

Jan. 7, 2022: National Advocacy Update

New physician toolkit on No Surprises Act implementation

On Jan. 1, 2022, the No Surprises Act (NSA) took effect. Among many other reforms, the NSA protects patients from surprise medical billing in certain situations and creates a process for providers and health insurance companies to settle payment amounts.

To help physicians and physician advocates navigate these changes, the AMA has published an initial toolkit on implementation of the No Surprises Act (PDF). The AMA will be updating this document as additional guidance is available, as well as developing new resources on the remaining provisions of the NSA not included in this toolkit. The toolkit focuses on several operational changes physicians and other providers will need to adopt immediately to be compliant with the new requirements. These include changes when care is provided by out-of-network providers at in-network facilities; emergency services and post-stabilization care at hospitals or freestanding emergency departments; and good faith estimates for self-pay and uninsured patients.

The toolkit is available on the AMA's Implementation of the No Surprises Act page with other letters, comments and summaries. Also listen to an AMA podcast on ReachMD, "What to know about the No Surprises Act." The AMA will be posting more resources as they are developed and updating the toolkit as more guidance becomes available.

CDC recommends shortened isolation period for COVID-19-positive individuals

On Jan. 4, the Centers for Disease Control and Prevention (CDC) announced clarification for its recent isolation guidelines for individuals testing positive for COVID-19. New guidelines recommend that individuals testing positive for COVID-19 should isolate for a period of five days if, at the end of five days, individuals are asymptomatic or symptoms are resolving (no fever for at least 24 hours), followed by a period of five days of masking when around others. CDC has claimed this recommended change is based on evidence showing the majority of SARS-CoV-2 transmission takes place early in the course of illness.

The updated CDC guidance has received significant criticism from the scientific and medical communities, including the AMA (see AMA statement), over the lack of a requirement for a negative test result to exit quarantine. The AMA has called for a negative test to be required to end the shorter isolation time, given that evidence shows a significant number of individuals will still be infectious after a 5-day period, even if symptoms have resolved or are resolving. The updated CDC guidance for the general public follows on the heels of updated isolation guidance for health care workers, which also shortens the recommended isolation period for health care staff in order to help alleviate critical staffing shortages.

CMS agrees to not change Medicare organ acquisition payment policies

In the 2022 Inpatient Prospective Payment System (IPPS) final rule (PDF), in response to comments from the AMA and others, the Centers for Medicare & Medicaid Services (CMS) decided not to finalize proposed changes to longstanding Medicare organ acquisition payment policies that had the potential to significantly reduce the deceased donor organs available for transplantation, reduce access to transplantation and increase the number of patients who die while waiting for a transplant.

For example, CMS proposed to eliminate a longstanding feature of the payment system under which organs that are procured at a transplant center hospital and transplanted at another transplant center are “counted” as Medicare organs for the purpose of determining Medicare’s portion of organ acquisition costs. This feature of the cost accounting system functions as a strong incentive for transplant center hospitals to establish effective programs for the identification of potential deceased organ donors and engage in other organ acquisition-related activities. The incentive has worked: transplant centers constitute only 4% of Medicare-certified hospitals but retrieve 36% of deceased donor organs, and organ donation has been increasing over the last few years.

The AMA joined the American Society of Transplant Surgeons, the American College of Surgeons and other stakeholders in a letter (PDF) calling on CMS not to finalize its proposed changes and, instead, to conduct a comprehensive study of the potential impact of the proposals on patient access to transplantation and to work closely with stakeholders to conduct the study. The agency agreed with these comments and will perform a comprehensive analysis of the impact of this policy change if it is considered in future rulemaking.

CMS guidance on the omnibus COVID-19 health care staff

vaccination interim final rule

CMS released guidance on the Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule that was published on Nov. 5, 2021. The emergency regulation requires vaccinations (PDF) for eligible staff at health care facilities participating in the Medicare and Medicaid programs.

The staff vaccination requirement applies to the following Medicare and Medicaid-certified provider and supplier types: Ambulatory Surgery Centers, Community Mental Health Centers, Comprehensive Outpatient Rehabilitation Facilities, Critical Access Hospitals, End-Stage Renal Disease Facilities, Home Health Agencies, Home Infusion Therapy Suppliers, Hospices, Hospitals, Intermediate Care Facilities for Individuals with Intellectual Disabilities, Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services, Psychiatric Residential Treatment Facilities (PRTFs) Programs for All-Inclusive Care for the Elderly Organizations (PACE), Rural Health Clinics/Medicare Federally Qualified Health Centers, and Long Term Care facilities. The AMA has strong policy supporting vaccination requirements in health care settings. Currently, the implementation and enforcement of this regulation is enjoined in the following 25 states: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming. Facilities in these states are not required to comply with the rule, pending future developments in the litigation.

The rule currently applies to facilities participating in the Medicare and Medicaid programs in the remaining 25 states, the District of Columbia and the territories. Facilities covered by this regulation (but not in the enjoined states) must establish a policy ensuring all eligible staff have received the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine prior to providing any care, treatment or other services by Jan. 27, 2022, 30 days following the publication of the guidance. All eligible staff must have received the necessary shots to be fully vaccinated—either two doses of Pfizer or Moderna or one dose of Johnson & Johnson—by Feb. 28, 2022, 60 days following the publication of the guidance. Read FAQs.

CMS seeks physician feedback on draft cost measures

CMS is field-testing five cost measures for potential use in the Medicare Merit-based Incentive Payment System (MIPS) from Jan. 10 until Feb. 25. The five measures include emergency medicine, heart failure, low back pain, major depressive disorder and psychoses-related conditions. MIPS-eligible clinicians and groups with at least 20 episodes for at least one of the measures will receive a field test report with information about their cost performance based on a measurement period of Jan. 1 to Dec. 31, 2019. This information will be for field testing purposes only. Field test reports will be

available on the Quality Payment Program portal. More information, including the measure specifications and information about how to access the field test reports, will be available on the MACRA Feedback page once field testing begins. Field tests provide an opportunity for physicians to familiarize themselves with the measures and to provide feedback on the draft measures. Because physician feedback is critical to ensuring these measures are appropriate and field-testing overlaps with the current COVID-19 surge, the AMA will be seeking an extension of the Feb. 25 deadline.

USCIS releases guidance on expedited work permit renewals for non-citizen health care workers

On Dec. 28, U.S. Citizenship and Immigration Services (USCIS) released guidance on expedited employment authorization document (EAD) renewals for health care workers and other essential critical infrastructure workers. Expedited processing only applies to Form I-765 renewals that expire in 30 days or less or have already expired. Qualifying applicants should be prepared to provide evidence of their profession or current employment as a health care worker. Please see the guidance for a comprehensive list of health care workers that are considered essential critical infrastructure workers.

Updated 2022 specialty impact analysis and Medicare conversion factor

The AMA's updated specialty impact analysis factors in the Protecting Medicare & American Farmers from Sequester Cuts Act, which avoided a 4% statutory cut from the PAYGO provisions, extended the moratorium on the 2% Medicare payment sequester and mitigated the 3.75% Medicare physician payment cut. Note, the analysis is focused on the impact at the beginning of the year. Thank you to all of organized medicine for the advocacy efforts to avert these substantial cuts.

In addition, CMS has now released the new 2022 Physician Fee Schedule conversion factor (CF) of \$34.6062 and anesthesia CF of \$21.5623. The updated CFs were included in newly updated spreadsheets on cms.gov (the Physician Fee Schedule and the anesthesia CF).

More articles in this issue

- | Jan. 7, 2022: Advocacy Update spotlight on federal advocacy agenda for 2022
- | Jan. 7, 2022: State Advocacy Update
- | Jan. 7, 2022: Advocacy Update other news