



Health Policy Briefing

November 6, 2023

Medicare Physician Fee Schedule Final Rule Published

CMS released the CY 2024 Physician Fee Schedule (PFS) [final rule](#) on November 2. According to [CMS](#), the finalized CY 2024 PFS conversion factor is \$32.74, a decrease of \$1.15 or 3.37% relative to CY 2023. Also note that CMS finalized maintaining a Merit-Based Incentive Payment System (MIPS) performance threshold of 75 points for 2024, rather than increasing it to 82 points, as proposed, which would have made it more challenging for physicians to avoid a penalty in 2026.

FY 2024 Appropriations Update

While both the House and Senate are making progress on their respective fiscal year (FY) 2024 spending bills, appropriators have yet to open any bicameral discussions to reconcile the two chambers' very different approaches to government funding. Congress currently faces a November 17 deadline to avoid a government shutdown. The House of Representatives has passed seven of the 12 annual appropriations measures (Military Construction-Veterans Affairs (VA), Defense, Homeland Security, State-Foreign Operations, Energy-Water, Legislative Branch, Interior-Environment), while the Senate passed the chamber's first minibus package containing appropriations for Agriculture-Food and Drug Administration, Military Construction-VA, and Transportation-Housing and Urban Development in a bipartisan 82-15 vote last week. The two chambers' approaches to FY 2024 government funding vary significantly, however, with the House bills containing steeper spending cuts and contentious policy riders.

During his first meeting with Senate Republicans since being elected House Speaker, Mike Johnson (R-La.) argued in support of another continuing resolution (CR) extending government funding through January 15. House Majority Leader Steve Scalise (R-La.) has said that any stop-gap spending bill will contain both spending cuts and policy changes. Congress faces an effective April 30 deadline to pass FY 2024 appropriations, given

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that the most recent debt ceiling agreement included a provision to subject all discretionary spending to a 1% cut should a CR still be in place past that date.

The House also passed a \$14.3 billion Israel aid package in a 226-196 vote last week. Most Democrats opposed the measure, which includes cuts to the Internal Revenue Service, and the White House has already threatened to veto the bill. Senate Majority Leader Chuck Schumer (D-N.Y.) has pledged that the Senate will consider a broader package including emergency spending for Israel, Gaza, and Ukraine. Speaker Johnson stated that the House will vote on aid to Ukraine as soon as this week as a part of a package that also contains border enforcement measures. Sens. Bernie Sanders (I-Vt.), Mazie Hirono (D-Hawaii), Ed Markey (D-Mass.), Jeff Merkley (D-Ore.), Elizabeth Warren (D-Mass.), and Peter Welch (D-Vt.) sent a [letter](#) to Senate leadership last week calling for any emergency supplemental appropriations bill for Ukraine, Israel, and Gaza to contain equal funding for “major crises” domestically, including the state of the U.S. primary health care system and the opioid crisis. The White House has requested \$106 billion in emergency aid for Ukraine, Israel, and Gaza.

Republican appropriators in the House of Representatives released a revised [version](#) of their FY 2024 Labor-Health and Human Services-Education legislation last week. Similar to other spending bills being advanced by the House, the revised HHS appropriations measure includes a number of contentious policy riders, including a provision to prevent any funding from going toward postgraduate physician training programs that mandate abortion training or penalize students who opt out of such training. The bill also includes language to block the declaration of a public health emergency related to gun violence, along with a measure to prevent funding to implement President Joe Biden’s executive order on ***Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation***. Speaker Johnson plans to bypass a full committee markup and instead bring the bill to the floor for a vote the week of November 13.

Senate Finance to Mark Up Mental Health, PBMs, Medicare Physician Fee Schedule Relief Extension Package This Week

Senate Finance Committee leadership released a bipartisan discussion [draft](#) of legislation containing measures related to the pharmacy benefit manager (PBM) industry as well as provisions aimed at increasing access to mental health care. The package would expand eligibility for workforce shortage incentive programs for mental health and substance use disorder clinicians, support the use of licensed clinical social workers in the Medicare program, and require Medicare Advantage plans to have up-to-date and accurate provider directories. Additionally, the draft would add to the ***Modernizing and Ensuring PBM Accountability Act*** advanced by the panel in July by mandating that prescription drug plan sponsors with preferred pharmacy networks have a minimum share of in-network pharmacies in underserved areas not tied to a PBM or the sponsor. The bill also directs the U.S. Department of Health and Human Services to collect data on drug acquisition costs, and would require plans to include certain discount-eligible drugs in their formularies. The package also mitigates the impending Medicare physician fee schedule cut by extending the relief from last year at the 2.5% level, rather than letting it drop to 1.25%. The panel plans to markup the package on Wednesday.

Senate to Hold NIH Director Confirmation Vote

The Senate plans to vote early this week on the nomination of Monica Bertagnolli to serve as the next director of the National Institutes of Health. A vote to end debate on the Senate floor is scheduled for Monday, which could set the stage for a final confirmation vote on Tuesday. The Senate Committee on Health, Education, Labor and Pensions advanced her nomination in a bipartisan vote late last month.

Pallone, Neal Push for MA Broker Compensation Oversight

House Energy and Commerce Committee Ranking Member Frank Pallone (D-N.J.) and Ways and Means Committee Ranking Member Richard Neal (D-Mass.) are [urging](#) the Centers for Medicare and Medicaid Services (CMS) to increase oversight of broker participation and compensation in the Medicare Advantage (MA) market. The lawmakers raise concerns that misaligned incentives have led to broker and marketing practices that may push seniors away from the insurance plans best suited to their needs. They request that CMS move to require MA plans to report total broker compensation amounts, inclusive of any bonus or incentive payments. They also ask the agency to change the total amount brokers can receive in compensation per enrollee.

Additional GOP Leaders Question Proposed Changes to Nursing Home Standards

Republican leadership of the House Energy and Commerce Committee, House Ways and Means Committee, and Senate Finance Committee have sent a [letter](#) to the U.S. Department of Health and Human Services arguing that the administration's proposed nursing home staffing requirements will jeopardize access to care, particularly for Americans in rural and underserved areas. The new rule from CMS would increase the on-site registered nurse staffing requirement to 24 hours and mandate that nursing homes provide 2.45 hours of care per resident day from nurse aides and 0.55 hours per resident day from registered nurses. The lawmakers ask that the agency withdraw the rule and work on tailored solutions "addressing the severe health care workforce shortages" across the nation.

Warner, Cassidy Launch Health Care Cybersecurity Working Group

Senate Intelligence Committee Chairman Mark Warner (D-Va.) and Health, Education, Labor and Pensions Ranking Member Bill Cassidy (R-La.) announced the creation of a health care cybersecurity working group last week. The lawmakers, joined by Sens. John Cornyn (R-Texas) and Maggie Hassan (D-N.H.), plan to examine proposals to address the cybersecurity of the nation's health care system. Sen. Warner released a report last year entitled *Cybersecurity is Patient Safety* which considered the establishment of minimum cyber hygiene practices for health care organizations.

COVID Panel Probes Global Biosafety Standards, Pandemic Origins

Reps. Brad Wenstrup (R-Ohio) and Raul Ruiz (D-Calif.) have sent a [letter](#) to the Government Accountability Office requesting a report on G-20 member nations' biosafety and biosecurity standards. The Select Subcommittee on the Coronavirus Pandemic leadership ask for a comprehensive assessment of how the current biosafety and biosecurity standards of the foreign nations compare to those existing in the United States. "As we saw during the COVID-19 pandemic, biosafety and biosecurity issues have the potential to affect the international community," the letter states. "While the United States evaluates its own biosafety and biosecurity standards, precautions taken by other nations remain highly relevant to the Select Subcommittee's work."

Chair Wenstrup, along with House Oversight and Accountability Chairman James Comer (R-Ky.) and Energy and Commerce Chair Cathy McMorris Rodgers (R-Wash.), also [informed](#) the U.S. Department of Health and Human Services of their decision to subpoena Assistant Secretary for Legislation Melanie Egorin last week. The committee leaders argue that she has spent months evading lawmakers' questions related to the origins of COVID-19. Egorin must now testify at a deposition on November 16.

President Issues AI Executive Order

President Joe Biden issued an [executive order](#) on artificial intelligence last week. The move charges the National Institute of Standards and Technology with the creation of standards to ensure that AI tools are safe and effective, and will require AI developers to share safety test results and other information with the federal government. Additionally, the order directs the U.S. Department of Health and Human Services to establish a safety program to address harms or unsafe health care practices involving AI. Measures laid out by the order are set to be implemented over the next year.

Bipartisan Veterans Task Force Recommends Improvements for Women's Care

A bipartisan congressional Women Veteran Task Force submitted a [report](#) to the House Committee on Veterans' Affairs last week making recommendations on issues that uniquely affect women veterans. The Task Force recommends more gender specific training for practitioners administering VA disability exams. The report also highlights the potential need to develop national or regional gender-specific cancer support programs, and suggests that the VA consider updating their guidelines for screening women who have heterogeneous dense breasts.

Upcoming Congressional Hearings and Markups

Senate Finance Committee markup of [discussion draft](#) of mental health/PBM package; time TBA; November 8

Senate Appropriations Committee hearing “A Review of the President’s Supplemental Request for the Departments of Health and Human Services and Homeland Security;” 9:00 a.m.; November 8

Senate Homeland Security and Governmental Affairs Committee hearing “The Philosophy of AI: Learning from History and Shaping Our Future;” 9:30 a.m.; November 8

Senate Judiciary Subcommittee on Intellectual Property hearing “Reforming the Patent Trial and Appeal Board – The **PREVAIL Act** and Proposals to Promote U.S. Innovation Leadership;” 2:30 p.m.; November 8

Senate Health, Education, Labor, and Pensions Subcommittee on Primary Health and Retirement Security hearing “Avoiding a Cautionary Tale: Policy Considerations for Artificial Intelligence in Health Care;” 2:30 p.m.; November 8

House Veterans’ Affairs Subcommittee on Health hearing “Emerging Therapies: Breakthroughs in the Battle Against Suicide?” 2:00 p.m.; November 14

House Veterans’ Affairs Subcommittee on Technology Modernization hearing “Electronic Health Record Modernization Deep Dive: System Uptime;” 12:00 p.m.; November 15

Recently Introduced Health Legislation

S.3162 — A bill to improve the requirement for the Director of the National Institute of Standards and Technology to establish testbeds to support the development and testing of trustworthy artificial intelligence systems and to improve interagency coordination in development of such testbeds, and for other purposes; Sponsor: Lujan, Ben Ray [Sen.-D-NM]; Committees: Senate - Commerce, Science, and Transportation

S.3165 — A bill to help persons in the United States experiencing homelessness and significant behavioral health issues, including substance use disorder, by authorizing a grant program within the Department of Health and Human Services to assist State and local governments, continuums of care, community-based organizations that administer both health and homelessness services, and providers of services to people experiencing homelessness, better coordinate health care and homelessness services, and for other purposes; Sponsor: Padilla, Alex [Sen.-D-CA]; Committees: Senate - Health, Education, Labor, and Pensions

S.3167 — A bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of certain association health plans as employers, and for other purposes; Sponsor: Braun, Mike [Sen.-R-IN]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.6122 — To require the Secretary of Health and Human Services and the Secretary of Labor to conduct a study and issue a report on grant programs to support the nursing workforce; Sponsor: Nunn, Zachary [Rep.-R-IA-3]; Committees: House - Energy and Commerce; Education and the Workforce

S.3171 — A bill to amend the Public Health Service Act to promote healthy eating and physical activity among children; Sponsor: Booker, Cory A. [Sen.-D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions

S.3172 — A bill to amend the Internal Revenue Code of 1986 to include certain over-the-counter dietary supplement products and foods for special dietary uses as qualified medical expenses; Sponsor: Cramer, Kevin [Sen.-R-ND]; Committees: Senate - Finance

S.3175 — A bill to establish a grant program to support schools of medicine and schools of osteopathic medicine in underserved areas; Sponsor: Kaine, Tim [Sen.-D-VA]; Committees: Senate - Health, Education, Labor, and Pensions

S.3193 — A bill to amend the Controlled Substances Act to allow for the use of telehealth in substance use disorder treatment, and for other purposes; Sponsor: Whitehouse, Sheldon [Sen.-D-RI]; Committees: Senate - Health, Education, Labor, and Pensions

S.3196 — A bill to amend title XIX of the Social Security Act to provide a State option to extend Medicaid coverage for foster care children while receiving treatment from a qualified residential treatment program; Sponsor: Rubio, Marco [Sen.-R-FL]; Committees: Senate - Finance

H.R.6144 — To amend the Omnibus Crime Control and Safe Streets Act of 1968 to authorize grant programs to combat fentanyl poisonings; Sponsor: Garcia, Mike [Rep.-R-CA-27]; Committees: House - Judiciary

H.R.6160 — To amend the Public Health Service Act to reauthorize a lifespan respite care program; Sponsor: Molinaro, Marcus J. [Rep.-R-NY-19]; Committees: House - Energy and Commerce

H.R.6161 — To amend the Internal Revenue Code of 1986 to allow amounts paid for over-the-counter naloxone to be taken into account in determining the deduction for medical expenses; Sponsor: Molinaro, Marcus J. [Rep.-R-NY-19]; Committees: House - Ways and Means

H.R.6168 — To amend the Violent Crime Control and Law Enforcement Act of 1994 to ensure that healthcare providers can assist survivors of domestic violence, and for other purposes; Sponsor: Sykes, Emilia Strong [Rep.-D-OH-13]; Committees: House - Judiciary

S.3200 — A bill to reauthorize the loan repayment program for the substance use disorder treatment workforce; Sponsor: Hassan, Margaret Wood [Sen.-D-NH]; Committees: Senate - Finance

S.3202 — A bill to amend the Internal Revenue Code of 1986 to provide an alternative manner of furnishing certain health insurance coverage statements to individuals; Sponsor: Thune, John [Sen.-R-SD]; Committees: Senate - Finance

S.3204 — A bill to amend Internal Revenue Code of 1986 to streamline and improve the employer reporting process relating to health insurance coverage and to protect dependent privacy; Sponsor: Warner, Mark R. [Sen.-D-VA]; Committees: Senate - Finance

S.3206 — A bill to provide for a study on the accessibility of substance use disorder treatment and mental health care providers and services for farmers and ranchers, and for other purposes; Sponsor: Bennet, Michael F. [Sen.-D-CO]; Committees: Senate - Health, Education, Labor, and Pensions

S.3211 — A bill to enhance our Nation's nurse and physician workforce by recapturing unused immigrant visas; Sponsor: Durbin, Richard J. [Sen.-D-IL]; Committees: Senate - Judiciary

S.3215 — A bill to conduct or support further comprehensive research for the creation of a universal influenza vaccine or preventative; Sponsor: Markey, Edward J. [Sen.-D-MA]; Committees: Senate - Health, Education, Labor, and Pensions

S.3219 — A bill to protect against seasonal and pandemic influenza, and for other purposes; Sponsor: Baldwin, Tammy [Sen.-D-WI]; Committees: Senate - Health, Education, Labor, and Pensions

S.3220 — A bill to expand the tropical disease product priority review voucher program to encourage prevention and treatment of coccidioidomycosis; Sponsor: Kelly, Mark [Sen.-D-AZ]; Committees: Senate - Health, Education, Labor, and Pensions

S.3224 — A bill to codify Internal Revenue Service guidance relating to treatment of certain services and items for chronic conditions as meeting the preventive care deductible safe harbor for purposes of high deductible health plans in connection with health savings accounts; Sponsor: Thune, John [Sen.-R-SD]; Committees: Senate – Finance

H.R.6171 — To amend the Internal Revenue Code of 1986 to provide a refundable credit to individuals who donate certain life-saving organs; Sponsor: Wilson, Joe [Rep.-R-SC-2]; Committees: House - Ways and Means; Energy and Commerce

H.R.6176 — To prohibit Federal funding of Planned Parenthood Federation of America; Sponsor: Aderholt, Robert B. [Rep.-R-AL-4]; Committees: House - Energy and Commerce

H.R.6177 — To prohibit Federal funding for researchers who have conducted a study or experiment relating to gender identity, and for other purposes; Sponsor: Brecheen, Josh [Rep.-R-OK-2]; Committees: House - Energy and Commerce; Education and the Workforce; Ways and Means; Natural Resources

H.R.6184 — To conduct or support further comprehensive research for the creation of a universal influenza vaccine or preventative; Sponsor: DeLauro, Rosa L. [Rep.-D-CT-3]; Committees: House - Energy and Commerce

H.R.6204 — To provide for a grant program to support access to free eye care services for students attending public elementary schools and secondary schools; Sponsor: Schiff, Adam B. [Rep.-D-CA-30]; Committees: House - Energy and Commerce; Education and the Workforce

H.R.6205 — To enhance our Nation's nurse and physician workforce by recapturing unused immigrant visas; Sponsor: Schneider, Bradley Scott [Rep.-D-IL-10]; Committees: House – Judiciary