point of sale.

Several of the proposals seek to improve policies for patients who are dually eligible for Medicare and Medicaid. For example, in response to CMS' proposal to require special needs plans to include health risk assessment questions on housing stability, food security and transportation access, the AMA recommended that CMS hold these plans accountable for ensuring patients are connected to support services once patient needs are identified. Also, to ensure equitable coverage for patients who need access to health services delivered via telecommunications but do not have 2-way audio-visual technology, the AMA letter (PDF) advocated its policy that diagnoses codes for audio-only telehealth encounters be included in MA risk adjustments.

The CMS proposal also included several requests for information. Responding to such a request pertaining to hospital transfers, the AMA provided detailed policy recommendations and described the alarming rates of serious adverse events due to prior authorization, strongly urging CMS to advance policies to reduce prior authorization requirements. The AMA noted that, especially during the COVID-19 public health emergency, there are not enough staff to manage the massive volume and administrative burden of prior authorization requests, which severely limits patient access to care.

AMA successfully urged CMS to re-open 2021 MIPS hardship exemption

At the start of 2022, the AMA heard from multiple practices that were concerned they would receive a negative 2023 MIPS payment adjustment because they missed the 2021 MIPS extreme and uncontrollable (E&C) hardship application deadline and/or their end of year MIPS scores were
impacted by the dramatic surge in COVID cases due to Omicron. The original E&C hardship application deadline coincided with the increase in COVID cases, and as a result increased demands on practices.

The re-opening of the 2021 application period will give physicians, including APM participants, much-needed relief and better ensure they avoid a 2023 MIPS negative payment adjustment. Physicians have until March 31, 2022, to submit an E&C application due to COVID. As a reminder, physicians who do not submit any MIPS data for the 2021 MIPS program will automatically avoid a 2023 penalty. If a physician, practice or physician/practice part of an APM is unsure of their status and believe they have been affected by the E&C circumstances (such as the public health emergency triggered by the COVID-19 pandemic), they can apply for this exception by March 31 whether reporting traditional MIPS or APM entities.

For more information, please see the Quality Payment Program COVID-19 Response webpage of the QPP website. You can contact the Quality Payment program at 1-866-288-8292, Monday through Friday, 8 a.m.–8 p.m. Eastern, or by e-mail at: QPP@cms.hhs.gov. To receive assistance more quickly, please consider calling during non-peak hours—before 10 a.m. and after 2 p.m. Eastern. Customers who are hearing impaired can dial 711 to be connected to a TRS Communications Assistant.

AMA advocacy results in extended QPP support for small, underserved and rural practices

The CMS Quality Payment Program’s (QPP) Small, Underserved, and Rural Support (SURS) initiative concluded on Feb. 15, 2022. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) only included five years of direct support to the QPP SURS. Recognizing the need for continued support and educational resources for small, underserved and rural practices participating in QPP, the AMA urged CMS to continue to provide technical support.

As a result of AMA advocacy, a new monthly newsletter strictly focused on small practices in QPP has been launched, upcoming webinars and trainings will be listed in the QPP library, small practice-specific resources have been centralized on the QPP website, and the QPP listserv will continue with updates on the QPP, which will be particularly important for program deadlines. The Quality Payment Program Service Center will continue to serve as the primary point of contact to address questions and concerns and can be accessed at 1-866-288-8292 (TTY 1-877-715-6222) or via email at QPP@cms.hhs.gov Monday–Friday 8 a.m.–8 p.m. Eastern.
Public Health Safety Act restrictions lifted for unaccompanied minors

The AMA applauds the Centers for Disease Control and Prevention (CDC) for terminating Title 42’s applicability to unaccompanied minors. Title 42, a section of the Public Health Safety Act, allows the U.S. government to temporarily block noncitizens from entering the U.S. “when doing so is required in the interest of public health.” Previously the Biden administration had exempt unaccompanied minors from Title 42.

However, Judge Pitman of the U.S. District Court for the Northern District of Texas ruled that the Biden administration could not exempt unaccompanied minors from Title 42 and required the government to either appeal the decision or start expulsions for unaccompanied minors within seven days of his decision. On the seventh day, the CDC released a decision (PDF) that stated that the expulsion of unaccompanied minors was no longer warranted to protect the public health, thus formally ending Title 42 for unaccompanied minors.

The AMA supports the special consideration of physical, mental and psychological health in determinations of the legal status of unaccompanied minor children without proper documentation and supports the CDC is its decision to no longer apply Title 42 to unaccompanied minors.

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