



## Executive Summary: CY 2023 Physician Fee Schedule Proposed Rule from CMS

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July 8, 2022

CMS released its proposed Physician Fee Schedule for CY 2023 yesterday, along with the proposed changes for the Quality Payment Plan and the Medicare Shared Savings Proposals. Comments are due September 5, 2022.

This memorandum serves as a top line overview of key provisions. We will provide additional analysis in the coming days.

- Click [here](#) for the PDF of the proposed rule.
- Click [here](#) for the CMS Fact Sheet on the Physician Fee Schedule from which you can download the CMS Fact Sheet on the Proposed Quality Payment Plan changes for CY 2023.
- Click [here](#) for the CMS Fact Sheet on the Medicare Shared Savings Proposals for CY 2023.
- Click [here](#) for the CMS Press Release.

### Key Provisions:

**Payment Update:** The proposed conversion factor for CY 2023 is \$33.08, a decrease of \$1.53 from the CY 2022 conversion factor of \$34.61, derived from the statutorily required update to the conversion factor for CY 2023 of 0%, the expiration of the 3% increase in PFS payments for CY 2022 as required by the Protecting Medicare and American Farmers From Sequester Cuts Act, and the statutorily required budget neutrality adjustments to account for changes in RVUs.

**Evaluation and Management Visits:** CMS proposes to adopt most of the changes recommended by the AMA CPT Editorial Panel in coding and documentation for Other E/M visits (including hospital inpatient, hospital observation, emergency department, nursing facility, home or residence services and cognitive impairment assessment) effective January 1, 2023. CMS is also proposing to create Medicare-specific coding for payment of Other E/M prolonged services.

**Split or Shared E/M Visits:** CMS is proposing to delay the split or shared E/M visits policy finalized in CY 2022 for one year with a few exceptions. Therefore, for CY 2023 CMS proposes that the substantive portion of a visit may be met by any of the following elements: history, performing a physical exam, making a medical decision or spending time (more than half of the total time spent by the practitioner who bills the visit).

## Telehealth Services

CMS proposes:

- No changes to services included in Category I or II; see Table 8 on page 101 of the PDF of the proposed rule for a list of services CMS proposes to add as Category III; see Table 9 on page 102 for services to be added to Category I.
- To allow certain services included during the Public Health Emergency (PHE) to remain on the list of telehealth services through the end of CY 2023 on a Category III basis.
- To extend the duration of time that services are temporarily included in the telehealth services list during the PHE, but are not included on a Category I, II or III basis, for a period of 151 days following the end of the PHE, in alignment with the Consolidated Appropriations Act, 2022 (CAA 2022)
- See Table 10 on page 104 of the PDF for services proposed to be removed from the after the 151-day period post PHE (these are the services not included in Category I, II or III).
- Telehealth provisions in the CAA, 2022 will be implemented via program instruction or other sub-regulatory guidance after the end of the PHE.
- Beyond the 151 days after the end of the PHE (other than certain statutory exceptions)
  - No in-home telehealth
  - Physician only may bill telehealth
- After 12/31 in the year in which the PHE ends, pre-PHE rules for direct supervision will apply.

## Behavioral Health Services

CMS proposes to allow licensed professional counselors (LPCs), marriage and family therapists (LMFTs) and other types of behavioral health practitioners to provide behavioral health services under *general* supervision. CMS proposes to pay for clinical psychologists and licensed clinical social workers to provide integrated behavioral health services.

## Medicare Shared Savings Program

CMS is proposing what it calls “some of the most significant reforms” since the program was finalized. To encourage providers treating rural and underserved populations, CMS proposes to provide advanced shared savings payments to low revenue ACOs inexperienced with performance-based risk Medicare ACO initiatives that are new to the Shared Program (that is, not a renewing ACO or re-entering ACO) and that serve underserved populations.

Other proposed changes to support the goal of having everyone in traditional Medicare in an ACO by 2030 include:

- Giving smaller ACOs more time to transition to downside risk;
- Growing participation in rural and underserve communities;
- A health equity adjustment to reward excellent care to underserved populations; and
- Benchmark adjustments to encourage more participation

For a detailed summary, click [here](#) for the CMS Fact Sheet on the Medicare Shared Savings Program.

### **Clinical Laboratory Fee Schedule (CLFS)**

CMS is proposing to make certain conforming changes to the data reporting and payment requirements at 42 CFR part 414, subpart G to update the definitions of both the “data collection period” and “data reporting period,” specifying that for the data reporting period of January 1, 2023 through March 31, 2023, the data collection period is January 1, 2019 through June 30, 2019 due to changes made in the Protecting Medicare and American Farmers from Sequester Cuts Act. Additionally, CMS proposing to codify and clarify various laboratory regulatory requirements.

### **Requiring Manufacturers of Certain Single-Dose Container or Single-Use Package Drugs to Provide Refunds with Respect to Discarded Amounts**

CMS is proposing to require pharmaceutical companies to repay Medicare for any unused amount of injectable or infused drugs as required by Section 90004 of the Infrastructure Investment and Jobs Act. The refund amount is the amount of discarded drug that exceeds an applicable percentage, which is required to be at least 10%, of total allowed charges for the drug in a given calendar quarter. This is only for injectable or infused drugs that are administered by physicians in outpatient clinics that come in single-dose vials, any pills or drugs received outside the office will not be included.

*For additional information, please contact our General Counsel Diane Turpin at [diane.turpin@shcare.net](mailto:diane.turpin@shcare.net) or 202-578-5444.*