

## Congress Must Act to Halt Medicare Payment Cuts and Avoid Further Damage to the U.S. Health Care System

On August 3, 2020, the Centers for Medicare & Medicaid Services (CMS) issued its long-awaited 2021 Medicare Physician Fee Schedule (PFS) proposed rule. Physicians and nonphysician health care professionals across the United States are now bracing for harmful payment cuts that could jeopardize patient access to medically necessary services. The reductions are primarily driven by new Medicare payment policies for office and outpatient visits that CMS will implement on January 1, 2021. Drastic cuts caused by changes to these visit codes — also known as evaluation and management (E/M) codes — will further strain a health care system that is already stressed by the COVID-19 pandemic. Furthermore, primary care providers will have fewer choices when referring patients to specialists if health care professionals must close or limit their practices as a result of these cuts.

**LEGISLATIVE REQUEST:** To help fortify the health care delivery system and ensure the long-term recovery post-pandemic, Congress should waive the budget neutrality requirements stipulated in Section 1848(c)(2) of the Social Security Act before the final E/M code proposal is implemented on January 1, 2021. This much-needed action by Congress, for inclusion in any forthcoming legislative package, will provide a critical reprieve for a broad scope of health care professionals facing substantial payment reductions in the coming months.

### BACKGROUND

In 2019, CMS finalized broad changes related to E/M services to reduce administrative burden, improve payment rates, and reflect current clinical practice. The health care community supported restructuring and revaluing the office-based E/M codes, which will increase payments for primary care and other office-based services. Unfortunately, by law, any changes to the PFS cannot increase or decrease expenditures by more than \$20 million. To comply with this budget neutrality requirement, any increases must, therefore, be offset by corresponding decreases. CMS estimates that the 2021 policies will increase Medicare spending by \$10.2 billion, necessitating steep cuts by reducing the Medicare conversion factor from \$36.0896 to \$32.2605, or a 10.6 percent decrease.

### MEDICARE CUTS WILL HURT PATIENTS

As the following table demonstrates, the impact of these cuts are devastating to health care professionals, their practices, and most importantly, their patients:

Specialty	Payment Change	Specialty	Payment Change
Nurse Anesthetist	-11%	Emergency Medicine	-6%
Radiology	-11%	Ophthalmology	-6%
Chiropractor	-10%	Portable X-Ray Supplier	-6%
Cardiac Surgery	-9%	Radiation Oncology	-6%
Interventional Radiology	-9%	Colon And Rectal Surgery	-5%
Pathology	-9%	Gastroenterology	-5%
Physical/Occupational Therapy*	-9%	Independent Laboratory	-5%
Anesthesiology	-8%	Optometry	-5%
Critical Care	-8%	Oral/Maxillofacial Surgery	-5%
Nuclear Medicine	-8%	Orthopedic Surgery	-5%
Thoracic Surgery	-8%	Multispecialty Clinic	-4%
Audiologist	-7%	Infectious Disease	-4%
General Surgery	-7%	Hand Surgery	-3%
Neurosurgery	-7%	Physical Medicine	-3%
Plastic Surgery	-7%	Dermatology	-2%
Vascular Surgery	-7%	Podiatry	-1%

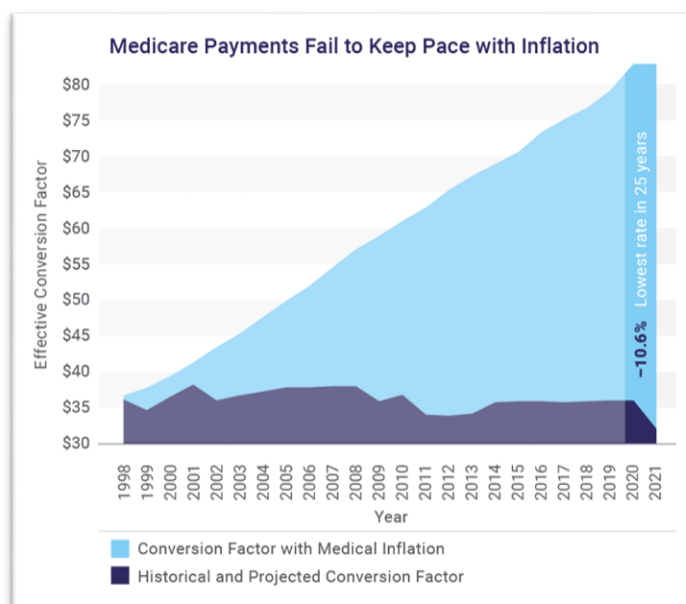
*Data from Table 90: Proposed CY 2021 PFS Estimated Impact on Total Allowed Charges by Specialty*

*\*This category includes Speech-Language Pathology.*

Compounding the problem is the fact that Medicare payments have failed to keep up with inflation since the inception of the PFS in 1992. This decrease in the 2021 conversion factor will be below the 1994 conversion factor of \$32.9050 — which is worth approximately \$58.02 today!<sup>1</sup>

Even before the CMS cuts take effect, health care practices are already in distress due to the pandemic.

- ◆ According to a recent survey of surgeons,<sup>2</sup> one-in-three private surgical practices stated that they are already at risk of closing permanently due to the financial strain of the COVID-19 crisis. Many face difficult financial decisions and are responding by either cutting their pay, taking on debt, or laying off or furloughing employees.
- ◆ Additional surveys and claims analyses verify that COVID-19 reduced patient volume significantly and has resulted in substantial revenue losses for independent physician practices. Estimates of revenue losses range between 48% and 64% between March and May 2020.<sup>3</sup>
- ◆ While visit numbers have rebounded, they are still substantially lower than before the U.S. pandemic began. Over the past three months, forgone visits have created “cumulative deficits” in both patient treatment and practice revenue. The cumulative decline in visits from the start of the pandemic is greatest among specialties like ophthalmology (-47%), dermatology (-42%), surgery (-41%), cardiology (-40%), orthopaedic surgery -39%), and obstetrics and gynecology (-28%).<sup>4</sup>
- ◆ It is not just physician practices in distress. Data also reflect that 38% of physical therapy (PT) owners/partners reported that revenue had decreased 76% to 100% in the early phases of the pandemic, with another 34% reporting declines of 51% to 75%.<sup>5</sup> Sixty-four percent saw fewer patients via direct access visits, and 88% reported a drop-off in physician referrals.



### **COVID-19 AMPLIFIES THE NEED FOR SWIFT CONGRESSIONAL ACTION**

Health care professionals across the spectrum are reeling from the effects of the COVID-19 emergency as they continue to serve patients during this global pandemic. Consider the following:

- ◆ As a result of their training in critical care medicine, **anesthesiologists** have been deployed to the intensive care unit to care for COVID-19 patients. The most valuable service they provide to patients — intubations — also puts the anesthesiologist in the most danger. During the intubation procedure, an anesthesiologist’s face is inches away from the patient’s mouth and the aerosolized COVID-19 virus being discharged from the patient’s airway into the air.

<sup>1</sup> Using the U.S. Bureau of Labor Statistics inflation calculator, the conversion factor in 1994, \$32.9050, is worth approximately \$58.02 today. This means that the proposed CY 2021 cut of the conversion factor to \$32.2605 is an even steeper cut when adjusted for inflation and is by far the lowest conversion factor since its inception in 1992. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

<sup>2</sup> Survey conducted by the independent public opinion research firm, Brunswick Insight. The online survey of 5,244 surgeons was conducted between May 11-20, 2020. [https://www.surgicalcare.org/wp-content/uploads/2020/06/SCC\\_Member\\_Survey\\_Data\\_06172020\\_FINAL.pdf](https://www.surgicalcare.org/wp-content/uploads/2020/06/SCC_Member_Survey_Data_06172020_FINAL.pdf).

<sup>3</sup> Fair Health, Healthcare Professionals and the Impact of COVID-19; MGMA, COVID-19 Financial Impact on Medical Practices; AMGA, Surveys of Financial Impact of COVID-19; Primary Care Collaborative, Primary Care & COVID-19 Surveys. <http://ndpanalytics.squarespace.com/the-impact-of-covid-19-on-independent-physician-practices>.

<sup>4</sup> The Impact of the COVID-19 Pandemic on Outpatient Visits: Practices Are Adapting to the New Normal. Commonwealth Fund (June 2020). <https://www.commonwealthfund.org/publications/2020/jun/impact-covid-19-pandemic-outpatient-visits-practices-adapting-new-normal>.

<sup>5</sup> Impact of COVID-19 on the Physical Therapy Profession Report: A Report from the American Physical Therapy Profession (June 2020). <https://www.apta.org/contentassets/15ad5dc898a14d02b8257ab1cdb67f46/impact-of-covid-19-on-physical-therapy-profession.pdf>

- ◆ **Audiologists** play a critical role in the assessment and treatment of hearing loss and balance disorders that include those induced by viruses. Recent studies have indicated that individuals with COVID-19, including those who are asymptomatic, may experience damage to hair cells in the inner ear that can impair hearing function. Although research in this area is emerging as this novel coronavirus continues to spread, there is a growing need for Medicare beneficiaries — one of our most at-risk populations for COVID-19 — to have access to care provided by audiologists, both for COVID-19 and non-COVID-19-related hearing and balance-related problems.
- ◆ Extracorporeal membrane oxygenation (ECMO) is the treatment of last resort when COVID-19 patients fail to recover with ventilator support. A **cardiothoracic surgeon** hooks the patient up to a machine that either/both breathes and pumps blood, giving the patient's body a chance to rest and recover under the supervision of cardiothoracic surgeons and other health professionals trained in this specialized treatment.
- ◆ **Dermatology** practices that perform fewer office E/M services will be especially hit hard, including those practices that provide dermatologic surgical care and dermatopathology practices. Reductions for these practices will be between 6% and 8% in 2021 and are in addition to the negative financial impact of COVID-19 where nine in ten dermatologists have reported losing more than half their income due to the public health emergency, as well as the increased cost of operating in this environment that disproportionately impacts physician doing medical procedures.
- ◆ Seniors with diet-related conditions, including diabetes and chronic kidney disease, are suffering from the worst COVID-19 outcomes, including higher rates of death. Medical nutrition therapy provided by registered **dietitian nutritionists** has been proven to help these patients control their blood sugar, blood pressure and weight, slow the progression of diabetes and kidney disease, lower medication use, and avoid unnecessary emergency room visits and hospitalizations.
- ◆ Throughout the pandemic, **facial plastic surgeons** have assumed — at considerable personal health risk, with some developing COVID-19 as a result — various roles in assisting other physicians and medical professionals on the front lines in triaging and treating patients impacted by the novel coronavirus. Most facial plastic surgeons — and their staffs — throughout the country are experiencing extreme financial hardships, as a result of shutting down their medical practices and suspending elective surgeries in a proactive effort to dramatically curb the transmission of the virus, safeguard PPE supplies, and promote the public safety and wellbeing of their communities. Additionally, Facial Plastic Surgeons have developed and are implementing [guidance on the resumption of elective](#) facial plastic surgical procedures to maximize safety and reduce the risk of COVID-19 transmission as states and their medical practices re-open.
- ◆ **Gastroenterology** practices are slowly re-opening and treating more patients after many states, and Medicare placed a moratorium on elective endoscopy procedures earlier this year. GI practices were forced to shut down, leading to delays in needed care. At a time when practices are safely resuming care, CMS has now proposed deep cuts to these very GI services, so Congress must step in and prevent these looming Medicare cuts.
- ◆ **Hand surgeons** across the country had the majority of their revenue deeply cut when their elective office patient flow and surgical cases were canceled to preserve personal protective equipment (PPE) and due to fear of spreading the virus to crucial medical personnel. While emergent hand patients were treated surgically, this resulted in exposure to undiagnosed COVID-19. The severe revenue loss resulted in furloughs and layoffs of office staff, causing access to care challenges for patients.
- ◆ In many hospitals, **interventional radiology** (IR) was one of the few services that has remained open throughout the pandemic, providing emergency care to COVID-19 patients. IR services have included dialysis catheters and other venous access; drainage procedures such as abscess and cholecystectomy; and lysis procedures for COVID-19 patients with massive embolism and deep vein thrombosis. Nevertheless, canceled elective cases, the need for PPE, increased risks of caring for patients with

COVID-19, staff reassignments — including technicians, nurses and physician— and private practices unable open while maintaining staff and benefits, has resulted in lost revenue, significant burnout and stress.

- ◆ **Neurosurgeons** are stepping up to lend their [expertise](#) on the frontlines of the COVID-19 pandemic, as well as continuing to take care of critically ill patients who suffer from painful and life-threatening neurologic conditions such as traumatic brain injury, brain tumors, debilitating, degenerative spine disorders, and stroke. Without timely neurosurgical care, patients can face permanent neurologic damage or death.
- ◆ Many **obstetrician-gynecologists** exclusively provide gynecologic services and were required to cancel all non-urgent procedures and office visits in the spring, reducing their practice revenues to almost nothing. For those ob-gyns that provide obstetric and gynecologic services, gynecologic services are essential to maintaining financial solvency due to inadequate reimbursement rates for obstetric care. The forthcoming cuts to gynecologic surgery will be detrimental to ob-gyns who are already facing financial hardships and will put the future of private practice in jeopardy.
- ◆ **Occupational therapy (OT)** practitioners are working with patients across health care settings to promote recovery from the functional effects of COVID-19. These effects include COVID-19-related cognitive impairments, neuromuscular damage, fatigue, and psycho-social challenges — all of which interfere with one's ability to participate safely in necessary and meaningful day-to-day activities. OT services are crucial to achieving optimal function and long-term rehabilitation/recovery for people with COVID-19.
- ◆ **Orthopaedic surgery** practices have stepped up throughout the COVID-19 pandemic, abstaining from elective surgery to preserve lifesaving PPE. Practices are now working against significant patient backlogs and are struggling to catch-up working with limits on operating room time and, in many cases, with a reduced staff. Orthopaedic surgeons are now facing Medicare payment cuts for total hip arthroscopy and total knee arthroscopy, on top of the proposed E/M cuts. This double reduction will result in Medicare payment cuts of up to 10% for these procedures, and if not quickly addressed by CMS, access to musculoskeletal care will be significantly threatened.
- ◆ **Pathologists** are integrally involved in direct mitigation of the COVID-19 crisis, including testing for accurate and timely diagnosis, as well as work on potential cures. Now more than ever, patients and their treating physicians are relying on the expertise of pathologists. That foundation must not be eroded.
- ◆ Once patients recover from COVID-19 symptoms, their journey is not over. Hospitalization and bed rest can lead to complications of the musculoskeletal system, including strength loss, atrophy and contracture, as well as be devastating to the cardiopulmonary system. **Physical therapists (PT)** and physical therapist assistants are providing rehabilitation to patients with muscle weakness and limitations in strength and function due to their ICU stay, as well as cardiac rehabilitation, to help patients recover.
- ◆ **Psychologists** are Medicare's primary providers of mental and behavioral health services, diagnostic services, and psychological and neuropsychological tests and assessments. The COVID-19 public health emergency is taking a heavy toll on the mental health of Medicare beneficiaries and all Americans. According to June data from the Kaiser Family Foundation, more than one-third of U.S. adults reported symptoms of anxiety or depressive disorder, more than three times the number in 2019. Based on the consequences of previous epidemics, experts predict that the mental health impacts from COVID-19 will continue well after the end of the public health emergency.
- ◆ Medicare's proposed 6% E/M cut for **radiation oncology** rubs salt in the open wound for radiation therapy clinics, as most struggle with revenue declines of [20-30%](#) or more due to COVID-19. The National Cancer Institute [predicts](#) that COVID-19 will lead more patients to present with later-stage

cancer, requiring radiation oncology physicians to treat more challenging cases with fewer resources unless Congress stops the E/M cuts.

- ◆ Particularly in areas where COVID-19 testing kits are not widely available, medical imaging is used to help confirm COVID-19 findings, gauge the extent of illness and determine effective treatment. As **radiology** practices followed WHO and CDC guidance to postpone non-urgent care, and Americans worried about infection risk, cancer screenings — including mammograms — and other oncologic imaging plummeted. Major [cancer diagnoses are down](#) 46 percent. [Seventy percent of radiology practices](#) had to take out small business loans or federal relief options to survive the pandemic's financial toll. Drastic imaging cuts now may drive practices out of business, restrict access to care and cause a [spike in adverse health outcomes](#) — including deaths.
- ◆ **Speech-language pathologists** (SLPs) provide critical speech, swallowing, and cognitive care to individuals with COVID-19 — especially those who currently are, or have been, intubated as a result of the need for mechanical ventilation. SLPs help facilitate communication between these patients and their other providers through a variety of ways to improve patient care and treatment outcomes, and provide essential speech and swallowing therapy post-intubation. Some patients who have been intubated or have received low oxygen to the brain during the COVID-19 episode may also have persistent cognitive issues (e.g., memory impairments). As part of the patient's healthcare team, SLPs can help the individual lead a more independent life to reduce adverse outcomes such as rehospitalizations and reduce health care costs.
- ◆ Due to age and multiple comorbid conditions, residents of **skilled nursing and long term care facilities**, such as assisted living, are the most vulnerable population impacted by COVID-19 — with incidence and mortality rates much higher than all other demographics. While more than 80% of this population that is infected successfully survives COVID-19, these patients frequently experience significant loss of weight, strength, mobility, and ability to perform activities of daily living, and enjoy life at a level possible prior to the pandemic. These individuals will often need various and sometimes extensive and long-term therapy to restore their abilities to eat, move about, and perform daily activities as independently as possible. Reduced access to PT, OT, and SLP rehabilitation services resulting from the proposed draconian cuts to PFS payments would result in a lower quality of life for nursing facility residents and higher and costly rates of institutionalization of assisted and senior living residents who are unable to restore functional losses experienced during the acute phase of their COVID-19 illness.
- ◆ **Surgeons** have continued to operate on patients in need of critically important procedures during COVID-19 that saved lives and improved patients' quality of life. Many surgeons have served on the frontlines of the pandemic, helping the sickest patients fight COVID-19 and treating non-surgical patients who have contracted the disease.

### ***BOTTOM-LINE***

The health care community appreciates CMS' efforts to restructure and revalue the office-based E/M codes. However, we are deeply concerned that adhering to existing budget neutrality requirements for implementing the new policy will do lasting damage to the health care system — particularly in light of the COVID-19 crisis. **As such, Congress should waive the budget neutrality requirements associated with the finalized E/M code policies slated for implementation on January 1, 2021.**

**Congress must act now to prevent these cuts from going into effect!**