Emergency Department EDPMA Practice Management Association

April 23, 2020

The Honorable Alex M. Azar II
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

RE: **Terms & Conditions of Provider Relief Fund**

Dear Secretary Azar:

The Emergency Department Practice Management Association (EDPMA) represents independent emergency physician groups and their practice partners. Our members serve approximately half of all visits to emergency departments in the nation.

We are writing regarding several issues related to the CARES Act Provider Relief Fund disbursements and related terms and conditions. We believe there are several areas in which it is critical that the Department of Health and Human Services (HHS) issue guidance as soon as possible and long before May 8th when providers must attest to those terms and conditions. In addition, there are several areas in which we provide recommendations to ensure a result that is in the public interest.

We look forward to working with you to ensure that the nation's healthcare safety net – the network of emergency departments across the nation – stays intact. Emergency physicians are only 4% of physicians in the nation, yet they provide over two-thirds of all uninsured care and over half of the care covered by Medicaid and CHIP. And they are risking their lives on the frontlines fighting the COVID-19 pandemic. It is imperative that we work together to ensure that Americans continue to have timely access to an emergency department and have confidence in our healthcare system and can safely seek care – for COVID-19 infections and otherwise – without unnecessary delays.

1) Request for Clarification on the Scope of Patients & Diagnoses

Until at least Friday, April 17, 2020, the *Terms & Conditions pdf* on the HHS website stated:

> The Secretary has concluded that the COVID-19 public health emergency has caused many healthcare providers to have capacity constraints. As a result, patients that would ordinarily be able to choose to receive all care from in-network healthcare providers may no longer be able to receive such care in-network. Accordingly, for all care for a **possible** or actual case of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would

> have otherwise been required to pay if the care had been provided by an in-network Recipient. (emphasis added)

The *HHS Provider Relief Fund website* was updated to state (and as of April 18, 2020 at 3:00 pm continues to state):

> If you ceased operation as a result of the COVID-19 pandemic, you are still eligible to receive funds so long as you provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. Care does not have to be specific to treating COVID-19. **HHS broadly views every patient as a possible case of COVID-19**. (emphasis added)

However, on Monday, April 20, 2020, the *Terms & Conditions pdf* linked to on the HHS website was replaced with a new version, which changed the previous Terms & Conditions language related to balance billing to state:

> The Secretary has concluded that the COVID-19 public health emergency has caused many healthcare providers to have capacity constraints. As a result, patients that would ordinarily be able to choose to receive all care from in-network healthcare providers may no longer be able to receive such care in-network. Accordingly, for all care for a **presumptive** or actual case of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient. (emphasis added)

We seek clarification from the Agency and ask it to provide clear and specific guidance on HHS' interpretation of a "presumptive case of COVID-19" to inform the applicability of this provision. We assume from the HHS website language that if HHS "broadly views every patient as a possible case of COVID-19," and elsewhere subsequently changed the word "possible" to "presumptive" that the Agency intends for "presumptive" to be of a more narrow scope than "possible." ***EDPMA urges HHS to clarify whether this is true and to provide additional guidance on what its interpretation of a "presumptive . . . case of COVID-19" so that practices will know how to administer the ban on balance billing***.

Finally, even if the scope of the patients and diagnoses to which the provision applies were clarified, the timeframe during which the provision applies is not available. It is unclear if this is only for the duration of the PHE, for the duration of existence of the funds prior to use by the Recipient, or some other timeline. If a provider accepts the funding, they want to fully understand what time period the ban on balance billing applies. Therefore, ***EDPMA requests that HHS provide clear guidance on the timeline or duration of the activities and restrictions described in the Terms & Conditions pdf***. We strongly urge you to clarify that the time period does not reach beyond the end of the PHE.

2) Request for Protections to Ensure Commercial Insurers Reimbursement Rates are Sustainable and Commercially Reasonable

As stated, as of April 20, 2020, the relevant passage of the *Terms and Conditions pdf* states:

> The Secretary has concluded that the COVID-19 public health emergency has caused many healthcare providers to have capacity constraints. As a result, patients that would ordinarily be able to choose to receive all care from in-network healthcare providers may no longer be able to receive such care in-network. Accordingly, for all care for a presumptive or actual case of COVID-19, Recipient certifies that it **will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient**.

We understand that during the PHE that it is in the best interest of the patient that they should not be caught in the middle of insurers and providers when it comes cost of care associated with COVID-19. However, beyond the most recent language in the *Terms & Conditions pdf*, it is unclear what the Agency expects in the interaction between the patient's insurer and the provider. When reading the *Terms & Conditions pdf* with the interagency guidance from April 11, 2020,[1] which provides an overview on the protection from both the CARES Act and the *Families First Coronavirus Act*, there is even greater confusion about what the Agency actually intends in the *Terms & Conditions pdf*. We believe that the Agency should issue guidance that makes clear the following provisions:

- **Take the patient out of the middle.** We support changes to ensure that patients receive COVID-19 diagnosis and treatment without any cost-sharing. In providing these critical patient protections, the insurer should promptly pay the allowed amounts (including the patient's usual cost-sharing amount, either as required by law or as exercised by the insurer) directly to the provider.
- **Ensure sustainable and commercially reasonable allowable rates.** We believe that the Agency should direct insurers to pay providers in a timely fashion and that the allowed amount should reflect sustainable and commercially reasonable rates.
- **Allow for dispute resolution- with no monetary threshold and allow similar claims to be batched– to ensure the allowed amount is both sustainable and commercially reasonable.**
- We believe that the allowed amount that insurers pay the providers should include any patient cost-sharing amounts that have been waived during the PHE, either as required by law or as exercised by the insurer.

Without these protections, the commercial insurer would be able to reimburse emergency providers at whatever rate they choose – even at unsustainable and unreasonable rates - because there are few network adequacy requirements that require emergency providers be included in a network and the Emergency Medicine Treatment and Labor Act (EMTALA) decimates the

[1] Department of Labor, Department of Health and Human Services, Department of Treasury, *FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 42, https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf* (April 11, 2020).

emergency physicians ability to negotiate a fair in-network rate. Therefore, a plan's "in-network rate" can be unsustainable, unreasonable, and rejected by the vast majority of emergency physicians in the area. Unsustainable or unreasonable rates would lead to fewer emergency physicians on the emergency department floor, longer wait times for care, and would make it very difficult for our nation to succeed in the fight against the pandemic. This is especially true because the healthcare safety net – our emergency departments - depends on reasonable commercial reimbursement. Even though emergency physicians are only 4% of physicians, they provide over two-thirds of all uninsured care and over half of the cover by Medicaid and CHIP. Because they provide much more than their fair share of uncompensated and undercompensated care, they cannot afford to be underpaid by highly profitable commercial plans.

3) **Request for Clarification on the Reporting Requirements**

We urge you to release the reporting requirements referenced in the terms and conditions long before providers attest to comply with them so providers know what they are attesting to. We urge you to ensure the reporting requirements are not overly burdensome.

4) **Request for Clarification Regarding TINs Covering Multiple Sites**

In some cases, our members have TINs that cover multiple hospital sites. And, in some cases, one of the hospitals served by the practice in 2019 is no longer staffed by that practice in 2020. Please clarify that the practice may attest for the funds in this circumstance and explain what additional information may be required when the set of sites served has changed between 2019 and 2020.

Thank you for considering our requests and we look forward to working with you to ensure Americans can receive both care for COVID-19 and other more traditional care provided in the emergency department.

Sincerely,

Bing Pao, MD, FACEP
Chair of the Board, EDPMA

Cc
Eric Hargan
Gary Beck
Demetrious Kouzoukas