Jan. 8, 2021: National Advocacy Update

President signs omnibus spending package providing new round of COVID-19 relief

On Dec. 22, the President signed into law the Consolidated Appropriations Act, 2021, a comprehensive omnibus spending package that funds the federal government through FY 2021, provides a new round of COVID-19 relief and economic stimulus, and imposes new restrictions on surprise medical billing. An AMA summary of select provisions in the bill can be found here (PDF). With respect to COVID-19 relief, the legislation would ease the impact of Medicare fee schedule budget neutrality adjustments in calendar year 2021 due to improved evaluation and management (E/M) office visit payment and coding rules, as well as an extension of the 2% Medicare sequester moratorium through March 2021. An AMA analysis estimating the impact of the Medicare payment changes (excluding the sequester moratorium extension) can be found here.

The surprise billing provisions include significant improvements over previous proposals, including a robust independent dispute resolution system.

Other significant provisions related to health care, medical education and public health include:

- Additional funding for the Provider Relief Fund and continuation of the Paycheck Protection Program (PPP)
- Distribution of an additional 1,000 Medicare Funded GME slots
- Flexibility for hospitals to host a limited number of residents for short-term rotations without being negatively impacted by a set permanent full time equivalent (FTE) resident cap or PRA
- Delay of Medicare Radiation Oncology Model implementation until Jan. 1, 2022
- Several provisions to expand broadband accessibility with a particular focus on rural and tribal communities
- Implementation of a Rural Health Clinic (RHC) payment reform plan and creation of a voluntary Medicare payment designation for conversion of Critical Access Hospitals (CAH) to Rural Emergency Hospitals (REH) in order to preserve emergency care access for beneficiaries
- Creation of an evidence-based national vaccine awareness campaign to combat misinformation
- Provisions designed to strengthen parity of mental health and substance use disorder

URL: https://www.ama-assn.org/health-care-advocacy/advocacy-update/jan-8-2021-national-advocacy-update
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As the 116th Congress came to a close, the AMA and Federation members confronted some extraordinary challenges beyond those directly associated with the COVID-19 pandemic. Thanks to combined strength and close collaboration, medicine faced these challenges head on, and this final legislative package shows a meaningful result.

**AMA submits comments on federal regulations addressing prior authorization reform**

The AMA submitted comments to the Centers for Medicare & Medicaid Services (CMS) regarding a notice of proposed rulemaking (NPRM) on provider burden reduction and prior authorization. The NPRM, which cited the AMA prior authorization survey data and grassroots website FixPriorAuth.org, would require Medicaid, Children’s Health Insurance Program (CHIP), and federally facilitated health exchange plans to support technology that would convey prior authorization requirements and automate the exchange of supporting clinical data from physicians’ electronic health records (EHR) workflow. The NPRM also would require plans to publicly report data on prior authorization programs and comply with processing timeframes. The AMA commended CMS for addressing prior authorization burdens and urged that these requirements be extended to Medicare Advantage plans so that more patients will benefit. Relatedly, the AMA encouraged CMS to allow for adequate testing of the technology it is proposing prior to requiring its use in regulation.

While the NPRM focuses on prior authorization, it also includes a proposal to require impacted payers to request an attestation on privacy policies from third-party apps facilitating patient access to claims and certain clinical information. Such attestations would require third-party app developers to indicate their adherence to industry-developed best practices around privacy and data sharing. The AMA advocated for CMS and the Office of the National Coordinator for Health Information Technology (ONC) to include such attestations in their patient access and interoperability regulations, which were finalized in 2020. While neither agency did so in those final rules, the new CMS NPRM builds on CMS’ prior final rule and proposes a privacy attestation policy. The AMA supported this proposal in its comments and urged ONC to adopt a similar requirement to bolster transparency and trust in emerging technology.
AMA urges changes to COVID-19 vaccine administration and PPE Medicare reimbursement

On Dec. 23, the AMA submitted comments (PDF) to CMS’ Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency Interim Final Rule with Comment (IFC). At the same time as the agency issued the IFC, CMS published interim final payment amounts for the first and second doses of the Pfizer-BioNTech and Moderna COVID-19 vaccines. CMS would pay a geographically adjusted $16.94 for the first dose and $28.39 for the second dose. The AMA urged CMS to withdraw these interim final payment rates and adopt the RUC-recommended values, which are based on an extensive and thorough review of the necessary physician work and practice expense to administer these COVID-19 vaccines.

In addition, the AMA expressed disappointment that CMS finalized CPT code 99072, which is a new code created to recognize the additional supplies and staff time to perform safety protocols during this pandemic, as a bundled service on an interim basis in the 2021 Medicare Physician Payment Schedule final rule as many services do not include these specific PPE items and physician practices are facing PPE and infection control expenses. The AMA along with 127 other state medical associations and national medical specialty societies reiterated the recommendations they made that CMS immediately implement and pay CPT code 99072 to recognize the increased expenses due to infection control practices necessary to safely immunize and care for patients during this PHE. Many physician practices are struggling as a result of the steps they have had to take to address COVID-19.

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