

Jan. 21, 2022: National Advocacy Update

Renewal of Public Health Emergency

Effective Jan. 16, 2022, Secretary of Health and Human Services Xavier Becerra has renewed the determination that a nationwide Public Health Emergency (PHE) exists due to the COVID-19 pandemic. This renewal is effective for 90 days, so it would need to be renewed again in mid-April.

Security concerns must be addressed

The AMA, along with several national provider organizations, sent a letter to the heads of the Office of the National Coordinator for Health Information Technology (ONC) and the Centers for Medicare & Medicaid Services (CMS) requesting federal agencies review their policies around application programming interfaces (API). APIs allow electronic health record (EHR) systems and digital health applications (apps) to communicate and share patient records and other information. New federal regulations require that physicians open their EHRs up to allow patients to use any app of their choice to access their medical records.

While this can improve patient engagement, cybersecurity researchers have identified inconsistencies and vulnerabilities in the technology many app developers use in their products. Moreover, the federal government expressly prohibits physicians or EHR vendors from ensuring apps meet industry guidelines for good security practices—putting patients' medical information at risk. The letter requests that ONC and CMS update their guidance so that physicians or EHR vendors can use security assessment mechanisms to review apps and protect their patients' medical information.

Relatedly, the AMA launched a new resource (PDF) to assist app developers in building trusted apps that protect patients' data privacy. The AMA continues to encourage more federal oversight of apps and health technology to protect the nation's health care system.

UnitedHealthcare halts implementation of medical benefit copay accumulator program

UnitedHealthcare (UHC) recently announced that it will not implement a copay accumulator program for drugs covered under the medical benefit, following strong objections from the AMA, state medical associations and national medical specialty societies. This marks the second time that UHC has paused the proposed policy.

Under the original version of the program, which was scheduled for implementation in early 2021, physician practices would have been required to report any copay assistance received by a UHC patient for office-administered medications so that these funds would not be applied to a member's deductible or out-of-pocket maximum payment. UHC delayed the program following widespread criticism from physician and patient organizations.

Following a Nov. 2021 call on which AMA and Federation staff raised continued significant concerns with a modified program (under which specialty pharmacies would report copay assistance to the insurer), UHC has stated that it will not proceed with implementation of the copay accumulator program for medical benefit drugs that was scheduled to go into effect Jan. 1, 2022.

Administration withdraws proposed rule changing selection process for H-1B visas

On Dec. 22, 2021, the "Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions" rule was withdrawn. On Dec. 2, 2020, the AMA submitted comments (PDF) strongly opposing the Department of Homeland Security's (DHS) proposed rule.

This rule would have abruptly and unnecessarily changed the selection process for H-1B cap-subject petitions by prioritizing registrants based on the highest prevailing wage or highest proffered wage. In its comments, the AMA acknowledged that it is false to assume that higher-skilled workers are always paid a higher wage and that the conclusion made by DHS devalued physicians practicing in medically underserved areas.

The AMA strongly urged DHS to withdraw the proposed rule and as such, applauds the administration's current implementation of withdrawal.

Administration proposes new rules for Medicare Advantage plans

On Jan. 12, CMS issued a proposed rule that advances important policies to help hold Medicare Advantage (MA) plans more accountable, consistent with longstanding AMA advocacy. The deadline

for public comments on the proposals is March 7.

Up until now, plans were allowed to attest in their applications that they have adequate networks to provide their enrollees with sufficient access to covered services. CMS has not denied MA applications based on evaluations of the plan's network. For 2023, CMS proposes to require MA plans to meet network adequacy standards when they submit their applications, and the agency plans to strengthen its oversight of organizations' ability to provide an adequate network to deliver care to MA enrollees. To allow for the difficulty that some plans may experience lining up their entire network nearly a year before the beginning of the contract, CMS proposes to allow a 10-percentage-point credit but once the contract is operational, this credit would no longer apply and MA organizations would need to meet full network adequacy compliance.

The proposed rule also responds to an increase in the number of complaints that CMS has received from patient advocates and stakeholders about third-party marketing of MA and Part D plans, including print and television ads. To address these complaints, CMS proposes to provide more clarity about the responsibilities of MA and Part D plans for the activities of these third parties, require disclaimers in marketing by third parties and impose additional oversight requirements.

Another proposal modifies the way maximum out-of-pocket (MOOP) costs are calculated for patients who are enrolled in both Medicare and Medicaid. The change will count more of the funds that are spent on behalf of dual-eligible patients so that MA plans will be more likely to have to cover their costs above MOOP limits. This proposal is intended to lead to more equitable payment for practices that treat dual-eligible patients.

Finally, the proposed rule includes a request for information (RFI) on prior authorization (PA) for hospital transfers to post-acute care settings during a public health emergency. CMS notes that a large proportion of MA organizations opted to relax or waive their PA requirements for hospital transfers during the 2020 plan year due to the agency's guidance encouraging flexibility. However, many MA organizations reinstated previous PA requirements, which CMS says have reportedly contributed to "capacity issues and delays in hospital acute care settings." CMS is requesting feedback to aid in its assessment of the impact of MA organizations' PA patient transfer requirements on a hospital's ability to effectively manage resources and provide appropriate and timely care during a public health emergency. The AMA is pleased that CMS is looking into this issue and plans to respond to the RFI.

New report from National Clinical Care Commission advances diabetes prevention and treatment

The National Clinical Care Commission is urging a massive federal effort to prevent and treat diabetes in a new report to Congress and the Secretary of Health and Human Services. The report emphasizes that policymakers should not view diabetes as a medical issue alone and that they need to address social and environmental factors that make managing diabetes more challenging. For this reason, the commission's recommendations extend beyond health care to the need to improve the nutrition assistance programs overseen by the U.S. Department of Agriculture, expand housing opportunities in health-promoting environments and improve neighborhood walkability and access to green spaces. The report also focuses on the need to improve equity. The AMA presented testimony to the commission as it developed its report and commented on the draft report. As a result, many of the commission's recommendations are consistent with AMA policy and advocacy. The report recommends:

- Better coverage of screening tests for prediabetes
- Adoption of AMA-developed quality measures for diabetes prevention
- Covering in-person and virtual diabetes prevention services
- Making the Medicare Diabetes Prevention Program a permanent covered benefit
- Supporting use of metformin for preventing type 2 diabetes

The AMA welcomes the new report and looks forward to working with the administration and Congress to help get many of its recommendations implemented.

More articles in this issue

- Jan. 21, 2022: State Advocacy Update
- Jan. 21, 2022: Advocacy Update other news