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ACEP Issues Proposal to Address Out-of-Network Billing Issues

On Monday, ACEP President Vidor Friedman, MD, FACEP, held a media conference call to issue ACEP's proposal on addressing out-of-network billing issues. With increased attention on the issue of "surprise bills" in the press, as well as growing discussion around how to address this matter occurring in the House of Representatives, Senate, and White House, ACEP released a proposed framework specific to emergency care to help ensure that patients are truly taken out of the middle of billing disputes.

As legislators examine a potential federal solution, ACEP believes there are three key principles that should guide such an effort: protect patients by truly taking them out of the middle and holding them harmless; level the playing field and encourage fair and reasonable contracting for in-network services; and recognize the unique nature of emergency care (i.e., EMTALA).

The framework itself is comprised of six patient protections:

- 1) A prohibition on balance billing by emergency care providers.
- 2) A streamlined process to ensure patients only have a single point of contact for emergency medical billing and payment.
- 3) Ensure all aspects of patient responsibility for OON emergency care is no higher than it would be in-network.
- 4) Ensure patients fully understand the limits of their coverage by providing deductible information on their insurance card.
- 5) Provide patients with clear explanations of their specific rights related to emergency care with their coverage documents (e.g., Prudent Layperson protections).
- 6) Take the patient out of insurer-provider billing disputes (through an alternative dispute resolution process, such as that already in place in New York).

ACEP's Associate Executive Director of Public Affairs, Laura Wooster, MPH, also participated in a briefing on Thursday to the staff of the Senate Committee on Health, Education, Labor, and Pensions (HELP), to share this framework and answer questions for committee and member staff. The framework was also provided to health care staffers on Capitol Hill by email earlier in the week. ACEP is actively working with members of Congress to share the unique nature of emergency care and to advocate for our patients regarding this issue. We will continue to provide updates as this critical matter moves forward.

To read more about the announcement, [click here](#).

To read the specific framework, [click here](#).

ONDCP Releases Administration's 2019 National Drug Control Strategy

On Thursday, Jim Carroll, the new Director of the White House Office of National Drug Control Policy (ONDCP), issued the Administration's [National Drug Control Strategy](#), detailing the President's plan to address problems surrounding illicit drugs and substance use, especially the nation's ongoing opioid crisis. The strategy focuses on three elements: prevention, treatment and recovery, and reducing the availability of drugs in America.

Notably, the plan also calls for the expanded use of prescription drug monitoring programs (PDMPs), including looking into "...measures to incentivize states to make checking of PDMPs mandatory for all providers." The strategy does note the existing challenges and impediments regarding provider access to PDMPs and interstate sharing of data, and the plan indicates that the Administration is looking to employ a variety of strategies targeted toward increasing PDMP integration and data sharing.

ACEP has been active in legislative efforts to improve data sharing between federal and state PDMP databases, including the successful passage of ACEP-developed legislation during the 115th Congress to facilitate sharing of prescribing information between the Department of Defense and state PDMPs.

CMS Releases 2020 Medicare Advantage and Part D Advance Notice

On Wednesday, the Centers for Medicare & Medicaid Services (CMS) released its Medicare Advantage and Part D [Advance Notice Part II and Draft Call Letter](#) for 2020. CMS proposes to give Medicare Advantage (MA) plans more flexibility to offer supplemental benefits to chronically ill beneficiaries, such as providing home-delivered meals or transportation for non-medical needs. The Advance Notice and Call Letter also lays out several proposals for combating the opioid crisis. In addition, CMS proposes requiring Part D plans to place generic and brand-name drugs on separate formulary tiers. Furthermore, the Advance Notice and Call Letter includes changes to plan payment methodologies that CMS estimates will increase plan revenues by an average of 1.59 percent in 2020.

With respect to addressing the opioid crisis, the draft call letter implements provisions of the SUPPORT Act that require the coverage of opioid treatment programs, including Medication-Assisted Treatment (MAT). Plans will be required to provide enrollees with access to such programs that is consistent with "prevailing community patterns of care." Additionally, CMS is encouraging plans to lower cost-sharing for naloxone and to co-prescribe naloxone alongside high doses of opioid analgesics. Finally, CMS reminds MA organizations that supplemental benefits may cover non-opioid pain management.

HHS Proposes to Eliminate the Anti-Kickback Protection for PBMs

On Thursday, the Department of Health and Human Services (HHS) issued a [proposed rule](#) that would eliminate a safe harbor from the federal anti-kickback statute for discounts (in the form of rebates) that drug companies give insurance plans and pharmacy benefit managers (PBMs). The rule would also create a new exemption for prescription drug discounts that are offered directly to patients, as well as fixed fee service arrangements between drug manufacturers and PBMs.

While some say that the current safe harbor creates an incentive for PBMs and insurers to demand big rebates and then keep them as profits, others argue that the rebates are indirectly passed down to consumers in the form of lower premiums. The HHS Office of the Actuary predicts that the rule would cause Medicare beneficiaries' out-of-pocket costs to fall but premiums to increase. HHS ran various scenarios that projected anywhere from an 8 to 22 percent increase in premiums for patients not in low-income subsidized plans and a 9 to 14 percent decrease in total cost-sharing.

This rule would only apply to federal health programs. Congress would need to pass legislation to prohibit rebates in commercial insurance. The rule does not address the current safe harbor for group practicing organizations (GPO) that exists under the same federal anti-kickback statute.

ACEP Signs onto a Letter Related to Definition of Hospital-based Clinicians in MIPS

On Thursday, a small coalition including ACEP, sent a [letter](#) to CMS asking the agency to modify the current policy around the definition of hospital-based groups. Besides ACEP, the coalition included the Society of Hospital Medicine (SHM) the Infectious Diseases Society of America (IDSA), the Emergency Department Practice Management Association (EDPMA), and the American Society of Anesthesiologists (ASA).

As background, under the Merit-based Incentive Payment System (MIPS), certain clinicians are automatically exempt from the Promoting Interoperability (i.e. Meaningful use) category, including those who meet the definition of "hospital-based" at either the individual or group level. A hospital-based clinician is defined as someone who furnishes 75 percent or more of his/her Medicare Part B covered professional services in sites identified by Place of Service (POS) codes 21 (inpatient hospital), 22 (outpatient on-campus hospital), or 23 (emergency department). Many clinicians report to MIPS as part of a group, and under current CMS rules, if even a single clinician in the group doesn't meet the 75 percent criteria to be hospital-based, the entire group will lose the automatic exemption status and be required to report under the Promoting Interoperability category unless they apply for and are granted another hardship exemption. This "all-or-nothing" approach is unfair and penalizes many emergency physicians who are in multi-specialty groups or are in a group practice where at least one clinician sees patients outside of the ED setting.

ACEP has commented on this policy for years. This letter asks CMS to align the definition of hospital-based clinicians with other group definitions in MIPS, where only 75 percent of individuals in the group would need to qualify in order to receive the special status.

Advocacy Efforts to Engage the New 116th Congress

ACEP is mounting an aggressive push to connect ACEP members back home with as many of the 110 new members of Congress and legislators who are new to important health care committees. We will be setting up local meetings between ACEP 911 Network members and the new members to introduce them to emergency medicine and our role in the health care delivery system and to establish a local contact in the health care space. The meetings will most likely be 30 minutes or less and we will provide tips for the hosting ACEP member as well as a [fact sheet](#) for the legislator. If you are interested in hosting or participating in one of these meetings, please contact [Jeanne Slade](#) or [Caitlin Demchuk](#) in the ACEP Washington DC office for more details.

Please "Save the Date" for the 2019 ACEP Leadership and Advocacy Conference in Washington, DC which will be held May 5-8, 2019. If you want to make a difference or aspire to be a leader in emergency medicine, this is a must attend conference with something for everyone. Opportunities abound to interact with elected officials and policymakers, and network with emergency medicine's top leaders.

This conference will highlight reimbursement issues in EM and how we can work with Congress to improve the EM work environment along with combatting insurance company bad behavior and addressing patient access issues.

LAC 2019 will also bring back Wednesday's Solutions Forum, where this year we will present and discuss emergency medicine-led solutions in telemedicine and the mental health crisis.

For more information, please go to <https://www.acep.org/lac/>



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