

COVID-19 Pandemic, Current Medicare Payment System, Impending Cuts of 10.4%, Inflation, Fraud, and Abuse Investigations: A Perfect Storm is Brewing

LET US START FIGHTING FOR MEDICARE’S UNSUSTAINABLE PHYSICIAN PAY SYSTEM AND PREVENT THE PENDING 10.4% CUTS (20% COMPOUNDED BY ESCALATING INFLATION).

INTRODUCTION

Interventional pain physicians, along with all physicians, have barely survived the perfect storm that began in 2020, now we are faced with an 8.5% inflation, a similar increase in employee expenses, extensive fraud and abuse investigations, and additional work related to documentation for Merit-Based Incentive Payment System (MIPS). In addition, extensive fraud and abuse investigations are requiring even further documentation, often resulting in refund demands. Above all, we continue to face increasing demands and costs related to the COVID-19 pandemic and restricted supplies with 100%-200% increases in costs. All of these issues combined are causing many physicians to leave the practice of medicine.

Chronic pain patients have suffered substantially during the pandemic and post-pandemic. In addition, the opioid epidemic in its fourth phase, has been exacerbated by the CDC regulations, easy

availability of opioids on the street, diminished access to various non-opioid modalities combined with illicit opioids, and the overall regulatory atmosphere (Fig 1).

Most urgently, starting January 1, 2023, we are facing a 10.4% cut for physician payments (compounded by inflation, nearly 20%) and 6% cuts for facility payments, including ambulatory surgery centers (compounded by inflation, nearly 15%).

BACKGROUND

Unsustainable Medicare Payment System

- Physicians in private practice 20%
- Physicians contemplating to retire 20%
- Physician payment reductions 20%
- Practice costs increase 40%

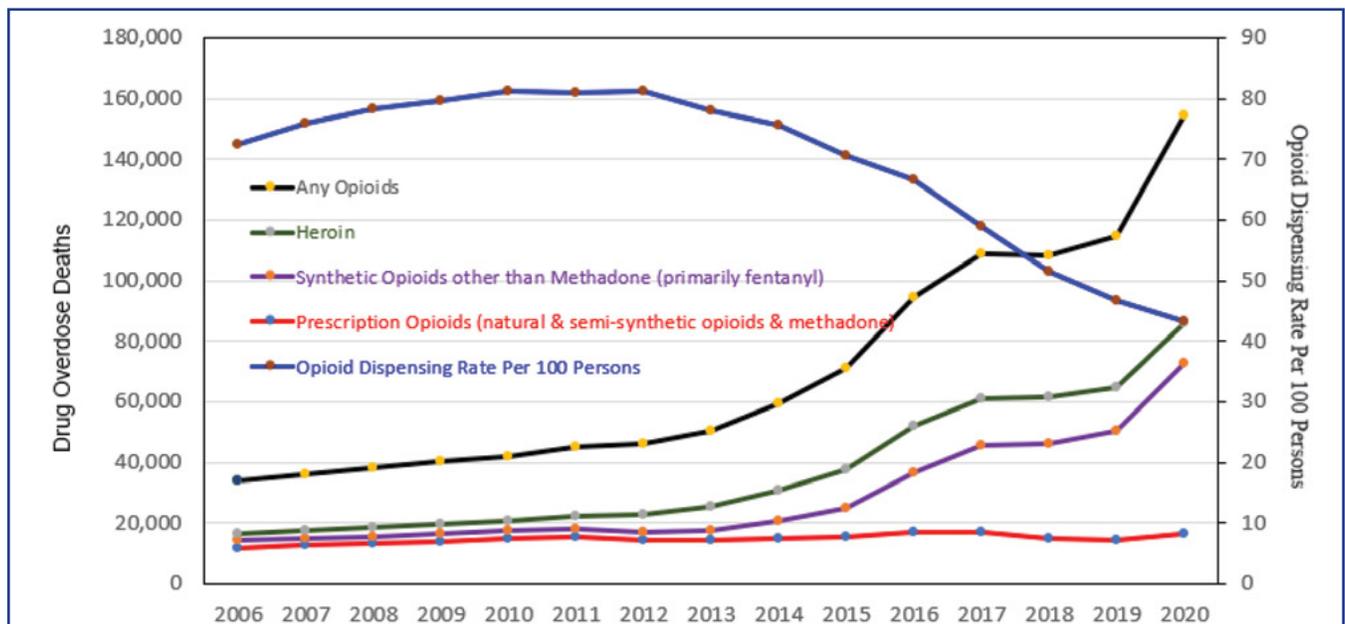


Fig. 1. The opioid paradox. Opioid prescriptions are declining while opioid overdose deaths are increasing.

Source: Manchikanti L, et al. Fourth wave of opioid (illicit drug) overdose deaths and diminishing access to prescription opioids and interventional techniques: Cause and effect. *Pain Physician* 2022; 25:97-124.



ASIPP FACT SHEET 2022

A Perfect Storm is Brewing *(continued)*

In 2020, there was almost a \$14 billion drop in Medicare physician fee schedule spending due to various reasons. Medicine's great resignation continues with 20% of the physicians expecting to leave their current practice, and only 20% of physicians remaining in private practice.

Physicians must endure an increasing financial instability of the Medicare physician payment system with stress every year due to a confluence of uncertainties related to COVID-19 pandemic, statutory payment cuts, consistent lack of inflation updates, and significant administrative burdens, which were extensively added after COVID.

Medicare physician payment has fallen 20% (adjusted for inflation) since 2001, with an average of about 1.1% per year. At the same time, the cost of running a medical practice increased 39% since 2001 or 1.6% a year. These practice costs do not take into consideration the actual inflationary stressors throughout the years, and specifically

8.5% in 2022 and beyond, with increasing employee costs of at least 5.5% by government estimates which may range up to 15% when benefits and overhead are included, and extensive administrative costs based on unnecessary extensive audits by private agencies and Medicare and other related organizations (Fig. 2).

Historically, the relative value system set up by HCFA, now CMS, in 1992 had a conversion factor of \$32. Thirty (30) years later, in 2022, the proposed conversion factor would be reduced from \$34.61 to \$33.08, a reduction of 4.4%, which is beyond the stabilization provided with 3% duration 2022. Considering the conversion factor was \$32 in 1992, 30 years later, with inflation-adjustment, it should be \$59. Since all insurance plans base reimbursement on Medicare, and very few provide reimbursements higher than Medicare (many below Medicare rates), this will be even more detrimental to physicians and patients' access to care. The rule will create an increase in patients' copays and even higher copays with Medicare Advantage plans (Fig. 3).

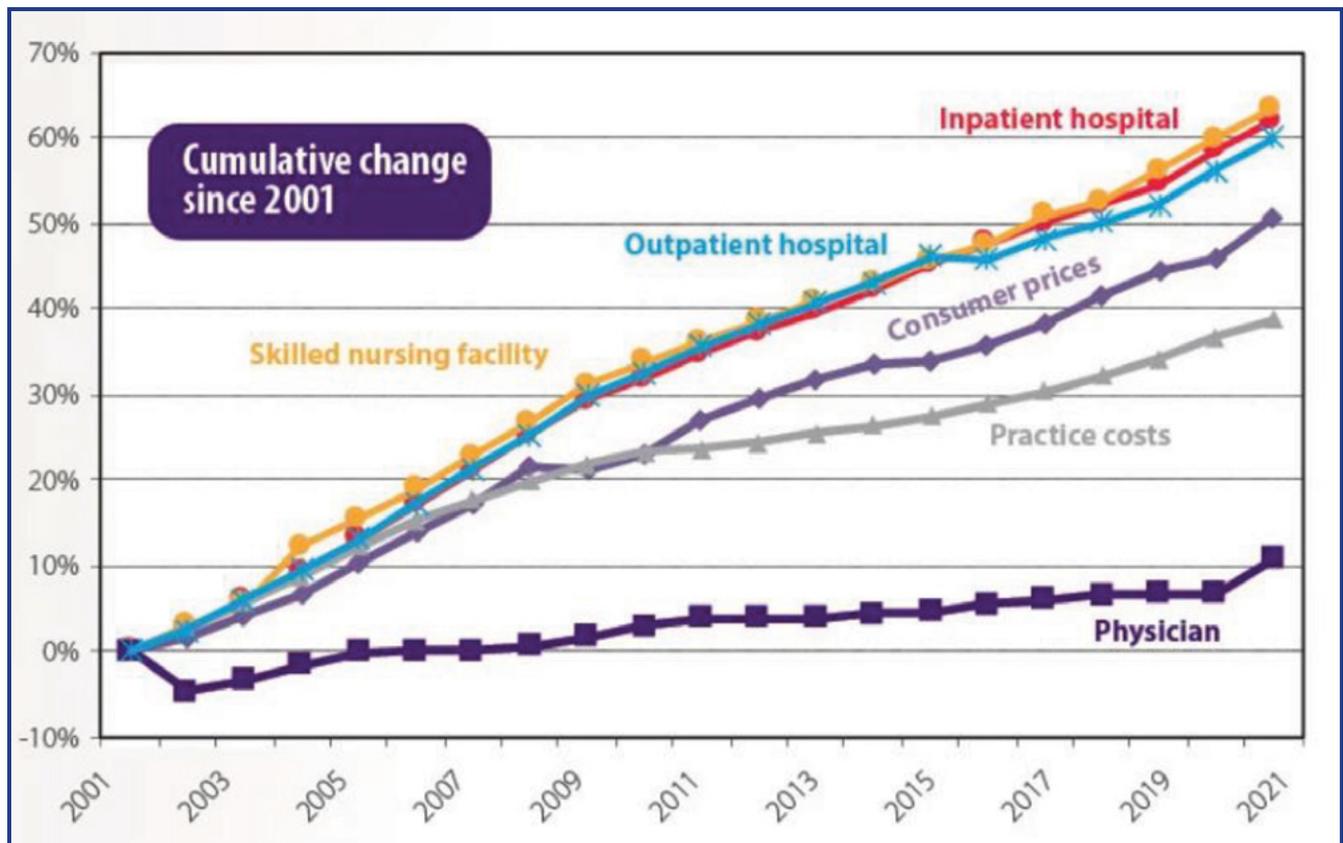


Fig. 2. Medicare updates compared to inflation (2001-2021).

Source: Federal Register, Medicare Trustees' Reports and U.S. Bureau of Labor Statistics, American Medicare Association, Economic and Health Policy Research, October 2021.



ASIPP FACT SHEET 2022

A Perfect Storm is Brewing (continued)

Ironically, all the efforts the government is making in reference to improving access, reducing costs, and quality of care, are reducing access and quality of care and increasing costs due to the regulatory atmosphere, specifically fraud and abuse investigations. Without including the time spent on fraud and abuse investigations, in addition to the psychological mental and financial stress, a 2021 study published in JAMA Health Forum found that it costs an estimated \$12,811 and consumes more than 200 hours per physician annually to comply with Medicare MIPS alone.

Impending Cuts for 2023

Unless Congress acts, the total expected cuts are 10.4% starting January 2023.

- -4.5% schedule conversion factor beyond 3%
- -4% statutory PAYGO from American Rescue Plan Act
- -2% sequester cut from ACA

Expiration of the congressionally enacted 3% temporary increase in the Medicare physician fee schedule conversion factor, replacing the 3.75% temporary increase in 2021, to avoid payment cuts associated with budget neutrality adjustment tied to physician fee-for-service policy changes.

Expiration of the partial reprieve from the repeatedly extended 2% sequester stemming from the Budget Control Act of 2011. It appears that while Congress originally scheduled this policy to sunset in 2021, it will now continue beyond 2030.

Imposition of a 4% statutory PAYGO sequester resulting from passage of the American Rescue Plan Act, presumably extending for at least another 10 years, or with budget calculations, 20 years.

Thus, overall, combined physician practices face 10.4% cut on January 1, 2023, compared to 2022. This will continue to stretch physician practices to the limit clinically, emotionally, and financially as the pandemic continues to persist and multiple COVID-19 regulations implemented, with supply chain issues continuing, inflation will undoubtedly threaten patient access to care, specifically for the vulnerable population suffering with chronic pain.

Facility Payment Cuts (6% Cut)

Under the present status, it appears that ambulatory surgery centers and other facilities will be suffering with 2% cut from sequester extension and a 4% reduction with imposition of a 4% statutory PAYGO sequester resulting from passage of the Budget Control Act of 2011 and American Rescue Plan Act of 2021. I added this from the letter.

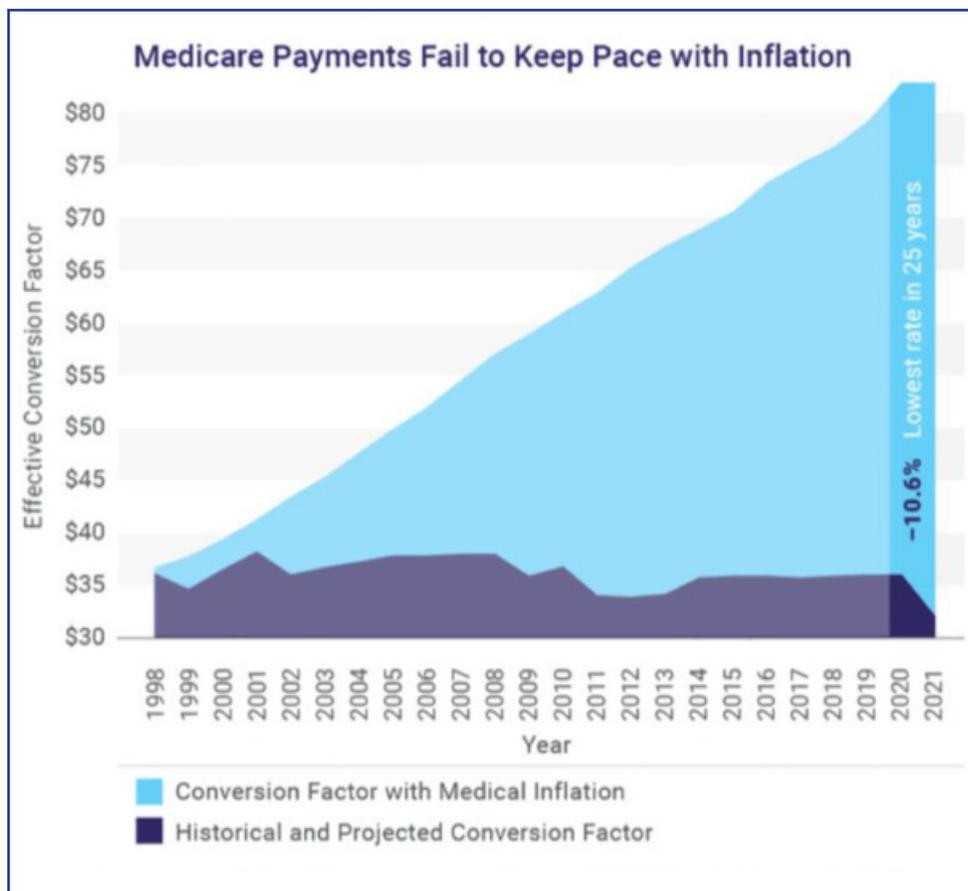


Fig. 3. Medicare payments fail to keep pace with inflation.

Source: https://www.linkedin.com/posts/david-a-mclain-m-d-facp-macr-a116ba11_calltoaction-medicare-writetcms-activity-6951959948599713792-8Q9t.

CALL FOR CONGRESSIONAL ACTION

Congressional action is required to fix Medicare payment system, fraud and abuse investigations, and impending cuts.

Fixing the Impending Cuts

While Medicare requires long-term payment system reform to avoid from its unsustainable path, it needs to reverse the impending cuts, on an emergency basis, by:

1. Adding a 3.75% permanent increase instead of the 3% from last year in the Medicare physician fee schedule (PFS) conversion factor to avoid payment cuts associated with budget neutrality adjustment tied to PFS policy changes.
2. Elimination of sequesters completely, without budget gimmicks and extending through potentially 2050. This policy was scheduled to sunset in 2021. Consequently, it is now time for the policy to be permanently removed, and without gimmicks.
3. Waive the 4% statutory PAYGO sequester, which was a result of the passage of the American Rescue Plan Act, permanently. Further, Congress should enact legislation so that Medicare will never be included in this so that the elderly and providers will never be punished for government spending activities.

Providing Financial Stability

It is crucial that Congress provide financial stability to providers with or without a systematic reform to Medicare so that it works better for patients and providers through a baseline positive annual update reflecting inflation and practice costs. Furthermore, Congress should eliminate, replace, or revise budget-neutrality requirements to allow for appropriate changes in spending growth.

Reforming Fraud and Abuse Investigations Policies

At present, the Office of Inspector General (OIG) and multiple private contractors have their own policies of investigation without any regard for established local coverage determinations (LCDs) and medical policies. These audits and investigations, specifically from private contractors, are also defying precertification rules and regulations and demanding refunds on patients even though a precertification has been obtained. The demands of these investigations are costing physicians hundreds of thousands of dollars financially and creating unnecessary mental stress. These also increase future costs by increasing provider time and investing substantial resources just to meet everchanging computerized program criteria developed by the same people who developed electronic medical records (EMRs) and established the EMRs for so-called rapid documentation, which is now considered as copying/pasting, cloning, cloned, pre-populated, highly redundant, and auto filled, beyond any obligations from MIPS, LCDs, and medical policies. ■

ABOUT ASIPP

The American Society of Interventional Pain Physicians (ASIPP) is a not-for-profit professional organization founded in 1998 which now comprises over 4,500 interventional pain physicians and other practitioners who are dedicated to ensuring safe, appropriate, and equal access to essential pain management services for patients across the country suffering with chronic and acute pain. There are approximately 8,500 appropriately trained and qualified physicians practicing interventional pain management in the United States. ASIPP is comprised of 49 state societies of Interventional Pain Physicians, including Puerto Rico and the affiliated Texas Pain Society.

ABOUT SIPMS

SIPMS is a not-for-profit professional organization founded in 2005, with membership involving surgical centers focusing on interventional pain management, dedicated to ensuring safe, appropriate, and equal access to essential pain management services for patients across the country suffering with chronic pain. There are approximately 500 surgery centers across the nation approved by Medicare providing or solely or an overwhelming majority of interventional pain management services.

ABOUT INTERVENTIONAL PAIN MANAGEMENT

Interventional pain management techniques are minimally invasive procedures including, percutaneous precision needle placement, with placement of drugs in targeted areas or ablation of targeted nerves; and some surgical techniques such as laser or endoscopic discectomy, intrathecal infusion pumps and spinal cord stimulators, for the diagnosis and management of chronic, persistent or intractable pain.



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