July 25, 2019: National Advocacy Update

House committee reports surprise billing proposal and other legislation

On July 17, the House Committee on Energy and Commerce reported out health care bills reauthorizing a number of programs, including: Title VIII nursing workforce grants; the "Autism CARES Act" to support programs at the National Institutes of Health (NIH), Centers for Disease Control and Prevention (CDC), and Health Resources and Services Administration (HRSA); and the Emergency Medical Services for Children program, among others. Significantly, the committee also advanced the "REACH Act" which would extend funding for Community Health Centers, the Teaching Health Centers GME program and the National Health Service Corps. Included in that bill was the "No Surprises Act" to address the contentious issue of surprise medical billing.

Most stakeholders agree that patients should be held accountable only for their in-network cost-sharing amounts in situations where they are unable to select an in-network physician, such as in a medical emergency. Where views diverge is how to determine appropriate payment amounts for out-of-network physicians and other providers. As originally introduced, the "No Surprises Act" would have plans pay out-of-network physicians the median in-network contract amount for the service provided in that particular geographic area. Not only would that bind out-of-network physicians to contracted amounts they did not agree to accept, but it would eliminate much of the incentive for plans to contract with an adequate number of physicians in the first place. Furthermore, as the Congressional Budget Office (CBO) has noted on similar proposals, plans would have an incentive to cancel or cut contracted amounts for any physicians currently above the median rate, reducing payment for both in- and out-of-network physicians. Such a solution would tilt the advantage in negotiating fair contracts even further in the direction of plans.

At the urging of committee members Rep. Raul Ruiz, MD (D-CA), Rep. Larry Buschon, MD (R-IN) and others, the committee adopted an amendment to provide for an independent dispute resolution process loosely based on the successful baseball-style arbitration model used in New York. Under the proposal, if either party was dissatisfied with the initial payment offer, an appeals process could be triggered that would allow an independent entity to decide between the payment offer of the plan and the physician's billed amount while considering a number of other factors related to the circumstances

of the case and the training and experience of the physician. While the proposal still needs improvement, it represents an important step forward by recognizing that the resolution of these disputes requires a solution that is fair and encourages both sides to make reasonable initial payment offers and charges.

AMA will continue to work to make improvements to these provisions over the August congressional recess and when Congress returns in September.

HHS delays effective date of rule on conscience rights in health care

The U.S. Department of Health and Human Services (HHS) announced that it will delay the effective date of the conscience rule finalized in May of this year. The rule dramatically expands the discretion that religious or moral objectors can exercise in refusing care without meaningful safeguards to ensure that the rights of those receiving care are protected. It covers a wide array of existing federal laws that provide conscience protections including those related to abortion, contraception, sterilization, vaccines, end-of-life care and care of often-marginalized groups like LGBTQ patients.

The rule would have gone into effect on July 22, but multiple lawsuits prompted the U.S. Department of Justice to reach an agreement with plaintiffs to postpone the rule for four months. The newly scheduled effective date is Nov. 22 and will potentially allow enough time for some of the litigation around the rule to be settled.

Multiple lawsuits seek to have the rule declared unlawful and thus be rescinded or enjoined. Plaintiffs, ranging from city, county and state governments to non-governmental organizations such as Planned Parenthood, claim that the rules violate constitutional law and conflict with other current laws guaranteeing treatment, such as the Emergency Medical Treatment and Active Labor Act (EMTALA). The AMA raised similar concerns in its response (PDF) to the proposed conscience rule, which expressed opposition to the proposal, citing concern for vulnerable patient populations and asserting that conscience rights for physicians are not unlimited.

"The proposed rule would undermine patients' access to medical care and information, impose barriers to physicians' and health care institutions' ability to provide treatment, impede advances in biomedical research, and create confusion and uncertainty among physicians, health care professionals and institutions," AMA Executive Vice President and CEO James L. Madara, MD, wrote in the letter.

While the AMA is committed to conscience protections for physicians and other health professional personnel, the letter states that the exercising of those rights must "be balanced against the

fundamental obligations of the medical profession and physicians' paramount responsibility and commitment to serving the needs of their patients."

According to the AMA *Code of Medical Ethics*, the freedom to act according to conscience is not unlimited. Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals in obligation to patients with whom they have a patient-physician relationship.

This principle is in keeping with many AMA's policies protecting access to care, especially for vulnerable and underserved populations, and its anti-discrimination policy, which opposes any discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin or age.

Trump Administration pulls drug rebate rule; DTC drug price disclosure rule tossed by court

Two of the Trump Administration's key drug pricing efforts suffered defeats in recent weeks, with neither policy proposal moving forward towards implementation. The much-touted drug rebate rule was recently pulled back by the administration over the high price tag of the policy changes. The rule, which looked to ensure that drug rebates were passed on to consumers at the point of sale, was thwarted over the estimated $170 billion cost and concerns about the impact on Part D premiums. In its comments (PDF) on the proposal, the AMA supported proposals to pass rebates and discounts to patients at the point of sale but did raise concerns about unintended consequences, such as increased Part D premiums and reductions in the size of rebates and other discounts. It is unclear if the administration will try to find a new path forward to reform the drug rebate system.

Separately, the administration's effort to mandate disclosure of drug list prices in direct-to-consumer (DTC) television advertisements was defeated in federal court on first amendment grounds. The judge also ruled that the administration's final rule exceeded their statutory authority. The suit was brought by several drug manufacturers, arguing that the rule improperly limited free speech and that the required disclosures would confuse patients. It is unclear if the administration will pursue an appeal to overturn the ruling.

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