AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES (A-25)

Report of the Private Practice Physicians Section Reference Committee

Hillary Johnson-Jahangir, MD, Chair

Your Reference Committee recommends the following consent calendar for acceptance:

RECOMMENDED FOR ADOPTION AS AMENDED

1. Report B – Updates to the Private Practice Physician Section Internal Operating Procedures
2. Resolution 5 – Grace Period for Timely Filing Due to Change Healthcare Cyber Event
3. Resolution 6 – Minimum Payer Communication Quality Standards
4. Resolution 10 – Payment Recoupment—Let Sanity Prevail

RECOMMENDED FOR REFERRAL

5. Resolution 9 – Conflicts of Interest and Transparency at the PPPS—Let Members Decide

RECOMMENDED FOR NOT ADOPTION

6. Resolution 1 – Universal Out of Network Benefits
7. Resolution 2 – Reduction of AMA Dues
8. Resolution 3 – Root Cause Analysis of the Causes of the Decline of Private Medical Practice
9. Resolution 4 – AMA Advocacy Efforts Will Include Priority Items for Private Practice Physicians
10. Resolution 8 – EFT Fees, Virtual Credit Card Fees, and Administrative Burdens—Time to Act

RECOMMENDED FOR ADOPTION AS AMENDED

(1) REPORT B – UPDATE TO THE PRIVATE PRACTICE PHYSICIANS SECTION INTERNAL OPERATING PROCEDURES

RECOMMENDATION A:

Recommendation #3 in Report B be rejected.

3. Our Private Practice Physician Section should adopt proposal 3 to remove the one-year section membership requirement for service on the Governing Council.

RECOMMENDATION B:

Alternate recommendation #3 in Report B be adopted in lieu of recommendation #3 to read as follows:

3. Our Private Practice Physician Section should adopt as amended proposal 3 to ~~remove~~ adjust the one-year section membership requirement for service on the Governing Council.

   b. Eligibility. Section members shall be eligible for election or appointment to the Governing Council only after they have been members of the Section for at least one calendar year. Additionally, only Section members who have completed at least one term on the Governing Council shall be eligible for election or appointment to the positions of Chair-elect or Delegate. In the event that no member is available for election or appointment solely due to the one calendar year membership requirement, an election shall be held that is open to otherwise eligible members who have been members for less than one calendar year to fill the completion of the term of office. ~~These requirements shall not apply to the inaugural Governing Council as described in IV.G.~~

RECOMMENDATION C:

Report B be adopted as amended.

RESOLVED, that our American Medical Association conducts a member survey to reveal value-based payment models' impact on physicians and the quality and access to care for patients to help guide future AMA advocacy efforts (Directive to Take Action).

1. Our Private Practice Physician Section should not adopt proposal 1 to eliminate the position of Secretary on the Governing Council.

2. Our Private Practice Physician Section should adopt proposal 2 to change the practice size for the Member at-Large positions on the Governing Council

3. Our Private Practice Physician Section should adopt proposal 3 to remove the one-year section membership requirement for service on the Governing Council.

4. Our Private Practice Physician Section should not adopt proposal 4 to create a new, non-voting Associate Member of the Governing Council.

5. Our Private Practice Physician Section should adopt proposal 5 to change the timeline and procedures for appointing vacancies to the Governing Council.

6. Our Private Practice Physician Section should adopt proposal 6 to better articulate the deadlines and procedures for PPPPS resolutions.

7. Our Private Practice Physician Section should adopt proposal 7 to create a new standing Committee on Late Resolutions.

Your Reference Committee considered the recommendations of the Governing Council as well as posted comments and testimony in the PPPS Online Forum and found it agreed with the majority of the Governing Council's recommendations for updates to the Section's Internal Operating Procedures with one exception. The Committee appreciates the rationale for recommending the removal of the one-year membership requirement for serving on the Governing Council, however it was not persuaded that removing the requirement altogether is the most sensible option. The Committee instead recommends adding a clause to the existing language that would retain the one-year membership requirement but allow a process for temporarily waiving that requirement when necessary. Your Reference Committee thus recommends the GC Report B be adopted as amended.

(2) RESOLUTION 5 – GRACE PERIOD FOR TIMELY FILING DUE TO CHANGE HEALTHCARE CYBER-EVENT

RECOMMENDATION A:

The resolve in Resolution 5 be <u>amended by addition and deletion</u> to read as follows:

RESOLVED, that our American Medical Association advocate <u>for a two-year</u> ~~that payers provide a~~ grace period ~~equaling two years~~ <u>from the date of a</u> claims <u>processing failure, allowing payers</u> ~~created on 11/30/2023~~ to resolve claims before ~~they~~ deny<u>ing them</u> based on a "timely filing limit" (Directive to Take Action).

RECOMMENDATION B:

Resolution 5 be <u>adopted as amended with a change in title</u>:

Grace Period for Timely Filing Due to Technology Failures Regardless of Cause

RECOMMENDATION C:

Resolution 5 be <u>immediately forwarded for consideration at the 2025 Annual Meeting of the AMA House of Delegates.</u>

RESOLVED, that our American Medical Association advocate that payers provide a grace period equaling two years from claims created on 11/30/2023 to resolve claims before they deny based on a "timely filing limit" (Directive to Take Action).

Your Reference Committee found itself in support of Resolution 5 and agreeing with the need for a longer period of filing time for claims following an event like the 2023 data breach experienced by Change Healthcare. The Committee considered feedback from the AMA Office of the General Counsel that while the original language was legally unobjectionable, tying the resolution directly to Change Healthcare could unnecessarily limit the resolution's aims. The Committee thus proposed decoupling the resolve clause from any specific event and broadening its scope, an amendment that the author agreed to. Your Reference Committee thus recommends Resolution 5 be adopted as amended and immediately advanced to the House of Delegates for the 2025 Annual Meeting.

(3) RESOLUTION 6 – MINIMUM PAYER COMMUNICATION QUALITY STANDARDS

RECOMMENDATION A:

The first resolve be <u>amended by addition and deletion</u> to read as follows:

RESOLVED, that our American Medical Association advocate for payer minimum quality standards to include <u>immediate</u> access to a live representative during business hours (Directive to Take Action)<u>.</u>~~; and be it further~~

RECOMMENDATION B:

The second resolve be <u>deleted</u>:

~~RESOLVED, that our AMA explore reasonable methods of compliance enforcement, including the possible deployment of automatic penalties for violations (Directive to Take Action).~~

RECOMMENDATION C:

Resolution 6 be <u>adopted as amended.</u>

RECOMMENDATION D:

Resolution 6 be <u>immediately forwarded for consideration at the 2025 Annual Meeting of the AMA House of Delegates.</u>

RESOLVED, that our American Medical Association advocate for payer minimum quality standards to include access to a live representative during business hours (Directive to Take Action); and be it further

RESOLVED, that our AMA explore reasonable methods of compliance enforcement, including the possible deployment of automatic penalties for violations (Directive to Take Action).

Your Reference Committee heard feedback from the AMA Office of the General Counsel that while Resolution 6 was not legally objectionable, the Office did note that the directive to explore compliance methods may not be actionable given that the AMA itself does not control compliance or enforcement mechanisms such as the kind described in the resolution. The Committee also found itself in unified agreement about the need for live representatives when working with payers, however the Committee believed the resolution could go further in advocating for better conditions. As such, the Committee proposes adding additional language to the first resolve and striking the second. The Committee thus recommends that Resolution 6 be adopted as amended and immediately forwarded to the House of Delegates for consideration at the 2025 Annual Meeting.

(4) RESOLUTION 10 – PAYMENT RECOUPMENT—LET SANITY PREVAIL

RECOMMENDATION A:

The second resolve be <u>amended by addition and deletion</u> to read as follows:

RESOLVED, that our AMA for legislation and regulation, compliant with the Supreme Court holding in *Rutledge v. PCMA,* that if the reason for claim recovery or recoupment is not due to ~~provider~~ <u>physician</u> error, the health plan may not seek recovery from the ~~provider~~ <u>physician</u> and that health plans must seek ~~recovery or recoupment~~ <u>resolution</u> ~~directly~~ from the patient on whose behalf the insurance company paid the claim and who has a contract with the insurance company or the third party responsible for the payment involved in claim recovery or recoupment (Directive to Take Action); and be it further

RECOMMENDATION B:

The third resolve be amended by addition and deletion to read as follows:

RESOLVED, that our AMA advocates for legislation and regulations that are compliant with the Supreme Court holding in *Rutledge v. PCMA* that whenever a health plan seeks recoupment or payment recovery for overpayment or wrong payment from a ~~provider~~ physician, a detailed and comprehensive explanation for the payment recoupment/recovery must be provided ~~sufficient to perform a forensic accounting evaluation of the recoupment action; failure to provide a detailed explanation with reference to plan benefit design, applicable law, source of error, and the reason for recovery that provides sufficient detail to allow healthcare providers to independently evaluate the factual legitimacy of the recoupment action shall invalidate the recoupment request~~ (Directive to Take Action); and be it further

RECOMMENDATION C:

The fourth resolve be amended by deletion to read as follows:

RESOLVED, that our AMA report back at the 2026 Annual Meeting ~~and annually after that until the goal of this resolution is fully achieved~~ on the progress of the implementation of this resolution (Directive to Take Action).

RECOMMENDATION D:

Resolution 10 be adopted as amended.

RECOMMENDATION E:

Resolution 10 be immediately forwarded for consideration at the 2025 Annual Meeting of the AMA House of Delegates.

RESOLVED, that our American Medical Association advocates for legislation and regulations compliant with the Supreme Court holding in *Rutledge v. PCMA,* that stipulate that if payment recovery or recoupment is due to coordination of benefit failure, the payer seeks recovery from the patient and/or the correct insurance company or primary payer responsible for the claim (Directive to Take Action); and be it further

RESOLVED, that our AMA advocates for legislation and regulation, compliant with the Supreme Court holding in *Rutledge v. PCMA,* that if the reason for claim recovery or recoupment is not due to provider error, the health plan may not seek recovery from the provider and that health plans must seek recovery or recoupment directly from the patient on whose behalf the insurance company paid the claim and who has a contract with the

insurance company or the third party responsible for the payment involved in claim recovery or recoupment (Directive to Take Action); and be it further

RESOLVED, that our AMA advocates for legislation and regulations that are compliant with the Supreme Court holding in *Rutledge v. PCMA* that whenever a health plan seeks recoupment or payment recovery for overpayment or wrong payment from a provider, a detailed and comprehensive explanation for the payment recoupment/recovery must be provided sufficient to perform a forensic accounting evaluation of the recoupment action; failure to provide a detailed explanation with reference to plan benefit design, applicable law, source of error, and the reason for recovery that provides sufficient detail to allow healthcare providers to independently evaluate the factual legitimacy of the recoupment action shall invalidate the recoupment request (Directive to Take Action); and be it further

RESOLVED, that our AMA report back at the 2026 Annual Meeting and annually after that until the goal of the resolution is fully achieved on the progress of the implementation of this resolution (Directive to Take Action).

Your Reference Committee carefully considered Resolution 10 and found that while it generally was sympathetic to the resolutions aims, it would have liked to have seen more evidence of the problem and the need for a large-scale solution. The Committee found itself unsure about how pervasive the problem of recoupment is for independent physicians, though it ultimately agreed with Resolution 10's central premise—that physicians should be removed from the chain of responsibility for settling financial complaints when those complaints are unrelated to the physician or their office. Given the general agreement with the resolution's aims, the Committee agreed it was worthy of consideration, though felt that simplifying some of the "asks" would improve the likelihood of acceptance at the HOD as well as create a stronger foundation for longer-term solutions.

As stated in other areas of this report, specifically under Item 10 on page 15 of this report, the Committee heard testimony from the AMA's Advocacy Resource Center (ARC) about the utility of requiring annual reports for individual resolutions and was persuaded by ARC's position that in addition to already existing annual reports that detail updates for AMA policy, requiring additional annual reports to continue possibly in perpetuity is an exceedingly costly ask, both in terms of financial resources and in terms of the time needed for review by the Board of Trustees. As such, the Committee supports limiting a report back to once occurrence, one year after implementation.

The Committee also opted to slightly amend some language, particularly in changing occurrences of the word "provider" to "physician" to reflect the AMA's style preference. The Committee also amended language directing responsibility for recoupment falling onto patients as a situation to be resolved, rather than recouped. The Committee's reasoning here is to reflect that, in general, physicians should be wary of appearing to shift burdens onto patients directly. The Committee believed amending the language to seek "resolution" permitted both monetary and non-monetary solutions, was still in keeping with the author's intent, and appeared sensitive to patients' needs. The Committee also believes that reversing the order of the second and third resolve clauses could improve readability, though it acknowledges that the clauses both stand independent of each other. The Committee trusts the Section to adopt this recommendation as it sees fit.

With these considerations, your Reference Committee recommends that Resolution 10 be adopted and immediately advanced to the House of Delegates for consideration at the 2025 Annual Meeting.

RECOMMENDED FOR REFERRAL

(5) RESOLUTION 9 – CONFLICTS OF INTEREST AND TRANSPARENCY AT THE PPPS—LET MEMBERS DECIDE

RECOMMENDATION:

Resolution 9 be referred.

RESOLVED, that our Private Practice Physicians Section (PPPS) will amend its internal operating procedures to adopt requirements that PPPS members who are eligible to vote and to serve on the Governing Council disclose:

1. Whether they are employed in or own/co-own a private practice from which they derive the majority of their income or personally generate fewer than or equal to 3,000 or more than 3,000 wRVU per year;
2. Disclose (co-) ownership of the practice or management company (management service organization or equivalent) by non-physician entity(ies) or whether the practice or management company is a subsidiary of another entity or entities;
3. Disclose the number of physicians and non-physician healthcare providers (nurse practitioners, physician assistants, etc.) the practice employs;

(Directive to Take Action); and be it further

RESOLVED, that our PPPS amend its internal operating procedures to adopt requirements that the Chair of the PPPS Governing Council or an appointed designee must inform the full voting-eligible membership of the PPPS by email or another electronic method about self-reported as well as any perceived or actual conflicts of interest on the governing council that may result from the election or re-election of the candidates nominated for election 1) at least 10 days before the Business Meeting; 2) prior to the start of every business session as to inform members; and 3) prior to every election session, including floor nominations (Directive to Take Action); and be it futher

RESOLVED, that the nominees and present members of the PPPS Governing Council who are eligible to vote and serve on the Governing Council disclose:

1. Any perceived conflicts of interest to other members of the Governing Council, including any familial relations up to second degree relative (grandparent, second cousin, aunt, uncle, niece, nephew, etc.) whether by blood, marriage, or adoption;
2. Any perceived conflict of interest to other members of the Governing Council, including any association with organizations in common with other members from which income is derived, whether as employee, owner, or investor, except for publicly traded non-healthcare companies or contractors that may share owners or management;

(Directive to Take Action); and be it further

RESOLVED, that our American Medical Association amend the criteria for all AMA elective offices, including Board of Directors, to require disclosure of information relevant to members' understanding of potential conflicts of interest:

1. Whether they are employed in an organization that is hospital-owned, government-run, insurance-owned, non-physician investor-owned, or whether they own/co-own a private practice from which they derive the majority of their income;
2. Whether they personally generate fewer than or equal to 3,000 or more than 3,000 wRVU per year, excluding billing for supervision of residents, physician assistants, nurse practitioners, etc. Optionally, they may also report total wRVUs as well during supervision of residents, physician assistants, nurse practitioners, etc.;
3. Disclose (co-) ownership of the practice or management company (management service organization or equivalent) by non-physician entity(ies) or whether the practice or management company is a subsidiary of another entity or entities;
4. Disclose the number of physicians and non-physician healthcare providers (nurse practitioners, physician assistants, etc.) the practice employs;

(Directive to Take Action).

To better understand the implications of Resolution 9, your Reference Committee reached out for guidance from the Office of the General Counsel (OGC) as well as the Council on Constitution & Bylaws (CCB) to better understand the procedures and processes surrounding changes to internal operating procedures (IOPs) and general section and AMA bylaws. The Committee's primary concern was that it did not wish to make recommendations that counter established procedures for the AMA. The Committee was relieved to learn that neither the Office of the General Council nor CCB had an objection to the first three resolves, provided that they remained under the purview of the PPPS and were not advanced to the House of Delegates.

The Committee heard testimony from OGC that the fourth resolve, while not legally objectionable, was inappropriate in the current format, which is to say as a clause in a resolution. According to the OGC, and confirmed by CCB, the appropriate method for requesting consideration of these changes at the level of AMA leadership and including the Board of Trustees is for such changes to formally requested by a section governing council or a section subcommittee. The Committee concluded that the proper method for this is to refer the clause to the Governing Council for report and to be re-considered by the Section as a whole.

The Committee also considered that the first three resolves of Resolution 9 contain changes that are almost exactly identical to proposals offered by PPPS members related to the Section's ongoing discussion about larger changes to the PPPS IOPs. While the Committee understood the wisdom in submitting changes in both venues, it believed that referring these proposals back to the Governing Council to be heard as part of the larger debate on overall PPPS IOPs was the most parsimonious method for fully considering them and not risking duplication or limiting that debate. The Committee also agreed that the specific details outlined in Resolution 9 deserve consideration by the Section as a whole and in the proper context of other proposed changes to the PPPS IOPs.

Your Reference Committee thus recommends that Resolution 9 be referred to the PPPS Governing Council for inclusion in its planned section-wide discussion on updating PPPS IOPs, scheduled to occur alongside the other business functions of the 2025 PPPS Annual Meeting.

RECOMMENDED FOR NOT ADOPTION

(6) RESOLUTION 1 – UNIVERSAL OUT OF NETWORK BENEFITS

RECOMMENDATION:

Resolution 1 be <u>not adopted.</u>

RESOLVED, that our American Medical Association will advocate for a federal law that requires all private insurers that operate in the United States to only offer health insurance plans with out-of-network benefits (Directive to Take Action).

Your Reference Committee considered that the aims of Resolution 1 may not be achievable. While the Committee agreed in spirit that far too many patients experience barriers to care because of limitations on out-of-network benefits, the Committee struggled to reconcile requiring those benefits of all private health plans with the very real need for legitimate cost containment. The Committee also considered that the AMA currently has well-established policy regarding principles for out-of-network care, both planned and unanticipated, potentially setting up Resolution 1 for reaffirmation, rather than new action.

Your Reference Committee thus recommends that Resolution 1 be not adopted, however the Committee would encourage the author to reconsider the resolution as a call for a study to measure the impact of creating a universal out-of-network mandate as a potential reasonable next step.

(7) RESOLUTION 2 – REDUCTION OF AMA DUES

RECOMMENDATION:

Resolution 2 be <u>not adopted.</u>

RESOLVED, that our American Medical Association will reduce its annual dues to $15 for all medical students and physicians, both MDs and DOs (Directive to Take Action).

Your Reference Committee closely considered the aims of Resolution 2 relative to the likely effects of it to the AMA as an organization. The Reference Committee requested a detailed fiscal note be attached to aide in its deliberations. The assessment of AMA's Analytics and Operations team that Resolution 2 would generate a revenue loss of approximately $29 million for the organization weighed strongly in the Committee's evaluation.

While the Committee sympathized with the author's goal of making AMA membership more accessible, it also considered that dues are a component of revenue needed for an entity like the AMA to continue operating. The Committee would have liked to have seen a more detailed analysis of why the proposed reduction would be set at $15 and how

such a reduction would help the AMA to achieve its goals while maintaining its financial obligations. While enriching the AMA's membership body is a worthy goal, the Committee was not convinced that reduction of dues would achieve that enrichment, given the wide array of specialties and practices that make up AMA membership.

Your Reference Committee thus recommends that Resolution 2 be not adopted, however the Committee would likely support future endeavors to explore methods and rationales for lowering membership dues.

(8) RESOLUTION 3 – ROOT CAUSE ANALYSIS OF THE CAUSES OF THE DECLINE OF PRIVATE MEDICAL PRACTICE

RECOMMENDATION:

Resolution 3 be <u>not adopted.</u>

RESOLVED, that our American Medical Association will conduct a root cause analysis of the decline of private medical practice that will include consideration of at least the following factors:
1) The declining inflation-adjusted Medicare rates
2) Stark laws, which allow hospitals, but not private physicians, to self-refer
3) The development of insurance plans that had no out-of-network benefits
4) The permitted consolidation of insurers and hospitals
5) Hospital-insurer collusion to set minimal in-network fees for hospital physicians in return for high hospital technical fees (which would be partly kicked back to physicians for their salaries)
6) Increased government influence by insurers and hospitals and decreased influence by doctors
(Directive to Take Action).

Your Reference Committee found Resolution 3 thought-provoking. It considered that each of the components of the resolution were reasonable asks, though not necessarily equally attainable or equally pressing. It also considered that many of the asks are topics that the AMA is currently engaged in to some extent; reports on the impact of Stark Laws are currently underway from a previous PPPS resolution; consolidation remains a key are of interest for the AMA, including direct involvement in real world cases such as CVS's acquisition of Aetna. The Committee also considered that some specialties within the AMA may be less eager than others to see attention drawn to particular topics. The question the Committee found itself wrestling with is what else can the AMA, with its current mission and resources, devote study to aside from the work it is currently engaged in? The Committee ultimately concluded that without a comprehensive understanding of the current state of AMA study into these areas, it is potentially problematic to ask for more.

Your Reference Committee thus recommends that Resolution 3 be not adopted, however it would like to see the PPPS Governing Council create programming at a future PPPS meeting to illustrate what progress is being made into the issues raised by

Resolution 3. The Committee considered closely that while it is certain the AMA is doing this work, the fact that it is not readily apparent what is being done points to a need for the AMA to perhaps better explain its initiatives to the membership directly.

(9) RESOLUTION 4 – AMA ADVOCACY EFFORTS WILL INCLUDE PRIORITY ITEMS FOR PRIVATE PRACTICE PHYSICIANS

RECOMMENDATION:

Resolution 4 be <u>not adopted.</u>

RESOLVED, that our American Medical Association's advocacy efforts will consider including priority items for private practice physicians (Directive to Take Action).

Your Reference Committee heard testimony supporting the idea of Resolution 4, however noting that the ask of inclusion of priority items of interest to the section in the AMA's larger advocacy goals is something that any section would be equally desirous of. As such, it is incumbent upon each section to make the case for its priorities amidst all the competing requests from all areas of the AMA. Testimony also reflected that the PPPS has gotten strong support from the AMA Board of Trustees and other AMA leadership, with many of those key figures coming from private practice.

The Committee also considered that the PPPS is currently engaged in several initiatives that have strong institutional support, such as the Private Practice Bootcamp from I-24 and the upcoming collaboration with the Practice Sustainability and Physician Satisfaction (PS2) Private Practice Incubator, which launches this year. These initiatives are particularly encouraging given the section is only just about to celebrate its five year anniversary.

Given these developments, your Reference Committee recommends that Resolution 4 be not adopted without a more specific ask of the House of Delegates for direct action that it could take.

(10) RESOLUTION 8 – EFT FEES, VIRTUAL CREDIT CARD FEES, AND ADMINISTRATIVE BURDENS—TIME TO ACT

RECOMMENDATION:

Resolution 8 be <u>not adopted.</u>

RESOLVED, that our American Medical Association report at the 2026 Annual Meeting and annually thereafter on the progress of implementation of policies D-190.968, "Amend Virtual Credit Card and Electronic Funds Transfer Fee Policy" and D-190.970, "CMS

Administrative Requirements" until the goals of these policies are fully achieved (Directive to Take Action).

Your Reference Committee considered that in plain language, Resolution 8 is asking for a report on the status and activities surrounding two existing AMA policies with repeated reports conducted annually every year thereafter. As such, the Committee struggled with how to reconcile the issues at play, namely the concerns about unpaid payment processes and the need for relief from them for practices being harmed, with the stated ask of repeated reporting on existing policy. The Committee consulted the AMA's Advocacy Resource Center (ARC), the area of the AMA tasked with implementing these policies, and learned that annual reports are already routinely generated and presented to the Board of Trustees as well as other AMA bodies. While the Committee found itself sympathetic to the implied reality that the information in these reports may not be effectively communicated to the larger AMA membership, it struggled to see the utility in asking for a series of reports that are already being produced, albeit in a slightly different form than asked for by Resolution 8. The Committee also received feedback from the ARC that creating separate, annual reports would likely incur a significant cost as well as an additional drain on the limited time of the Board of Trustees. Your Reference Committee thus recommends that Resolution 8 be not adopted.

Doctor Chair, this concludes the report of the Private Practice Physicians Section Reference Committee. I would like to thank Dr. Carl Knopke and Dr. Avani Patel, as well as all those who testified before the Committee.

Hillary Johnson-Jahangir, MD, PhD, MS
Chair, PPPS Reference Committee

Carl Knopke, MD

Avani Patel, MD