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**Regs & Eggs Blog: ACEP Responds to a Major Proposed Reg- 2021 Medicare Physician Fee Schedule**

Earlier this week, ACEP submitted a letter to the Centers for Medicare & Medicaid Services (CMS), responding to its proposed calendar year (CY) 2021 Medicare Physician Fee Schedule (PFS)—which was released in early August. This is a major regulation that affects Medicare physician payments and the Merit-based Incentive Payment System (MIPS). As this is just a proposed reg, CMS is collecting comments from external stakeholders and uses that feedback to help inform the final policies. You can read a summary of ACEP’s comments [here](https://example.com) and the full 42-page response [here](https://example.com).

Read the **Regs & Eggs blog** for key highlights of ACEP’s response.

**ACEP Responds to Electronic Prescribing for Controlled Substances Request for Information**

On Monday, ACEP responded to a request for information on electronic prescribing for controlled substances (EPCS). The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act requires CMS to implement EPCS for Medicare Part D starting in 2021. CMS, in the Medicare Physician Fee Schedule proposed rule, is proposing to delay this requirement to 2022 due to the COVID-19 pandemic. ACEP supports the delay.

CMS issued a separate request for information on how best to implement this requirement going forward. CMS specifically requested comments on three issues: 1) compliance with the requirement; 2) enforcement and penalties; and 3) exceptions.

In ACEP’s letter, we ask that CMS build in an exception to this requirement for emergency physicians in certain cases where emergency physicians feel, in their clinical judgment, that issuing an electronic prescription for a controlled substance would be logistically challenging and/or decrease the likelihood that their patient will actually get their prescription filled.

**ACEP Responds to 2021 Hospital Outpatient Proposed Rule**

On Monday, ACEP responded to CMS’ Calendar Year (CY) 2021 Outpatient Prospective Payment
System (OPPS) proposed rule—a regulation impacting Medicare hospital outpatient payments. In the rule, CMS is proposing to eliminate the Inpatient Only (IPO) list over a three-year transitional period with the list completely phased out by CY 2024. This is a list of procedures which currently can only be performed in a hospital inpatient setting. CMS will begin with the removal of nearly 300 musculoskeletal-related services, which would make these procedures eligible to be paid by Medicare in the hospital outpatient setting in addition to the inpatient setting. Procedures removed from the IPO list will eventually become subject to the “two-midnight rule.”

In ACEP’s comments, we express concern about the effects eliminating the IPO list will have on observation stay reimbursement policies. We believe that if CMS were to finalize the IPO elimination policy, the agency should exempt services removed from the IPO list from the two-midnight rule for at least two years.

Additional Funds Available from the Provider Relief Fund
Last week, HHS announced another general distribution from the Provider Relief Fund—a $175 billion fund appropriated by Congress that helps cover health care providers’ lost revenues and increased expenses due to COVID-19. The $20 billion distribution is open to health care providers and groups, including emergency physicians and emergency medicine group practices, who have already received funding from the Provider Relief Fund.

You can start applying for these funds now. Applications are due on November 6, 2020, but HHS urges you to apply as soon as possible. For more details, please click here.

CMS Announces New Terms for Medicare Advance Payments
On Thursday, CMS announced new terms for the Medicare Advance Payment program. As background, this program had provided “advance payments” to hospitals and health care practitioners to help them cover increased expenses from COVID-19. These were loans that had to be paid back starting in August. Unpaid loans were subject to a 10.25 percent interest rate. CMS issued $106 billion in payments before suspending the program in April.

The Continuing Appropriations Act, 2021 and Other Extensions Act, which was recently enacted, includes some favorable changes to the program—which CMS is now implementing. Under the new law, repayment of the advance payments will now begin one year from when hospitals or health care practitioners received them (instead of in August). After that first year, Medicare will automatically recoup 25 percent of Medicare payments otherwise owed to the health care practitioner for eleven months. At the end of the eleven-month period, recoupment will increase to 50 percent for another six months. If the health care practitioners is unable to repay the total amount of the advance payment during this time-period (a total of 29 months), CMS will issue letters requiring repayment of any outstanding balance, subject to an interest rate of four percent (instead of 10.25 percent).

Health care practitioners can also request an Extended Repayment Schedule (ERS) if they are experiencing financial hardships. An ERS is a debt installment payment plan that allows a health care practitioner to pay debts over the course of three years, or up to five years in the case of extreme hardship. To allow even more flexibility, Provider Relief funds can also be used towards repayment of these Medicare loans.

The FDA Issues Vaccination Emergency Use Authorization Guidance
This week, the Food and Drug Administration (FDA) issued guidance with recommendations for vaccine sponsors regarding the scientific data and information that would support the issuance of an emergency use authorization (EUA) for a COVID-19 vaccine. This guidance had sparked controversy since it effectively makes it impossible for a COVID-19 vaccine to receive an EUA from the FDA prior to the election. Specifically, it requires data from Phase 3 studies to include a median follow-up duration of at least two months after completion of the full vaccination regimen.

President Trump Signs Executive Order on Mental and Behavioral Health
On Monday, President Trump signed an executive order (EO) addressing and supporting mental and behavioral health particularly during the COVID-19 pandemic. The EO establishes an intra-governmental “Coronavirus Mental Health Working Group” that will outline a plan for improved
service coordination between public and private stakeholders to assist individuals within 45 days. The
EO will also grant funding for states and organizations that permit in-person treatment and recovery
support activities for mental and behavioral health.

**CMS Requires Hospitals to Report COVID-19 Data**
This week, CMS released new regulatory requirements and guidance for all hospitals to report specific
COVID-19 information related to testing, capacity and utilization, and patient flows. CMS lays out a
specific enforcement strategy for non-compliance. If hospitals repeatedly fail to report the required
information after a 14-week period, they could be kicked out of the Medicare program. The American
Hospital Association opposes this strict policy, calling it “an overly heavy-handed approach that could
jeopardize access to hospital care for all Americans”.

**ACEP Participates in Panel Hosted by The Joint Commission on Workplace Violence**
ACEP participated in a technical expert panel hosted by The Joint Commission (TJC) on addressing
workplace violence in health care. TJC is seeking the perspective of physicians and other health care
practitioners as it examines potential standards and enforcement options to crack down on this
violence.

ACEP has long advocated for more robust federal standards to be put in place to better protect
emergency physicians and their patients from potential violent episodes in the emergency
department. Unfortunately, many emergency physicians have been physically or verbally assaulted in
the emergency department. In fact, an ACEP survey showed that nearly half of emergency physicians
have experienced violence in the emergency department and 80 percent of emergency physicians
said that violence in the emergency department was harming patient care.

ACEP and the Emergency Nurses Association (ENA) have launched “No Silence on ED Violence” to
support, empower, and protect those working in our nation’s emergency departments by raising
awareness of the serious dangers emergency health providers face every day, and by generating
action among stakeholders and policymakers to ensure a violence-free workplace for emergency
nurses and physicians.

**ACEP20 Countdown: 16 Days Out!**
We know one of the most memorable parts of Scientific Assembly is catching up with friends. There
are many virtual opportunities to connect:

- **Catch up with your friends:** All attendees have their own video chat rooms so you can invite friends
to chat between courses.
- **Mix & Mingle:** The first 25 to join these happy hours get to chat with different EM luminaries each
night while whipping up a DIY cocktail.
- **Guac with a Doc:** Dip into Dallas cuisine from wherever you are as a local chef leads a quick
cooking & cocktail demo.
- **Pick your poison:** Do you want to win the Trivia Night, Knowledge Bowl or Fortnite Tourney? Or are
you going for the trifecta? Let your competitive side shine!
- **Reflect on this year:** Take part in the Theater of War for the Emergency Medicine Community on
Oct. 27 or join the personal sharing event Smores & Storytelling on Oct. 28. Talk about the year’s
challenges with your peers who get it.

[Click here](#) to view the full list of social activities including these events and more. [Click here](#) to
register for ACEP20 today!

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want to receive this publication and do not want to be a member of the ACEP 911 Network, please
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