



RESOLUTION: 30(20)
SUBMITTED BY: Louisiana Chapter
Emergency Telehealth Section
SUBJECT: Protection and Transparency

PURPOSE: Establish policy that requires all employers, persons, or entities who contract for emergency physician services (whether in-person or via telehealth) to provide itemized billing and collection information monthly to the emergency physician for all charges billed and all collections made under the physician’s name, license number, or other identifying information without the physician having to request it. Additionally calls for new policy that would requires these same entities to automatically provide information on a monthly basis to physicians for any and all compensation or benefit, cash, and payment-in-kind, received by the employer or CMG as a result of the physician providing his or her services.

FISCAL IMPACT: Budgeted committee and staff resources for policy development.

1 WHEREAS, Many emergency physicians work for or are contracted by others to provide their services; and

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3 WHEREAS, The majority of emergency department staffing contracts are owned, controlled, or influenced by
4 contract management groups and not the physicians working in the emergency department; and

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6 WHEREAS, Most of the billing done for the services provided by emergency physicians are not billed by or
7 under the control of the physicians who provided, or are responsible for, the services; and

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9 WHEREAS, The physician remains responsible and liable for any fraud or false claims that might occur in
10 the billing for services provided by them or that they may be responsible for in a supervisory role, regardless of who
11 performs the billing services; and

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13 WHEREAS, The False Claims Act (FCA) provides that any person who knowingly submits false claims to
14 the government is liable for treble the government’s damages plus a penalty (\$5,000-\$10,000)ⁱ that is linked to
15 inflation for each false claim”ⁱⁱ; and

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17 WHEREAS, “The False Claims Act makes it a crime for any person or organization to knowingly make a
18 false record”ⁱⁱⁱ and “knowingly includes having actual knowledge that a claim is false or acting with ‘reckless
19 disregard’ as to whether a claim is false”^{iv}; and

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21 WHEREAS, 31 U.S.C. § 3729 (False Claims Act) states that while “the False Claims Act imposes liability
22 only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual
23 knowledge that the claim is false”^{vi}; and

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25 WHEREAS, The physician may be viewed as “acting with reckless disregard” if he or she is not aware of
26 what is being billed under their name or license number; and

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28 WHEREAS, By providing detailed information to the physician for all charges that are billed and collected
29 under his or her name and allow the physician to review the information would remove this reckless disregard
30 argument and protect the physician; and

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32 WHEREAS, Allowing physicians who have charges billed under their identifying information would serve as
33 an additional tool to protect physicians, help screen for, identify, and possibly prevent healthcare fraud; and

34 WHEREAS, Contract management groups (CMGs) or employers may not want to share the physician's
35 billing or collection data with the physician for various reasons; and

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37 WHEREAS, CMGs often receive benefits because of the services the emergency physicians provide that may
38 be separate from traditional billing and collections; and

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40 WHEREAS, CMGs or employers may discourage physicians from requesting their own billing or collection
41 information and may penalize conspicuously or inconspicuously; and

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43 WHEREAS, If this information is only provided when a physician asks for it, physicians who request such
44 information would stand out and could become targets for discriminatory treatment by their employer or CMG; and

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46 WHEREAS, Many emergency physicians do not know exactly how much is being billed to patients and third
47 parties for the services they provided or were the attending physician supervising a non-physician provider who
48 provided the service; and

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50 WHEREAS, Many emergency physicians are unaware how much is taken out of the money they generate for
51 medical malpractice insurance, billing services, management fees, or other expenses; and

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53 WHEREAS, Many emergency physicians are unaware of their true market value as emergency physicians
54 because they are unaware of the exact amount of collections that are generated under their identifying information;
55 therefore be it

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57 RESOLVED, That ACEP establish policy that requires all employers, persons, or entities who contract for
58 emergency physician services (whether in-person or via telehealth) to provide itemized billing and collection
59 information on a monthly basis to the emergency physician for all charges billed and all collections made under the
60 physician's name, license number, or other identifying information without the physician having to request it; and be
61 it further

62
63 RESOLVED, That ACEP establish policy that requires all employers, persons or entities who contract for
64 emergency physician services to provide information on a monthly basis to physicians for any and all compensation
65 or benefit, cash, and payment-in-kind, received by the employer or Contract Management Group (CMG) as a result
66 of the physician providing his or her services without any requirement of the physician requesting it.

ⁱⁱ United States Department of Justice. July 15, 2020. <<https://www.justice.gov/civil/false-claims-act>>

ⁱⁱⁱ Total Health Care. July 15, 2020. <<https://thcmi.com/false-claims-act/#:~:text=The%20False%20Claim%20Act%20is%20a%20federal%20law,United%20States%20Government%20or%20any%20state%20healthcare%20system.>>

^{iv} Total Health Care. July 15, 2020. <<https://thcmi.com/false-claims-act/#:~:text=The%20False%20Claim%20Act%20is%20a%20federal%20law,United%20States%20Government%20or%20any%20state%20healthcare%20system.>>

^v United States House of Representatives. July 15, 2020.

<[https://uscode.house.gov/view.xhtml?req=\(title:31%20section:3729%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title31-section3729\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:31%20section:3729%20edition:prelim)%20OR%20(granuleid:USC-prelim-title31-section3729)&f=treesort&edition=prelim&num=0&jumpTo=true)>

^{vi} Capital District Physicians' Health Plan. July 15, 2020. <https://www.cdphp.com/-/media/files/home/false_claims_act_relevant_statutes.pdf?la=en>

Background

This resolution directs the College to establish policy that requires all employers, persons, or entities who contract for emergency physician services (whether in-person or via telehealth) to provide itemized billing and collection information on a monthly basis to the emergency physician for all charges billed and all collections made under the

physician's name, license number, or other identifying information without the physician having to request it. The resolution additionally calls for new policy that would require these same entities to automatically provide information on a monthly basis to physicians for any and all compensation or benefit, cash, and payment-in-kind, received by the employer or Contract Management Group (CMG) as a result of the physician providing his or her services.

The intent of this resolution is similar to Resolution 29(20) Billing and Collections Transparency in Emergency Medicine, therefore the background for both resolutions is also similar. The scope of resolution 29(20) is more comprehensive.

ACEP's policy statement "[Emergency Physician Contractual Relationships](#)" and the associated [Policy Resource and Education Paper](#) (PREP) convey support for the rights of an emergency physician to review what is billed and collected in their name:

Billing Rights:

- **The emergency physician should have the right to review what is billed and collected for his or her service regardless of whether or not billing and collection is assigned to another entity within the limits of state and federal law.**

Further, the PREP states that "the contracting parties should be ethically bound to honor the terms of any contractual agreement to which it is party and to relate to one another in an ethical manner."

Although patients are generally billed on behalf of the specific emergency physician who cared for them, the way business is structured in emergency medicine, funds paid by a patient or by a third-party payer on behalf of a patient do not generally go directly to the emergency physician. In most instances, the emergency physician has assigned his or her payments to another entity, generally the entity contracted with the emergency physician. The physician, however, is responsible for the accuracy of the charting and also the accuracy of the coding and billing based upon the physician's charting. The bottom of the Health Insurance Claim Form 1500 (required by many government payers) reads:

SIGNATURE OF PHYSICIAN (OR SUPPLIER): I certify that the services listed above were medically indicated and necessary to the health of this patient and were personally furnished by me or my employee under my personal direction.

NOTICE: This is to certify that the foregoing information is true, accurate and complete. I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws."

ACEP's policy statement "[Compensation Arrangements for Emergency Physicians](#)," mentions recognition of various compensation methods and that exploitation of emergency physicians is improper. It further strongly urges members to carefully evaluate any health care delivery system or arrangement that might unfairly profit from the professional services of the emergency physician.

Should the resolution be adopted, the College would be required to create and implement a means of investigating alleged offenses, responding to complaints of noncompliance, gathering evidence, and conducting fair and impartial hearings to provide adequate due process to the accused member(s). ACEP would not have any standing to investigate CMG's for non-compliance since ACEP's "Procedures for Addressing Charges of Ethical Violations and Other Misconduct" apply only to members. It is also possible that the filing of charges and the conduct of this process could be used as a tool by competitors to discredit or limit the effectiveness of their competition.

ACEP Strategic Plan Reference

Goal 1 – Improve the Delivery System for Acute Care

Objective E: Pursue strategies for fair payment and practice sustainability to ensure patient access to care.

Fiscal Impact

Budgeted committee and staff resources for policy development.

Prior Council Action

Resolution 15(02) Promotion of College Policies on Contracting and Compensation not adopted. Requested the Board of Directors to review the policy statement “Promotion of College Policies on Contracting and Compensation” and potentially realign it with other ACEP policies or rescind it and report back to the 2003 Council.

Amended Resolution 14(01) Fair and Equitable Emergency Medicine Practice Environments adopted. Directed ACEP to endorse the principles outlined in the Emergency Physician Rights and Responsibilities" information paper as a priority for the College.

Resolution 12(01) Coercive Contracting not adopted. Directed ACEP to discourage any contracting practice that may be illegal, unethical, or any practice that may circumvent fair and equitable negotiations and to explore legal issues surrounding coercive contracting and if appropriate request an OIG opinion on contracts that force emergency physicians to accept less than fair market value reimbursement from third party payers in exchange for the right to retain their contract.

Amended Resolution 20(00) Due Process in Contracts Between Physicians and Hospitals, Health Systems, and Contract Groups adopted. Directed ACEP to endorse the right to have due process provisions in contracts between physicians and hospitals, health systems, health plans and contract groups.

Amended Resolution 74(95) Support Part B of the Health Care Quality Improvement Act not adopted. There were concerns about anti-kickback statutes and the need to recognize where it occurs between both hospitals and contracting entities and management companies and physicians.

Substitute Resolution 56(94) Exploitation of Emergency Physicians adopted. Called for ACEP to reaffirm its value statement that “the best interests of the patient are served when emergency physicians practice in a fair, equitable, and supportive environment,” and its accompanying objective that “fair and equitable compensation for emergency physicians will be established through fair business practices and be available for all emergency services rendered.” Amended Resolution 49(94) Information on Contract Issues adopted. Directed ACEP to continue efforts to provide members with current and comprehensive information to assist them in negotiating contracts.

Substitute Resolution 9(93) Contractual Relationships adopted. Called for ACEP to support fair and equitable contractual business arrangements and promote these relationships through a public relations campaign and the development of a policy statement on fair and equitable contractual relationships.

Substitute Resolution 18(85) Fairness adopted. Directed the development of a position statement on contractual relationships between emergency physicians and contracting/employing entities that addresses emergency physicians' rights to fair and equitable treatment.

Prior Board Action

June 2018, approved the revised policy statement “[Emergency Physician Contractual Relationships](#),” revised and approved October 4 2012, January 2006, March 1999, and August 1993 with the current title. Originally approved October 1984 titled “Contractual Relationships between Emergency Physicians and Hospitals.”

July 2018, reviewed the PREP “[Emergency Physician Contractual Relationships](#)” as an adjunct to the policy statement “Emergency Physician Contractual Relationships.”

January 2017 approved the revised policy statement “[Code of Ethics for Emergency Physicians](#),” revised and approved June 2016 and June 2008; reaffirmed October 2001; revised and approved June 1997 with the current title; originally approved January 1991 titled “Ethics Manual.”

October 2015, approved the revised policy statement “[Emergency Physician Rights and Responsibilities](#),” revised and approved April 2008 and July 2001; originally approved September 2000

April 2015, approved the revised policy statement “[Compensation Arrangements for Emergency Physicians](#),” revised and approved April 2002 and June 1997; reaffirmed October 2008 and April 1982; originally approved June 1988.

Amended Resolution 14(01) Fair and Equitable Emergency Medicine Practice Environments adopted.

June 1997 reviewed the information paper “Fairness Issues and Due Process Considerations in Various Emergency Physician Relationships.”

Substitute Resolution 56(94) Exploitation of Emergency Physicians adopted.

Amended Resolution 49(94) Information on Contract Issues adopted.

Substitute Resolution 9(93) Contractual Relationships adopted. A Contracts Task Force was appointed as a result of this resolution.

Substitute Resolution 18(85) Fairness adopted.

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