

In fee schedule, an increase to pathology clinical labor rates

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December 2022—The Centers for Medicare and Medicaid Services published on Nov. 1 its final 2023 Medicare physician fee schedule with payment rates and new policies set to take effect next year. The CAP had engaged with the CMS on payment rate changes affecting its members in the fee schedule and successfully lobbied the administration to increase payment to pathologists and laboratories in several areas.

Technical corrections to clinical labor rates, which were errors the CAP discovered in 2021, were a highlight in the final 2023 fee schedule. Following the CAP's recommendations, the CMS finalized the proper rank order of the clinical labor rates for histotechnologists and laboratory technicians. This action will result in higher payments for the technical and global components of some pathology services in 2023 and beyond.

In the 2022 Medicare physician fee schedule released in November 2021, the CMS had finalized a proposal that updated the clinical labor pricing in conjunction with the final year of supply and equipment pricing changes. The prices for labor, supplies, and equipment are accounted for as part of Medicare payment for the technical component of fees paid to physicians and other providers. These clinical labor rates had not been updated in 20 years, and the long time frame between updates had created a significant disparity between the CMS' clinical wage data and the market average for clinical labor. However, the CMS' efforts for the 2022 fee schedule made several flawed assumptions for the pricing, and the CAP intervened.

The CMS had primarily used Bureau of Labor Statistics (BLS) wage data to update its clinical labor prices. The federal Medicare agency believed that BLS data was the most accurate source to use as a basis for clinical labor pricing, and it had used the most recent BLS survey data available for its calculations of wage data (2019). However, for certain labor categories where BLS data were not available, the CMS had to crosswalk or extrapolate the wages using supplementary data sources for verification. This was the case for the flawed 2022 clinical labor price per minute for histotechnologists.

The CAP began its advocacy seeking the corrections early in 2022 by providing the agency with the most current wage data resources, relative BLS comparison rates, and current open histotechnologist job salary offerings. These data from the CAP convinced the CMS to correct the final clinical labor rate for histotechnologists. This correction in addition had a positive impact on another pathology blended clinical labor rate.

In the 2023 fee schedule, the CMS finalized the implementation of the clinical labor update to include the CAP's requested corrections over four years to transition to the final updated prices by 2025. The repricing has an impact on both the technical and global components of physician services. Services under the physician fee schedule that rely primarily on clinical labor rather than supplies and/or equipment will receive the largest increases relative to other services. In contrast, services that rely primarily on supplies or equipment items will experience decreases relative to other services because any changes to the physician fee schedule are subject to budget neutrality constraints. For 2023, the clinical labor pricing will be year two of the transition. The final pathology CMS clinical labor rate phase-in increases secured by CAP advocacy are as follows: laboratory technicians, 67 percent; histotechnologists, 73 percent; and lab technician/histotechnologist blend, 70 percent.

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Conversion factor and impact on pathology. The final 2023 conversion factor used for the physician fee schedule’s payment formula is \$33.0607, which represents a 4.5 percent decrease from the fee schedule’s 2022 conversion factor. This 4.5 percent decrease accounts for a statutory required zero percent update to the conversion factor for 2023, the expiration of a three percent supplemental increase to fee schedule payment for 2022 (as required by the Protecting Medicare and American Farmers from Sequester Cuts Act), and the required budget neutrality adjustment to account for increases in physician payment for evaluation and management visits for hospital, nursing facility, home health, and emergency patients. The CAP has calculated the total Medicare spending impact on pathology from this final ruling will be a minus 3.6 percent and a minus 3.0 percent for independent laboratories. The individual impact of the 2023 payment changes varies based on the practice’s mix of services.

The CAP has aggressively opposed cuts to the 2023 Medicare payment for pathology services. During the CAP’s Pathologists Leadership Summit and annual Hill Day in May in Washington, DC, CAP members met with 300 congressional offices to discuss how cuts would affect their pathology practices. And in November the CAP organized a virtual “fly-in” event during which another 20 CAP members met with the offices of 50 members of Congress to urge them to support legislation to mitigate the cuts. The CAP is also participating with a coalition of specialty societies and the AMA to ensure physicians are accurately reimbursed for their work next year. The Protecting Medicare and American Farmers from Sequester Cuts Act was enacted in 2021 to mitigate payment cuts that were set to hit physician pay in 2022. It is likely that Congress will act again in December with a similar measure. The federal government will run out of funding in mid-December, and Congress must pass legislation to avoid a shutdown. The end-of-year funding bill would represent an opportunity to attach legislative language to stop or mitigate the 2023 Medicare cut.

Supplies and equipment pricing update. The CMS also finalized several provisions the CAP requested to improve pathology payment for 2023. Specifically, a number of pathology supply and equipment items commonly used by pathologists will have updated prices affecting the technical and global components of pathology services. The CAP advocated for these updates and to correct the mispricing of one particular common pathology supply based on new invoices submitted during a comment period preceding the final fee schedule’s release. The CAP’s advocacy with the CMS resulted in a reversal of an incorrect reduction proposed for 2023 in the supply input price that translates to a more accurate finalized payment for the impacted pathology services.

Colorectal cancer screening. The CAP also supported colorectal cancer screening policy changes adopted by the agency in this final rule to expand access to quality care and to improve health outcomes for patients through prevention and early detection services, as well as through effective treatments. Specifically, the CMS expanded Medicare coverage for certain colorectal cancer screening tests by reducing the minimum age payment and coverage limitation from 50 to 45 years.

In addition, the CMS expanded the regulatory definition of colorectal cancer screening tests to include a complete colorectal cancer screening, where a follow-up screening colonoscopy after a Medicare-covered noninvasive stool-based colorectal cancer screening test returns a positive result. A functional outcome of this improved policy for a complete colorectal cancer screening will be that, for most beneficiaries, cost-sharing will not apply for either the initial stool-based test or the follow-up colonoscopy. The revised colorectal cancer screening policies directly advance health equity goals the CAP supports by promoting access for much needed cancer prevention and early detection in rural communities and communities of color that are especially affected by the incidence of colorectal cancer. □

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