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Medicare and Budget Sequestration

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SUMMARY

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Medicare and Budget Sequestration

Sequestration is the automatic reduction (i.e., cancellation) of certain federal spending, generally by a uniform percentage. The sequester is a budget enforcement tool that was established by Congress in the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA, also known as the Gramm-Rudman-Hollings Act; P.L. 99-177, as amended) and was intended to encourage compromise and action, rather than actually being implemented (also known as *triggered*). Generally, this budget enforcement tool has been incorporated into laws to either discourage or encourage certain budget objectives or goals. When these goals are not met, either through the enactment of a law or the lack thereof, a sequester is triggered and certain federal spending is reduced.

Sequestration is of recent interest due to its current use as an enforcement mechanism for three budget enforcement rules created by the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO; P.L. 111-139) and the Budget Control Act of 2011 (BCA; P.L. 112-25). At present, only the BCA mandatory sequester has been triggered and is in effect. Under the BCA, the sequestration of mandatory spending was originally scheduled to occur in FY2013 through FY2021. However, subsequent legislation, including, most recently, the Infrastructure Investment and Jobs Act (P.L. 117-58), extended sequestration for mandatory spending through FY2031. (The CARES Act, as amended, temporarily suspended the application of this sequestration to Medicare from May 1, 2020, through March 30, 2022, and limited Medicare reductions to 1% from April 1, 2022, through June 30, 2022.) The BCA discretionary sequester expired at the end of FY2021.

The Statutory PAYGO sequester is current law and can be triggered if associated budget enforcement rules are broken. Due to the potential impact of the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) on deficits, sequestration under PAYGO was expected to be triggered in early 2022. However, the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71) deferred the impact of ARPA to 2023. Without related congressional action prior to the end of 2022, reductions to Medicare under PAYGO could occur in 2023. If a PAYGO sequester were to be triggered in 2023 or another future fiscal year, neither the Statutory PAYGO Act nor the Budget Control Act include any explicit directions as to how the two sequesters would be implemented alongside each other.

Medicare is a federal program that pays for certain health care services of qualified beneficiaries. The program is funded using both mandatory and discretionary spending and is impacted by any sequestration order issued in accordance with the aforementioned laws. Medicare is mainly impacted by the sequestration of mandatory funds since Medicare benefit payments (the majority of Medicare expenditures) are considered mandatory spending. Special sequestration rules limit the extent to which Medicare benefit spending can be reduced in a given fiscal year. This limit varies depending on the type of sequestration order.

Under a BCA mandatory sequestration order, Medicare benefit payments and Medicare Integrity Program spending cannot be reduced by more than 2%. Under a Statutory PAYGO sequestration order, Medicare benefit payments and Medicare Program Integrity spending cannot be reduced by more than 4%. These limits do not apply to mandatory administrative Medicare spending under either type of sequestration order. These limits also did not apply to discretionary administrative Medicare spending under a BCA discretionary sequestration order.

Generally, Medicare's benefit structure remains unchanged under a mandatory sequestration order and beneficiaries see few direct impacts. However, Medicare plans and providers see reductions in payments. Due to varying plan and provider payment mechanisms among the four parts of Medicare, sequestration is implemented somewhat differently across the program.

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Introduction

Sequestration is the automatic reduction (i.e., cancellation) of certain federal spending, generally by a uniform percentage.[1] The sequester is a budget enforcement tool that Congress established in the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA, also known as the Gramm-Rudman-Hollings Act; P.L. 99-177, as amended) intended to encourage compromise and action, rather than actually being implemented (also known as *triggered*).[2] Generally, this budget enforcement tool has been incorporated into laws to either discourage or encourage certain budget objectives or goals. When these goals are not met, either through the enactment of a law or lack thereof, a sequester is triggered and certain federal spending is reduced.

Sequestration is currently used as a budget enforcement mechanism as part of the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO; P.L. 111-139) and the Budget Control Act of 2011 (BCA; P.L. 112-25). At this time, only the BCA mandatory spending sequester is in effect and is scheduled to continue each year through FY2031; however, the applicable Medicare spending reductions have been suspended from May 2020 through March 2022.[3] The BCA discretionary spending limits, which were enforceable through a sequester, expired at the end of FY2021.

Medicare, which is a federal program that pays for covered health care services of qualified beneficiaries,[4] is subject to a reduction in federal spending associated with the implementation of these sequesters, although special rules limit the extent to which it is impacted.

This report begins with an overview of budget sequestration and Medicare before discussing how budget sequestration has been implemented across the different parts of the Medicare program. Additionally, this report provides appendixes that include references to additional Congressional Research Service (CRS) resources related to this report and budget terminology definitions, as defined by BBEDCA.

Budget Sequestration

Under current law, sequestration is a budget enforcement tool that occurs because certain budgetary goals have not been met. When a sequester is triggered, all applicable budget accounts, unless exempted by law, are reduced by a certain percentage amount for a fiscal year.[5] The

[1] Section 250(c)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177) defines the terms *sequestration* and *sequester* as "the cancellation of budgetary resources provided by discretionary appropriations or direct spending law." Budgetary resources are subject to sequestration unless exempted by law. For further information on sequestration, see Office of Management and Budget (OMB), OMB Circular A-11 (2019), Section 100, at https://www.whitehouse.gov/wp-content/uploads/2018/06/s100.pdf.

[2] U.S. Congress, Senate Committee on Finance, *Budget Enforcement Mechanisms*, Oral and Written Testimony of the Honorable Phil Gramm, 112th Cong., 1st sess., May 4, 2011.

[3] Section 3709 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) suspended the application of the Budget Control Act of 2011 (BCA; P.L. 112-25) sequestration to Medicare from May 1, 2020, through December 31, 2020; §102 of Division N, Title I of the Consolidated Appropriations Act, 2021 (P.L. 116-260), extended the suspension through March 31, 2021; §1 of an Act to Prevent Across-the-Board Direct Spending Cuts, and for Other Purposes (P.L. 117-7), extended the suspension through December 31, 2021; and §2 of the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71) extended the suspension through March 31, 2022. (The Protecting Medicare and American Farmers from Sequester Cuts Act also limited the Medicare reductions to 1% from April 1, 2022, through June 30, 2022.)

[4] For more information on Medicare, see CRS Report R40425, *Medicare Primer*.

[5] Sequestration does not apply to every account, since many budget accounts are either exempted from sequestration or governed by special rules under sequestration, the latter of which can vary depending on the sequestration trigger. See

percentage reduction varies between and within budget accounts depending on the categories of funding, as described below, contained within each budget account.

After identifying each category of funding within a budget account, sequestration reductions are applied evenly across all budget account subcomponents referenced in committee reports, budget justifications, and/or Presidential Detailed Budget Estimates – also known as programs, projects or activities.[6] For budget accounts that contain only one category of funding, all sequestrable funds are reduced by the same corresponding percentage. For accounts that contain multiple categories of funding, the total amount of each category of sequestrable funds is reduced by its corresponding percentage. The reduced budget resources usually are permanently cancelled.[7]

A sequester can apply to either discretionary or mandatory spending. Discretionary spending is associated with most funds provided by annual appropriations acts. While all discretionary spending is subject to the annual appropriations process, only a portion of mandatory spending is provided in appropriations acts.[8] Mandatory spending is generally provided by permanent laws, such as the Social Security Act, which made indefinite budget authority permanently available for Medicare benefit payments.[9] Some federal programs, including Medicare, can receive both discretionary and mandatory funding.

In the event that a sequester is triggered, the Office of Management and Budget (OMB) is responsible for calculating the across-the-board percentage reductions, and calculates separate percentages for Medicare, other nondefense, and defense funding.[10] Due to sequestration rules, which are covered later in this report, mandatory Medicare benefit payments receive a specific percentage reduction different from other types of federal spending.

BBEDCA §255 and §256, as amended. Since OMB is responsible for the execution and legal interpretations of sequestration orders, some accounts not listed in these sections may also be exempt from sequestration. For a complete list of exempted accounts, see CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*.

[6] See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, and CRS Report 98-721, *Introduction to the Federal Budget Process*.

[7] "In some circumstances current law allows for budget authority sequestered in one fiscal year to become available to the agencies again in a subsequent fiscal year. OMB refers to these amounts as 'pop ups.'" See U.S. Government Accountability Office (GAO), *2014 Sequestration Opportunities Exist to Improve Transparency of Progress Toward Deficit Reduction Goals*, GAO-16-263, April 2016, p. 20, at https://www.gao.gov/assets/680/676565.pdf.

[8] Some mandatory entitlements are provided through the annual appropriations process and are considered *appropriated entitlements* (e.g., Medicaid). Although these entitlements are appropriated, the federal government is legally obligated to make payments to those deemed eligible for the entitlement. (Medicaid is explicitly exempt from sequestration.)

[9] Indefinite budget authority is federal spending that, at the time of enactment, is for an unspecified amount that will be determined at a later date. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 1, 2005, p. 23, at https://www.gao.gov/assets/80/76911.pdf.

[10] All funds are first classified as discretionary or mandatory. Within each of these categories, funds are further classified as Medicare, defense, or nondefense. During a sequestration order, each subcomponent of discretionary and/or mandatory funds receives a sequestration percentage based on the necessary amount of savings for that category. For sequestration purposes, Medicare benefit payments are defined by BBEDCA as all payments for programs and activities under Title XVIII of the Social Security Act. See BBEDCA §256(d). Defense and nondefense are referred to in BBEDCA as either "revised security" or "revised nonsecurity," respectively. "Revised security" is any funding coded with a budget function of 050, which is effectively the Department of Defense. "Revised nonsecurity" includes all other government spending. Each of these categories receives a different percentage reduction under a sequestration order.

The methodologies used to calculate these percentages and the sequestered amounts are published in a report produced by OMB. Once the President issues a sequestration order, the associated report is made available to the public and transmitted to Congress.[11]

Budget Enforcement Rules

In recent years, there have been three budget enforcement rules that could trigger sequestration. Two were established by the BCA, and one was established by Statutory PAYGO. Two of them are currently in effect, while one of the BCA rules expired at the end of FY2021. The three rules and their corresponding sequesters can be summarized as follows (and are presented in **Table 1**):

Budget Control Act

The BCA established a bipartisan Joint Select Committee on Deficit Reduction (Joint Committee), which was responsible for developing legislation that would reduce the deficit by at least $1.2 trillion from FY2012 to FY2021.[12] However, the Joint Committee was unable to achieve this goal; therefore, Congress and the President were unable to enact corresponding deficit reduction legislation by a date specified in the law. As a result, two types of spending reductions were triggered automatically.[13]

BCA Mandatory Sequester

One automatic spending reduction involved the sequestration of certain *mandatory* spending initially from FY2013 to FY2021. (This report refers to these spending reductions as the *BCA mandatory sequester*.) Subsequent legislation extended this sequestration through FY2031.

Legislation that extended the BCA mandatory sequester includes the following:

- The Bipartisan Budget Act of 2013 (BBA 2013; P.L. 113-67) extended the BCA mandatory sequester through FY2023;
- A law modifying the cost-of-living adjustment (COLA) for certain military retirees (P.L. 113-82) extended it through FY2024;
- The Bipartisan Budget Act of 2015 (BBA 2015; P.L. 114-74) extended it through FY2025;
- The Bipartisan Budget Act of 2018 (BBA 2018; P.L. 115-123) extended it through FY2027;
- The Bipartisan Budget Act of 2019 (BBA 2019; P.L. 116-37) extended it through FY2029;
- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) extended it through FY2030; and
- The Infrastructure Investment and Jobs Act (P.L. 117-58) extended it through FY2031.

[11] For more information about the methodologies associated with calculating the sequester percentage in a given year, see *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2022*, May 28, 2021, at https://www.whitehouse.gov/wp-content/uploads/2021/05/BBEDCA_251A_Sequestration_Report_FY2022.pdf.

[12] See Title IV of the BCA.

[13] See CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*.

Additional legislation suspended the application of the BCA mandatory sequester to Medicare during the Coronavirus Disease 2019 (COVID-19) pandemic from May 2020 through March 2022 and limited the reductions to 1% from April 2022 through June 2022. (See "Temporary Suspension of Medicare Sequestration.")

BCA Discretionary Sequester

Additionally, the BCA established statutory limits on *discretionary* spending for FY2012-FY2021.[14] These discretionary spending limits (discretionary caps) restricted the amount of spending permitted through the annual appropriations process for defense and nondefense programs. Any breach of these discretionary caps would have resulted in the sequestration of nonexempt discretionary funding. (This reduction is referred to in this report as the *BCA discretionary sequester*.)

No sequester was triggered as a result of a breach of the statutory discretionary caps over the FY2012-FY2021 period.[15] Notably, the statutory caps for each of FY2014-FY2021 were revised upward to accommodate agreed-upon discretionary spending levels prior to the enactment of the applicable appropriations acts for each of those fiscal years.[16] The BCA discretionary spending limits expired at the end of FY2021, so there are no BCA discretionary spending caps in effect for FY2022 and beyond.

Statutory PAYGO

The Statutory PAYGO Act established a budget enforcement mechanism generally requiring that legislation affecting direct (mandatory) spending and revenues does not have the effect of increasing the deficit over a 5- and/or 10-year period. If such legislation were to become law, a sequester of certain *mandatory* spending would be required. This budget enforcement rule does not have a sunset date and therefore remains in effect under current law. (This reduction is referred to in this report as *Statutory PAYGO sequester*.)

Although legislation estimated to increase the deficit has been enacted since 2010 (when the Statutory PAYGO Act was enacted), a Statutory PAYGO sequester has never been triggered. To avoid any potential sequester, such legislation has often included a provision effectively exempting it from the PAYGO requirements.[17]

A recent exception to this practice, however, was the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2), which did not include any provision that excluded its budgetary effects from the Statutory PAYGO requirements. Therefore, its estimated deficit increases of over $1.9 trillion and

[14] For more information about the discretionary spending limits established under the BCA, see CRS Report R42506, *The Budget Control Act of 2011 as Amended: Budgetary Effects*.

[15] Apart from the statutory discretionary spending caps, the BCA required a sequester of discretionary spending in FY2013 as a result of the Joint Committee not being able to report legislation reducing the deficit, as described above. For further information, see CRS Report RL34424, *The Budget Control Act and Trends in Discretionary Spending*, under the heading, "FY2013 Sequestration Triggered."

[16] The following legislation revised the statutory discretionary spending caps upward: (1) the BBA 2013 revised the caps for FY2014 and FY2015; (2) the BBA 2015 revised the caps for FY2016 and FY2017; (3) the BBA 2018 revised the caps for FY2018 and FY2019; and (4) the BBA 2019 revised the caps for FY2020 and FY2021. For additional information on these revisions, see CRS Report R46752, *Expiration of the Discretionary Spending Limits: Frequently Asked Questions*.

[17] For more information, see CRS Congressional Distribution Memorandum, "Budgetary Effects Excluded or Eliminated from the Statutory Pay-As-You-Go (Stat-PAYGO) Scorecards," February 16, 2022, by Bill Heniff Jr. Available from the author upon request.

over $2.0 trillion were placed on the 5-year and 10-year PAYGO scorecards, respectively.[18] To avoid a sequester in early 2022, however, the balances on the scorecards for FY2022 were transferred to FY2023 by the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71). A PAYGO sequester, including the 4% reduction to Medicare, could be triggered in early 2023 unless similar legislative action is taken before then.

If a PAYGO sequester were to be triggered in 2023 or another future fiscal year, neither the Statutory PAYGO Act nor the Budget Control Act include any explicit directions as to how the two sequesters would be implemented alongside each other.

Table 1. Medicare Budget Enforcement Rules Summary

Funding Types	Medicare Programs	Sequester	Enforcement Rule	Sequester Percentage Cap	Current Status
Mandatory	Parts A, B, C, and D Benefits; MIP HCFAC; Non-MIP HCFAC; Administration	Statutory PAYGO	If revenue and/or mandatory spending legislation that projects to increase the deficit over a 5 and/or 10-year period is enacted, a sequester of certain mandatory spending would be ordered.	4% for benefit payments and MIP HCFAC. None for other spending.	Current law but not triggered.
		BCA Mandatory Sequester	If the Joint Select Committee was unsuccessful at reducing the federal deficit by $1.2 trillion from FY2012-FY2021, mandatory sequestration would be implemented and discretionary limits would be established (with any breaches enforced through sequestration).	2% for benefit payments and MIP HCFAC. None for other spending.[a]	Currently triggered and in effect through FY2031 (temporarily suspended during the period of May 2020-March 2022 and limited to 1% from April 2022 to June 2022).[b]
Discretionary	Non-MIP HCFAC; Administration	BCA Discretionary Sequester		None.	Expired at the end of FY2021.[c]

Source: CRS.

Notes: Programs that appear in both categories are funded using mandatory and discretionary spending authority. In addition to the Medicare sequestration cap, other sequestration rules prohibit sequestration effects from being included in the determination of adjustments to Medicare payment rates, and explicitly exempt Part D low-income subsidies, Part D catastrophic subsidies (reinsurance) and Qualified Individual premiums from sequestration. **BCA** refers to Budget Control Act. **Discretionary Administration** includes amounts for payments to contractors to process providers' claims, beneficiary outreach and education, and maintenance of Medicare's information technology infrastructure. **HCFAC** refers to the Health Care Fraud and Abuse Control Program, which is responsible for activities that fight health care fraud and waste and is funded through discretionary and mandatory resources. **Mandatory Administration** includes, among other things, amounts for quality improvement organizations. **Medicare Benefit Payments** are defined by BBEDCA as all payments for programs and activities under Title XVIII of Social Security Act, including the Medicare Integrity Program. **MIP HCFAC** refers to the Medicare Integrity Program, which focuses on combating fraud in Medicare. **Non-MIP HCFAC** refers to all HCFAC spending other than MIP.

[18] OMB, *2021 Statutory Pay-As-You-Go Act Annual Report*, p. 10, at https://www.whitehouse.gov/wp-content/uploads/2022/01/annualpaygoreport2021.pdf.

a. Per the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71), the FY2030 Medicare sequester percentages will be 2.25% during the first 6 months of the FY2030 sequestration order and 3% for the next 6 months. Per the Infrastructure Investment and Jobs Act (P.L. 117-58), the Medicare sequester percentages in FY2031 will be 4% during the first 6 months of the FY2031 sequestration order and 0% for the next 6 months. See 2 U.S.C. §901a(6).

b. The Bipartisan Budget Act of 2013 (BBA 2013; P.L. 113-67) extended the BCA mandatory sequester through FY2023. A law modifying the cost-of-living adjustment (COLA) for certain military retirees (P.L. 113-82) extended the sequester through FY2024. The Bipartisan Budget Act of 2015 (BBA 2015; P.L. 114-74) extended the sequester through FY2025. The Bipartisan Budget Act of 2018 (BBA 2018; P.L. 115-123) extended the sequester through FY2027, the Bipartisan Budget Act of 2019 (BBA 2019; P.L. 116-37) extended the sequester through FY2029, the CARES Act (P.L. 116-136) extended it through FY2030, and the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71) extended it through FY2031. The CARES Act, as amended by the Consolidated Appropriations Act, 2021 (P.L. 116-260), an Act to Prevent Across-the-Board Direct Spending Cuts, and for Other Purposes (P.L. 117-7), and the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71) also suspended the sequestration of Medicare from May 2020 through March 2022. P.L. 117-7 also limited the Medicare reductions to 1% during April 2022 through June of 2022.

c. Several laws established new caps that were adhered to, thus not requiring any sequestration in the relevant years. These include BBA 2013 for FY2014 and FY2015, BBA 2015 for FY2016 and FY2017, BBA 2018 for FY2018 and FY2019, and BBA 2019 for FY2020 and FY2021. The discretionary spending limits under the BCA expired at the end of FY2021. See CRS Report R46752, *Expiration of the Discretionary Spending Limits: Frequently Asked Questions*.

For more information on budget sequestration, see CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*, CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, and CRS Report R45941, *The Annual Sequester of Mandatory Spending through FY2029*.

Medicare Overview

Medicare, which is a federal program that pays for certain health care services of qualified beneficiaries, is subject to sequestration, although special rules limit the extent to which it is impacted. Due to the varying payment structures of the four parts of the program, sequestration is applied differently across Medicare.

Medicare was established in 1965 under Title XVIII of the Social Security Act to provide hospital and supplementary medical insurance to Americans aged 65 and older. Over time, the program has been expanded to also include certain disabled persons, including those with end-stage renal disease. In CY2021, the program covered an estimated 64 million persons (56 million aged and 8 million disabled).[19]

The Congressional Budget Office (CBO) estimated that total Medicare spending in FY2022 will be about $912 billion and will increase to about $1.8 trillion in FY2031.[20] Almost all Medicare spending is mandatory spending that is used primarily to cover benefit payments (i.e., payments to health care providers for their services), administration, and the Medicare Integrity Program (MIP). The remaining Medicare outlays are discretionary and used almost entirely for other administrative activities that are described in more detail later in this report.

Medicare consists of four distinct parts:

[19] CMS, "Fast Facts," March 2022, at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/CMS-Fast-Facts.

[20] Congressional Budget Office (CBO), July 2021 Medicare Baseline, at https://www.cbo.gov/system/files/2021-07/51302-2021-07-medicare.pdf.

1. **Part A** (Hospital Insurance, or HI) covers inpatient hospital services, skilled nursing care, hospice care, and some home health services. Most persons aged 65 and older are automatically entitled to premium-free Part A because they or their spouse paid Medicare payroll taxes for at least 40 quarters (about 10 years) on earnings covered by either the Social Security or the Railroad Retirement systems. Part A services are paid for out of the Hospital Insurance Trust Fund, which is mainly funded by a dedicated 2.9% payroll tax on earnings of current workers, shared equally between employers and workers.
2. **Part B** (Supplementary Medical Insurance, or SMI) covers a broad range of medical services, including physician services, laboratory services, durable medical equipment, and outpatient hospital services. Enrollment in Part B is optional, but most beneficiaries with Part A also enroll in Part B. Part B benefits are paid for out of the Supplementary Medical Insurance Trust Fund, which is primarily funded through beneficiary premiums and federal general revenues.
3. **Part C** (Medicare Advantage, or MA) is a private plan option that covers all Parts A and B services, except hospice. Individuals choosing to enroll in Part C must be enrolled in Parts A and B. About one-third of Medicare beneficiaries are enrolled in MA. Part C is funded through both the HI and SMI trust funds.
4. **Part D** is a private plan option that covers outpatient prescription drug benefits. This portion of the program is optional. About three-quarters of Medicare beneficiaries are enrolled in Medicare Part D or have coverage through an employer retiree plan subsidized by Medicare. Part D benefits are also paid for out of the Supplementary Medical Insurance Trust Fund and are primarily funded through beneficiary premiums, federal general revenues, and state transfer payments.

For more information on the Medicare program, see CRS Report R40425, *Medicare Primer*.

Beneficiary Costs

Beneficiaries are responsible for paying Medicare Parts B and D premiums, as well as other out-of-pocket costs, such as deductibles and coinsurance,[21] for services provided under all parts of the Medicare program.[22] Under Medicare Parts A, B and D, there is no limit on beneficiary out-of-pocket spending, and most beneficiaries have some form of supplemental insurance through private Medigap plans, employer-sponsored retiree plans, or Medicaid to help cover a portion of their Medicare premiums and/or deductibles and coinsurance. Medicare Advantage has limits on out-of-pocket spending.

Provider and Plan Payments

Under Medicare Parts A and B, the government generally pays providers directly for services on a *fee-for-service* basis using different prospective payment systems and fee schedules.[23] Under

[21] A deductible is the amount an enrollee is required to pay for health care services or products before his or her insurance plan begins to provide coverage. Coinsurance is the percentage share that an enrollee in a health insurance plan pays for a product or service covered by the plan.

[22] Beneficiaries enrolled in a Medicare Advantage (MA, Part C) plan must pay Part B premiums as well as any additional premium required by the MA plan.

[23] Under a *prospective payment system* (PPS), Medicare payments are made using a predetermined, fixed amount based on the classification system for a particular service. The Centers for Medicare & Medicaid Services (CMS) uses

Parts C and D, Medicare pays private insurers a monthly *capitated* per person amount to provide coverage to enrollees, regardless of the amount of services used. The capitated payments are adjusted to reflect differences in the relative cost of sicker beneficiaries with different risk factors including age, disability, or end-stage renal disease.

Health Care Fraud and Abuse Control Program

The Health Care Fraud and Abuse Control Program (HCFAC) was established by the Health Insurance Portability and Accountability Act (HIPAA; P.L. 104-191) and is responsible for activities that fight health care fraud and waste.[24] HCFAC is funded using both mandatory and discretionary funds and consists of three programs: (1) the HCFAC program, which finances the investigative and enforcement activities undertaken by the Department of Health and Human Services (HHS), the HHS Office of Office of Inspector General, the Department of Justice, and the Federal Bureau of Investigation, (2) Medicaid Oversight, and (3) Medicare Integrity Program (MIP).

Historically, MIP has focused on combating fee-for-service fraud in Medicare Parts A and B. However, increases in private Medicare enrollment—Parts C and D—have expanded program integrity efforts into capitated payment systems as well.

While HCFAC is not a part of the Medicare program, MIP is authorized by the same title of the Social Security Act as Medicare and focuses entirely on the program. As a result, this portion of HCFAC is treated as a part of Medicare benefit payments under a sequestration order and is subject to the Medicare mandatory sequestration percentage limits.[25]

Administrative Spending

The administration of Medicare is funded through a combination of discretionary and mandatory resources that are subject to reductions under a discretionary or mandatory sequestration order, respectively. Discretionary administration funding includes amounts for payments to contractors to process providers' claims, beneficiary outreach and education, and maintenance of Medicare's information technology infrastructure. Mandatory administration funding includes amounts for quality improvement organizations and Part B premium payments for Qualifying Individuals (QI).[26]

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separate PPSs to reimburse acute inpatient hospitals, home health agencies, hospice, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities. A *fee schedule* is a listing of fees used by Medicare to pay doctors or other providers/suppliers. Fee schedules are used to pay for physician services; ambulance services; clinical laboratory services; and durable medical equipment, prosthetics, orthotics, and supplies in certain locations.

[24] For additional information, see U.S. Department of Health and Human Services, Office of Inspector General, *Health Care Fraud and Abuse Control Program Report*, at https://oig.hhs.gov/reports-and-publications/hcfac/index.asp.

[25] For sequestration purposes, BBEDCA defines Medicare benefit payments as all payments for programs and activities under Title XVIII of Social Security Act. This includes the Medicare Integrity Program (MIP). See BBEDCA §256(d).

[26] The Qualifying Individuals (QI) program is a state program that helps pay Part B premiums for people who have Part A and limited income and resources. See CMS, "Medicare Savings Programs," at https://www.medicare.gov/your-medicare-costs/help-paying-costs/medicare-savings-program/medicare-savings-programs.html.

Medicare Sequestration Rules

Special rules limit the total effect of budget sequestration on Medicare (see **Table 1**). Most notably, BBEDCA, as amended by the BCA, prohibits Medicare benefit payments from being reduced by more than 2% under a BCA mandatory sequestration order. Similarly, Statutory PAYGO prohibits Medicare benefit payments from being reduced by more than 4% under a Statutory PAYGO sequestration order.[27] The caps do not apply to Medicare mandatory and discretionary administrative spending, which is subject to the unrestricted percentage reduction under both BCA and Statutory PAYGO sequestration orders.

Under the current mandatory sequestration process triggered by the BCA, the Medicare sequestration percentage is capped at 2%.[28] Therefore, regardless of the percentage reduction applied to other mandatory spending through FY2031, Medicare benefit payments cannot be reduced by more than 2%.

For the FY2013-FY2021 sequestration orders, the reduction percentages were determined under the following method. If OMB were to determine that total nonexempt, nondefense mandatory funds needed to be reduced by a percentage larger than 2% in order to achieve necessary savings under a BCA sequestration order for a given year, then a 2% reduction would be made to Medicare benefit spending, and a uniform reduction percentage for the remaining non-Medicare benefit, nonexempt, nondefense mandatory programs would be recalculated and increased by an amount to achieve the necessary level of reductions.[29] If the uniform percentage reduction needed to achieve the total amount of savings were less than 2%, then the determined percentage would be applied to Medicare as well as to all other nonexempt non-Medicare nondefense mandatory spending.

If a mandatory sequestration order were triggered by Statutory PAYGO, the process would be the same as above, but the reduction of payments for Medicare benefits would be capped at 4%.[30]

Beyond FY2021, there is no statutory requirement that the BCA mandatory sequester achieve a certain level of budgetary savings in defense and nondefense spending and, consequently, no specific amounts to apportion to the different spending categories. The statutes extending the BCA mandatory sequester (see "BCA Mandatory Sequester") therefore required that the applicable percentage reductions for FY2022 through FY2031 be the same as those under the FY2021 sequestration order. (See **Table 2**.)

In addition to the Medicare percentage caps, BBEDCA also prohibits Statutory PAYGO and BCA mandatory sequestration effects from being included in the determination of annual adjustments

[27] Medicare benefit payments are considered mandatory budgetary resources and would not be subject to a BCA discretionary sequestration order.

[28] See 2 U.S.C. §901a(6). Per the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71), the Medicare sequester percentage in FY2030 will be 2.25% during the first 6 months of the FY2030 sequestration order (April 2030 through September 2030) and 3% for the next 6 months (October 2030 through March 2031). Per the Infrastructure Investment and Jobs Act (P.L. 117-58), the Medicare sequester percentage in FY2031 will be 4% during the first 6 months of the FY2031 sequestration order (April 2031 through September 2031) and 0% for the next 6 months (October 2031 through March 2032). See 2 U.S.C. §901a(6).

[29] In making the sequestration amount determinations during the CARES Act, as amended, suspension of Medicare sequestration, OMB's estimates reflect the full amount of sequestrable Medicare resources even though resources expended during that period would not be reduced. For additional information, see *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2022*, May 28, 2021, at https://www.whitehouse.gov/wp-content/uploads/2021/05/BBEDCA_251A_Sequestration_Report_FY2022.pdf.

[30] See BBEDCA, §256(d)(2).

to Medicare payment rates established under Title XVIII of the Social Security Act.[31] (See "Reductions in Benefit Spending.")

Finally, certain Medicare programs and activities are explicitly exempted from Statutory PAYGO and BCA sequestration orders. Specifically, Part D low-income subsidies,[32] Part D catastrophic subsidies (reinsurance),[33] and QI premiums cannot be reduced under a mandatory sequestration order.[34]

Medicare Sequester Execution

Timing

Once a sequester is triggered, OMB issues a sequestration order for, at most, one fiscal year, and subsequent orders are reissued for each fiscal year, as necessary. These orders can be issued either before or during the fiscal year in which they apply, depending on the trigger.

Reductions in budget resources are to be made during the effective period of a sequestration order; however, special rules differentiate when a sequestration order is implemented for benefit payments. As a result, sequestration orders are applied to Medicare benefit payments on a different timeline than other mandatory and discretionary Medicare funds (i.e., Medicare administration and HCFAC).

Once OMB issues a sequestration order, Medicare benefit payments are sequestered beginning on the first date of the following month and remain in effect for all services furnished during the following one-year period.[35] In the event that a subsequent sequester order is issued prior to the completion of the first order, the subsequent order begins on the first day after the initial order has been completed. As an example, the first BCA mandatory sequester order (FY2013) was issued on March 1, 2013, and took effect April 1, 2013. It remained in effect through March 31, 2014. The FY2014 order was issued on April 10, 2013 (corrected on May 20, 2013), and was in effect from April 1, 2014, to March 31, 2015.

All other sequestrable funding is reduced only during the fiscal year associated with the sequester report. Using the same example, the first BCA mandatory sequester order (FY2013) reduced appropriate administrative spending from March 1, 2013, to September 30, 2013. The second order for FY2014 sequestered funds from October 1, 2013, to September 30, 2014.

While OMB uses current law to determine the amount of funds available to be sequestered and corresponding percentage reductions, actual Medicare outlays will not be known until after the end of the fiscal year. Since sequestration orders are issued either before or during the fiscal year in which they are applicable, OMB *estimates* the total sequestrable budget authority for Medicare,

[31] See BBEDCA §256(d)(6).

[32] Medicare Part D provides subsidies to assist low-income beneficiaries with premiums and cost sharing. For more information on Medicare Part D, see CRS Report R40611, *Medicare Part D Prescription Drug Benefit*.

[33] Part D pays nearly all drug costs above a catastrophic threshold, except for nominal beneficiary cost sharing. Medicare subsidizes 80% of each plan's costs for this catastrophic coverage. For more information on Medicare Part D, see CRS Report R40611, *Medicare Part D Prescription Drug Benefit*.

[34] See BBEDCA §256(d)(7).

[35] See BBEDCA §256(d)(1).

and other accounts with indefinite budget authority, in order to determine necessary sequestration percentages.[36]

If Medicare outlays exceed the estimated amount included in a sequestration order for that fiscal year, the additional outlays are sequestered at the established percentage for that fiscal year. If Medicare outlays are determined to be less than the estimated amount, no adjustments are made to the sequestration order. In other words, OMB does not adjust sequestration percentages for any category of budget authority once actuals are realized for accounts with indefinite budget authority. Similarly, OMB does not adjust future orders to account for any previous discrepancies between estimates and actuals.

Temporary Suspension of Medicare Sequestration

During the COVID-19 pandemic, Congress has taken a number of actions to address financial challenges faced by health care providers. This has included suspending the application of the BCA mandatory spending sequestration to the Medicare program. Specific legislation included

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) initially suspended Medicare sequestration from May 2021 through December 2021;
- The Consolidated Appropriations Act, 2021 (P.L. 116-260), extended the suspension through March 2021;
- An Act to Prevent Across-the-Board Direct Spending Cuts, and for Other Purposes (P.L. 117-7), extended the suspension through December 2021; and
- The Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71) extended the suspension through March 2022. This law also limited the Medicare reductions under sequestration to 1% from April 2022 through June 2022.

Without further congressional action, the BCA mandatory spending sequester on Medicare will resume April 1, 2022. However, from April 1 to June 30, 2022, Medicare benefit payments will be reduced by only 1%. Then, beginning on July 1, 2022, Medicare benefit payments will be reduced by 2%, as they were before the temporary suspension. These reductions are scheduled to continue through FY2031.

Reductions in Benefit Spending

Parts A and B

Under Medicare Parts A and B, participating providers, such as hospitals and physicians, are paid by the federal government on a fee-for-service basis for services provided to a beneficiary. According to guidance issued by the Centers for Medicare & Medicaid Services (CMS), any sequestration reductions are to be made to claims after determining coinsurance, deductibles, and any applicable Medicare Secondary Payment adjustments.[37] Therefore, sequestration applies only

[36] GAO, *2014 Sequestration Opportunities Exist to Improve Transparency of Progress Toward Deficit Reduction Goals*, GAO-16-263, April 2016, p. 27, at https://www.gao.gov/assets/680/676565.pdf.

[37] CMS, Medicare FFS Provider e-News, March 8, 2013, *Monthly Payment Reductions in the Medicare Fee-for-Service (FFS) Program – "Sequestration,"* at https://www.cms.gov/Outreach-and-Education/Outreach/FFSProvPartProg/Downloads/2013-03-08-standalone.pdf.

to the portion of the payment paid to providers by Medicare; the beneficiary cost-sharing amounts and amounts paid by other insurance are not reduced.

As an example, if the total allowed payment for a particular service is $100 and the beneficiary has a 20% co-insurance, the beneficiary would be responsible for paying the provider the full $20 in co-insurance. The remaining 80% that is paid by Medicare would be reduced by 2% under the FY2018 sequestration order, or $1.60 in this example, resulting in a total Medicare payment of $78.40. In total, the provider would receive a payment of $98.40. This reduced payment is considered payment in full and the Medicare beneficiary is not expected to pay higher copayments to make up for the reduced Medicare payment.[38]

Part A inpatient services are considered to be furnished on the date of the individual's discharge from the inpatient facility. For services paid on a reasonable cost basis,[39] the reduction is to be applied to payments for such services incurred at any time during the sequestration period for the portion of the cost reporting period that occurs during the effective period of the order. For Part B services provided under assignment,[40] the reduced payment is to be considered *payment in full* and the Medicare beneficiary will not pay higher copayments to make up for the reduced amount.[41]

Medicare *nonparticipating* providers, which are providers that do not elect to accept Medicare's allowed payments as payment in full on *all* claims for services furnished to program beneficiaries in a given year, are not subject to the same rules. Medicare nonparticipating providers receive a lower reimbursement rate from Medicare on all services provided and may charge beneficiaries a limited amount more (balance bill charge) than the fee schedule amount on nonassigned claims.[42] In these instances, instead of the Medicare check being sent to the provider, a check that incorporates the 2% reduction is mailed to the patient. The patient must then pay the provider an amount that incorporates the sequestered amount. More specifically, as payment, the beneficiary is responsible for paying the provider the amount listed on the check, any cost sharing, balance bill charges, *and* the sequestered amounts taken out of the provider check.[43]

Annual adjustments to Medicare payment rates are determined without incorporating sequestration.[44] However, the Medicare Payment Advisory Commission does incorporate the effects of sequestration when assessing the adequacy of provider payments.[45] The commission

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[38] Ibid.

[39] Most providers are paid under a prospective payment system or fee schedule. Some types of providers, such as Critical Access Hospitals, are paid on a reasonable cost basis under which payments are based on actual costs incurred. Reasonable cost is defined at Social Security Act §1861(v).

[40] Assignment is an agreement by a doctor, provider, or supplier to be paid directly by Medicare, to accept the payment amount Medicare approves for the service, and not to bill the beneficiary for any more than the Medicare deductible and coinsurance (if applicable). Providers that don't accept assignment may charge more than the Medicare-approved amount.

[41] See CMS, Medicare FFS Provider e-News, March 8, 2013, *Monthly Payment Reductions in the Medicare Fee-for-Service (FFS) Program – "Sequestration,"* at https://www.cms.gov/Outreach-and-Education/Outreach/FFSProvPartProg/Downloads/2013-03-08-standalone.pdf.

[42] CMS, *Medicare Provider Utilization and Payment Data: Physician and Other Supplier PUF: Frequently Asked Questions*, updated May 23, 2019, p. 4, at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/Downloads/Physician_FAQ.pdf.

[43] CMS, Medicare FFS Provider e-News, March 8, 2013, *Monthly Payment Reductions in the Medicare Fee-for-Service (FFS) Program – "Sequestration,"* at https://www.cms.gov/Outreach-and-Education/Outreach/FFSProvPartProg/Downloads/2013-03-08-standalone.pdf.

[44] BBEDCA §256(d)(6).

[45] Medicare Payment Advisory Commission (MedPAC), *Medicare Payment Policy Report to Congress*, March 2018, p.

uses these annual assessments to develop payment adjustment recommendations to the HHS Secretary and/or Congress.

During the suspension of sequestration of Medicare under the CARES Act, as amended, fee-for-service provider payments are not subject to the 2% reduction in Medicare payments.[46] The suspension is effective for claims with dates of service from May 1, 2020, through March 31, 2022.[47] Additionally, reductions will be limited to 1% from April 1, 2022, through June 30, 2022.

Part C (Medicare Advantage)

Under Medicare Advantage, private health plans are paid a per person monthly amount to provide all Medicare-covered benefits, except hospice, to beneficiaries who enroll in their plans. These capitated monthly payments are made to MA plans regardless of how many or how few services beneficiaries actually use. The plan is at risk if costs for all of its enrollees exceed program payments and beneficiary cost sharing; conversely, the plan can generally retain savings if aggregate enrollee costs are less than program payments and cost sharing.

With respect to sequestration, reductions are made uniformly to the monthly capitated payments to the private plans administering Medicare Advantage (Medicare Advantage Organizations or MAOs). These fixed payments are determined every year with CMS approval through an annual "bid process" and the amounts can vary depending on the private plan.[48]

In general, CMS payments to MAOs are generally comprised of amounts to cover medical costs, administrative expenses, private plan profits, risk adjustments, and plan rebates to beneficiaries.[49] MAOs have discretion to distribute any sequestration cut across these different components but must still adhere to their legal obligations.[50] Due to the temporary suspension of sequestration from May 2020 through March 2022, the 2% payment reduction that would have otherwise applied to MAOs will not be applied during the suspension period. CMS has indicated that the 2% will also not apply to any future retroactive adjustments made to payments for beneficiaries

60, at http://www.medpac.gov/docs/default-source/reports/mar18_medpac_entirereport_sec_rev_0518.pdf?sfvrsn=0.

[46] See April 10, 2020, CMS MLNConnects Newsletter, "COVID-19: Infection Control, Maximizing Workforce, Updated Q&A, CS Modifier for Cost-Sharing, Payment Adjustment Suspended," at https://www.cms.gov/outreach-and-educationoutreachffsprovpartprogprovider-partnership-email-archive/2020-04-10-mlnc-se; January 7, 2021, CMS MLNConnects Newsletter, "Physician Fee Schedule Update," at https://www.cms.gov/outreach-and-educationoutreachffsprovpartprogprovider-partnership-email-archive/2021-01-07-mlnc-se; April 16, 2021, CMS MLNConnects Newsletter, "Medicare FFS Claims: 2% Payment Adjustment (Sequestration) Suspended Through December," at https://www.cms.gov/outreach-and-educationoutreachffsprovpartprogprovider-partnership-email-archive/2021-04-16-mlnc; and December 16, 2021, CMS MLNConnects Newsletter, "Medicare FFS Claims: 2% Payment Adjustment (Sequestration) Changes," at https://www.cms.gov/outreach-and-educationoutreachffsprovpartprogprovider-partnership-email-archive/2021-12-16-mlnc.

[47] Information on the impact of the sequestration suspension on Medicare provider payments may be found in the March 2022 MedPAC report, *Medicare Payment Policy*, at https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_SEC.pdf.

[48] For more information on the annual bid process, see CRS Report R45494, *Medicare Advantage (MA)–Proposed Benchmark Update and Other Adjustments for CY2020: In Brief*.

[49] A plan rebate is the difference between a plan's bid and a statutorily specified benchmark amount. It is included in the plan payment and must be returned to enrollees in the form of additional benefits, reduced cost sharing, reduced Medicare Part B or Part D premiums, or some combination of these options.

[50] See May 1, 2013, memorandum from Cheri Rice and Danielle Moon, CMS, *Additional Information Regarding the Mandatory Payment Reductions in the Medicare Advantage, Part D, and Other Programs*, at https://www.cms.gov/Medicare/Medicare-Advantage/Plan-Payment/Downloads/PaymentReductions.pdf.

enrolled within the sequestration suspension period.[51] (CMS will continue to apply sequestration to payments for, and any retroactive adjustments made to payments for, beneficiaries enrolled outside of the sequestration suspension period.) Beginning in April 2022, the reductions will resume but will be limited to 1%, and beginning in July 2022, the full 2% reductions will again be applied.

Some MAOs have attempted to pass the reduction in their capitation rates onto providers through lower reimbursement rates; however, MAOs may be limited in their ability to do so.[52] CMS provided instructions regarding the treatment of contract and noncontract providers that provide services under Part C. Specifically, "whether and how sequestration might affect an MAO's payments to its contracted providers are governed by the terms of the contract between the MAO and the provider."[53] Therefore, in order for MAOs to reduce provider payments by the sequestered amount, specific language within a contract must allow the reduction or the contract would need to be renegotiated. Similarly, during the May 2020 through March 2022 CARES Act, as amended, suspension of sequestration, the decision to suspend the application of the 2% reduction to provider payments may depend on the reimbursement language in MAO-provider contracts.[54]

In certain instances, such as when beneficiaries receive emergency out-of-network care, MAOs need to reimburse the noncontracted providers; in such cases, the MAOs are required to pay at least the rate providers would have received if the beneficiaries had been enrolled in original Medicare. However, MAOs have the discretion of whether or not to incorporate sequestration cuts into payments to noncontracted providers for those services.[55] Noncontracted providers must accept any payments reduced by the sequestration percentage as payment in full.

In addition, regulations in the annual bid process restrict MAO's potential responses to sequestration. Specifically, MAOs are limited to "reasonable" revenue margins and a set

[51] See April 22, 2020, memorandum from Jennifer R. Shapiro, CMS, *Medicare Advantage/Prescription Drug System (MARx) May 2020 Payment Information*, at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/marx%20plan%20payment%20letter_may%204.22.2020_7.pdf; March 30, 2021, memorandum from Jennifer R. Shapiro, CMS, *Medicare Advantage/Prescription Drug System (MARx) April 2021 Payment Information*, at https://www.cms.gov/httpseditcmsgovresearch-statistics-data-and-systemscomputer-data-and-systemshpmshpms-memos-archive/hpms-memos-week-5-march-29-31-2021; and January 28, 2022, memorandum from Jennifer R. Shapiro, CMS, *Medicare Advantage/Prescription Drug System (MARx) February 2022 Payment Information*, at https://www.cms.gov/files/document/marxplanpaymentletterfeb2022508.pdf.

[52] As a result of the initial BCA sequester, some Medicare Advantage Organizations (MAOs) attempted to reduce provider payments by 2%. The courts ultimately determined that MAOs were subject to the terms in the contracts with providers. See Baptist Hosp. of Miami, Inc. v. Humana Health Ins. Co. of Florida, Inc. and Butler Healthcare Providers et al. v. Highmark Inc. et al.

[53] May 1, 2013, memorandum from Cheri Rice and Danielle Moon, CMS, *Additional Information Regarding the Mandatory Payment Reductions in the Medicare Advantage, Part D, and Other Programs*, at https://www.cms.gov/Medicare/Medicare-Advantage/Plan-Payment/Downloads/PaymentReductions.pdf.

[54] Two of the nation's largest commercial insurers, Aetna and UnitedHealthcare, have indicated that they have temporarily eliminated the 2% sequestration cuts in payments to providers in their Medicare Advantage plans during the suspension period. Additional detail may be found at https://www.uhcprovider.com/en/resource-library/news/Novel-Coronavirus-COVID-19/covid19-practice-administration/covid19-practice-administration-cares-act.html (as of the date of this report, this site had not yet been updated to reflect the suspension extensions), and https://www.aetna.com/health-care-professionals/covid-faq/billing-and-coding.html.

[55] May 1, 2013, memorandum from Cheri Rice and Danielle Moon, CMS, *Additional Information Regarding the Mandatory Payment Reductions in the Medicare Advantage, Part D, and Other Programs*.

Medicare/non-Medicare profit margin discrepancy, among other requirements.[56] MAOs are also restricted from allowing sequestration to impact a beneficiary's plan benefits or liabilities.[57]

As HHS computes annual adjustments to Medicare payment rates, the Secretary cannot take into account any reductions in payment amounts under sequestration for the Part C growth percentage.[58] In other words, plan payment updates are to be determined as if the reductions under sequestration have not taken place. This results in larger annual adjustments compared to baselines that incorporate sequestration cuts.

Part D

Under Medicare Part D, each plan receives a base capitated monthly payment, called a direct subsidy, which is adjusted to incorporate three risk-sharing mechanisms (low-income subsidies, individual reinsurance, and risk corridor payments). While each plan receives the same direct subsidy amount for each enrollee regardless of how many benefits an enrollee actually uses, plans receive different risk-sharing adjustments in their monthly payments. With respect to sequestration, the 2% reductions are made only to the direct subsidy amounts. Part D risk-sharing adjustments are exempt from sequestration and are therefore not reduced.[59]

During the May 2020 through March 2022 CARES Act, as amended, sequestration suspension period, the 2% payment reductions to Part D plans will not occur. Payment adjustments during the suspension period for Part D plans will be applied similarly to payments to MAOs under Medicare Advantage.[60] In addition, similar to provider payments made by MAOs, whether and how sequestration, and its temporary suspension, affects a Part D plan sponsor's payment to its contracted providers is "governed by the payment terms of the contract between the plan sponsor and its network pharmacy providers."[61] Beginning in April 2022, the reductions will resume but will be limited to 1%, and beginning in July 2022, the full 2% reductions will again be applied.

Part D also contains a Retiree Drug Subsidy Program, which pays subsidies to qualified employers and union groups that provide prescription drug insurance to Medicare-eligible, retired workers. Instead of a capitated monthly payment, each sponsor receives a federal subsidy at the

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[56] See CMS, *Actuarial Bid Training – 2021*, at https://www.cms.gov/medicare/medicare-advantage-rates-statistics/actuarial-bid-training; and 42 C.F.R. Part 422, Subpart X.

[57] See CMS, *User Group Call 05/07/2015*, May 7, 2015, at https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/ActuarialBidQuestions2016.pdf.

[58] BBEDCA §256(d)(6)(A). The Secretary uses an estimate of the growth in overall spending in Medicare when calculating updated payments to MA plans. See CRS Report R45494, *Medicare Advantage (MA)–Proposed Benchmark Update and Other Adjustments for CY2020: In Brief*.

[59] This is different from Medicare Part C risk-sharing adjustments, which are included in the capitated payments and are subject to sequestration.

[60] See April 22, 2020, memorandum from Jennifer R. Shapiro, CMS, *Medicare Advantage/Prescription Drug System (MARx) May 2020 Payment Information*, at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/marx%20plan%20payment%20letter_may%204.22.2020_7.pdf; March 30, 2021, memorandum from Jennifer R. Shapiro, CMS, *Medicare Advantage/Prescription Drug System (MARx) April 2021 Payment Information*, at https://www.cms.gov/httpseditcmsgovresearch-statistics-data-and-systemscomputer-data-and-systemshpmshpms-memos-archive/hpms-memos-week-5-march-29-31-2021; and January 28, 2022, memorandum from Jennifer R. Shapiro, CMS, *Medicare Advantage/Prescription Drug System (MARx) February 2022 Payment Information*, at https://www.cms.gov/files/document/marxplanpaymentletterfeb2022508.pdf.

[61] May 1, 2013, memorandum from Cheri Rice and Danielle Moon, CMS, *Additional Information Regarding the Mandatory Payment Reductions in the Medicare Advantage, Part D, and Other Programs*.

end of the year to cover a portion of gross prescription drug costs for each retiree during that year. Under this program, sequestration reductions are applied to the annual subsidy amount.[62]

Similar to Part C, the HHS Secretary is prohibited from taking into account any reductions in payment amounts under sequestration for purposes of computing the Part D annual growth rate.[63]

Health Care Fraud and Abuse Control Program

As noted, the HCFAC program is not part of Medicare but does receive mandatory and discretionary funds to ensure the programmatic integrity of the Medicare program. Under a BCA sequestration order of mandatory funds, MIP funds are treated as a part of Medicare benefit payments and are therefore subject to the Medicare 2% sequester limit. (The sequestration of this portion of HCFAC funding has been suspended by the CARES Act, as amended, from May 2020 through March 2022.) HCFAC mandatory funding that does not exclusively address Medicare is reduced by the nondefense mandatory sequester rate (5.7% in FY2022), when applicable.

Administrative Expenses

Under either a mandatory or discretionary sequestration order, administrative spending within nonexempt Medicare and HCFAC programs is reduced by the nondefense rate determined by OMB. (Mandatory Medicare administrative spending authorized under Title XVIII of the Social Security Act is exempt from the sequester during the CARES Act, as amended, suspension period.)[64]

Medicare and the BCA Mandatory Sequester

With the exception of the CARES Act, as amended, May 2020 through March 2022 suspension (and the 1% limit from April through June 2022), Medicare benefit payments have been subject to the 2% annual reduction limit established by the BCA since the first BCA mandatory sequester order was issued in FY2013. Nondefense mandatory budget authority reductions, which have applied to mandatory Medicare administrative spending, have fluctuated between 5.1% and 7.3% from FY2013 through FY2022. (See **Table 2**.) Under the FY2022 sequestration order, with the exception of the suspension time frames mentioned above, mandatory Medicare administrative expenses are to be sequestered by the nondefense mandatory percentage, 5.7% in FY2022.[65]

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[62] CMS, "Mandatory Payment Reduction in CMS' Retiree Drug Subsidy Reconciliation Payments," April 19, 2014, at https://www.rds.cms.hhs.gov/sites/default/files/webfiles/documents/mandatorypaymentreduction.pdf; and CMS, "Extension to Suspension of Sequestration for Retiree Drug Subsidy (RDS) Program," December 30, 2020, at https://www.hhs.gov/guidance/document/extension-suspension-sequestration-retiree-drug-subsidy-rds-program.

[63] BBEDCA §256(d)(6)(B).

[64] Department of Health and Human Services, *Agency Financial Report: Fiscal Year 2021*, p. 154, at https://www.hhs.gov/sites/default/files/fy-2021-hhs-agency-financial-report.pdf.

[65] CMS receives administrative funding for the Medicare program through the Medicare trust funds and the CMS program management account. Since the *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2022* shows the amount of mandatory administrative funding sequestered at the account level and CMS funds other programs through the program management account, the total amount of mandatory administrative funding for the Medicare program cannot be determined from the source.

Table 2. Mandatory Percentage Reductions Under Budget Control Act Sequestration Orders

(FY2013-FY2022)

	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
Medicare *(Benefit Payments and MIP HCFAC)*	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
Nondefense Mandatory *(Medicare administrative spending and non-MIP HCFAC)*	5.1%	7.2%	7.3%	6.8%	6.9%	6.6%	6.2%	5.9%	5.7%	5.7%
Defense Mandatory	7.9%	9.8%	9.5%	9.3%	9.1%	8.9%	8.7%	8.6%	8.3%	8.3%

Source: OMB Reports to Congress on the Joint Committee Sequestration for FY2013 to FY2022.

Notes: Reductions to Medicare benefit and mandatory administrative spending did not occur during the CARES Act, as amended, temporary suspension of Medicare sequestration from May 2020 through March 2022, in effect during the period of the FY2020 through FY2022 sequestration orders. Reductions to Medicare benefit payments are also limited to 1% from April 2022 through June 2022. **Defense Mandatory** is any funding coded with a budget function of 050. **Medicare Benefit Payments** are defined by BBEDCA as all payments for programs and activities under Title XVIII of Social Security Act. The **Health Care Fraud and Abuse Control Program (HCFAC**) is responsible for activities that fight health care fraud and waste. **Nondefense Mandatory** includes all other government spending not defined as Medicare or Defense Mandatory. **MIP** refers to the Medicare Integrity Program, which is under HCFAC and focuses on combating fraud in Medicare.

Traditionally, Medicare benefit payments comprise the largest single source of sequestered funds in a given mandatory sequestration order, as shown in **Figure 1**. Under the FY2022 BCA mandatory sequester order (excluding the impact of the CARES Act, as amended, sequestration suspension and reduction limits), the estimated $835.4 billion in Medicare benefit payments subject to sequestration (not including administration) were expected to represent about 87% of all Medicare and non-Medicare resources *available* to be sequestered.[66] Of the funds expected to be sequestered, the estimated Medicare benefit sequestration amounts of $16.7 billion were expected to account for about 69% of the combined mandatory defense and nondefense sequestered funds.[67]

The Congressional Budget Office (CBO) estimated that the original CARES Act May 2020 through December 2020 suspension would increase Medicare outlays by $4 billion in each of FY2020 and FY2021—for a total increase of $8 billion—but did not provide a separate estimate for the Consolidated Appropriations Act, 2021, extension through March 2021.[68] CBO projected

[66] For a list of sequestrable budget authority by budget account, see *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2022*, May 28, 2021, at https://www.whitehouse.gov/wp-content/uploads/2021/05/BBEDCA_251A_Sequestration_Report_FY2022.pdf.

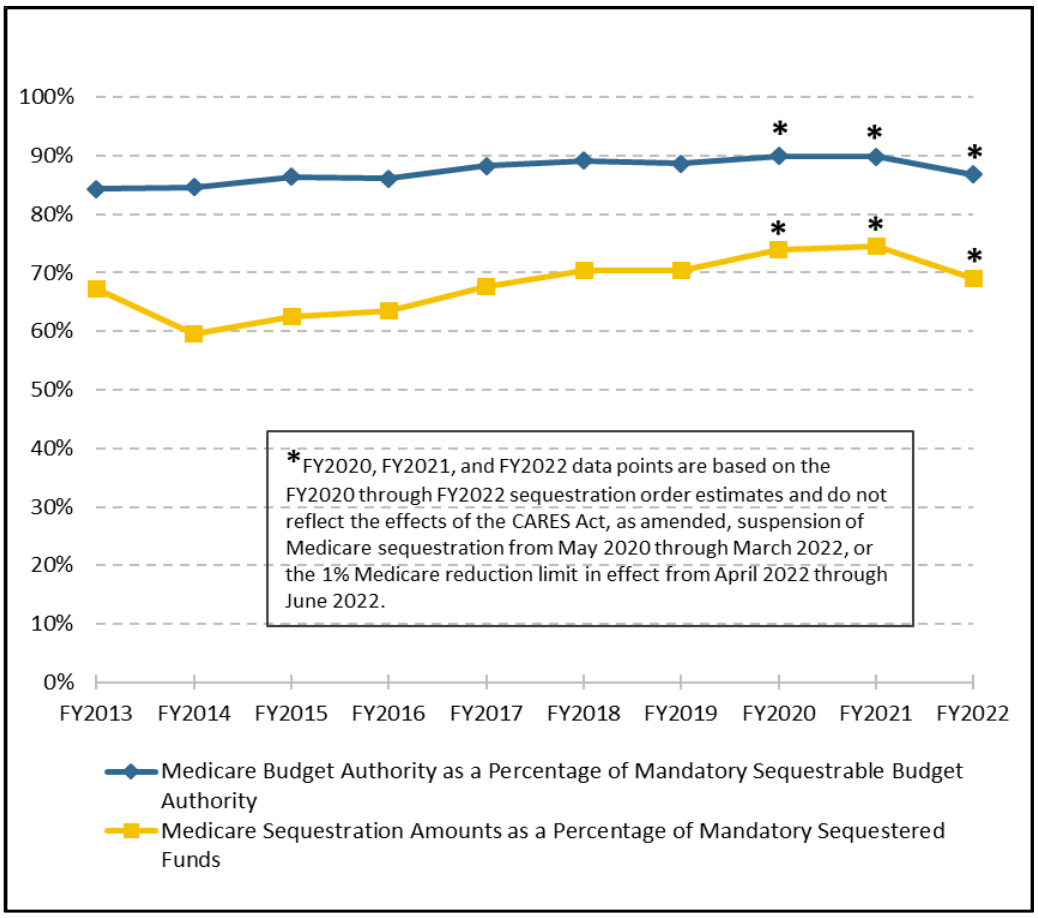
[67] Ibid.

[68] CBO, *Preliminary Estimate of the Effects of H.R. 748, the CARES Act*, P.L. 116-136, *Revised*, April 27, 2020, at https://www.cbo.gov/system/files/2020-04/hr748.pdf. In its projection of the CARES Act provision, CBO projected that the Medicare sequestration suspension would increase direct spending in both FY2020 and FY2021. In addition to the temporary suspension, §3709 of the CARES Act also amended the BCA (P.L. 112-25) to extend by one year (through FY2030) the sequestration of all nonexempt mandatory spending. CBO scored the net impact of §3709 as decreasing direct spending (outlays) by $19 billion over the FY2020-FY2030 projection period. (In its score of Division N of the Consolidated Appropriations Act, 2021 (P.L. 116-260), CBO provided an aggregate estimate for all provisions in Title I and did not include a separate estimate for the three-month Medicare sequestration suspension extension; see CBO, *H.R. 133, Estimate for Division N—Additional Coronavirus Response and Relief Consolidated Appropriations Act, 2021* P.L. 116-260, January 14, 2021, at https://www.cbo.gov/system/files/2021-01/PL_116-260_div_N.pdf.)

that (1) the additional March 2021 through December 2021 suspension extension in An Act to Prevent Across-the-Board Direct Spending Cuts, and for Other Purposes, would cost a total of $12.3 billion over FY2021 and FY2022,[69] and (2) the Protecting Medicare and American Farmers from Sequester Cuts Act (P.L. 117-71) suspension extension from January 2022 through March 2022 and the April 2022 to June 2022 1% Medicare sequestration limit would cost $5.9 billion over FY2022 and FY2023.[70]

Figure 1. Medicare Benefit Payment Amounts as a Percentage of Budget Control Act Mandatory Sequester Amounts

(FY2013-FY2022)



Source: CRS analysis of OMB Reports to the Congress on the Joint Committee Sequestration for FY2013 to FY2022.

Notes: Each FY refers to amounts sequestered in accordance with that fiscal year's sequestration order. Mandatory sequester amounts include amounts for Medicare, other nondefense, and defense. **Sequestrable budget authority** refers to all resources estimated to be available to be sequestered. **Sequestered Funds**

[69] This cost estimate reflects only the cost of the April 2021 through December 2021 extension and is in addition to the costs of the original CARES Act suspension and Consolidated Appropriations Act, 2021, extension. CBO, *CBO's Estimate of the Statutory Pay-As-You-Go Effects of H.R. 1868, an Act to Prevent Across-the-Board Direct Spending Cuts, and for Other Purposes*, April 12, 2021, at https://www.cbo.gov/publication/57139.

[70] CBO, *Estimated Budgetary Effects of the House Amendment to S.610, the Protecting Medicare and American Farmers from Sequester Cuts Act*, December 7, 2021, at https://www.cbo.gov/publication/57675.

refers to all resources estimated to be sequestered. Administrative funding is not included in Medicare benefit payment totals. All percentages are estimates. This figure does not reflect the CARES Act, as amended, temporary suspension of Medicare sequestration from May 2020 through March 2022, in effect during the period of the FY2020 through FY2022 sequestration orders or the 1% limit in effect from April 2022 through June 2022.

CBO estimates that Medicare benefit payment outlays will more than double from FY2021 to FY2031 (from $839 billion to almost $1.8 trillion), the last year of BCA mandatory sequestration.[71] Most of this expected increase is due to an aging population and rising health care costs per person.[72] Most of this increase would be subject to sequestration.

[71] CBO, *July 2021 Medicare Baseline*, at https://www.cbo.gov/system/files/2021-07/51302-2021-07-medicare.pdf.

[72] CBO, *The 2021 Long-Term Budget Outlook*, March 2021, p. 17, at https://www.cbo.gov/publication/57038.

Appendix A. Additional CRS Resources

To gain a deeper understanding of the topics covered in this report, readers may also wish to consult the following CRS reports:

CRS Report R40425, *Medicare Primer*

CRS Report R43122, *Medicare Financial Status: In Brief*

CRS Report R45494, *Medicare Advantage (MA)–Proposed Benchmark Update and Other Adjustments for CY2020: In Brief*

CRS Report R40611, *Medicare Part D Prescription Drug Benefit*

CRS Report 98-721, *Introduction to the Federal Budget Process*

CRS Report R41965, *The Budget Control Act of 2011*

CRS Report R42506, *The Budget Control Act of 2011 as Amended: Budgetary Effects*

CRS Report RL34424, *The Budget Control Act and Trends in Discretionary Spending*

CRS Report R46752, *Expiration of the Discretionary Spending Limits: Frequently Asked Questions*

CRS Insight IN11148, *The Bipartisan Budget Act of 2019: Changes to the BCA and Debt Limit*

CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*

CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*

CRS Report R45941, *The Annual Sequester of Mandatory Spending through FY2029*

CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*

Appendix B. Budget Terminology Definitions

As defined by Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177, as amended) and simplified where appropriate:

Budget Authority—Authority provided by federal law to enter into financial obligations that will result in immediate or future outlays involving federal government funds.

Budgetary Resources—Amounts available to enter into new obligations and to liquidate them. Budgetary resources are made up of new budget authority (including direct spending authority provided in existing statute and obligation limitations) and unobligated balances of budget authority provided in previous years.

Discretionary Appropriations—Budgetary resources (except to fund direct-spending programs) provided in appropriation Acts.

Mandatory Spending—Also known as *direct spending*, refers to budget authority that is provided in laws other than appropriation acts, entitlement authority, and the Supplemental Nutrition Assistance Program.

Medicare Benefit Payments—All payments for programs and activities under Title XVIII of the Social Security Act.

Revised Nonsecurity Category—Discretionary appropriations other than in budget function 050, often referred to as *nondefense category*.

Revised Security Category—Discretionary appropriations in budget function 050, often referred to as *defense category*.

Sequestration—The cancellation of budgetary resources provided by discretionary appropriations or direct spending laws.

For definitions of other budget terms mentioned in this report but not defined by BBEDCA, see U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 1, 2005, at https://www.gao.gov/assets/80/76911.pdf.

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