



## 2023 Open Enrollment is Underway! Personal Insurance Products at Discounted Rates ... For a Limited Time

The Cooperative of American Physicians (CAP) is pleased to offer personal insurance coverages that members can enroll in at competitive group rates during the **October 1 through November 15, 2023 open enrollment period.**

This is the only time of year that you can upgrade your existing benefits or select new coverages offered through CAP Physicians Insurance Agency, Inc. (CAP Agency), in partnership with MetLife.

All available programs are designed to help protect the wealth and/or well-being of you and your family, and include group life insurance, short- and long-term disability, accident and critical illness insurance, legal protection, and more. A comprehensive list of coverages can be found in the flier included in this issue of *CAPsules*.

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1. Our licensed agents are experienced in tailoring coverage just for physicians.
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3. All your personal insurance needs are covered in a one-stop-shop from an industry-leading carrier (MetLife).
4. Enjoy benefits for the entire family.
5. Easy access to coverages at specially negotiated rates just for CAP members.

**Don't miss the opportunity to take advantage of these member-exclusive coverages. But remember, open enrollment ends on November 15!**



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# CASE OF THE MONTH



## When Failed Mental Health Assessments End in Tragedy

by Monica Ludwick, Pharm.D.

Sufficient access to care helps individuals with mental health challenges proactively manage their conditions, which can lead to positive long-term health outcomes. But given lingering social stigmas and scarcity of services, those with mental health impairment tend to be complex patients, which may convolute delivery of services. This *Case of the Month* highlights the unfortunate scenario when a patient with mental health issues fell through the cracks within the healthcare system.<sup>1</sup>

On January 6, 2015, a 22-year-old male patient was brought into a New York hospital's ED for an evaluation after he reportedly attacked his uncle and beat the family dog. The patient's family members and friends reported that the patient began exhibiting signs of a mental break that day. According to the doctors, the patient believed himself to be the god of war, and that a world war was coming. Among many other delusions, he was also convinced that the government was spying on him through electronics, and that the local sanitation employees were going to kill him. The patient was released from the ED the same day. Several hours after being released, police reported he killed his adoptive mother, uncle, and stepsister.

According to the evidence, the patient stabbed his stepsister 178 times and ultimately beheaded her, stabbed his adoptive mother 187 times, and stabbed his uncle 40 times. When police arrived at the residence, they found the bodies mutilated. A dagger-like weapon

with a bent blade and a glass nativity set was found on the uncle's stomach because the patient said he thought it would get rid of the devil. Mirrors had been placed around the bodies "because [he] thought the devil couldn't see in the mirror."<sup>2</sup>

The patient was charged with the murders of his three family members. In the criminal court proceeding, the patient's plea that he was not responsible for the crimes by reason of mental illness at the time he killed his family members was accepted by the criminal court. Subsequently, the patient filed a civil action against the hospital, the emergency physician group ("ED group"), and other parties for negligence and medical malpractice. He alleged that the treating physician, who was a member of the ED group, failed to perform a proper psychiatric examination and failed to diagnose and treat the patient's acute mental illness, ongoing psychiatric condition, and violent propensities. He also alleged the physician, with other members of the healthcare team, caused him to be discharged the same day of the murders. It was noted that police asked to be alerted of the patient's discharge, but were not notified of the patient's release. The patient sought compensatory damages due to the psychological trauma he experienced after committing the murders, his loss of freedom, and the stigma of a psychiatric admission.

The ED group filed a motion to dismiss the lawsuit, arguing that under New York state case law a plaintiff may not take advantage of their own serious violation

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of the law by basing a claim on the direct results of that wrong. The ED group contended the patient was attempting to do just that. The trial court denied the motion and the ED group appealed the ruling.

Ultimately, the appellate court affirmed the trial court's denial of the ED group's motion to dismiss. (*Bumbolo v. Faxton St. Luke's Healthcare*, 196 A.D.3d 1119 [N.Y. App. Div. July 16, 2021]). The basis of this decision was that by accepting the patient's pleas, the criminal court upheld that the patient lacked substantial capacity to understand and recognize the nature and outcomes of his conduct. Since the patient was found to lack criminal responsibility by reason of mental disease, he lacked substantial capacity to know or appreciate the nature and consequences of his conduct or that his conduct was wrong.<sup>1</sup>

Outside of the criminal and civil cases, state inspectors on behalf of the Centers for Medicare and Medicaid Services completed an inspection of the hospital in response to an unspecified complaint. The inspectors reviewed medical records of patients with potential psychiatric conditions and found several inadequacies in the ED records for its handling of six of eight patients. Three of the patients did not receive mental health evaluations by a licensed clinical social worker, and two patients were released. According to their report, "The facility failed to ensure ED services were provided in accordance with generally accepted standards." It was also observed that the hospital did not have a written policy and procedure for performing suicidal and/or homicidal assessments.<sup>3</sup>

Healthcare organizations and professionals need to assess their current strengths and opportunities for

improvement in addressing the behavioral health needs of patients, especially when providing adequate mental health assessments and medical clearance for discharge. This can be done by evaluating patient flow within the health system and collaborating with behavioral health providers to map available resources, identify opportunities, and facilitate coordinated care. It is important for the organization to define the necessary competencies for staff members who directly interact with patients with behavioral health needs, identify any gaps in those competencies, and provide training to bridge those gaps. Additionally, the organization should establish protocols, care plans, or other tools to handle specific patient situations. An organization's plans and protocols should consider interactions with law enforcement, intake, admission, evaluation, treatment, response to escalating needs, and care coordination. The processes and tools used to assess behavioral health needs should be tailored to the patient population and the specific unit. Furthermore, healthcare organizations should consider expanding behavioral health support in nonpsychiatric acute care units, emergency departments, and other outpatient settings.<sup>1,4,5</sup>

While it is true that even the best emergency psychiatric care can only estimate risk, and not predict violence, physicians play a vital role in the safe and comprehensive care of patients requiring admission for psychiatric services. ←

*Monica Ludwick is a Senior Risk & Patient Safety Specialist. Questions or comments related to this article should be directed to [MLudwick@CAPphysicians.com](mailto:MLudwick@CAPphysicians.com).*

#### References

<sup>1</sup>Patient Who Killed Three Family Members May Sue Emergency Physician Group That Discharged Him. Emergency Care Research Institute (ECRI). [https://www.ecri.org/search-results/member-preview/hrcalerts/pages/hrcalerts011222\\_patient/](https://www.ecri.org/search-results/member-preview/hrcalerts/pages/hrcalerts011222_patient/). Accessed 8/20/2023.

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<sup>3</sup>Thrasher TW, Rolli M, Redwood RS, Peterson MJ, Schneider J, Maurer L, Replinger MD. 'Medical Clearance' of Patients With Acute Mental Health Needs in the Emergency Department: A Literature Review and Practice Recommendations. *WMJ*. 2019 Dec;118(4):156-163. PMID: 31978283; PMCID: PMC7215859. Accessed 8/22/2023.

<sup>4</sup>Coombs NC, Meriwether WE, Caringi J, Newcomer SR. Barriers to healthcare access among U.S. adults with mental health challenges: A population-based study. *SSM Popul Health*. 2021 Jun 15;15:100847. doi: 10.1016/j.ssmph.2021.100847. PMID: 34179332; PMCID: PMC8214217. Accessed 8/15/2023.

<sup>5</sup>Hospital Inspection Report: Faxton-St. Luke's Healthcare. January 12, 2015. <http://www.hospitalinspections.org/report/20125>. Accessed 8/22/2023

# RISK MANAGEMENT AND PATIENT SAFETY NEWS



## Staying on Target With Updated Federal Telehealth Requirements

by Yvette Ervin and Andie Tena

Telehealth has been an effective tool for improving access to care and creating more flexibility for providers. During the pandemic, the U.S. Department of Health and Human Services offered regulatory permissions to promote and expand the adoption and use of telehealth services, supporting the health and safety of patients and providers alike.

While some permissions have become permanent, others expired on May 11, 2023. The Office of Civil Rights (OCR), which is responsible for protecting the privacy and security of protected health information (PHI) through the enforcement of certain regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act (collectively known as HIPAA Rules), allowed a transition period to give providers time to modify operations to ensure full compliance with HIPAA by August 10, 2023.<sup>1</sup> Below, we will review some of the pertinent areas where this discretionary enforcement period has ended.

### Telehealth Remote Communications<sup>2</sup>

Any audio or video communication technology used in communicating with patients must be through HIPAA-compliant platforms with vendors that will enter into a HIPAA business associate agreement in connection with the provision of their video communication product. While the Public Health Emergency (PHE) permissions allowed for providers to communicate with patients using popular applications such as Apple FaceTime, Google

Hangouts, or Skype, **these modes of communication are non-compliant with current privacy regulations.**

### Online or Web-Based Appointment Scheduling for COVID-19 Vaccinations<sup>3</sup>

Any appointment scheduling system for COVID-19 vaccinations must be HIPAA compliant. While the OCR permitted the use of web-based scheduling applications to accommodate the need for large scale appointments for persons to obtain the COVID-19 vaccines, any scheduling application currently used must be through a HIPAA-compliant platform.

### Use and Disclosure of Protected Health Information for Public Health Activities in Response to COVID-19<sup>4</sup>

The HIPAA Rules permit a business associate of a HIPAA-covered entity to use and disclose PHI to conduct certain activities, functions, or services on behalf of the covered entity, pursuant to the terms of the business associate agreement or as required by law. During the PHE, federal public health authorities, oversight agencies, and departments relaxed the enforcement of these business associate agreements, allowing business associates to provide PHI to these entities in a timely manner. At the time of this article, this agreement is no longer the case, and a business associate of a HIPAA-covered entity must have express permission to disclose any PHI per the business associate agreement and/or as required by law.

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## Potential Repercussions of HIPAA Non-Compliance<sup>5</sup>

In 2015 and 2016, the OCR settled a number of potential HIPAA violations. The settlements included significant monetary payments and required the entities to abide by administratively burdensome corrective action plans. As of September 2016, 39 cases resulted in payments totaling \$45.9 million, amounting to an average payment of over \$1 million per case. Additionally, the OCR referred 584 cases of HIPAA violations to the Department of Justice (DOJ) for potential criminal violations. From 2017 to 2021, studies show that HIPAA complaints and large-volume privacy breaches rose significantly.<sup>6</sup> The bottom line is that taking steps now to ensure your practice's compliance with HIPAA—both with your staff and the technology and applications you use—demonstrates your commitment to upholding the privacy of your patients.

## How to Avoid Pitfalls and Implement Best Practices

Using non-compliant telehealth platforms can pose risks to patient privacy, data security, and overall quality of care. To avoid these pitfalls, consider the following steps when choosing a HIPAA-compliant telehealth and patient communication platform:

- 1. Research Platform Compliance:** Before adopting a telehealth platform, thoroughly research its compliance with relevant HIPAA regulations. Look for clear documentation of compliance measures and security protocols.
- 2. Privacy and Security:** Ensure the platform uses encryption for data transmission and storage. It should have features like secure login, data access controls, and regular security updates.
- 3. User Authentication:** Verify that the platform provides robust user authentication methods, such as two-factor authentication, to prevent unauthorized access.
- 4. Data Ownership and Storage:** Understand where patient data is stored, who owns it, and for how long.

Ensure that the platform adheres to data retention and disposal policies.

- 5. Informed Consent:** Platforms should allow patients to provide informed consent for telehealth services and data usage. Make sure the platform facilitates obtaining and documenting patient consent. If the platform does not allow for electronic consent, ensure it is obtained via paper.
- 6. Regular Auditing:** Choose a platform that undergoes regular security audits by third-party organizations to assess its compliance and security measures.
- 7. Vendor Reputation:** Opt for platforms from reputable vendors with a track record of reliable and secure services. Read reviews and testimonials from other healthcare professionals.
- 8. Technical Support:** Ensure the platform offers reliable technical support to address any issues promptly, especially security-related concerns.
- 9. Data Transfer and Sharing:** If the platform allows data sharing, ensure it's done securely and with appropriate patient consent. Avoid using platforms that encourage sharing sensitive information through unsecured methods like email or messaging apps.
- 10. Compatibility:** Check the platform's compatibility with your existing electronic health record (EHR) systems and other tools for seamless integration, or check with your EHR vendor to inquire about telehealth tools that may be available.
- 11. EHR Integration:** If possible, choose a telehealth platform that integrates with your existing EHR system to facilitate accurate record-keeping and continuity of care.
- 12. Patient Verification:** Implement processes to verify patient identity before starting telehealth sessions to prevent unauthorized access.
- 13. Transparent Policies:** The platform should have clear policies regarding data usage, sharing, and security. Review these policies to ensure they align

with your ethical and legal obligations.

**14. Regulatory Compliance:** Be aware of any changes in telehealth regulations and ensure that the platform remains compliant with evolving requirements.

**15. Feedback and Monitoring:** Encourage patients and providers to provide feedback on their experiences with the platform. Regularly monitor for any breaches or unauthorized activities.

Remember, your priority is to provide safe and secure care to your patients. If you have concerns about a platform's compliance, it is better to err on the side of caution and explore alternatives that better meet your

needs while ensuring patient safety and data security.

This information is provided as a service to CAP members from a risk management perspective and is not intended as legal advice. If you have questions or a specific patient situation and need guidance, please contact CAP's Risk Management Hotline at 800-252-0555. ↩

*Yvette Ervin is a CAP Senior Risk Management & Patient Safety Specialist. Andie Tena is CAP's Assistant Vice President of Practice Management Services. Questions or comments related to this article should be directed to YErvin@CAPphysicians.com or ATena@CAPphysicians.com*

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<sup>1</sup>U.S. Department of Health and Human Services, "HHS Office for Civil Rights Announces the Expiration of COVID-19 Public Health Emergency HIPAA Notifications of Enforcement Discretion (Apr. 11, 2021)," Sept. 2023, <https://www.hhs.gov/about/news/2023/04/11/hhs-office-for-civil-rights-announces-expiration-covid-19-public-health-emergency-hipaa-notifications-enforcement-discretion.html> | HHS.gov

<sup>2</sup>Federal Register/Vol. 85, No. 77/ April 21, 2020/ Rules and Regulations, HHS.gov, September, 2023, 2020-08416.pdf (govinfo.gov)

<sup>3</sup>Federal Register/Vol. 86, No. 35/ Feb. 24, 2021/Rules and Regulations, HHS.gov, Sep. 2023, 2021-03348.pdf (govinfo.gov)

<sup>4</sup>Federal Register/Vol. 85, No. 67/ April 7, 2020/Rules and Regulations, HHS.gov, Sep. 2023/2020-07268.pdf (govinfo.gov)

<sup>5</sup>Emergency Care Research Institute, Ambulatory Care Risk Management-Guidance, "The HIPAA Privacy Rule (1/27/2017)," ecri.org, Sep. 2023, <https://www.ecri.org/components/PPRM/Pages/RS5.aspx>

<sup>6</sup>Emergency Care Research Institute., "HIPAA Compliant, Large Breaches Rose Significantly from 2017 to 2021 (3/14/2023)," ecri.org, Sep. 2023, [https://www.ecri.org/components/PhysicianPracticeENews/Pages/Phys031423\\_HIPAA.aspx](https://www.ecri.org/components/PhysicianPracticeENews/Pages/Phys031423_HIPAA.aspx)

# Your Privacy With the Cooperative of American Physicians, Inc.

The Cooperative of American Physicians, Inc. (CAP) promotes a range of products and services designed with the welfare of physicians in mind. From the professional liability coverage provided through the Mutual Protection Trust (MPT) and the CAPAssurance Risk Purchasing Group (CAPAssurance), to the range of services and products offered through CAP and its affiliates, CAP's goal is to match healthcare providers with the best products and services—all tailored to fit their needs.

## Information We Collect

When you join CAP, you provide us with personal information. We collect and use that information to service your needs at CAP, MPT, and CAPAssurance. We treat this personal information as confidential, limit access to those who need it to perform their jobs, and take steps to protect our systems from unauthorized access. The personal information we obtain falls into two general categories:

- Information we receive from you on the application and other forms you complete (e.g., first name, last name, organization, phone number, address, email, and CAP identification number) relating to:
  - CAP enrollment
  - Professional liability coverage through MPT and/or CAPAssurance
  - Other products and services available through CAP for which you request quotes or purchase
- Information about your transactions with CAP, MPT, CAPAssurance, and CAP's affiliates, including the CAP Physicians Insurance Agency, Inc. and the Cooperative of American Physicians Insurance Company, Inc.

### Reasons We Share Your Information

We want you to feel secure about the non-public personal information you give to CAP. There are several reasons why we may need to share this information:

- For CAP's everyday business purposes—for example, to process your requests, maintain and service your records and accounts, administer CAP benefits and programs, and respond to court orders or legal investigations.
- For everyday business purposes of MPT, CAPAssurance, and CAP's affiliates.
- For CAP's marketing purposes with service providers we use, including affiliated group purchasing organizations and vendors—to offer our products and services to you.

### To Limit the Sharing of Your Information

All CAP members and participants have the opportunity to tell us if they do not want to receive direct marketing offers from CAP, its affiliates, or other affiliated service providers. You may choose not to receive marketing offers by any method, be it direct mail, email, or fax.

#### To tell us your preference, you may:

**Write us at:**

CAP Membership Services  
333 S. Hope Street, 8th Floor  
Los Angeles, CA 90071

**Call us at:** 800-252-7706

**Email us at:** MS@CAPphysicians.com

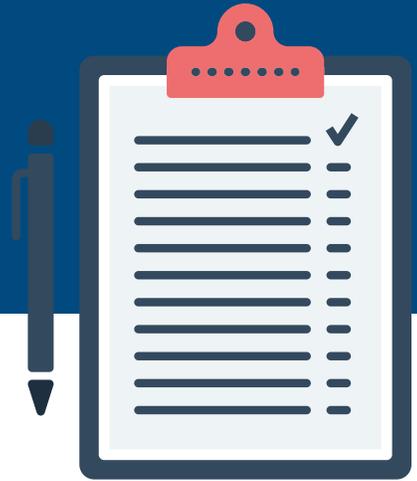
**Fax us at:** 213-473-8773

To ensure that we accurately fulfill your request, please provide your full name, street address, member number, telephone number, fax number for fax requests, and email address for email requests. Even if you elect not to receive product information by direct mail, fax, or email, you will continue to:

- Be contacted as necessary for routine CAP services.
- Receive marketing information through our regular monthly CAPsules publication.
- Receive notices regarding political activities affecting the medical professional liability industry and solicitations for contributions to CAP's political action committees.

Of course, if you wish to continue receiving valuable and convenient product and service offers, no action is required. ➡

# Making Changes to Your Practice? Update Your Membership Information to Help With Your Year-End Planning



If you are considering a change in your practice this year or in 2024, please notify CAP as soon as possible so our Membership Services department can work with you to ensure that any necessary coverage transitions are implemented smoothly. Changes include, but are not limited to:

- Retirement from practice at age 55+
- Part-time practice (e.g., 20 or fewer hours per week or 16 hours for anesthesiologists)
- Reduction or any change in the scope of your practice
- Employment with a government agency or non-private practice setting
- Employment with an HMO or other self-insured organization
- Joining a practice insured by another carrier
- Moving out of state
- Termination of membership

The Mutual Protection Trust (MPT) Board of Trustees will levy an assessment in November 2023. To allow ample processing time, we strongly recommend that you complete your Coverage Update Form (CUF) no later than October 31, 2023, to be evaluated for reductions or proration of the 2024 assessment.

The online Membership Information Update form is now available in the Member's Area of the CAP website at <https://member.CAPphysicians.com>.

If you have not yet registered for the Member's Area, please register for an account at <https://member.CAPphysicians.com/register>. You will need your member number and the last four digits of your Social Security number.

For assistance, please call Membership Services at **800-610-6642** or email [MS@CAPphysicians.com](mailto:MS@CAPphysicians.com). ↩

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## REFER YOUR COLLEAGUE to CAP

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# A New CME Course Coming Your Way

by Gabriela Villanueva



Among thousands of bills introduced since the beginning of this year's legislative term, one has swiftly made its way to the governor's desk with a unanimous yes vote from members of both the Assembly (79-0) and Senate (39-0).

Introduced by Assemblyman Avelino Valencia (D-Anaheim), Assembly Bill 470 (AB 470) is a Latino Caucus Priority bill which creates standards for new Continuing Medical Education (CME) courses to align with federal and state threshold language requirements. The bill aims to improve the ability of physicians to communicate with patients for whom English is not their primary language—physician or patient.

AB 470 outlines the development of new CME courses by authorizing associations that accredit CME courses to update standards, should they choose to, in conjunction with an advisory group that has expertise in cultural and linguistic competency issues, informed by federal and state language thresholds. The advisory group would prioritize languages in proportion to the state population's most prevalent languages spoken by 10% or more of the state population. The measure seeks to “remedy the disparity between the number

of California physicians who speak foreign languages and the patient populations whose first language is not English,” according to the author.

According to a UCLA Latino Policy and Politics Initiative report, nearly 44% of Californians speak a language other than English at home. AB 470 underscores the need to provide physicians with the opportunity to take newer courses that can help them eliminate language barriers and better understand their patient populations.<sup>1</sup>

A variety of factors may be what took this bill swiftly to the governor's desk for his signature before the end of the legislative term. The bill singled out a very relevant issue, making it easy to find the right allies and create a consensus.

Even if approved by the governor and enacted, there is no guarantee that a CME accreditor will update standards to comply with CME laws and requirements, so this bill merely suggests what an entity must do should they choose to update standards. But this being California, it would seem like a good idea. ↩

*Gabriela Villanueva is CAP's Government and External Affairs Analyst. Questions or comments related to this article should be directed to [GVillanueva@CAPphysicians.com](mailto:GVillanueva@CAPphysicians.com).*

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<sup>1</sup>Hsu, Paul et al. *California's Language Concordance Mismatch: Clear Evidence for Increasing Physician Diversity*. UCLA. September 2018. <https://latino.ucla.edu/wp-content/uploads/2021/08/AltaMed-Policy-Brief-1.pdf>



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The information in this publication should not be considered legal or medical advice applicable to a specific situation.  
Legal guidance for individual matters should be obtained from a retained attorney.

# Insurance Benefits to Protect You and Your Assets

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\*To safeguard member confidentiality, the Social Security number in the system will be displayed as the last four digits of your CAP member number.

\*To be eligible, you must be working in healthcare at least 17.5 hours/week and cannot be currently disabled or at the time coverage becomes effective. Other limited time pre-existing condition exclusions may apply.

<sup>1</sup>Limited time pre-existing condition exclusions apply.

<sup>2</sup>Income from the tax year immediately prior will be used to determine benefit at time of claim.

<sup>3</sup>Members covered by CAP longer than 90 days and not previously enrolled in supplemental life coverage.

<sup>4</sup>No medical underwriting required if currently enrolled in supplemental life insurance benefits under the \$500,000 maximum. (Underwriting required for new policyholders.) Increase above the additional \$50,000 available with Statement of Health.

<sup>5</sup>Additional benefits details are available in the Resources section of the enrollment portal.

# Important CAP Member Notice

**EFFECTIVE JANUARY 1, 2024: A 3% fee will be charged on all credit card transactions. Debit cards will no longer be accepted.**



Any CAP members making payments to CAP by credit card on or after January 1, 2024, will be charged a 3% fee of the amount billed.

The 3% fee will take effect so that the significant costs associated with credit card processing fees are no longer absorbed by CAP and no longer shared as a collective cost by the entire membership, including those who do not use credit cards.

By implementing the 3% fee, CAP can reduce costs to help keep rates for medical malpractice coverage as stable and as affordable as possible.

This fee will apply to any credit card payment made online, or by autopay, mail, phone, or other method. This is now a standard practice among many businesses, merchants, and even medical groups themselves.

**In addition to the 3% credit card fee, effective January 1, 2024, CAP will no longer accept payments made by debit card.**

Automated Clearing House (ACH) payments using your bank account may be the best method for making individual/one-time payments or automatic payments every month.

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**Don't wait until January! To avoid the fee, set up one-time or automatic monthly ACH payments when you log in to your account.**

### **Here's How:**

1. Visit <https://member.capphysicians.com/> to log in to your CAP account. If you do not have an account, you will need to register to create one at <https://member.capphysicians.com/register>.
2. Once logged in, make sure to go paperless by selecting the green **"Set Up Paperless Billing"** button.
3. Select the **"Via Email Only"** button.
4. Verify your email address and click the **"Save Changes"** button.
5. Then, simply click on the **"Pay CAP Bill"** button (agree to the terms and conditions when prompted), and follow the instructions to set up autopay payments by clicking on the **"Set Up Autopay Payments"** button and provide the required information for recurring payments made by ACH.

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For assistance with your account, or if you have questions about your membership or the new credit card fee, please call **800-610-6642** or email [MS@CAPphysicians.com](mailto:MS@CAPphysicians.com). 