

**To:** NACBH Public Policy Committee  
**From:** Maddie Geschu – Senior Director, Center Road Solutions  
**Date:** February 9, 2023  
**Subject:** Fiscal Year 2023 Omnibus Provisions for Children’s Behavioral Health

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## **EXECUTIVE SUMMARY**

The Consolidated Appropriations Act of 2023, also called the Fiscal Year 2023 (FY23) Omnibus, included multiple provisions relevant to the work of NACBH members. Legislative solutions to address mental health – particularly children’s mental health – dominated conversations throughout the 117<sup>th</sup> Congress and we expect the focus to continue in this session. Additionally, we now know that the COVID Public Health Emergency (PHE) will end on May 11, 2023 which will also impact post-FY23 Omnibus policy. From extending telehealth flexibilities to enabling Medicare to cover Licensed Marriage and Family Therapists (LMFTs) and Intensive Outpatient Programs (IOPs), the \$1.66 trillion FY23 Omnibus marked one of the more important packages for mental health in recent years.

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## **GRANTS FOR NONPROFIT ENTITIES FOR CHILDREN’S BEHAVIORAL HEALTH**

### *TECHNICAL ASSISTANCE FOR SCHOOL-BASED HEALTH CENTERS*

The Omnibus included a new provision that directs the Department of Health and Human Services (HHS) Secretary to award “grants or contracts to private, nonprofit entities with demonstrated expertise related to school-based health centers... [to] support such entities in providing services.” These services

include mental health and substance use disorder (SUD) services, program operations, and best practices for provision of children/adolescent behavioral health care.

#### *TRAINING AND TECHNICAL ASSISTANCE FOR INFANT AND EARLY CHILDHOOD MENTAL HEALTH PROMOTION, INTEGRATION, AND TREATMENT*

The legislation adds another new technical assistance provision to allow the Secretary to award grants or contracts to public and private nonprofit entities to support training and technical assistance to eligible entities under the Infant and Early Childhood Mental Health Promotion, Intervention, and Treatment Program. This program grants funds to human services agencies and nonprofit institutions to provide age-appropriate mental health promotion and early intervention services, train health care professionals, provide consultation to early care/education programs, and assess, diagnose, and intervene for children from infancy to 12 years of age.

#### **REAUTHORIZATION OF COMPREHENSIVE COMMUNITY MENTAL HEALTH SERVICES FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCES**

The Omnibus reauthorized and raised funding for the [Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances](#) program under SAMHSA, funding it at \$125 million (an increase of \$5.9 million) each year through 2027.

#### **TWO-YEAR EXTENSION OF TELEHEALTH FLEXIBILITIES**

The legislation included provisions to extend and expand telehealth flexibilities through Dec. 31, 2024. Under previous law, many of these flexibilities were set to expire 151 days after the end of the COVID-19 PHE (which would have been October 9, 2023). In addition, the HHS Secretary will be required to submit a report to Congress on utilization of services (interim report in October 2024; final report in April 2026).

These flexibilities include:

- Expanding ‘originating site’ to include any site at which the patient is located, including the patient’s home;
- Expanding eligible practitioners to furnish telehealth services to include occupational therapist, physical therapist, speech-language pathologist and audiologist;
- Extending the ability for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) to furnish telehealth services. FQHCs are outpatient clinics serving underserved areas/populations that provide behavioral health and other services and qualify for enhanced reimbursement under Medicare and Medicaid. RHCs are certified facilities operating in rural, underserved areas that are required to provide outpatient primary care and basic laboratory services;
- Delaying the six-month in-person requirement for mental health services furnished through telehealth until 2025, including the in-person requirements for FQHCs and RHCs;
- Extending coverage and payment for audio-only telehealth services;
- Extending safe harbor exceptions for telehealth services in high-deductible health plans, meaning these plans can offer coverage of telehealth services before the deductible is met;

#### **CONTINUOUS MEDICAID AND CHIP ELIGIBILITY FOR CHILDREN**

Effective January 1, 2024, the FY23 Omnibus required states to ensure that children determined eligible for Medicaid and Children’s Health Insurance Program (CHIP) receive continuous eligibility for 12 months. This policy allows a child to remain enrolled for a year even if there are fluctuations in income. Continuous eligibility policies have been [shown to lower rates of ‘churn’](#), which is when individuals temporarily lose Medicaid coverage and disenroll and then re-enroll within a short period of time which leads to gaps in coverage and limited access to care. The provision also decouples the Medicaid continuous enrollment requirement from the COVID PHE and terminates the requirement on March 31, 2023. This means that starting in April, states can resume Medicaid disenrollments.

### **MEDICARE COVERAGE FOR INTENSIVE OUTPATIENT PROGRAMS (IOPS), LICENSED MARRIAGE AND FAMILY THERAPISTS (LMFTs), and LICENSED PROFESSIONAL COUNSELORS (LPCs)**

Importantly, the FY23 Omnibus expanded Medicare coverage for intensive mental health outpatient treatment programs, significantly increasing access to this level of care. This new IOP benefit mirrors the existing partial hospitalization benefit under Medicare, except that it applies to individuals who only need 9 hours of services per week to qualify (compared to 20 hours per week with partial hospitalization programs).

Another way that the FY23 improved mental health care access under Medicare was to open coverage up to include LMFTs and LPCs. These providers comprise about [25% of the behavioral health workforce](#), but were previously not covered under Medicare’s outpatient mental health benefits. Additionally, oftentimes TRICARE, CHAMPS-VA, Medicaid, and commercial insurance model their coverage after Medicare, so this Medicare-specific change could resonate throughout the health care infrastructure.

### **MENTAL HEALTH PARITY FOR NON-FEDERAL GOVERNMENT PLANS**

The FY23 Omnibus eliminated the opt-out for non-federal government health plans (i.e., state, municipality, school district, or other public system health plans) for mental health parity requirements. The bill also included \$50 million across five years to help states enforce federal parity provisions. Previously, the Affordable Care Act included similar funding available for state commissioners and it led to significant changes in compliance in the states that received funds.

Our partners at [the Kennedy Forum estimate](#) that over one million more children and families will gain improved mental health coverage. Unfortunately, the bill did not include a request by the Department of Labor to be able to levy fines for health plans that are out of compliance with mental health parity regulations.

### **FUNDING TO TRAIN NEW PSYCHIATRISTS AND OTHER PROVIDERS**

Beginning in 2026, the Omnibus provided an additional 200 Medicare-funded Graduate Medical Education (GME) residency positions, with at least half of the slots dedicated to psychiatry and psychiatry subspecialty residencies as accredited by the Accreditation Council for GME for the purpose of preventing, diagnosing, and treating mental health disorders.

### **PAYMENT METHODOLOGY UPDATE FOR INPATIENT AND PSYCHIATRIC UNITS**

The Omnibus required the U.S. Department of Health and Human Services (HHS) Secretary to update the methodology for determining payment rates under the Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) beginning in the rate year 2025 based on new data collection for inpatient and psychiatric units. The IPF PPS is the per diem payment to be made for inpatient psychiatric services furnished in psychiatric hospitals and psychiatric units of acute care hospitals and critical access hospitals.

### **HHS OUTREACH FOR BEHAVIORAL HEALTH INTEGRATION SERVICES**

The Omnibus required HHS to conduct outreach to physicians and other healthcare providers that participate in Medicare on the availability of behavioral health integration services as a covered benefit under Medicare and report on the provider outreach and service utilization rates to Congress.

### **PHYSICIAN FEE SCHEDULES**

CMS's [final 2023 Medicare Physician Fee Schedule \(MPFS\)](#) included cuts to services provided by the majority of Medicare health care providers, including psychiatrists who treat Medicare patients. This 4.5% cut to the fee schedule's conversion factor is in addition to cuts in the fee schedule from 2020 and 2021. Despite thousands of health care providers contacting Congress, the final omnibus does not stop this full cut. They did, however, take steps to reduce the size of the cuts: for 2023, the conversion factor will be cut by 2% (instead of 4.5%) and for 2024, they have increased the conversion factor by 1.25%. It is not known what the 2024 conversion factor will be.

In addition, all Medicare providers were also facing a possible 4% cut due to a budgetary process known as "PAYGO." The omnibus waived PAYGO requirements and prevented practitioners across all Medicare settings from facing a related 4% reduction.

### **MOBILE CRISIS INTERVENTION UNITS**

The bill established a 50% payment increase in Medicare payment rates for mobile crisis intervention units, also referred to as crisis psychotherapy services, to be implemented by 2024.

### **PHYSICIAN WELLNESS PROGRAMS**

The Omnibus established a new exception to the [Stark Law](#) to better enable hospitals and other entities to provide physicians with evidence-based programs to improve their mental health, increase resiliency, and prevent suicide.

### **AUTHORIZATION OF CENTER OF EXCELLENCE FOR EATING DISORDERS**

The Omnibus authorized the Center of Excellence (CoE) for Eating Disorders under SAMHSA for an additional 5 years. The CoE is tasked with educating and training primary care, mental health, and other providers on eating disorders. The provision also authorized the CoE to develop training materials and modules to improve identification, intervention, and treatment of children at disproportionate risk for eating disorders.

### **REPEAL OF REQUIREMENTS FOR PRESCRIBING BUPRENORPHINE FOR OPIOID USE DISORDER**

The Omnibus included a provision to make buprenorphine – an FDA-approved medication for opioid use disorder – more accessible to people seeking treatment. The provision does this by permanently repealing bureaucratic guardrails that limited buprenorphine prescribing for OUD.