

PROPOSED MEDICARE PAYMENT CUTS CONTINUE TO PRESSURE OUTPATIENT THERAPY SERVICES

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CMS Fails to Address Compounding Pay Cuts to Outpatient Therapy Providers

CMS recently issued the CY 2024 Physician Fee Schedule ("PFS") Proposed Rule that includes the proposed payment rates and policy changes for the upcoming payment year starting on January 1, 2024. Unfortunately, CMS is once again projecting that its proposed payment rates and policies will result in decreased Medicare payments for the physical therapy and occupational therapy specialty. If finalized, this would be a continuation of CMS's long-term trend of cutting Medicare payments for therapy services.

CMS has subjected therapy providers to repeated payment cuts, both from reductions to the conversion factor and through other policies that reduce payment for physical therapy and occupational therapy. These cuts have included the 15% payment cut to services provided by physical therapy assistants ("PTAs") and occupational therapy assistants ("OTAs"), the resumption of Medicare sequestration cuts, cuts to the conversion factor in CYs 2021 through 2023, and approximately 9% in cuts to payments for the therapy specialty as a result of changes to evaluation and management codes.¹ For FY 2024, CMS is proposing another 3.36% cut to the conversion factor that will reduce payments for all specialties, including therapy providers. If adopted, this cut to the conversion factor would occur while practice costs are increasing at the highest rate in decades. CMS estimates a 4.5% increase to the Medicare Economic Index ("MEI") in CY 2024.²

In recent years, congressional intervention has helped alleviate some of the cuts to Medicare payments for the physical therapy and occupational therapy specialty that CMS initially proposed. For example, Congress directed CMS to apply a 3% increase to the conversion factor in CY 2022.³ However, in the *Consolidated Appropriations Act, 2023* (Pub. L. 117-328), Congress only provided for a 1.25% increase to the conversion factor in CY 2024. Even with this statutory increase, the CY 2024 conversion factor of \$32.75 that CMS is proposing is a \$1.14 decrease from the actual CY 2023 conversion factor of \$33.89. CMS's repeated cuts to therapy payments are troubling, especially because CMS never acknowledges or accounts for the compounding effect that these cuts have on the payment rates each year.

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In addition to payment cuts, therapy providers must begin preparing for the eventual rollback of telehealth privileges for therapists. CMS affirmed in the CY 2024 PFS Proposed Rule that Medicare will reimburse telehealth services provided by therapists through CY 2024, but said that this temporary flexibility developed during the COVID-19 pandemic will not become permanent. CMS claims in the proposed rule that it does not have statutory authority to add physical therapists ("PTs"), occupational therapists ("OTs"), and speech-language pathologists ("SLPs") to the list of eligible Medicare telehealth practitioners.⁴ CMS asked for comments from interested parties on the removal, addition, or changes to the Medicare Telehealth Services List for CY 2024.

CMS is also proposing changes to the supervision standard for PTAs and OTAs in private practice settings. Specifically, CMS is proposing to change the direct supervision requirement in private practice for remote therapeutic monitoring ("RTM") to a general supervision requirement. CMS is also requesting input on a similar change in supervision requirements for *all* therapy services in private practice. With a general supervision standard, the PT or OT does not have to be on-site for PTAs or OTAs to provide services. This allows for increased access to therapy for patients because PTAs and OTAs can provide more services. Adopting a general supervision standard for services provided by PTAs and OTAs in all settings could therefore help mitigate some workforce shortages and would address health equity concerns related to patients that do not have adequate access to therapy services, especially in rural and other medically underserved areas.

In addition to the policy updates in the CY 2024 PFS Proposed Rule, there is pending legislation that could address some of the ongoing challenges facing therapy providers. The *Expanded Telehealth Access Act* (H.R. 3875) reintroduced in Congress on June 6 would enable physical therapy and occupational therapy services to be provided to Medicare beneficiaries via telehealth beyond December 2024 and would permanently add PTs, OTs, PTAs, and OTAs as Medicare telehealth providers. CMS has said that it does not have the authority to make these changes on its own.

Another bill, the *Enabling More of the Physical and Occupational Workforce to Engage in Rehabilitation Act*, or EMPOWER Act (S. 2459, H.R. 4878) has been introduced in Congress to address the issue of PTA and OTA supervision. This legislation would adopt a general supervision standard for PTAs and OTAs in all settings, including private practice settings.

Although CMS has been reluctant to permanently revise the telehealth policy and PTA/OTA supervision policy for all therapy services, provider support for these legislative efforts could lead to their enactment, which would help alleviate some of the administrative burdens faced by therapy providers at a time when CMS continues to propose payment cuts.

If your organization provides Medicare services paid under the PFS and you would like more information about CMS's proposals, the upcoming final rule, or any other aspects of Medicare reimbursement for professional services, please let us know.

¹ APTQI, *Deep Medicare Cuts Will Destabilize Physical Therapy Services* (Aug. 2022), https://www.aptqi.com/wp-content/uploads/2022/08/APTQI-Framework_PT_Solutions-Aug2022-v01.pdf.

² CY 2024 PFS Proposed Rule, 88 Fed. Reg. 52262, 52305 (Aug. 7, 2023).

³ Social Security Act § 1848(t)(1)(B).

⁴ 88 Fed. Reg. at 52297.

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