

# What Have You Done for Me Lately?

## 2020 EDPMA Advocacy Successes to Date (10/12)

### Activity (So Far)

**Letters: 58: 31 Federal; 22 State; 5 Payer**

**Meetings: 42: over 40 Federal (March and August lobby days); 2 State**

**Action Alerts: 15: 7 Federal; 8 State**

### COVID-19 SUCCESSES (21 EDPMA letters; 40 meetings)

- 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 (\$20 Billion) Provider Relief Opportunity (Tranche 3) breaks the 2% cap on relief and provides **more relief to providers who have larger volume losses and expenses** as EDPMA requested.
- 5) Balance billing ban referenced in the Terms and Conditions for Provider Relief was limited as EDPMA requested. HHS originally appeared to ban balance billing for actual and “possible” COVID-19 cases (which included all cases). After EDPMA wrote HHS, HHS changed the language and **only banned balance billing for actual and “presumptive” COVID-19 cases**. On May 6th, HHS guidance clarified that *“Not every possible case of COVID-19 is a presumptive case of COVID 19,”* and *“A presumptive case of COVID-19 is a case where a patient’s medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive in vitro diagnostic test result in his or her medical record.”*
- 6) Scope of Ban on Balance Billing in CARES Act Provider Relief Fund Terms & Conditions was clarified as requested. On May 6<sup>th</sup>, HHS issued an [updated FAQ document](#) stating that *“The Terms and Conditions do not impose any limitations on the ability of a provider to submit a claim for payment to the patient’s insurance company.... Most health insurers have publicly stated their commitment to reimbursing out-of-network providers that treat health plan members for COVID-19-related care at the insurer’s prevailing in-network rate. But if the health insurer is not willing to do so, **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.**”*
- 7) More claims will be paid under HRSA uninsured program as EDPMA requested. HRSA stated in guidance that it will accept claims that include the **acceptable diagnoses anywhere on the claim**, not just when it is the primary diagnosis, as EDPMA requested.
- 8) HRSA clarified in writing that claims will be paid **even when test results were unavailable or came back negative** as EDPMA requested.
- 9) **Interest rate lowered (from 10.25% to 4%) and repayment period extended (another 6 months) for Medicare loans** made during COVID as EDPMA requested in April 2020.
- 10) **Emergency department services were added to the list of Medicare telehealth** approved services during the pandemic as EDPMA requested. CMS proposes to extend this through 2021 for levels 1-3.
- 11) **Clinicians who provide telehealth from home** are reimbursed as EDPMA requested. CMS proposes to extend this through 2021.
- 12) **Telehealth virtual check-in services expanded to new patients** as EDPMA requested.

- 13) **Some freestanding emergency departments** are eligible for Medicare reimbursement during the pandemic as EDPMA requested.
- 14) 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.
- 15) **2019 MIPS reporting deadline was delayed** as EDPMA requested and CMS created exemptions for extreme and uncontrollable circumstances.
- 16) **Blanket 1135 EMTALA waiver** was approved as EDPMA requested.
- 17) Small Business Administration clarified that **independent contractor physicians are eligible for PPP** as EDPMA requested.

#### **OTHER FEDERAL SUCCESSES** (10 EDPMA letters; 7 action alerts, 40 meetings)

- 1) **Problematic federal surprise billing proposals have not become law**, such as the proposal offered by Alexander and Pallone as EDPMA and other provider groups have requested.
- 2) **Most Recent Surprise Billing Proposal reportedly includes some EDPMA requests such as:**
  - **IDR,**
  - **Lowering the monetary threshold for IDR (to \$750)**
  - **Tying in-network standard to 1/1/19 plus inflation to prevent manipulation,**
  - **Batching, and**
  - **Giving more weight to prior contract rates between the parties.**
- 3) Directly in response to EDPMA's 2020 MPFS comment letter, **CMS proposes to increase ED E/M reimbursement to maintain historic relativity with office-based care.**
- 4) **GPCI Work Floor extended** (through mid-December) as requested by EDPMA.

#### **STATE SUCCESSES** (22 EDPMA letters; 2 meetings; 8 action alerts)

- 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).

#### **PAYER SUCCESSES** (5 EDPMA letters)

- 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 shared that request with all state insurance commissioners.
- 2) **Illinicare (Centene) decreased down coding** after EDPMA met with them and raised concerns with state regulators.