



To: RFS Governing Council  
From: Hans Arora, MD, PhD  
Date: May 24, 2021  
Subject: Council on Legislation – Update to RFS – 2021 June Meeting

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The AMA Council on Legislation met virtually on Monday, February 22, 2021. The Council meeting preceded the National Advocacy Conference, which included an opportunity to meet with federal legislators to discuss four issues: maternal health and mortality, medical marijuana research, extending the moratorium on the Medicare sequester, and telehealth. Reports from the AMA Alliance, AMPAC, and Board of Trustees were presented to the Council.

#### Current Legislative Issues

- Maternal Health and Mortality
  - The AMA outlines several issues targeted towards reducing maternal mortality rate in the United States, which is the highest among developed countries, and addressing significant racial disparities in this area.
    - expand Medicaid and CHIP coverage to 12-months post-partum;
    - increase support for Maternal Mortality Review Committees;
    - implement equitable standardized data collection methods;
    - expand access to medical and mental health care and social services for post-partum women;
    - continue to develop a health care workforce that is diverse in background and experience;
    - address shortcomings in our institutions; and
    - adopt standards to ensure respectful, safe, and quality care before, during, and after delivery.
  - The AMA supports the “Mothers and Offspring Mortality and Morbidity Awareness (MOMMA’s) Act,” re-introduced by Rep. Robin Kelly (D-IL-2) and Senator Durbin (D-IL), which would improve data collection, disseminate information on effective interventions, and expand access to health care and social services for postpartum women. In addition, the bill would expand coverage for post-partum care for up to one year under Medicaid and CHIP, a top priority for the AMA.
- Medical Marijuana Research
  - Cannabis and its compounds, in particular CBD, have been found to have some therapeutic benefits. However, legal and regulatory barriers to cannabis and cannabinoid research have left physicians and patients without the evidence needed to understand the health effects of these products and make sound clinical decisions regarding their use.
  - The AMA supports the "Cannabidiol and Marijuana Research Expansion Act" to enable legitimate research evaluating the potential efficacy and safety of medicines derived from cannabis. This legislation would improve the process for conducting scientific and clinical research on cannabidiol (CBD) and marijuana and streamline the development of safe and effective cannabinoid-based drugs approved by the U.S. Food and Drug Administration (FDA).
- Extending the Moratorium on the Medicare Sequester
  - In light of the continued COVID-19 pandemic, additional financial relief is needed for physician practices.

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law in 2020 temporarily suspended this sequester between May 1, 2020 and December 31, 2020. Recognizing that the challenges associated with the pandemic show no signs of abating, Congress included provisions in the Consolidated Appropriations Act, 2021, signed into law last December, that further postponed the Medicare sequester until March 31, 2021. Yet, it was clear that the COVID-19 pandemic would extend well beyond the first quarter of this year and, absent additional Congressional intervention, these harmful payment cuts would have been restored on April 1, 2021.
- On March 25<sup>th</sup>, the Senate voted 90-2 to pass an agreement reached by Leaders Schumer and McConnell to extend the 2 percent Medicare sequester moratorium that expires on April 1. The bipartisan legislation, offered as an amendment by Senators Shaheen and Collins, would provide a nine-month extension of the moratorium, through December 31. It also contains some technical corrections related to rural health clinics and disproportionate share hospitals. The House of Representatives passed different legislation earlier that would both extend the moratorium through the end of the pandemic and eliminate an additional percent Medicare sequester scheduled to take effect on January 1, which was required by PayGo rules to offset part of the cost of passing the American Rescue Plan COVID-19/stimulus package. Consequently, the House will need to pass the Senate language when it returns from its Easter recess in mid-April. The House is expected to vote favorably, and the Centers for Medicare & Medicaid Services is expected to hold off on processing April claims until then to avoid making reduced payments. Physician and other stakeholder groups affected by the upcoming 4% sequester scheduled for January 1 expect legislation to be considered later in the year to waive those cuts.
- Telehealth
  - The critical role telehealth has played in health care to maintain physical distancing and reducing the spread of disease during the COVID-19 pandemic cannot be overstated. There has been no shortage of success stories from physicians and patients who see the expansion of telehealth as a positive step for health care delivery due to increased convenience, better provider/patient communication, greater provider/patient trust, and access to real-time information related to a patient's social determinants of health (i.e., a patient's physical living environment, economic stability, or food insecurity)—all of which can lead to better health outcomes and reduced care costs.
  - The AMA specifically asks that Congress work to remove geographic and site of service restrictions on audio-visual technologies. Additionally, the AMA is advocating for increased access to high speed broadband internet access to underserved communities in which patients cannot take advantage of telehealth services if they do not have the requisite internet connection to access them. Solving this requires enhanced funding for broadband internet infrastructure in rural areas and support for under-served urban communities and households to gain access to affordable internet access.

#### Advocacy Resource Center (ARC)

The Council received state-by-state updates on a variety of state-based issues. Further details can be found on the ARC website at: <https://www.ama-assn.org/advocacy/physician-advocacy/state-advocacy>. As always, the Council recommends that members refer to the ARC's website to see what the AMA is doing in your state, and encourages you to bring these issues to your colleagues to show them how the AMA is advocating on behalf of them and their patients at the local level. Specific legislative topics of interest at this meeting here:

- Telehealth, opioid epidemic, copay accumulator programs (see below for more details)

#### Draft Model Legislation

One of the explicit roles of the Council is to develop, review, and recommend model legislation for approval by the AMA Board of Trustees. This legislation can then be used by state and federal legislators in a manner consistent with AMA policy. Model legislation can be found here: <https://www.ama-assn.org/advocacy/physician-advocacy/ama-model-bills>

Model bills discussed by the Council included:

- Copay Accumulator Programs (policy D-110.986 I-20), a model bill developed by the All Copays Count Coalition (ACCC) was reviewed.

#### Additional Topics

- Drug Overdose Epidemic
  - The national outlook regarding the ongoing opioid epidemic continues to be bleak. While the COVID19 pandemic continues to wage at the forefront of our minds, the issue of opioid overuse and abuse continues to worsen. The AMA recently joined a coalition of 31 medical, academic, public health and advocacy organizations in support of a set of principles aimed at guiding state and local spending of potential opioid litigation settlement funds.
  - The report, Principles for the Use of Funds From the Opioid Litigation, provides five principles to help guide spending and policies supported by the settlement funds:
    - Spend money to save lives: Given the economic downturn, many states and localities will be tempted to use the dollars to fill holes in their budgets rather than expand needed programs. Jurisdictions should use the funds to add to rather than replace existing spending.
    - Use evidence to guide spending: At this point in the overdose epidemic, researchers and clinicians have built a substantial body of evidence demonstrating what works and what does not. States and localities should use this information to make funding decisions.
    - Invest in youth prevention: States and localities should support children, youth, and families by making long-term investments in effective programs and strategies for community change.
    - Focus on racial equity: States and localities should direct significant funds to communities affected by years of discriminatory policies that now experience substantial increases in overdoses.
    - Develop a fair and transparent process for deciding where to spend the funding: This process should be guided by public health leaders with the active engagement of people and families with lived experience, clinicians, as well as other key groups.
- Surprise Medical Billing
  - The Consolidated Appropriations Act of 2021 was signed into law on December 27, 2020 and is a comprehensive, \$1.4 trillion legislative package that includes COVID-19 related relief for physicians and provides funding for health care related government operations through the end of fiscal year 2021. Additionally, this new law includes the “No Surprises Act” (the Act) prohibiting surprise medical billing by out-of-network physicians and providers and establishing other patient protections related to out-of-network care. The law takes effect on January 1, 2022.
  - The Act will protect patients from surprise medical bills when they receive unanticipated out-of-network care in emergency and nonemergency settings. Specifically, the law applies to out-of-network providers and facilities delivering emergency care and out-of-network providers delivering nonemergency care at in-network facilities. The law also protects patients from surprise bills from out-of-network air ambulance services.
- Physician Self-Referral Law and Anti-Kickback Statute
  - The Council received a report related to the final Physician Self-Referral Law (Stark Law) and Anti-Kickback Statute (AKS) rules. Recent modifications accepted a number of the AMA’s recommended changes from the proposed rule, including:
    - New exception for limited remuneration to a physician which protects compensation not exceeding an aggregate of \$5,000 per calendar year (increased from \$3,500 as proposed), adjusted for inflation, to a physician for the provision of items and services without the need for a signed writing and compensation that is set in advance if certain conditions are met.

- New exception for cybersecurity technology and related services which protects arrangements involving the donation of certain cybersecurity technology and related services, including certain cybersecurity hardware donations. Note, that this is separate from the electronic health records exception clarification by CMS, which in the final rule expressly permits donations of cybersecurity software and services that protect electronic health records (EHR) under the EHR exception.
- Digital Health
  - In addition to federal legislation and regulation around telehealth, the Council received updates on various state-level legislation regarding telehealth restrictions and expansion.
  - Digital therapeutics are an emerging area of interest for the Council, and the AMA continues to monitor emerging legislation in this area
  - Augmented Intelligence (AI) continues to advance telehealth related legislation and regulation consistent with policy passed by the AMA House of Delegates. Furthermore, the AMA is working across stakeholder groups to develop a set of principles under which AI should be developed in order to earn physicians' trust, which is currently known as "Trustworthy AI in Medicine".
- Health equity continues to be an ongoing priority for the American Medical Association. Recent Council updates are supplanted by the announcement of the AMA's strategic plan to embed racial justice and advance health equity, which can be found here: <https://www.ama-assn.org/about/leadership/ama-s-strategic-plan-embed-racial-justice-and-advance-health-equity>