2020 EDPMA Advocacy Successes

It's been a busy year, with EDPMA sending over 80 advocacy letters and alerts and holding 3 sets of leadership lobby days. Fortunately, decision makers have responded favorably to many of our requests:

COVID-19 PROVIDER RELIEF

1. In addition to hospitals, **independent physician groups are eligible** for COVID-19 provider relief as EDPMA requested.
2. Initial tranche of provider relief was **distributed quickly** based on a simple **formula based on 2019 Medicare revenue** as EDPMA requested.
3. Second tranche (based on 2% of 2018 revenues) provided **additional funds and transparency** as EDPMA requested.
4. Third tranche (88% of reported losses over 6 months) breaks the previous 2% cap on relief and provides **more relief to providers, like emergency physicians, who have more losses and expenses** as EDPMA requested.
5. Allows providers to calculate losses by comparing 2020 actual revenue to budgeted revenue.
6. COVID balance billing ban was limited as EDPMA requested. HHS originally appeared to ban balance billing for actual and "possible" COVID-19 cases (all cases). After EDPMA wrote HHS, HHS changed the language to **actual and "presumptive" COVID-19 cases**. Further, HHS guidance clarified that *"Not every possible case of COVID-19 is a presumptive case."*
7. HHS clarified circumstances **when balance billing for COVID care is appropriate** as requested by EDPMA. HHS issued an updated FAQ stating that *"if the health insurer is not willing to [reimburse out-of-network providers], **the out-of-network provider may seek to collect from the patient out-of-pocket expenses, including deductibles, copayments, or balance billing**, in an amount that is no greater than what the patient would have otherwise been required to pay … an in-network provider."*
8. HRSA guidance allows **acceptable diagnosis in any position** as EDPMA requested.
9. HRSA clarified in writing that claims can be paid **even when test results were unavailable or came back negative** assuming all other requirements are met as EDPMA requested.
10. Commercial insurers not only cover COVID-19 testing (including professional services), as required by law, but also **cover related diagnostic services**, per CMS guidance, without cost-sharing as EDPMA requested.
11. **Blanket 1135 EMTALA waiver** was approved as EDPMA requested.
12. Small Business Administration clarified that **independent contractor physicians are eligible for PPP** as EDPMA requested.

MEDICARE SUCCESSES

1. In response to EDPMA's call for relief from the 6 Medicare cut in the 2021 fee schedule, plus sequestration (for a total 8% cut to EM), Congress:
    - **Increased Medicare reimbursement ceiling by 3.75%**.
    - **Delayed implementation of an add-on code for office-based care** for 3 years significantly reducing the Medicare cuts to EM over next 3 years,
    - **Delayed 2% Medicare sequester for 3 months**.

2. In response to EDPMA's letters, **CMS increased ED E/M reimbursement to maintain historic relativity with office-based care**
3. **GPCI 1.0 Work Floor extended** (through 1/1/24) as requested by EDPMA.
4. As requested by EDPMA, CMS finalized coverage and payment for **Initiation of Medication Assisted Treatment (MAT)** in the ED in 2021.
5. **Interest rate lowered (from 10.25% to 4%) and repayment period extended (another 6 months) for Medicare loans** made during COVID as EDPMA requested.
6. **Emergency department services were added to the list of Medicare telehealth** approved services during the pandemic as EDPMA requested. Further, CMS finalized a 2021 fee schedule where all five levels of ED E/M services can be furnished via telehealth through the end of 2021 as EDPMA requested. As recommended by EDPMA, these flexibilities were also extended to critical care and observation services.
7. **HHS clarified that during the PHE clinicians who provide telehealth from home** are reimbursed as EDPMA requested.
8. **Telehealth virtual check-in services expanded to new patients** as EDPMA requested.
9. **Some freestanding emergency departments** are eligible for Medicare reimbursement during the pandemic as EDPMA requested.
10. **2019 MIPS reporting deadline was delayed** as EDPMA requested and CMS created exemptions for extreme and uncontrollable circumstances for both 2020 and 2021 reporting.

FEDERAL SURPRISE BILLING SUCCESSES

1. Takes **patients out of the middle** of billing disputes as EDPMA requested.
2. Includes **Independent Dispute Resolution (IDR)** as EDPMA requested**.**
3. **Removal of monetary threshold for IDR** as EDPMA requested ($750 threshold would have excluded 95% of emergency claims)**.**
4. **Prohibits mediator from considering public reimbursement rates** such as Medicare and Medicaid as EDPMA requested**.**
5. Requires mediator to consider most relevant factors offered by parties, including **prior contracted rates** (over the last 4 years).
6. **Median in-network rate** is tied to the past, and increased by inflation, to avoid recent manipulation as EDPMA requested**.**
7. **Batching** allowed to improve efficiencies as EDPMA requested.
8. Requires the insurer to either deny or pay the claim in 30 days.

DOWNCODING SUCCESSES

1. **UHC delayed implementation of its April 1, 2020 policy** that would have violated the Prudent Layperson Standard after EDPMA asked UHC not to implement it and filed complaints with 50 state insurance commissioners.
2. **Illinicare (Centene) decreased down coding** after EDPMA met with them and raised concerns with state regulators.

STATE SUCCESSES

1. **Texas** confirmed that the OON arbitration portal supports multiple claim submissions as EDPMA and the Texas provider coalition requested. The Texas Department of Insurance released a report affirming the effectiveness of the arbitration portal and process.
2. **Texas** delayed its tax on medical billing as requested by EDPMA and others in the Texas provider coalition. The legislature will now have an opportunity to weigh in on the issue in 2021.

3. **Virginia** did not pass problematic surprise billing legislation based on Medicare rates and, instead, adopted legislation requiring OON reimbursement at the commercially reasonable rate with arbitration as EDPMA and others in the Virginia provider coalition requested.
4. **Maine** OON legislation references reimbursement rates from an “independent” database when data in the state database is insufficient, as requested by EDPMA and the Maine provider coalition.
5. **Connecticut** rescinded its executive order that would have blocked the effect of the model CT OON law during the pandemic as requested by EDPMA and the Connecticut provider coalition.
6. **Louisiana** did not pass problematic OON legislation in 2020.
7. **Massachusetts** House and Senate made changes EDPMA requested (using an unbiased database and adding an option based on the in-network rate to the standard based on Medicare).
8. **Georgia** State regulators are leaning towards selecting FAIRHealth as the reference database for their new OON law as EDPMA requested.