Policy Brief

July 8, 2022

MedPAC 2022 Report to Congress:

Medicare and the Health Care Delivery System

The Medicare Payment Advisory Commission (MedPAC) released a report to Congress on refinements to Medicare payments and other issues affecting the program. The June 2022 report contains recommendations for streamlining Alternative Payment Models (APMs), adopting new site-neutral payments, lowering Medicare Part B drugs costs, and creating a new payment mechanism for safety-net providers. While neither Congress nor the Biden Administration are required to adopt the recommendations, MedPAC is highly influential in the national policy arena. Keep reading to learn more about this report.

Alternative Payment Models

MedPAC recommended reducing the number of APMs available and designing more cohesive models. Recommendations included:

- **Reducing the number of Accountable Care Organization (ACO) model tracks down from seven to three.** The tracks could be geared toward provider organizations of different sizes and involve different degrees of financial risk. CMMI could also create a single track with shared savings and loss rates that vary based on ACO characteristics.

- **Implementing a new, *mandatory* national episode-based payment model**, for certain types of proven clinical episodes (e.g., hip and knee replacements) and require certain providers to participate in this model for all their fee-for-service Medicare patients, including beneficiaries already attributed to an ACO.
- **Requiring that all local clinicians billing under a provider organization's tax identification number be included in that provider organization's ACO.**

New Safety-Net Provider Definition and Payment Framework

MedPAC recommended designing a new framework to identify safety-net providers that expands on the current federal safety-net provider definition and could result in additional funds. The new metric, the Safety-Net Index (SNI), would replace the current Disproportionate Share Hospital (DSH) program. Under the new framework, safety-net hospitals would be defined as those that serve a large share of Medicare beneficiaries, uninsured patients and patients that qualify for full or partial Medicaid benefits. The current DSH program does *not* account for a hospital's uninsured and Medicare populations and is only based on care delivered in the inpatient setting; the SNI measure would account for outpatient care as well. If this policy were implemented, the 340B program could be impacted.

Site-Neutral Payments

MedPAC previously recommended that Medicare equalize payment rates across ambulatory settings, such as by reducing payments to Hospital Outpatient Departments (HOPDs) to equal those of physician offices. In the report, MedPAC identified 57 Ambulatory Payment Classifications (APCs) and recommended for CMS to reimburse them at the lower, physician fee schedule payment rate. MedPAC identified another 11 APCs for which Medicare could reduce the HOPD payment rate.

Drug Price Coverage Under Medicare Part B

MedPAC examined alternative approaches for reducing the cost of Medicare Part B drugs. Recommendations included:

- Encouraging the application of Coverage with Evidence Development (CED) to collect clinical evidence relevant to Medicare beneficiaries about the new drug while providing patients access to the product.
- Implementing a cap on the drug's payment rate based on information about the new product's estimated net clinical benefit and cost compared with the standard of care.

Help or Hinderance:
Scrutiny Intensifies on MA Plans

The House Energy and Commerce subcommittee held a hearing on June 24th to more closely examine Medicare Advantage (MA) plans. Enrollment in MA continues to grow, currently reaching roughly 27 million people, making the program a vital one for the health of America's seniors. Witnesses sharply criticized MA plans for denying seniors access to critical health care services while inflating the payments that plans receive. They recommended that the federal government provide stricter guidance on clinical criteria for coverage decisions, monitor disenrollment numbers, and strengthen fraud and abuse audits. Given the recent focus on MA plans, we expect future rulemaking or guidance related to this issue.

The subcommittee heard the testimony of leaders from the HHS' Office of Evaluation and Inspection, the Government Accountability Office and MedPAC. Testimony heavily referenced recent studies conducted by HHS in which federal officials found that 18% of MA benefiaries were being denied medical care, with 13% having gone through prior authorization processes and being inappropriately denied.

Witnesses warned Congress of potential gaming of the system by MA plans, who do not have to provide clinical justification beyond their own records for some federal payments. Erin Bliss, HHS' Assistant Inspector General, reported $2.6 billion in payments to private insurers for diagnoses supported only by *assessments*—with no record of receiving actual treatment during those assessment visits. She went on to share stories of enrollees being denied medically necessary care, even in life-threatening situations.

Lawmakers on both sides of the aisle expressed mutual appreciation for the MA program, but shared concerns about the quality of coverage. Subcommittee Chair Rep. Diana DeGette (D-CO) said enrollees should not have to "jump through numerous hoops" just to use their plans' benefits. James Matthews, director of MedPAC agreed, saying that while MA is a tool that could lower costs while improving care, it is "not meeting this potential." The health insurance industry counters that MA plans deliver *better* service, access to care and value than traditional Medicare.

2022 SCOTUS Rulings

The Supreme Court has concluded its rulings on all the cases that they have been working on throughout the 2021–2022 term. Some of these cases have directly impacted health care, like the reversal of Roe v. Wade. Others have a more indirect impact, such as SCOTUS' decision that limits the Environmental Protection Agency's ability to regulate carbon emissions, a key priority for the Biden Administration. Some of these key health care cases are summarized in the table below.

Summary of Key SCOTUS Decisions

Cases that Directly Impact Health Care		
Case Name	**Summary**	**Implications**
Whole Women's Health v. Jackson	This case, which authorized private citizens to file civil lawsuits to "enforce" an abortion ban, was sent back to the Fifth Circuit Court of Appeals.	While this case is still proceeding, the law remains in effect and allows lawsuits to continue being filed.
Becerra v. Empire Health Foundation	In a 5-4 decision, SCOTUS upheld a 2004 HHS regulation that even if hospitals do not receive Medicare payments for a hospital stay, a patient that qualifies, or are "entitled", to Medicare or Medicaid benefits can be counted in determining the DSH payment cap.	This decision will maintain a current HHS policy that calculates the DSH payment adjustment in a manner that generally reduces DSH payments to hospitals.
American Hospital Association v. Becerra	The Supreme Court unanimously ruled that HHS did not follow the proper steps when cutting reimbursement rates for 340B hospitals, making their previous cuts invalid.	HHS could still try to pursue the payment cuts by appealing to Congress or performing a cost survey. As of July 8th, it remains unclear how HHS will remedy the past cuts that were made.
Dobbs v. Jackson Women's Health Org	SCOTUS's 5-4 decision found that the constitution does not confer a right to an abortion and overruled *Roe v. Wade* and *Planned Parenthood v. Casey*. This upheld Mississippi's 15-week restriction on abortion.	This ruling opens the door for states to implement laws that restrict abortions at any time in a pregnancy.
Cases that Indirectly Impact Health Care		
Biden v. Texas	In a 5-4 ruling, SCOTUS decided that the Biden Administration can reverse the "remain in Mexico" asylum policy.	The Biden Administration can now allow asylum seekers to be detained or released into the United States instead of sending them to wait in Mexico while their cases are being processed.
West Virginia v. Environmental Protection Agency (EPA)	In a 6-2 decision, SCOTUS ruled that the EPA does not have the authority to compel coal power plants to switch to renewables.	This ruling will make it difficult for the EPA to regulate carbon emissions unless Congress amends the Clean Air Act to grant it the authority. HHS is currently considering requiring hospitals to develop environmental sustainability plans.
New York State Rifle & Pistol Association, Inc., Et Al. V. Bruen	In a 6-3 decision, the Supreme Court blocked a New York law that requires residents to have a special need for carrying a gun outside of the home to receive a concealed carry permit.	The outcome of this case may restrict states' ability to reduce gun violence in the future.

Click to view the full-sized document.

Key Cases for 2022-2023 Term

The next term for SCOTUS begins on October 3, 2022. So far, none of the cases on SCOTUS' fall docket have a large impact on health care. One of the expected high-profile cases is *Students for*

Fair Admissions, Inc. v. University of North Carolina, which will decide whether higher education institutions can use race as a factor in admission decisions. The Court is also scheduled to tackle *303 Creative LLC v. Elenis*, which will determine if businesses' refusal to do business with same-sex couples is protected under free speech.

HRSA Debuts Maternal Mental Health Hotline

To better support women during and after pregnancy, the Health Resources and Services Administration (HRSA) has launched a new Maternal Mental Health Hotline. The hotline provides real-time emotional support, information and referrals for all who call. **Pregnant and postpartum women can call or text 1-833-HELP4MOMS.**

New Oncology Model Unveiled

Last week, CMS announced the new Enhancing Oncology Model (EOM), set to launch in July of 2023. Part of President Biden's Cancer Moonshot, the model will focus on supporting and learning from cancer patients, caregivers and cancer survivors, while addressing inequities and providing patients with treatments that address their unique needs. The model will build on learnings from CMS' Oncology Care Model, which is being sunset this year.

CY 2023 Physician Fee Schedule Proposed Rule

CMS has released its proposed rule for the Calendar Year (CY) 2023 Physician Fee Schedule (PFS). This year's PFS proposed rule contains payment system updates, additional telehealth services, proposals impacting the Medicare Shared Savings Program and Medicare coverage of opioid use disorder services furnished by opioid treatment programs. AHPA will provide a full break down of the PFS proposed rule in the next policy brief.

Safer Communities Act Signed into Law

The Senate passed the bipartisan Safer Communities Act of 2022. While some critics believe that more could have been done, this has been the most significant legislation to pass since 1994. Provisions in the new law include:

- Allowing 10 business days for authorities to examine the mental health and juvenile gun records for potential gun buyers under 21.

- Making gun trafficking or purchases on behalf of some prohibited from possessing a gun a federal crime.
- Provides $750 million to “red flag” laws, which would allow guns to be temporarily confiscated from people found to be a present danger.
- Allocates $15 billion for improving mental health services and boosting in-school intervention programs.

Legislative and Regulatory Dates to Know:
A Look Ahead

Date	Event
Early July	Physician, Outpatient (OPPS), Medicare Shared Saving Program (MSSP) Home Health rules
August	Release of final IPPS and post-acute care rules.
September 30th	Major Medicare programs expire, including: - Low-Volume Hospital Program - FDA user fees for prescription drugs and medical products - Behavioral health and other programs under the 21st Century Cures Act
November 8th	Midterm Congressional election
Early to Mid-November	Release of OPPS and PFS final rules
November 29th	Lame Duck session of Congress
January 1, 2023	Medicare Access CHIP Reauthorization Act (MACRA) bonus expires; Enhanced Health Insurance Exchange subsidies expire

A Look at the Federal Register

Proposed Rule: *Rural Emergency Hospitals and Critical Access Hospital Conditions of Participation (CoP) Update*

The Centers for Medicare & Medicaid Services (CMS) released a proposed rule that would change the Medicare CoPs for Critical Access Hospitals (CAHs) and create a new hospital designation, "Rural Emergency Hospital (REH)." Additionally, CMS proposes to include changes to primary road and distance requirements.

AHPA Resources

To read AHPA's summaries of current legislation and requests for information, click below:

- Cures 2.0 Act | SAVE Act
- IPPS Summary | IPPS Comment | IPPS Comment Summary

WHAT WE'RE READING…

Democrats Offer Plan to Cut Drug Costs, Seeking Climate and Tax Deal – NYT

Updated Resources: Hospital Price Transparency – CMS

The First Gen. Z Candidates Are Running for Congress – NPR

CMS Innovation Center Tackles Implicit Bias – Health Affairs

How Pfizer Won the Pandemic, Reaping Outsize Profit and Influence – KHN

California First to Cover Health Care for all Immigrants – AP

We Must End the Public Health Emergency Carefully – The Hill

Flawed Oxygen Readings May Be Behind COVID-19's Toll on People of Color – Politico