In this Issue:

ED-Specific Opioid Bills Introduced

Earlier this week, the "Alternatives to Opioids (ALTO) in the Emergency Department Act" (H.R. 5197/S. 2516) was introduced in the House of Representatives by Reps. Bill Pascrell (D-NJ), David McKinley (R-WV), Diana DeGette (D-CO), and Scott Tipton (R-CO), and in the Senate by Sens. Cory Booker (D-NJ), Shelley Moore Capito (R-WV), Mike Bennet (D-CO), and Cory Gardner (R-CO). The legislation would provide $30 million (over three years) to help establish a demonstration program to test alternative pain management protocols to limit the use of opioids in the emergency department. Also this week, the "Preventing Overdoses While in Emergency Rooms (POWER) Act" (H.R. 5176) was introduced in the House by Reps. McKinley (R-WV) and Mike Doyle (D-PA). H.R. 5176 would provide $50 million (over five years) in grants to establish policies and procedures for administering Medication-Assisted Treatment (MAT) in the emergency department to overdose patients with subsequent referral to community providers. The grants would also be used to develop best practices for care coordination and integrated care models for long-term treatment and recovery options. ACEP worked with the bill sponsors to get them drafted and introduced in time to be considered for inclusion in the upcoming CARA 2.0 opioid package. Several more hearings on the opioid epidemic will occur in multiple congressional committees during the next couple of weeks.

Senators Call on HHS and DOL to Uphold PLS

Over the past several months, ACEP has been working with Sens. Cardin, McCaskill, and other lawmakers to raise awareness of Anthem's emergency department policies and to ensure the Prudent Layperson Standard (PLS) is being properly enforced. On Wednesday, Sens. Ben Cardin (D-MD) and Claire McCaskill (D-MO) sent a letter to Health and Human Services (HHS) Secretary Alex Azar and Department of Labor (DOL) Secretary Alexander Acosta calling on them to review Anthem's policy of denying coverage for their beneficiaries' emergency department visits. In the letter, the senators outline how Anthem may be violating federal law by disapproving these claims allowed under the PLS. As the letter states: "While we appreciate Anthem on their effort to encourage patients to seek medical care in lower-cost settings, we remain concerned that Anthem's ED policy still forces patients to determine, before they even leave their home, if their symptoms are serious enough to go to the emergency room. The Prudent Layperson Standard was specifically drafted to allow patients to get the services they need, when they need them. Patients should not be forced to act as their own doctors and second guess themselves when they truly believe that they are having a medical emergency. Anthem's coverage denials are creating obstacles to emergency room care and are leaving patients responsible for thousands of dollars in medical bills." Additionally, seven hospital organizations, including America's Essential Hospitals, American Hospital Association, Association of American Medical Colleges, Catholic Health Association of the United States, Federation of American Hospitals, Premier healthcare alliance, and Vizient, Inc., sent a letter this week to Anthem EVP and CCO Craig Samitt, MD, raising similar concerns about emergency care denials and its outpatient imaging requirements.

ACEP Response to the Calendar Year (CY) 2019 Advanced Notice and draft Call Letter

On Monday, March 5, ACEP submitted comments on the CY 2019 Advanced Notice and draft Call Letter for the Medicare Advantage program and the Part D Prescription Drug Benefit Program. The Advance Notice and draft Call letter includes proposed updates to payment rates for Medicare Advantage and Part D, guidance for plan sponsor organizations, and new requirements for participating plans. A number of the proposals directly affect the practice of emergency medicine and the patients we serve. For example, CMS includes a few policies aimed at addressing our nation's growing opioid crisis. CMS is proposing to require plan sponsors to implement hard formulary-level cumulative opioid safety edits at the point-of-sale at the pharmacy (which can only be overridden by the sponsor) at a dosage level of 90 Cumulative Morphine Milligram Equivalent Daily Dose (MME) per day, with a 7-day supply allowance. In addition, CMS expects plan sponsors to implement a hard safety edit for initial opioid prescription fills that exceed 7 days for the treatment of acute pain. In our submitted comments, ACEP highlights some of the barriers that these policies could impose on patients who receive prescriptions from emergency physicians, and asks that CMS allow for some flexibility to account for situations when a pharmacy or sponsor is unable to reach the emergency physician who ordered the prescription. Our full set of comments on the Advanced Notice and draft Call Letter is found here.

ACEP Response to the Proposed Definition of "Employer" under Section 3(5) of ERISA -- Association Health Plans

On Tuesday, March 6, ACEP submitted comments on the Department of Labor's proposed rule on the Definition of "Employer" under Section 3(5) of ERISA -- Association Health Plans. The Department of Labor is proposing to loosen some of the current restrictions on association health plans (AHPs) and allow these plans to be part of the large group market. By gaining access to the large group market, these plans would avoid some of the requirements imposed on plans in the individual and small group markets. In our comment letter, ACEP expresses concern with the impact that the proposal would potentially have on the coverage of emergency services. All non-grandfathered health plans in the individual and small group markets must cover the ten categories of essential health benefits (EHBs), one of which is emergency services. Plans in the large group market are not subject to this requirement. ACEP believes that emergency services, and the other nine essential health benefits, should be covered by all insurance plans. Without such guaranteed coverage, consumers can be left with a narrow set of benefits that do not ensure them access to the items and services they need to manage their health conditions. Therefore, we strongly urge the Department of Labor to reconsider its proposal and require AHPs to cover all ten essential health benefits. Our full set of comments on the proposed rule is found here.

ACEP Fact Sheet on Exemptions for the Advancing Care Information Category (ACI) of the Merit-based Incentive Payment System (MIPS)

ACEP has produced a factsheet that clarifies when emergency physicians may be exempt from the ACI category of MIPS or be required to submit ACI data. The ACI category is one of four reporting categories of the CMS MIPS program (also known as the Quality Payment Program), relating to the use of certified electronic health record technology (CEHRT). There have been some questions about which emergency physicians are exempt from the ACI category of MIPS for performance year (PY) 2017. Clinicians are required to submit PY 2017 data by March 31, 2018. Under MIPS, certain clinicians are automatically exempt from the ACI category, including those who meet the definition of "hospital-based." However, even if clinicians as individuals are classified as "hospital-based," those who report to MIPS as part of a group may lose that exemption status. Specifically, if one clinician in a group is not-hospital based, the entire group will be required to report under the ACI category. While the group would be required to submit ACI data, ACEP has now learned that the group would only be required to report ACI data from AMBULATORY-BASED certified EHRs (CEHRT). Data from inpatient CEHRT, including a hospital-based emergency department CEHRT module, would NOT need to be reported and used in the calculations to determine the ACI performance score.

Congressional Hearings This Week

On Thursday, the Senate Health, Education, Labor & Pensions (HELP) Committee held a hearing entitled: "The Opioid Cirsis: Leadership and Innovation in the States." The two witnesses were Maryland Governor Larry Hogan (R) and Oregon Governor Kate Brown (D). Also on Thursday, the House Energy and Commerce Oversight and Investigations Subcommittee held a hearing on public health preparedness and response efforts to seasonal influenza. Witnesses included Dr. Rick Bright, Office of the Assistant Secretary for Preparedness and Response (ASPR); Dr. Anthony Fauci, Director of the NIH's National

Institute of Allergy and Infectious Diseases; Scott Gottlieb, FDA Commissioner; and Dr. Anne Schuchat, Acting Director of the CDC.

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