



April 5, 2019

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Capital Minute

Click [here](#) to view the new edition of ACEP's Capital Minute or click on the blue box below.



We need YOU... To advocate at LAC! Register today.

Not sure if you should come to LAC? Check out this video for more reasons why your voice makes a difference on Capitol Hill - <https://www.youtube.com/watch?v=nF5CqhjIcdM>.

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. The 2019 Leadership and Advocacy Conference is May 5-8 in Washington, DC. Attendees will have many opportunities 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/>.

House Committee Conducts First Hearing on Surprise Billing

On Tuesday, the House Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions held the first congressional hearing on surprise billing, "[Examining Surprise Billing: Protecting Patients from Financial Pain](#)." The hearing featured witnesses from the USC/Brookings Institute, the American Benefits Council, Families USA, and Georgetown University. Unfortunately, the panel did not include any witnesses or perspectives from the physician or hospital community.

The House Education and Labor Committee has jurisdiction over health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA), which represents about 60% of the total insurance market nationwide. The hearing was billed as a fact-finding effort, though most of the witness testimony skewed largely in favor of proposals put forward by thinktanks and insurers, such as setting out-of-network physician rates at a percentage of Medicare rates, or establishing a bundled payment for out-of-network emergency services.

However, several Representatives either pushed back on some of the proposals or discussed successful arbitration-based models like those in New York or Connecticut. Rep. Joe Morelle (D-NY), the former Majority Leader in the New York State Assembly who helped pass New York's surprise billing law, brought up the success of the state's model, including how in 2018 approximately only 800 arbitration claims were filed out of 7-8 million emergency visits statewide. Rep. Joe Courtney (D-CT) also discussed Connecticut's model, noting they seem to have a model that can be implemented in a timely fashion. Rep. Phil Roe (R-TN), an OB/GYN and Chairman of the GOP Doctors' Caucus, brought up critical points about how EMTALA raises unique questions specific to emergency services, how providers have been negotiated out of contracts, why Medicare rates are a flawed benchmark, and why bundling proposals provide no incentives for physicians to be treated fairly.

ACEP worked with several members of the committee to help craft questions and to provide background information and has met with committee staff to share the perspective of emergency medicine. ACEP also continues to work with other members of this committee and other committees of jurisdiction to advocate on behalf of emergency physicians as the debate continues.

To read ACEP's statement for the record for the hearing, click [here](#).

Drug Pricing and ACA Bills Approved for House Consideration

On Wednesday, the full House Energy and Commerce Committee considered the 12 bills related to drug prices and the Affordable Care Act (ACA) that the Health Subcommittee approved last week.

The six drug-pricing bills were all passed by voice vote. The four less controversial bills were H.R. 938, which would limit first-approved generic makers' ability to delay other rivals into the market; H.R. 1520 and H.R. 1503, which would provide generic and biosimilar makers more information through FDA databases about the patents on brand name products; and H.R. 1781, which would boost advisory committee access to drug pricing and rebate data.

H.R. 965, which would penalize brand-name drug manufacturers for withholding sample products from generic makers, was amended with limits on civil suits brought against brand drug makers and made the maximum penalty equal to the revenue the manufacturer earned on the specific product during that

period. H.R. 1499, which would ban drug makers from paying generic manufacturers to keep their products off the market for some period of time (pay-for-delay), was also amended to exclude retroactive agreements.

The latter half of the mark-up relating to the ACA was more contentious, but all six of those bills were ultimately approved along party lines. H.R. 1385 would provide \$200 million annually for state-based marketplaces; H.R. 1386 would provide \$100 million to the federal navigator program; H.R. 987 would restore ACA outreach and enrollment funding cut by the Trump Administration and restrict the funds from being used for any marketing of short-term plans; H.R. 986, the only bill approved by voice vote, would revoke the Section 1332 [state innovation waiver] guidance issued by the Trump Administration on October 2018 that could potentially weaken pre-existing condition and essential health benefit protections; H.R. 1010 would reverse the Administration's expansion of short-term health plans; and H.R. 1425 would provide \$10 billion annually to establish reinsurance programs intended to lower ACA premiums.

To view the mark-up, click [here](#).

Senate Votes to Extend Behavioral Health Clinics and Medicaid Programs

On Tuesday, the Senate approved by voice vote the "Medicaid Services Investment and Accountability Act of 2019" (H.R. 1839), sponsored by emergency physician Dr. Raul Ruiz (D-CA). The bill includes funding to continue the Medicaid demonstration program for behavioral health clinics in Oregon and Oklahoma through June (both states' funding expired in March). The program provides an enhanced Medicaid match for mental health and addiction care services and is scheduled to end in all eight participating states on June 30, although efforts are underway to extend the demonstration for an additional two years. The bill also establishes civil monetary penalties when drug makers knowingly misclassify covered outpatient drugs in the Medicaid drug rebate program; allows states to create health homes for children with medically complex conditions; and extends the spousal impoverishment rules to let married couples protect certain assets while seeking Medicaid coverage for home- and community-based services through September 30.

House Approves Resolution Condemning White House Stance on ACA

On Wednesday, the House of Representatives approved, by a vote of 240 to 186, a non-binding resolution condemning the Trump Administration's newly announced policy of support for a lawsuit that would invalidate the entire ACA. The vote occurred one week after the U.S. Department of Justice abandoned a narrower legal strategy and endorsed the case brought by 20 state attorneys general that is currently under review by the Fifth Circuit Court of Appeals.

House Approves VAWA Extension

On Thursday, the House of Representatives reauthorized the "Violence Against Women Act" (VAWA), H.R. 1585, by a vote of 263 to 156. The VAWA, which provides funding and grants for a variety of programs that tackle domestic abuse, expired in February when it was omitted from the spending bill that ended the partial government shutdown. The bill also included new language that expanded the restriction on purchasing firearms to cover dating partners who were not legally married but have been convicted of abuse or are under a restraining order. Current law already bans those purchases for spouses or formerly married partners.

ACEP Responds to an Inter-agency Task Force Draft Report on Pain Management Best Practices

On Monday, ACEP submitted comments on an Inter-agency Task Force Draft Report on Pain Management Best Practices. In general, ACEP found the draft report to be extremely comprehensive, and we appreciated that the recommendations included in the report were grounded in evidence and took into account extensive feedback from a wide range of stakeholders. However, we do recommend some changes that the final report could include. Our specific comments focus on the following areas: 1)

education/training and the cost of naloxone; 2) the use of prescription drug monitoring programs (PDMPs); 3) alternatives to opioids (ALTO) in the ED; and 4) treatment for patients with sickle cell disease.

ACEP's full response can be found [here](#).

CMS Releases 2020 Medicare Advantage and Part D Final Notice

On April 1, the Centers for Medicare & Medicaid Services (CMS) released its [Medicare Advantage and Medicare Part D Final Rate Notice and Call Letter](#) for 2020. The final Notice and Call Letter finalizes many of the proposals CMS released in the Advanced Notice and draft Call Letter. ACEP had submitted comments on this proposed regulation, addressing a few issues that we believed had a direct impact on emergency physicians and our patients. ACEP's full comment letter can be found [here](#).

In the Final Notice and Call Letter, CMS finalizes a proposal 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 Final Notice and Call Letter also finalizes several proposals for combating the opioid crisis. Furthermore, it includes changes to plan payment methodologies that will increase plan revenues by an average of 2.53 percent in 2020. Also worth noting is the fact that CMS decided not to finalize a proposal that would have required Part D plans to place generic and brand-name drugs on separate formulary tiers, stating that additional CMS analyses found that such a policy in fact would not result in savings to Medicare beneficiaries.

With respect to addressing the opioid crisis, the final 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.

MIPS Reporting Period for 2018 Ends—Preliminary Results Available

Tuesday was the last day physicians could submit data for the second year (2018) of the Merit-based Incentive Payment System (MIPS)—the major Medicare quality reporting program for physicians. CMS is currently in the process of reviewing all the data submitted. If physicians submitted data through the [Quality Payment Program site](#), they can now review their [preliminary](#) performance feedback data.

Final scores and feedback on 2018 performance will be available in July 2019. To find out more information about how MIPS affects emergency physicians, please visit ACEP's website at: <https://www.acep.org/administration/quality/mips/>.

MedPAC Recommends Implementing National Coding Guidelines for Hospital ED Visits

On Thursday, the Medicare Payment Advisory Commission (MedPAC) officially voted on a previously-discussed recommendation that CMS should develop and implement a set of national guidelines for coding hospital ED visits under the Medicare outpatient prospective payment system by 2022.

As background, in October 2018, MedPAC began to dive into this issue at a public meeting. After that meeting in October, ACEP staff met directly with MedPAC to present our perspective on ED utilization and coding trends. We also talked to them about facility ED coding guidelines that ACEP had developed. ACEP's conversation with MedPAC helped inform a follow up meeting MedPAC held on the issue on March 7. During the March 7 meeting, MedPAC discussed the possibility of recommending national guidelines for coding ED visits, referring repeatedly to the ACEP-developed guidelines. On Thursday, MedPAC Commissioners simply voted on this recommendation related to national coding guidelines.

It is important to note that MedPAC can only make recommendations to Congress or to CMS. None of

the policies MedPAC proposes are binding.



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