

Dec. 17, 2021: National Advocacy Update

AMA files suit against federal regulators over implementation of the No Surprises Act

Earlier this month, the AMA and the American Hospital Association, along with two individual hospital and two individual physician plaintiffs, filed a lawsuit against federal regulators over implementation of a narrow but critical provision of a September Interim Final Rule (IFR) implementing the No Surprises Act (NSA).

When Congress enacted patient protections from surprise medical bills under the NSA, a reform strongly supported by the AMA, it also established a process for health plans and health care providers to settle payment disputes through an independent dispute resolution (IDR) process. The IDR process created by Congress requires arbiters to consider a number of factors relevant to determining a fair payment, including the median in-network rate, the acuity of the patient and complexity of the case, the market dominance of both parties, contracting history and the teaching status of the hospital. However, in the September IFR, federal regulators directed arbiters, during the IDR process, to presume that the median in-network rate is the appropriate out-of-network rate and significantly limited when and how the other factors come into play.

The lawsuit argues that the regulations are a clear deviation from the statute and all but ensure that physicians and other providers will routinely be undercompensated by commercial insurers. More importantly, the rule will result in narrower networks and patients having fewer choices for access to in-network care. The lawsuit does not attempt to delay or undercut any of the patient protections from surprise medical bills in the NSA.

While the publication of an IFR relieves federal regulators from the obligation of reviewing and responding to public comments, a public comment period was available through Dec. 6. The AMA submitted a detailed set of comments to the Departments addressing the IDR process, including the imbalance created by anchoring the arbiter's decision to the median in-network rate, and urged the Departments to revise those provisions in a final rule. The AMA's comments also expressed concern with the implementation of several administrative requirements, including provisions requiring a scheduling provider to collect from other providers and deliver to self-pay or uninsured patients a good

faith estimates about the cost of care. The AMA submitted comments (PDF) on the September IFR. Learn more about other letters and summaries of the NSA rules.

AMA expresses strong support for OSHA's vaccine or testing ETS

The AMA submitted a comment letter (PDF) strongly supporting the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS) on vaccination and testing for employers with 100 employees or more. The correspondence emphasized that widespread uptake of COVID-19 vaccines will be required to limit severe illness, hospitalization and death from COVID-19 and bring an end to the COVID-19 pandemic.

The AMA has strong policy supporting vaccine mandates. The AMA understands that some employees have concerns about the COVID-19 vaccines, but there is considerable evidence that the benefits of the COVID-19 vaccines produced by Pfizer-BioNTech, Moderna and Janssen outweigh the limited risks. Therefore, the AMA supports OSHA's efforts to ensure employee health and safety through the actions outlined in the ETS.

In addition, this week, the AMA filed a set of friend-of-the-court briefs urging United States Courts of Appeals for the Sixth and Eleventh Circuits to stay lower court orders denying enforcement of the "Safer Federal Workforce Task Force's Guidance for Federal Contractors and Subcontractors." The AMA-led amicus briefs in *Kentucky v. Biden* and *Georgia v. Biden* were joined by more than a dozen leading medical organizations. Read the full press release.

Additional time to submit for provider relief fund reporting period

Eligible providers who received provider relief funds (PRF) from the U.S. Department of Health and Human Services (HHS) to diagnose, test or care for individuals with possible or actual cases of COVID-19, and have health care-related expenses and lost revenues attributable to COVID-19, are required to report on the monies they received.

The Provider Relief Fund Reporting Period 1 portal will be reopened from 9:00 a.m. on Dec. 13 through 11:59 p.m. on Dec. 20. During this time, PRF recipients may register, request corrections and/or submit their report on PRF payments received prior to June 30, 2020. This one additional week will be the final opportunity for providers to report on Reporting Period 1 payments. Providers who submitted their reports before Nov. 30, 2021, may request to have their report reopened for revisions

by contacting the Provider Support Line (866-569-3522). All reports must be finalized and submitted before Dec. 20, 2021, at 11:59 p.m. Eastern time to be compliant with the terms and conditions of the PRF program.

Visit and access the PRF reporting portal. For additional information about PRF reporting, please visit the PRF web page.

Additional provider relief funds released for rural providers serving Medicaid, CHIP and Medicare beneficiaries

On Dec. 14 HHS, through the Health Resources and Services Administration (HRSA), announced the distribution of approximately \$9 billion in provider relief fund (PRF) Phase 4 payments to health care providers who have experienced revenue losses and expenses related to the COVID-19 pandemic. The average payment being announced for small providers is \$58,000, for medium providers is \$289,000, and for large providers is \$1.7 million. More than 69,000 providers in all 50 states, Washington, D.C., and eight territories will receive Phase 4 payments starting Dec. 17.

The PRF Phase 4 payments are part of the \$25.5 billion the Biden-Harris administration is releasing to health care providers to recruit and retain staff, purchase masks and other supplies, modernize facilities, or other activities needed to respond to COVID-19. The AMA has advocated for more of the PRF to be distributed, particularly to those providers who serve in rural areas and who see low-income patients.

New “Privacy by design” guidance for app developers

The ability to collect and track health and wellness data in recent years has had positive benefits for individuals across health care. Physicians and care teams can more closely monitor known conditions while individuals can choose from myriad mobile applications to support engagement in their care and wellness. Yet, as more data is collected and exchanged, there is often a lack of discussion and focus to ensure that individuals understand who is collecting, sharing and using their data. This can undermine the trust between physicians and patients.

Often, app developers are unaware or lack the necessary guidance on utilizing industry best practices for data privacy. The AMA-developed privacy by design guide, which is based on the AMA’s Privacy Principles, will assist app developers in creating privacy-focused products. This resource provides guidelines for data collection and equitable data governance to help technology developers implement “privacy by design” best practices.

The AMA continues to promote the need for privacy-forward technology development and advocates for federal and state policies that strengthen trust between patients and physicians.

Open enrollment for 2022 at HealthCare.Gov

As the new year approaches physicians should emphasize to their patients the value of having health insurance coverage. If your patients lack coverage, encourage them to sign up for health insurance through Jan. 15 on the federal marketplace exchange (HealthCare.gov). As an HHS-designed “Champion for Coverage,” the AMA is promoting open enrollment in the federal health insurance marketplace.

The AMA has been in frequent communication with the Centers for Medicare & Medicaid Services (CMS) and shares the Agency’s messages targeted to key groups for health insurance enrollment. Given the health challenges experienced in 2020 and 2021 during the pandemic, and the administration’s emphasis on promoting health equity, health insurance coverage is more important than ever. Enrollment data so far shows that nearly 4.6 million people have signed up for health care coverage during Open Enrollment on HealthCare.gov and state-based marketplaces (SBMs) but there are many more people who need to sign up for coverage. It is important to emphasize that the number of patients getting coverage for \$10 or less per month after tax credits has nearly doubled compared to this time last year; patients may be eligible for similar support. For more information, share the website HealthCare.gov.

Physician groups urge the VA to delay implementation of the national standards of practice

On Dec. 16, the AMA and a coalition of 92 state medical and specialty societies sent a letter (PDF) urging the Department of Veterans Affairs (VA) to engage stakeholders as early as possible as the VA develops National Standards of Practice (NSP). In addition, the letter emphasized the need for the VA to create a transparent process. As a result of AMA's advocacy, the VA agreed last month to publish the draft NSPs in the Federal Register with a 60-day comment period.

The letter argues that, if the VA is serious about stakeholder input and transparency, it should engage both internal and external stakeholders while the draft NSPs are still in development and well before they are published in the Federal Register. Also, the VA should push back implementation of the NSPs until at least the second half of 2022 to allow more time to complete a thorough review of stakeholder comments.

The AMA will continue to work with the Federation to deliver the message to VA leadership that physician-led team-based care should underpin the development of NSPs.

Administration rescinds rule that could have harmed H-1B physicians

On Dec. 13, the administration released a final rule vacating the “Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States.” In line with AMA advocacy, the vacatur implemented the United States District Court of the Northern District of California Dec. 1 judgment that determined that the interim final rule (IFR) violated the Administrative Procedures Act. This decision aligns with the AMA’s Dec. 4 comments (PDF) that supported rescinding the IFR.

If implemented, the IFR would have negatively impacted our H-1B physician colleagues who fulfill a vital and irreplaceable role in addressing the impending physician shortage. Moreover, the IFR could have impacted clinical faculty, residents and fellows placed at academic medical centers, as well as researchers collaborating with colleagues on a variety of critical projects. The AMA applauds the administration for vacating this IFR that could have harmed our H-1B physicians and for upholding the Administrative Procedures Act.

New U.S. Customs and Border Protection policy concerning detained women and adolescents

The AMA recognizes the need for programs and staff training to address the distinctive health care requirements of detained women and adolescent females, including gynecological care and obstetrics care for pregnant and postpartum women. As such, the AMA made a request for investigation (PDF) into the reported mistreatment of pregnant women seeking asylum to the Department of Homeland Security. In line with a number of AMA recommendations, U.S. Customs and Border Protection (CBP) recently issued a policy statement concerning pregnant, postpartum, nursing individuals and infants in custody. This action aligns with a few of the AMA’s recommendations to CBP including that it publish explicit policies that ensure adequate, timely medical care for pregnant women in the agency’s custody.

As part of the new CBP policy statement, pregnant persons will continue to receive initial health interviews and will receive a medical assessment if a potential medical issue of concern is identified. They will also receive appropriate follow-up care and final medical disposition and should be placed in

the least restrictive setting possible. In cases where an individual has given birth in a medical facility and is returned to CBP custody, all medical discharge instructions will be followed by personnel to the greatest extent operationally feasible. If a mother chooses to breastfeed, every reasonable effort will be made to provide the mother with privacy while breastfeeding in an area that is not a bathroom.

Finally, the documentation requirements have been updated and CBP must now produce a comprehensive, searchable process for documenting all known and reported pregnancies in the appropriate system(s) of record, as well as childbirths, in CBP custody. The AMA believes every individual, regardless of immigration status, deserves timely, accessible, quality health care and is pleased to see that CBP is taking some initial steps to help improve care for pregnant, birthing and postpartum individuals. The AMA urges CBP to implement these changes in a timely and holistic manner and to continue to improve care for all detainees.

AMA applauds the passage of the "Protecting Moms Who Served Act of 2021"

The AMA applauds Congress for passing S.796, the "Protecting Moms Who Served Act of 2021." This important piece of legislation will require the Department of Veterans Affairs (VA) to implement the maternity care coordination program with community maternity care providers (i.e., non-VA maternity care providers) who have the necessary training to address the unique needs of pregnant and postpartum Veterans.

The AMA supports this legislation (PDF) and is glad to see that it will be enacted so that birthing veterans will have better access to maternity care coordination programs, which have been shown to increase the use of beneficial health services, improve maternal and birth outcomes, and decrease costs especially for women with chronic or pregnancy-related physical or mental health conditions or social vulnerabilities.

The AMA believes that all pregnant people should have access to reproductive health services, especially those who have served our country, and is glad to see that veteran mothers and their babies will be provided with the additional resources needed to help ensure that they thrive throughout pregnancy and for the rest of their lives

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