



Consolidated Appropriations Act, 2023

Key Takeaways for Allergy/Immunology

The American Academy of Allergy, Asthma, & Immunology (AAAAI) has closely monitored congressional activity related to the end-of-year package. On Monday, December 19, the [bill text](#) for the *Consolidated Appropriations Act, 2023* was [released](#) and Congress plans to vote on the package before the end of the week.

Key Takeaways from the Consolidated Appropriations Act, 2023

In a review of the more than 4,000-page document, there are several issues of keen interest to A/I providers and patients. A summary of these key takeaways follows.

Overall funding levels – The omnibus includes \$772.5 billion for non-defense discretionary programs, including \$118.7 billion (a 22 percent increase) for veterans’ medical care, and \$858 billion in defense funding. A summary of the package can be found [here](#).

Medicare physician payment – Physicians faced several cuts in 2023, including a 4.47% reduction in the Medicare Physician Fee Schedule (PFS) conversion factor due to budget neutrality, and a 4.0% cut resulting from an across the board sequester resulting from earlier passage of the American Rescue Plan. The latter cut would impact all federal funding, but cap Medicare cuts to 4.0%. These cuts follow the application of a 2.0% Medicare sequester which resumed on July 1 after having been paused during the COVID-19 public health emergency.

The omnibus mitigates the impending cuts but does not eliminate them as advocated by AAAAI and other physician organizations. The package includes a 2.5% increase to fee schedule payments that would otherwise apply for 2023 and a 1.25% increase to fee schedule payments that would otherwise apply in 2024. It also orders disregard of this spending increase in setting payment amounts for the following years. We expect that the Centers for Medicare and Medicaid Services (CMS) will apply the 2.5% increase for 2023 to the 2023 conversion factor that was finalized in the CY 2023 PFS final rule. This would result in a conversion factor of 33.8872, or a decrease of 2.08% relative to the CY 2022 conversion factor, as shown in the table below. While we cannot estimate the final CY 2024 conversion factor given potential budget neutrality adjustments, the table also shows how a 1.25% increase could affect a flat conversion factor for 2024 (that is, if there were no change from the finalized 2023 conversion factor because of the requirement to disregard this new spending). Any negative budget neutrality adjustments would result in an even greater reduction for 2024.

Conversion Factor Estimates - Year-Over-Year Changes				
YEAR	Base CF	Statutory 1 Year Adjustment	Final	YoY % Change
2022	34.6062	(includes 3.0% 1 year Boost)		
2023	33.0607	2.50%	33.8872	-2.08%
2024	33.0607	1.25%	33.4740	-1.22%
	Subject to 2024 BN Adjustment		Relative to 2022	-3.27%

The AAAAI thanks our dedicated members who participated in our AAAAI Virtual Advocacy Day on December 6 and who have otherwise reached out to contact their members of Congress to join the broad physician community in advocating for mitigating the damage to physician practices and patient access threatened by the proposed cuts.

Telehealth extension – The omnibus further extends telehealth flexibilities through December 31, 2024 once the COVID-19 public health emergency (PHE) ends. Without action, these flexibilities are slated to end 151 days after the conclusion of the PHE, currently in effect until January 11, 2023.

Research funding – The legislation provides \$47.5 billion for the National Institutes of Health (NIH), including \$6.56 billion for the NIAID; \$9.2 billion for the Centers for Disease Control and Prevention (CDC); \$1.5 billion for the new Advanced Research Projects for Health (ARPA-H); and \$950 million for the Biomedical Advanced Research and Development Authority (BARDA).

Advanced Alternative Payment Models – Extends incentive payments for participation in advanced alternative payment models (A-APMs) through 2025. Currently, eligible clinicians participating in an A-APM receive a 5% bonus for meeting certain payment of patient count thresholds. The agreement extends incentive payments, with a 3.5% Medicare Part B incentive payment for services covered in 2025. The current freeze on participation thresholds for qualification for the APM bonuses is frozen for an additional year.

Graduate Medical Education – Creates 200 additional Medicare-funded graduate medical education (GME) residency positions, with half dedicated to psychiatry and related subspecialty residencies.

Makes Medicare IVIG Demo Permanent – Beginning on January 1, 2024, Medicare will cover items and services related to the administration of intravenous immune globulin (IVIG).

CHIP Funding – The agreement extends funding for the Children’s Health Insurance Program (CHIP) for two years, through fiscal year 2029, and requires children to be provided with 12 months of continuous coverage in Medicaid and CHIP effective January 1, 2024.

Cosmetics/Fragrance allergens – Requires each cosmetic product to bear a label identifying each fragrance allergen included. The Secretary of Health and Human Services will define substances that are fragrance allergens by regulation.

Care for veterans exposed to toxic burn pits – Includes \$5 billion for the Cost of War Toxic Exposures Fund to implement Public Law No. 117-168, the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act*.

Report Language Accompanying the Consolidated Appropriations Act, 2023

Congress includes explanatory statements with detailed language to express congressional intent with annual budget documents. Below are statements of relevance to A/I, many of which AAAAI has been working throughout the year to secure in the funding bill.

Defense [Explanatory Statement](#)

- **Food Allergy Research Funding** – As requested by the AAAAI, the report includes that food allergy research is eligible for funding under the peer-reviewed medical research program (PRMRP). The agreement provides \$370 million for the program, with funding is limited to “medical research projects of clear scientific merit and direct relevance to military health” in a specified list of diseases and conditions, including food allergy.

Labor, Health and Human Services, Education, and Related Agencies [Explanatory Statement](#)

- **Severe Combined Immune Deficiency (SCID)** – The agreement includes \$4 million to support newborn screening and follow-up for SCID and other newborn screening disorders.
- **Antimicrobial and Antibiotic Resistance** – The agreement includes an increase for activities and directives outlined in House Report 117-403. In addition, CDC is directed to improve data collection and increase support for U.S. health departments to detect, contain, and prevent antibiotic resistant infections and increase collaborative efforts at the international, national, regional, State, tribal, and local levels. Finally, the agreement directs the CDC to work with other Department of Health and Human Services agencies to provide an annual briefing within 30 days of enactment of this Act and every succeeding annual appropriations Act.
- **Food Allergies** – Consistent with the *School-Based Allergies and Asthma Management Program Act* (P.L. 116-292), which AAAAI championed in the 116th Congress, the agreement includes \$2 million for a school-based effort to address food allergies and reduce potentially fatal anaphylactic reactions.
- **Asthma** – The agreement includes an increase of \$3,000,000 for the National Asthma Control Program to increase the number of States carrying out programmatic activities. The report asks for a report after one year on the activities in the states.
- **Newborn Screening** – The agreement includes an increase to expand newborn screening efforts and funds a study to examine the current status of Newborn Screening systems, processes, and research and make recommendations for future improvements.
- **Consortium of Food Allergy Research (CoFAR)** – As requested by AAAAI in [testimony](#) before Congress, the agreement includes \$12.1 million, an increase of \$3 million above the fiscal year 2022 enacted level, for CoFAR to expand its clinical research network to add new centers of excellence in food allergy clinical care and to select such centers from those with proven expertise in food allergy research.
- **Alpha-gal Syndrome** – The agreement encourages NIAID to support multi-year awards for multidisciplinary research on vector-borne diseases, including Alpha-gal Syndrome.
- **Combating antimicrobial resistance** – In support of AAAAI’s work in partnership with the Stakeholder Forum on Antimicrobial Resistance (S-FAR), the agreement provides at least \$565 million, an increase of \$25 million above the fiscal year 2022 enacted level, to support NIAID research to combat antimicrobial resistance (AMR) and the training of new investigators to improve AMR research capacity as outlined in the 2020-2025 National Action Plan to Combat Antibiotic-Resistant Bacteria. A 2019 presentation by Dr. David Khan, MD, FAAAAI on penicillin

allergy testing as a component of antimicrobial stewardship before the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB) can be found [here](#).

- **Impact of COVID-19 on Pregnant and Lactating Women** – In alignment with the AAAAI-facilitated [Vaccines and Medications in Pregnancy Surveillance System \(VAMPSS\)](#), the agreement includes an increase of \$3 million to support research on the effects of COVID-19 on pregnancy, lactation, and postpartum health with a focus on individuals from racial and ethnic minority groups.
- **Pregnant and Lactating Women Advisory Committee** – The Coalition to Advance Maternal Therapeutics, of which the AAAAI and VAMPSS are members, requested funding for the creation of an Advisory Committee to monitor and report on the implementation of the recommendations from the Task Force on Research Specific to Pregnant Women and Lactating Women.
- **Long COVID Research** – The agreement includes \$10 million for health systems research on how best to deliver patient-centered, coordinated care to those living with post-acute sequelae of SARS-CoV-2 infection (PASC), or Long COVID. The AAAAI joined 75 other state and national organizations [urging Congress](#) to unify definitions and language around PASC; increase research, data collection, and surveillance and identifying additional opportunities; ensure patient diversity in research and mitigating disparities in care; define outcomes; educate medical professionals and patients about PASC; and develop guidance for clinical treatment and care coordination across primary care and several specialty providers.
- **Food as Medicine** – The agreement directs the Secretary to develop and implement a Federal strategy to reduce nutrition-related chronic diseases and food insecurity and improve health and racial equity in the U.S., including diet-related research and programmatic efforts that increase Americans' access to food as medicine, and healthy, nutritious, organic, and affordable foods, especially in at-risk communities. The agreement includes \$2 million to establish a Food as Medicine pilot program. The AAAAI has engaged in advocacy in this area to support food allergy-safe alternatives in federal nutrition support programs and to support access to medically necessary foods.

Important Note Regarding Prior Authorization Legislation

The omnibus unfortunately does not include the *Improving Seniors Timely Access to Care Act* (H.R. 3173/S. 3018) or other legislation modernizing the prior authorization process under Medicare Advantage plans. The AAAAI and numerous other stakeholders have long [supported](#) this legislation, and will continue to advocate for reforms to this burdensome process. Notably, this Spring, AAAAI plans to submit comments to the Centers for Medicare and Medicaid Services in response to its [proposed rule](#) on prior authorization.

As always, if you have specific examples of patient harm resulting from prior authorization or any questions on our advocacy efforts, please contact us at advocacy@aaaai.org.

December 21, 2022