



## **EDPMA News Alert: EDPMA Comments on Maine's 1115 Medicaid Waiver Application**

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EDPMA drafted and submitted a letter to the Centers of Medicare & Medicaid Services (CMS) raising concerns that Maine's 1115 Medicaid waiver application could undermine the Prudent Layperson (PLP) Standard and otherwise jeopardize access to emergency care. Both Maine ACEP and National ACEP agreed to cosign the letter.

Back in May, we had sent a joint letter to Maine DHHS urging it to drop its proposal to charge a higher copayment when a visit to the emergency department did not result in a hospital admission. We argued that the emergency department is the appropriate site of care whenever a prudent layperson is concerned there is an emergency. Plenty of emergencies are handled on an outpatient basis. Thus, it would be inappropriate to punish beneficiaries for seeking this care. We are pleased that Maine responded favorably to our comments and dropped this proposal. However, Maine replaced it with a proposal to charge a copayment when the primary diagnosis is included on a diagnosis list that is intended to reflect non-emergencies.

In our joint comment [letter](#) submitted to CMS today, we argued that the use of a diagnosis list would violate the Prudent Layperson (PLP) Standard and CMS should not waive the important PLP standard through an 1115 waiver. In addition, we argued that the policy raised additional concerns as follows:

"The State of Maine is hoping the copayment will discourage inappropriate use of the emergency department. However, if a Medicaid beneficiary is held to a diagnosis list instead of the PLP standard, the policy is actually asking Medicaid patients to diagnose themselves before deciding the appropriate site of care. This is clearly problematic. Congress wisely considered the perils of beneficiary "self-diagnosis" and avoidance of care in 1997 and adopted the PLP statute to guard against these perils. Moreover, if beneficiaries are afraid to risk paying a copayment, they may avoid seeking care in the emergency department even when it is the most appropriate site of care. And some may avoid seeking care altogether given that many Medicaid beneficiaries do not have access to primary care providers."

Maine's waiver application could set important precedent for other states who may want to use diagnosis lists to define whether care is "emergency care" and when the state can charge copayments. EDPMA will keep you informed of CMS's response to our letter.

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