



H.R. 2617 - Consolidated Appropriations Act, 2023

117th Congress

The Consolidated Appropriations Act of 2023 (Act) was passed by Congress on December 23, 2022 and signed into law by President Biden on December 29, 2022. This omnibus spending bill provides roughly \$1.7 trillion in discretionary resources for federal agencies and includes additional policy changes in other areas, including health care. The following summarizes major provisions in the Act of particular relevance to physicians and patients.

Medicare Physician Payment Provisions

As advocated for by the AMA and the Federation, the Act waives a scheduled 4 percent Medicare payment cut for 2023 and 2024 stemming from Statutory Pay-As-You-Go (PAYGO) rules. Additionally, the 4.5 percent cut to Medicare Physician Payment Schedule conversion factor was reduced to 2.0 percent for 2023 and 3.25 percent for 2024. In addition, the Act extends incentive payments for qualified advanced Alternative Payment Model (APM) participants for one additional year but reduces the amount to 3.5 percent (from 5 percent). The law also maintains the current threshold to qualify for Advanced APM payments at 50 percent for 2024. Additional provision include:

- Delays by one year payment reductions and data reporting periods for the clinical laboratory fee schedule; and
- Further extends the 2 percent Medicare sequester for one additional year, through the first half of fiscal year (FY) 2032 but lowers the Medicare sequestration percentages for FYs 2030-2031 to 2 percent (from varying amounts up to 4 percent).

Medicare Telehealth

As the AMA strongly advocated, all COVID telehealth flexibilities previously extended for 151-days beyond the Public Health Emergency (PHE) under former legislation are now extended through December 31, 2024, including lifting geographic and originating site restrictions, allowing audio-only visits, and delaying the in-person requirement for tele-mental health services. In addition, the Act provides the following telehealth provisions consistent with AMA advocacy:

- Extends through December 31, 2024, the flexibility to exempt telehealth services from the deductible for high-deductible health plans; and
- Extends through December 31, 2024, the Acute Hospital Care at Home initiative.

Additional Graduate Medical Education (GME) Slots

The Act provides funding for 200 additional GME slots, with half devoted to psychiatry or psychiatry subspecialties. The AMA has strongly advocated for additional Medicare supported residency positions in psychiatry and psychiatry subspecialties. Much like the 2020 year-end package (which included 1,000 residency slots), these 200 additional residency positions will be targeted to hospitals with diverse needs, including rural teaching hospitals, hospitals serving patients in health professional shortage areas, hospitals in states with new medical schools or branch campuses, and hospitals already training over their Medicare caps.

Medicaid and the Children's Health Insurance Program (CHIP)

The legislation extends CHIP funding for two years, through FY 2029, and requires 12 months of continuous coverage for children enrolled in Medicaid and CHIP beginning January 1, 2024. It also makes permanent states' optional ability to provide a full year of postpartum coverage to new mothers in Medicaid and makes investments in programs critical to child health and access.

In addition, the bill extends Puerto Rico's enhanced federal Medicaid match of 76 percent for five years and permanently extends the enhanced federal Medicaid match of 83 percent for certain other territories. The bill also decouples continuous Medicaid coverage requirements from the Public Health Emergency and requires states to resume enrollment verifications in 2024 and gradually phases out enhanced federal matching rates throughout 2023.

Effective July 1, 2025, the legislation codifies requirements for updated, publicly searchable provider directories for certain payer entities including Medicaid managed care organizations, and, effective Jan. 1, 2025, it requires states to provide justice-involved youth eligible for Medicaid or CHIP with case management and other services in the 30-days prior to and following their release from incarceration.

Mental Health and Substance Use Disorder (SUD)

The omnibus bill includes the AMA-supported House-passed Restoring Hope for Mental Health and Well-Being Act of 2022 (H.R. 7666), which reauthorizes key federal mental health programs and provides additional supports to address the national mental health and substance use disorder crisis supported. Specifically, the Act:

- Expands Substance Abuse and Mental Health Services Administration (SAMHSA) grants to increase uptake and access to integrated care services including the psychiatric collaborative care model and allocates 10 percent of such funds to primary care practices;
- Provides funding for non-opioid pain treatment alternatives in hospital outpatient and ambulatory surgery centers;
- Increases funding for substance use disorder and behavioral health services;
- Enacts the Mainstreaming Addiction Treatment Act (MAT Act) to permanently repeal the buprenorphine X-waiver requirements;
- Establishes a national maternal mental health hotline and task force;
- Allows certain DEA registrants to operate mobile units to dispense medications for opioid use disorder (OUD);
- Eliminates the requirement for individuals to have OUD for least 1 year before treatment by an opioid treatment program; and
- Requires self-funded, nonfederal, governmental health plans to comply with mental health and substance use parity requirements.
- Includes an AMA-endorsed HHS grant program for states to enforce and ensure compliance with the federal mental health and substance use disorder parity law.
- Facilitates the publication of best practices for a crisis response continuum of care related to mental health and SUD. The AMA secured language that such services should not require prior authorization.
- Expands Medicare coverage of therapy, crisis psychotherapy, and intensive outpatient services effective Jan. 1, 2024.
- Directs a GAO study to compare the mental health and SUD benefits offered by Medicare Advantage (MA) plans compared to traditional Medicare.

Despite AMA opposition, the bill also includes the Medication Access and Training Expansion Act (MATE Act), which will require all DEA registrants to meet a one time, eight-hour training requirement on identifying and treating patients with substance use disorders. The AMA did succeed in getting language recognizing medical school training and state and specialty society CME to satisfy the training requirements.

Secure 2.0, Retirement Parity in Student Loans Act provision:

As strongly supported by the AMA, the Act contains provisions that permit certain retirement plans to make matching contributions to workers as if their student loan payments were salary reduction contributions. Under this voluntary proposal for employers, graduates would no longer be forced to forego the important employer match for retirement contributions.

FDA Provisions

The Act reauthorizes several existing FDA programs and authorities through October 2027. Specifically, the legislation:

- Includes the Clinical Trial Diversity Act, which would amend the Public Health Service Act to improve the diversity of participants in research on Alzheimer’s disease (AD). Requires the FDA to solicit input from stakeholders on increasing the enrollment of historically underrepresented populations in clinical studies.
- Requires the FDA to issue draft guidance that addresses considerations for decentralized clinical studies, including regarding the engagement, enrollment, and retention of a meaningfully diverse clinical population with respect to race, ethnicity, age, sex, and geographic location, when appropriate.
- Reforms the accelerated approval program by strengthening requirements for post approval studies and expanding the FDA’s authority to withdraw approvals where sponsors fail to conduct studies with due diligence.
- Strengthens the FDA’s ability to regulate the safety of cosmetics and personal care products by empowering the FDA to establish good manufacturing practices, requiring manufacturers to report adverse events, requires manufacturing facilities to be registered, requiring cosmetic product labels to list fragrance allergens and contact information to report adverse event reports, and providing the FDA with mandatory recall authority.

Notably, the bill did **not** include the VALID Act, which would have created a new, risk-based regulatory paradigm for oversight of laboratory developed tests (LDTs), which has been a controversial subject due to the variance in preferred approaches amongst various stakeholders. The AMA has been engaged on LDT issues for several years and had supported efforts to delay passage of the VALID Act to allow stakeholders additional time to reach consensus. It is likely the FDA will look to strengthen oversight of LDTs through regulation.

PREVENT Pandemics Act:

The omnibus package includes the “PREVENT Pandemics Act” which includes a number of bipartisan proposals to strengthen the nation’s public health and medical preparedness and response systems, and which the AMA strongly supported and provided extensive [comments](#) on.

Specifically, the PREVENT Pandemics Act would:

- Improve strategy and coordination among public health preparedness agencies;
- Strengthen supply chain and government stockpiles of medical products;
- Require a Senate-confirmed CDC Director and an Agency-wide strategic plan;
- Modernize public health data capabilities;
- Take steps to address disparities which make public health emergencies harder on at-risk populations and communities;
- Improve public health communication and address misinformation;
- Revitalize the public and community health workforce;
- Accelerate biomedical research;
- Ensure continued access to mental health and SUD services during public health emergencies; and
- Establish an independent task force to conduct a comprehensive review of the COVID-19 response.

Indian Health Services (IHS)

The omnibus package funds IHS at \$6.95 billion, an increase of \$327 million billion above FY22 enacted levels. Increases have been provided for a modernized electronic health record system, initiatives for maternal health, Urban Indian health, and programs that support Indian Health Professionals. The agreement also provides advance appropriations for the Indian Services and Indian Health Facilities accounts totaling \$5.1billion for FY 2024.

Biomedical Research

This Act includes authorizing language for the Advanced Research Projects Agency for Health (ARPA-H), including its establishment separately within the National Institutes of Health (NIH), intended to accelerate innovation and transformative breakthroughs by investing in novel, broadly applicable, high-risk, high-reward research projects to find cures and treat the world's deadliest diseases. The Act also provides \$1.5 billion for ARPA-H through FY 2025 (\$500 million or a 50% increase over FY 2022) through the Health and Human Services (HHS) Office of the Secretary in FY 2023.

Medicare Section Offsets

- Reduces the amount in the Medicare Improvement Fund (MIF) from \$7.278 billion to \$180 million.
- Extends by one year the change to the annual updates to the hospice aggregate cap made in the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 and applies the hospice payment update percentage rather than the Consumer Price Index for Urban Consumers (CPI-U) to the hospice aggregate cap through 2032.

Appendix

A. Estimated Specialty Impact of CY 2023 MFS Final Rule and Consolidated Appropriations Act of 2023.

Note: The temporary 3% Medicare Conversion Factor increase from the *CY 2022 Protecting Medicare and American Farmers from Sequester Cuts Act* expired on December 31, 2022. It was replaced by a 2.5% increase from the *Consolidated Appropriations Act of 2023* (in effect through December 31st, 2023). The CY2023 Conversion Factor was also subject to a -1.60% budget neutrality adjustment.

Specialty	Allowed Charges (mil)	Combined Impact of CY 2023 MFS Final Rule and Consolidated Appropriations Act of 2023
Allergy/Immunology	\$233	-2%
Anesthesiology	\$1,749	-2%
Audiologist	\$71	-2%
Cardiac Surgery	\$199	-2%
Cardiology	\$6,331	-1%
Chiropractic	\$674	0%
Clinical Psychologist	\$791	-2%
Clinical Social Worker	\$861	-2%
Colon and Rectal Surgery	\$156	-2%
Critical Care	\$354	1%
Dermatology	\$3,760	-1%
Diagnostic Testing Facility	\$817	6%
Emergency Medicine	\$2,544	0%
Endocrinology	\$534	0%
Family Medicine	\$5,817	0%
Gastroenterology	\$1,595	-1%
General Practice	\$378	0%
General Surgery	\$1,772	-2%
Geriatrics	\$177	2%
Hand Surgery	\$256	-1%
Hematology/Oncology	\$1,713	-1%
Independent Laboratory	\$600	0%
Infectious Disease	\$590	3%
Internal Medicine	\$9,881	3%
Interventional Pain Mgmt	\$929	-2%
Interventional Radiology	\$467	-3%
Multispecialty Clinic/Other Phys	\$151	-1%
Nephrology	\$2,032	1%

Specialty	Allowed Charges (mil)	Combined Impact of CY 2023 MFS Final Rule and Consolidated Appropriations Act of 2023
Neurology	\$1,406	-1%
Neurosurgery	\$732	-1%
Nuclear Medicine	\$54	-2%
Nurse Anes / Anes Asst	\$1,122	-2%
Nurse Practitioner	\$5,842	1%
Obstetrics/Gynecology	\$596	-1%
Ophthalmology	\$4,849	-1%
Optometry	\$1,316	-1%
Oral/Maxillofacial Surgery	\$74	-2%
Orthopedic Surgery	\$3,476	-1%
Other	\$59	-2%
Otolaryngology	\$1,139	-1%
Pathology	\$1,173	-1%
Pediatrics	\$58	0%
Physical Medicine	\$1,097	2%
Physical/Occupational Therapy	\$4,925	-1%
Physician Assistant	\$3,182	0%
Plastic Surgery	\$324	-1%
Podiatry	\$2,013	-1%
Portable X-Ray Supplier	\$78	1%
Psychiatry	\$990	2%
Pulmonary Disease	\$1,402	1%
Radiation Oncology and Radiation Therapy Centers	\$1,615	-1%
Radiology	\$4,734	-2%
Rheumatology	\$548	-2%
Thoracic Surgery	\$318	-2%
Urology	\$1,758	-1%
Vascular Surgery	\$1,104	-3%
Total	\$91,414	-0.5%

B. Calculation of CY 2023 Medicare Physician Payment Schedule (MFS) Conversion Factor (CF)

	Medicare CF	Percentage Change vs. CY2022 Medicare CF
CY2022 Medicare Physician Payment Schedule (MFS) Conversion Factor (CF)	\$34.6062	0.00%
Impact of CY2023 Budget Neutrality (BN) Adjustment Only	\$34.0525	-1.60%
Impact of CY2023 BN Adjustment and Expiration of Temporary 3%	\$33.0607	-4.47%
Final CY2023 MFS CF (with CAA of 2023)	\$33.8872	-2.08%