

# 2022 Year-End Health Policy Priorities

## Lame Duck Session Predictions & Analysis

### Introduction


As the 117<sup>th</sup> Congress comes to a close in the final months of 2022, Leading Health Systems, hospital and provider trade associations, and healthcare industry stakeholder are looking to Congress to address multiple health policy priorities. PAYGO, Medicare Physician Fee Schedule cuts, telehealth extenders, home health flexibilities, mental health policy, Medicare Advantage prior authorization, and Alternative Payment Model (APM) adjustments are all on the table for Congress to consider before the end of the legislative session.

### Key Takeaways

- **The midterm elections are likely to play a role in determining which policies move by year-end.** If Republicans flip one or both chambers, party leadership may be emboldened to push consideration of larger policy packages, such as sweeping mental health reform, to 2023 when they control the majority.
- **If legislation moves at all, it will likely be wrapped into a year-end package rather than passed as standalone bills.** The Senate approved a continuing resolution (CR) this week to extend current budget levels to December 16. The ongoing budget negotiations will create an opportunity for health priorities to be attached to a must-pass vehicle, but will also present additional risks as the health policies will impact top-line budget numbers.
- **In preparation for the Lame Duck legislative sprint, LHS must align their policy priorities and maintain a unified front.** Currently, healthcare industry stakeholders are not aligned on a single, top priority; physician groups are focused on fee schedule cuts, home health groups are concerned about Hospital at Home and telehealth flexibilities, and mental health advocates are trying to move a mental health reform package. Not only will Congress be weighing a slate of health care policy asks, they will also be considering other industry sector priorities, as well.

### Executive Summary

Priority	Status
Statutory PAYGO Sequestration	Green – PAYGO’s history of being waived or postponed suggests that with maintained lobbying from cross industry stakeholders a fix is likely
Physician Fee Schedule Cuts	Green – political attention on this issue is growing and movement is probable given the support of a strong lobby with a history of mitigating cuts
Mental Health Package	Yellow – support for a sweeping package is significant, but competes with other health priorities for congressional attention by year-end
Medicare Advantage Prior Authorization	Yellow – intel suggests this is unlikely to pass as a standalone bill, but may be included in a potential mental health package
Telehealth Extenders	Yellow – legislation has passed the House, but despite broad Senate support, uptake is uncertain due to a low sense of urgency
Alternative Payment Model Cuts	Red – staffers suggest a fix is more likely to happen retroactively and LHS should be prepared to incur these cuts in the short term
Hospital at Home Flexibilities	Red – legislation in this area has stagnated and is not viewed as a year-end priority



*Likelihood of being address is ordered based on intel available at the point of publication on Thursday, September 29, 2022.*

## Statutory PAYGO Sequestration

**What is at stake:** Triggered by the *American Rescue Plan Act* passed in 2021, the Statutory Pay-As-You-Go (PAYGO) Act requires the Office of Management and Budget (OMB) to implement across-the-board reductions of federal spending to maintain a budget-neutral impact on the federal deficit. Congress waived PAYGO cuts for one year at the end of 2021, but if not addressed by the end of this year, a 4% sequestration cut will be applied to Medicare payments beginning in 2023.

**Analysis:** In the twelve years since PAYGO was enacted, Congress has always waived or postponed PAYGO sequestration. Furthermore, because PAYGO impacts all federal spending – not just healthcare spending – other industry sectors also benefit when Congress waives the cuts, which lends to the overall likelihood that Congress will choose to waive PAYGO again. That said, LHSs should not assume Congress will automatically prioritize PAYGO; it should remain a top end-of-year advocacy priority.

**The Academy Advisors' Take:** If Leading Health Systems focus their collective efforts and unite behind a single advocacy ask, we believe there is a high likelihood Congress will follow historic precedent and waive the 4% PAYGO cuts.

## Physician Fee Schedule Cuts

**What is at stake:** Legislation passed at the end of 2021 that implemented a statutory 3% increase in Physician Fee Schedule payments expires at the end of 2022. At the same time, CMS also proposed a change in the CY 2023 Medicare Physician Fee Schedule (PFS) that would result in a \$1.53 decrease in the conversion factor. Without Congressional action, physicians face a nearly 4.5% cut to Medicare payments between 2022 and 2023.

**Analysis:** Physician trade associations have a strong track record of success lobbying Congress to remedy payment concerns, including last year's 3% statutory bump. Already, these groups have successfully lobbied for the introduction of the [Supporting Medicare Providers Act of 2022](#), which would postpone the proposed cuts. Also noteworthy, the physician trade groups have been leveraging their PACs in advance of the midterm elections, and among healthcare stakeholder sub-groups, are unified in making this a top priority.

**The Academy Advisors' Take:** Physician trade groups are unified in making this issue a top priority, and their history of success leads us to believe that the PFS cuts are likely to be postponed.

## Mental Health Package

**What is at stake:** The Senate Health, Education, Labor, and Pensions (HELP) and Finance Committees have discussed introducing a sweeping mental health care package since 2020. Proposals include reforms to youth mental health care and improving the mental health care workforce. With major congressional supporters of mental health reform like Sen. Richard Burr (R-NC), Roy Blunt (R-MO), and Rob Portman (R-OH) retiring at the end of the year, mental health advocates worry that this package will face significant setbacks if not passed by year-end.

**Analysis:** The Senate Finance committee has released drafts of major provisions on [youth mental health](#), [telemental health](#), and [mental health workforce shortages](#) expected to be included in the package, but legislation has not been officially introduced. While there is a lot of political will in addressing mental health, ultimately a sweeping reform package may fall lower on the list of must-pass priorities, or could be intentionally postponed to 2023 if Republicans flip one or both chambers.

**The Academy Advisors' Take:** Passing mental health legislation falls in a “maybe” bucket that is highly dependent on the outcome of the election, and may be moved to next Congress.

## Medicare Advantage Prior Authorization

**What is at stake:** Medicare Advantage (MA) plans often implement prior authorization clauses which require providers receive pre-approval from the MA plan prior to providing services to a patient. While there are no monetary cuts or investments at stake, enabling electronic prior authorization processes for MA plans would help providers deliver real-time care to patients, allowing services and treatments to be administered more quickly and easily to patients—saving providers' and patients' time.

**Status Update:** The [Improving Seniors' Timely Access to Care Act of 2021 \(H.R. 3173\)](#), which requires MA plans to introduce electronic prior authorization programs and make timely decisions on authorization requests, passed the House in mid-September. However, it has not yet been taken up by the Senate.

**The Academy Advisors' Take:** Some hope remains that the bill may be included as part of a year-end package (i.e. part of the mental health package), but because there is no year-end cliff to force congressional action sooner rather than later, this issue also falls into a middle-ground “maybe” bucket.

## Telehealth Extenders

**What is at stake:** The COVID-19 Public Health Emergency (PHE) flexibilities eased telehealth bureaucracy and increased telehealth options for providers and patients. Currently, telehealth flexibilities that allow LHS to provide services to patients via technologies like Facetime and Skype are set to expire five months (151 days) after the end of the COVID-19 PHE.

**Status Update:** [The Advancing Telehealth Beyond COVID-19 Act \(H.R. 4040\)](#), which would extend federal telehealth flexibilities through 2024, has received significant support from healthcare and industry stakeholders. The legislation passed the House in late July, but the Senate has indicated it is not likely to pick up the standalone bill. Instead, the Senate has suggested it may add similar provisions to those included in the bill to a year-end package.

**The Academy Advisors' Take:** As the ongoing COVID-19 PHE designation is expected to be extended into 2023, and with flexibilities already extended for five months after the end of the PHE, this issue falls into a “maybe” bucket if Congress is forced to choose between this and other, more pressing issues.

## Alternative Payment Model Cuts

**What is at stake:** The [Medicare Access and CHIP Reauthorization Act of 2015 \(MACRA\)](#) instated a 5% incentive through 2024 for providers that transition to Alternative Payment Models (APM). As the payment is retroactive, Congress must act before the end of this year to extend the bonus beyond 2024. Furthermore, the requirements to meet said 5% bonus are set to rise and become more difficult for health system to satisfy in 2023.

**Status update:** LHS support the [Value in Healthcare Act \(H.R. 4587\)](#) which would delay the raising of the requirements to receive the incentive and extend the bonus incentive through 2030. Sponsors of the bill have indicated that they do not think it is likely that this bill will pass in 2022.

**The Academy Advisors' Take:** While there has been some discussion of including certain provisions from this bill in a larger year-end package, we've heard that stakeholders and Congressional staffers are looking into a retroactive fix – addressing these issues next year – which leads us to believe there is little confidence in a 2022 win.

## Hospital at Home Flexibilities

**What is at stake:** CMS introduced the Acute Hospital Care at Home waiver during the COVID-19 PHE, which has allowed LHS to provide care to patients in their own homes. With these waivers, LHS have made workforce and infrastructure investments in order to provide home health care, but these flexibilities are set to expire after the end of the COVID-19 PHE.

**Status Update:** LHS support the [Hospital Inpatient Services Modernization Act \(H.R. 7053 / S. 3792\)](#), which would extend the Acute Hospital Care at Home waiver for two years. Unfortunately, this legislation has seen little traction after its introduction.

**The Academy Advisors' Take:** Like the telehealth issue, this priority is likely to be punted until next year when the end of the PHE waivers force congressional action. Unlike telehealth, however, which has broad stakeholder support and engagement, this issue is more niche: it will take a greater effort from LHS and other supporters to convince Congress to continue the waivers.