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How the New COVID Package Impacts Physicians

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On Sunday, December 27th, President Trump signed into law a consolidated 2020 omnibus COVID-19 relief package that includes numerous provisions affecting the practice of medicine. This high-profile piece of Congressional legislation represented an 11th hour effort to deal simultaneously with challenges related to the pandemic, the economy, and numerous other important issues. Significant provisions of the legislation affecting physicians include:

- A one-year "fix" aimed at addressing the EM budget neutrality cuts triggered by the 2021 Medicare Physician Fee Schedule Final Rule. The legislation drastically reduces the magnitude of the budget neutrality cuts that threatened access to surgical care and other specialty care while maintaining large payment increases for primary care physicians and other non-procedural specialists. While the legislative approach taken to address these cuts is neither perfect nor permanent, the language adopted by Congress staves off what would have otherwise been a catastrophic reduction in Medicare fees amidst an ongoing pandemic. A specialty-by-specialty breakdown comparing the effects of the Final Rule with and without the legislative fix **is available here.**

  New restrictions on "surprise medical billing," effective 2022. The existing surprise medical billing restrictions enacted under Florida Law will remain permanently in effect for patients with state-regulated health plans and new additional restrictions will apply to self-funded ERISA plan patients in 2022. While the FMA strenuously opposed these new restrictions due to their 11th hour introduction into the bill and numerous substantive deficiencies, the language enacted nevertheless represents a significant improvement over proposals previously entertained by Congress over the past two years.

  Working in tandem, the FMA, CMA, TMA, AMA, and numerous other physician advocacy groups were able to prevent the legislation from imposing a government-set, out-of-network benchmark rate, provide access to an independent "baseball-style" arbitration process to dispute insurance underpayments, prohibit the consideration of Medicare and Medicaid rates during the arbitration process, provide a process for batching together claims during the arbitration process for greater efficiency, and remove onerous "timely billing requirements" that would have imposed an additional administrative burden on physicians.

  While it is unfortunate that Congress choose not to adopt more of the provisions that we felt were necessary to guarantee a fair outcome, such as network adequacy requirements and the consideration of charge-based data during the dispute resolution process, the incremental improvements made to the bill will render it substantially fairer and less burdensome than what Congress had originally proposed.

  Additionally, our advocacy on this issue remains

far from over as we now begin the ongoing work of ensuring that the legislation is fairly implemented while closely monitoring its effects on access to care. After making four fly-in visits to Washington D.C., writing dozens of communications to physicians and members of Congress, and dedicating thousands of staff and contract lobbyist hours to this issue over the past two years, the FMA will not stop fighting for its members.

- The legislation also clarifies that deductions are allowed for expenses paid for with proceeds from forgiven PPP loans, provides additional funding to address vaccinations, testing and tracing, creates an additional 1,000 federally-funded GME slots, and temporarily lifts the current two percent Medicare sequestration payment cuts from January 1st through March 31st, among other things. Each of these additional provisions will benefit physicians, particularly those who bill Traditional Medicare and who took out loans under the Paycheck Protection Program.

While certainly not the legislation the FMA would have written itself, the provisions of this massive bill are sure to impact physicians nationwide and, in some instances, such as with the EM budget neutrality provisions, provide significant financial relief to thousands of medical practices in Florida. **To read more about the legislation, click here.**

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This high-profile piece of Congressional legislation represented an 11th hour effort to deal simultaneously with challenges related to the pandemic, the economy, and numerous other important issues. Consequently, much of the content of the legislation was deliberated by congressional leaders behind closed doors and drafted in the late hours of the night, forcing physician advocates to constantly monitor and respond to new rumors and information with mere days or even hours before a package was finalized. Ultimately, when the nearly 5,600-page omnibus bill emerged in its final form, the legislation moved swiftly through Congress, tying countless issues together and ending any further opportunity to negotiate its myriad provisions.

While the final product is certainly not the legislation that the FMA would have written itself, physician advocates were successful in making several substantive improvements to the legislation before its final passage.

As passed, the legislation funds the federal government through FY 2021, provides a new round of economic stimulus, addresses Medicare budget neutrality cuts, provides considerable funding for the pandemic response and other important health care initiatives, and imposes new restrictions on surprise medical billing, among other things. Provided below is an overview of some of the key provisions affecting physicians. **Click here for a more detailed summary** of the legislation as a whole and **here for an additional detailed breakdown** of the bill's surprise medical billing provisions.

EM Budget Neutrality Provisions

The bill drastically reduces the Medicare budget neutrality payment cuts that were poised to go into effect in 2021 due to the CMS Medicare Physician Fee Schedule Final Rule. Moreover, primary care physicians and many other

non-procedural specialists will still receive a substantial pay increase in 2021. The bill achieves this by implementing a 3.75%, across-the-board, pay increase for all Medicare services through 2021 and by suspending payment for the new HCPCS code G2211 through 2024. These changes reduced the conversion factor reduction that otherwise would have been applied by more than 60%, effectively eliminating net payment reductions for most specialists and substantially reducing the magnitude of the cuts incurred by others. **A specialty-by-specialty breakdown of the effects of these changes is available here**, which compares the effect of the Final Rule with and without the legislative fix. While the "fix" enacted in the bill is neither perfect nor permanent, the language adopted by Congress largely staves off what would have otherwise been a catastrophic reduction in Medicare fees amidst an ongoing pandemic.

Surprise Medical Billing Provisions

The legislation implements new "surprise medical billing" restrictions, effective 2022. Given that Florida has already adopted a state-level surprise medical billing law, Florida Law will remain in effect for all patients with state-regulated health plans while these newly adopted restrictions will apply to any patients with self-funded ERISA plans starting in 2022. While the FMA strenuously opposed these new restrictions due to their 11th hour introduction into the bill and numerous substantive deficiencies, the language enacted nevertheless represents a significant improvement over proposals previously entertained by Congress over the past two years.

Working in tandem, the FMA, CMA, TMA, AMA, and numerous other physician advocacy groups were able to prevent the legislation from imposing a government-set, out-of-network benchmark rate, provide access to an independent arbitration process to dispute insurance underpayments, prohibit the consideration of Medicare and Medicaid rates during the arbitration process, provide a process for batching together claims during the arbitration process to improve efficiency, and remove onerous "timely billing requirements" that would have imposed an additional administrative burden on physicians.

While it unfortunate that Congress choose not to adopt more of the provisions that we felt were necessary to guarantee a fair outcome, such as network adequacy requirements and the consideration of charge-based data during the dispute resolution process, the incremental improvements made to the bill will render it substantially fairer and less burdensome than what Congress had originally proposed.

To understand the magnitude of the improvements that were made, consider that legislation filed in Congress in 2018 would have required all physicians to accept the insurer's "median in-network rate" for out-of-network care with absolutely zero recourse available. Subsequent iterations of the bill included an arbitration process to dispute the adequacy of the insurer's payment but limited the process to high-dollar claims while making it difficult or impossible to "batch" large numbers of claims together for efficiency, thereby rendering the arbitration process all but useless.

The final legislation requires the plan to make a payment for out-of-network care but does not impose a specific government-set, out-of-network benchmark rate. The legislation also provides for an independent "baseball-style" arbitration process for claims of all sizes. Additionally, similar claims can be batched together for

efficiency. Moreover, the arbiter is required to consider multiple factors when adjudicating disputes, including, but not limited to, the median in-network rate, the complexity of the case, the market share of the parties, good faith efforts by parties to contract with one another, any previous contract history from the last four years, and additional information submitted by the plan or provider. While the legislation unfortunately prohibits arbiters from considering charge-based data during payment disputes, arbiters are also prohibited from considering rates set by Medicare, Medicaid, CHIP, or Tricare.

Ultimately, it will take time to know what the effects of this legislation will be on the practice of medicine. One of our primary reasons for opposing this language, despite the aforementioned improvements, is a fear that some arbiters may simply adjudicate cases by selecting whichever offer is closer to the median in-network rate, either for simplicity's sake or due to a misconception that the median in-network rate is an inherently reasonable sum. The Congressional Budget Office's projection that this surprise medical billing language will "save" approximately $17 billion over 10 years through reductions in provider fees that feed down into lower premiums does little to assuage this concern. Furthermore, the surprise medical billing provisions of the bill were drafted with little time for advocates to review and, at nearly 400 pages in length, are relatively complex and will require considerable rulemaking to implement. However, we are hopeful that proper rulemaking and continued efforts by physicians and physician advocates across the nation, the bill can be implemented in a way that will substantially mitigate its potential for harm. The considerable improvements driven by physicians over these past two years of advocacy work certainly provide far more potential for a good outcome that what existed before.

To learn more about the surprise medical billing provisions of this legislation, **click here for a detailed breakdown of the language**, including a full overview of the arbitration process.

Other Noteworthy Provisions

The legislation also clarifies that deductions are allowed for expenses paid for with proceeds from forgiven PPP loans, provides additional funding the address vaccinations, testing and, tracing, creates an additional 1,000 federally-funded GME slots, and temporarily lifts the current two percent Medicare sequestration payment cuts from January 1st through March 31st, among other things. Each of these additional provisions will benefit physicians, particularly those who bill Traditional Medicare and who took out loans under the Paycheck Protection Program. **Click here for a more detailed summary** of the legislation as a whole, including these provisions.

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