American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

Fair Payment for Emergency Physician Services – Principles

Payment for emergency physician (EP) services to patients covered by commercial insurance plans is not a simple issue. Contrary to what many people assume, most emergency physicians are not employed by the hospitals they work in. These physicians typically practice in groups that are contracted by hospitals to provide 24/7 staffing of emergency departments (EDs), and these groups obtain payment for the services provided to patients in the ED directly from patients or their health plans or from government sponsored health insurance programs like Medicare and Medicaid. Emergency physicians provide the backbone of the emergency care safety net for their communities, and this mission, along with a legal obligation imposed by EMTALA statutes, means that emergency physicians provide essential emergency care services without regard for the patient's insurance status or ability to pay. This mission and obligation creates unique challenges for EPs, and is the primary reason why emergency physicians provide substantially more charity, under-, and un-reimbursed care than any other type of physician.

The greatest financial challenge for EP groups is to offer excellent emergency care by qualified emergency physicians in the face of inadequate reimbursement from the Medicare and Medicaid programs, and minimal to no reimbursement from those who are uninsured and unable to pay. Even if health care reform results in near-universal insurance coverage of some sort for most US citizens, our safety net mission will continue to place a unique burden on EPs, who will be asked to care not only for those who still do not have coverage, but for a disproportionate share of those who have inadequate coverage. Consequently, in order to fulfill their mission, most EP groups must receive fair payment for the services rendered to commercially insured patients. In the current environment, few hospitals can afford to provide substantial subsidies to EP group practices.

The current payment practices of commercial health plans, even not-for-profit plans, and other commercial insurers, often do not result in fair payment to EPs and other providers of emergency care. The inappropriate down-coding, bundling, and underpayment of EP claims is the rule rather than the exception, perhaps because EPs and other EMTALA obligated physicians are considered captive providers, unable to decline to provide services to these plans' enrollees no matter how inappropriately EP claims are paid. Even contractual agreements between EPs and health plans provide no guarantee of appropriate payment, and the inability to underpay non-contracted claims leads directly to inadequate payment and rates for contracted EP services. In most states, there are few regulations covering the fair payment of EP claims by health insurance plans. Regulatory enforcement of such regulations when they do exist is spotty at best, and often ignored entirely. Few State health plan regulators require these plans to contract with EPs. Most states simply allow commercial health plans to decide for themselves how, and how much, to pay for non-contracted EP services. One result of the systematic underpayment of these claims is that patients who are treated by non-participating EPs and on-call ED specialists may receive unexpected bills for the unpaid balance on these claims.

Although balance billing is a common and accepted practice for non-contracted elective care service providers in the commercial health care market; ACEP recognizes that patients who use ED services may not have the capability or the necessary information to be able to select only EPs or on-call specialists who are participating providers in their health plan network. This circumstance has led some State legislators and regulators to decide to prohibit balance billing by non-contracted physicians providing emergency care. Fortunately, the NY Attorney General and some federal courts have recently identified the systematic underpayment of non-contracted physician claims as the appropriate object of regulatory and legal action against health plans to protect enrollees from the balance bills that result. However, without enforced regulations requiring plans to pay appropriately for these services, balance billing is the only effective way for these physicians to obtain fair payment.

This document represents ACEP's efforts to provide model cost-effective and reasonable solutions to the balance billing / fair payment issue for emergency physician services.

Principles. In developing model legislative language, ACEP relied on certain principles and assumptions that should be considered by Legislators and other stakeholders when drafting legislative language for the fair payment of non-contracted EP claims:

1. Most emergency physicians' usual and customary charges are reasonable; and therefore most claims for non-contracted emergency care services should be paid in full.

2. The usual and customary charges of emergency physician groups generally reflect the overall impact of the various market forces, economic demands, and practice costs that must be addressed by these groups in order to successfully meet their mission.

3. A prohibition against balance billing for emergency care provider claims which is not tied directly to a mechanism to ensure the fair payment of those claims by health insurers, is not a reasonable solution to the issue, and will destroy the emergency care safety net.

4. A fair payment mechanism for emergency care provider claims must not rely on the need for these providers to adjudicate millions of underpaid claims in court or in an arbitration process to assure fair payment.

5. The initial payment of appropriately coded non-contracted emergency care providers' claims must result in the payment of most of these claims at the reasonable value of the service, so that only a very limited number of remaining claims and payments will need to be disputed by either the payer or the provider.

6. A fast, fair, and cost effective independent claims dispute resolution process must be available to adjudicate these remaining claims, using the Gould criteria as the premise for determining the reasonable of the services rendered.

7. Discounted contract payments, especially in the coercive contracting environment experienced by most hospital based physicians, should not be used to determine the reasonable market value of non-contracted emergency physician services.

8. Until such time as national standards for insurance plan payment adjudication and coding edits are established for each specialty in order to limit the need to dispute issues of down-coding, up-coding, bundling and unbundling of CPT coded services, the published AMA-CPT claims coding standards shall apply.

9. It is essential that commercial health plans pay emergency care providers at rates that represent the reasonable commercial value of these services. Fair payment by commercial insurance plans to EMTALA-obligated providers is essential in order for these providers to be able to meet their mission to provide care for all patients, regardless of insurance status or ability to pay.

10. In most states, the emergency care safety net is on the verge of financial collapse, and cannot sustain a reduction in revenues resulting from an unbalanced solution to balance billing and fair payment. Such a solution will only trade a potential very small reduction in overall health care costs for significantly reduced access to timely emergency care for all patients.

11. The prudent layperson standard should be applied when determining whether the services provided in an emergency department are considered covered services under a health insurance policy or program.