
**November 16, 2018**

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**Capital Minute**
Here's a new edition of ACEP's Capital Minute for the second week of November, 2018 https://www.youtube.com/watch?v=C_TAExSqZfk&t=13s or click on the blue box below to view.


**ACEP President is Panelist in DC Election Analysis**
On Wednesday, ACEP President Vidor Friedman, MD, FACEP, participated in a post-election briefing hosted by Roll Call in Washington, DC. The event, entitled "Election Impact: Improving Patient Care Under a New Congress," asked health care leaders and policymakers what the midterm election results would mean for health care priorities and legislative issues, such as the Affordable Care Act, opioids, drug prices, etc. in the upcoming 116th Congress. In addition to Dr. Friedman, the expert panel included Sarah Dash, MPH, President and CEO of the Alliance for Health Policy; Mary Grealy, President of the Healthcare Leadership Council; and Elena Rios, MD, MSPH, President and CEO of National Hispanic Medical Association. Participants also heard from Congresswoman Jan Schakowsky (D-IL), a senior member of the House Energy and Commerce Committee.


Dr. Friedman, Ms. Grealy, Dr. Rios, Ms. Dash, and moderator Rebecca Adams (CQ News) during Roll Call Election Impact Panel Discussion

**ACEP Continues to Meet with Senate Price Transparency Work Group**
Earlier this month, ACEP participated in a roundtable meeting with the Senate Bipartisan Price Transparency Work Group, as part of continued discussions on the work group's draft legislation related to out-of-network billing issues. In addition to ACEP, several other physician groups, insurers, employers, and trade associations participated. ACEP was represented by Board member Tony Cirillo, MD, FACEP, and ACEP's Associate Executive Director for Public Affairs, Laura Wooster.

Staff for the Senate work group also invited FAIR Health, an independent, national non-profit organization that collects data on provider charges and insurer payments, who made a presentation to the roundtable participants and provided background information on their methodology. FAIR Health data is already used in several states that have established laws to address out-of-network issues.

The work group continues to seek information from all relevant stakeholders throughout the drafting process, and it was clear from the discussion that there is still significant disagreement on the draft bill's provisions. ACEP remains engaged with the Senate work group and continues to provide constructive feedback on this legislative proposal.

**Congressional Leadership Changes**
Rep. Kevin McCarthy (R-CA) was elected House Minority Leader Wednesday in a closed-door meeting of House Republicans, putting the California Republican in position to lead House GOP members after Speaker Paul Ryan (R-WI) leaves Capitol Hill at the end of his term in January. Rep. Steve Scalise (R-LA), the current No. 3 House Republican, was elected to the No. 2 Republican leadership position in the new Congress, where he will serve as Minority Whip. Rep. Liz Cheney (R-WY), the daughter of former Vice President Dick Cheney, was elected to the third-ranking position in the GOP hierarchy and will be the next Republican Conference Chair.

House Democrats plan to hold their leadership elections on Nov. 28. Nancy Pelosi (D-CA) is the overwhelming favorite for speaker and doesn't currently face a serious challenger. Steny Hoyer (D-

MD) is expected to continue as Majority Leader. Jim Clyburn (D-SC) is expected to be the House Majority Whip.

**Meeting the New Members of the 116th Congress**
ACEP is mounting an aggressive push throughout the next two months to meet as many of the new members as possible before or just after they are sworn in. Although we supported quite a few in their election bids, there may be more than 100 new members coming to Congress. 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 hosting ACEP members as well as a fact sheet for the new member. If you live or work in a congressional district of a new member of congress and 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.

**ACEP Comments on HHS Request for Information on Social Risk Factors**
On November 16, ACEP responded to a request for information (RFI) put out by the Department of Health and Human Services (HHS) that seeks input on how health care providers and health plans are working to improve care for Medicare patients with social risk factors. In our comments, ACEP states that we are committed to improving the quality of care that is delivered to all our patients, and we are cognizant of the specific challenges facing patients that do not have access to adequate social support services. We note that many interventions help identify barriers to health such as transportation and access to food and housing. One such tool that ACEP supports to help manage care for patients with complex needs is the Collective Medical Technologies' (CMT) Edie™ (a.k.a. PreManage ED) software. We are continuing to explore other innovative ways our physicians can help coordinate care for high-risk patients, including through participation in alternative payment models. Finally, we argue that it is difficult to disentangle beneficiaries' social and medical risks and that it is more prudent to address these risks together.

ACEP's full response can be found here.

**ACEP Comments on CMS Proposed Rule Related to Regulatory Burden Reduction**
On November 16, ACEP responded to a Centers for Medicare & Medicaid Services (CMS) proposed rule that aims to reduce regulatory burden on providers. In our response, ACEP states the while we support the Administration's overall goal to eliminate unnecessary documentation requirements, we want to make sure that any possible changes do not have any unintended consequences that could pose a detrimental impact on the patients we serve.

The proposed rule includes a number of proposed changes to the existing requirements around emergency preparedness. In general, these changes relate to the frequency of updating a facility's emergency preparedness program and conducting training and testing sessions. ACEP believes that these proposed changes would move us down a slippery slope that could potentially weaken our disaster preparedness efforts going forward.

ACEP also opposes another proposal in the rule that would eliminate the requirements that: 1) an ambulatory surgical center (ASC) have a written transfer agreement; and 2) the physicians performing surgery in the ASC have admitting privileges with a hospital that is a local, Medicare-participating hospital or a local, nonparticipating hospital that is eligible for payment for emergency services. ACEP believes that having a transfer agreement in place is a key check to make sure that both the ASC and the accepting hospital manage patient care appropriately and that the accepting hospital offers evidence-based treatments and has staff that is able to take care of all possible patient complications. Furthermore, we think that the physicians performing surgery in the ASC must

continue to have admitting privileges with the hospital. This current requirement helps ensure that emergency departments are appropriately staffed and that hospitals are able to maintain reliable on-call systems that enable the hospitals to fulfill all the obligations of EMTALA.

ACEP's full response can be found here.

**CMS Announces New Medicaid Demonstration Opportunity to Treat Patients with Mental Illnesses**

On November 13, CMS sent out a letter to State Medicaid directors that included a new demonstration opportunity for states to treat adults and children with serious mental illnesses. Specifically, states can now apply for a Medicaid Section 1115 waiver to receive matching federal funds for short-term residential treatment services in an institution for mental disease (IMD). This policy broadens the ability for states to work around the current "Medicaid IMD exclusion," which prohibits the use of federal Medicaid funding for care provided to most patients in non-hospital inpatient mental health treatment facilities. Before this announcement, CMS only allowed states to waive the "Medicaid IMD exclusion" for patients with substance abuse disorders (SUDs). ACEP has long advocated for the full repeal of the Medicaid IMD exclusion, and believes that this new demonstration is a positive step in achieving this ultimate goal. Therefore, we encourage states to explore this new opportunity.

ACEP's summary of this new demonstration opportunity can be found here.

**Merit-based Incentive Payment System (MIPS) Updates**

On November 1, CMS issued a final rule that established final policies for the third year (2019) of MIPS, the performance program established by the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015. ACEP's summary of the rule can be found here. On November 15, CMS held a webinar to highlight some of the major MIPS policies finalized in the rule. Of note, CMS announced during the webinar that the agency plans to make information about the "facility-based scoring option" available to clinicians during the first quarter of 2019. Under the facility-based scoring option, clinicians who deliver 75 percent or more of their Medicare Part B services in an inpatient hospital, on-campus outpatient hospital, or emergency room setting will automatically receive the quality and cost performance score for their hospital through the Hospital Value-based Purchasing (HVBP) Program starting in 2019. CMS estimates that most emergency physicians would qualify for this option. Clinicians who qualify for the option can still report quality measures through another submission mechanism (such as a QCDR) and receive a "traditional" MIPS score for quality. If they do so, CMS will automatically take the highest of the HVBP score and the traditional MIPS score. ACEP had requested that CMS provide information to clinicians about their eligibility for this option and about their hospital's HVBP score as soon as possible. That way, clinicians can make informed decisions about how to participate in MIPS. We are therefore pleased that CMS is planning on sharing this information with clinicians in a timely manner.

In other MIPS-related news, on November 8, CMS released results from the first year of the program (2017). Overall, 93 percent of clinicians received a positive bonus for their performance in 2017, and 95 percent overall avoided a negative payment adjustment. With respect to scoring, the overall national mean (or average) score for clinicians was 74 out of a possible 100 points, and the national median was 89 points. MIPS is a budget neutral program, and since most clinicians received a relatively high score and avoided a downward payment adjustment, the pool of funding available for bonuses was small. Thus, although MACRA allowed up to a 4 percent bonus for performance in 2017, due to budget neutrality, the maximum bonus a clinician will be able to receive for a perfect score (100 out of 100 points) will only be 1.88%.

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