THE MONTHLY PUBLICATION FOR CAP MEMBERS

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COOPERATIVE OF AMERICAN PHYSICIANS

Risk Management and Patient Safety News

April 2020

CAP Creates COVID-19 Resource Center – The Most Important Coronavirus Information All in One Place

As communities and nations work together to confront the COVID-19 pandemic, it is incumbent upon medical professionals to stay abreast of ever-changing information. "Members know that we are prepared and committed to providing solutions and resources that can help address the unprecedented challenges arising from the current pandemic," says CAP's Chief Executive Officer Sarah Scher. "We will not let them down." To this end, CAP has created an online information center to help.

CAP's COVID-19 Resource Center is updated frequently with key guidance and current best practices. Among the useful resources the site currently offers are printable office signage templates, healthcare provider resources, and extensive guidance to implementing telemedicine in your practice. Visit **https://www.CAPphysicians.com/covid19** to access essential resources covering the following areas:

Telemedicine

- Quick Guide to Adopting Telemedicine
- HIPAA Compliance Guidelines
- Consent Forms
- Risk Management Strategies
- On-Demand Billing Webinar
- CMS General Provider Telehealth and Telemedicine Tool Kits

Business Relief

- Federal Funding Opportunities for Physicians and Medical Practices
- Small Business Administration Loans
- Overview of Major COVID-19 Business Relief Programs for Healthcare Providers

Medical Practice Employment

- Paycheck Protection Program
- Staffing Adjustment Instructions
- Guidelines for Employees Impacted by Illness and/or Childcare Requirements

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CMS/Medicare/Medi-Cal

- Requirements and Procedures for Emergency Medi-Cal Provider Enrollment
- FAQs on Essential Health Benefit Coverage and the Coronavirus (COVID-19)

Healthcare Provider Guidance

- Homecare and Isolation Instructions for Patients (multilingual)
- COVID-19 PSA Posters (multilingual)
- Interim Guidance for Healthcare Facilities
- What to Know About Caring for Patients with COVID-19 Disease
- Preparedness Checklist for Transport and Arrival of COVID-19 Patients
- California Local Health Department Reporting Contact Information for Healthcare Providers/Labs

Access CAP's COVID-19 Resource Center at **https://www.CAPphysicians.com/covid19.**

Free
Practice Management Resources at Your Fingertips

Introducing *My Practice*, Free Practice Management Support Exclusive for CAP Members

CAP is pleased to introduce *My Practice*, our free practice management and business services solutions program. As part of your CAP membership, you have access to experienced professionals who can offer advice, connect you to first-rate resources, and customize solutions to a wide variety of practice- and business-related issues, all to help increase your revenue and decrease your costs.

My Practice can offer guidance in:

- General Billing, Collections, and Coding
- Streamlining Workflow and Costs
- Front and Back Office Operations
- Interoffice Communications
- And much more!

During these unprecedented times, CAP is pleased to provide our members with resources like My Practice to help you navigate the challenges resulting from COVID-19 and beyond. For the solutions you need now for your practice-related concerns and questions, email us at **mypractice@CAPphysicians.com** or call **800-610-6642**.

Fulfill California's Sexual Harassment Avoidance Training Requirements with Free Online Courses

California employers with five or more employees are required to provide sexual harassment prevention training to all employees by January 1, 2021. CAP recommends that your practice train your employees now and not wait until the end of 2020.

CAP offers free courses for both supervisory and non-supervisory employees through Kantola Training Solutions. Receive access to these courses by completing the form on **https://www.CAPphysicians.com/hrtraining**.

As these courses are being offered free as a benefit of CAP membership, we request that you do not share the link with any individuals outside of your member practice.

For questions regarding any HR issues, contact **Nancy Brusegaard Johnson,** CAP's Senior Vice President of Human Resources and Operations, at **213-473-8664** during business hours, 8:30 a.m. to 5:30 p.m.

Note: *On August 30, 2019, California Governor Gavin Newsom signed SB 778 into law, which extended the training deadline from January 1, 2020 to January 1, 2021. All employees who have been hired or employees who have been promoted to supervisor positions since September 2018 must be trained within six months of hire or promotion. SB 778 does not change this requirement.*

April 2020

House Considers Competing Proposals on 'Surprise Billing'

by Gabriela Villanueva

A new JAMA study of almost 350,000 patients found that more than 20 percent of surgical patients received a bill for an unexpected unpaid balance averaging more than $2,000. Medical bills can be usual after emergency care visits or non-surgical hospital stays, but the study highlights how common "surprise billing" is, even when patients select in-network providers.

Billing for unreimbursed balances has been a focus for statehouses in recent years with California passing its own law in 2017. The California law created consumer protections for patients, along with an independent dispute resolution process for providers and insurers. Since then, lawmakers in Congress have also taken up the issue and in 2019 tried to get legislation passed.

But just as there was no compromise to be found among congressional legislators last year, a bipartisan aim to protect patients has not yet overcome gridlock in 2020 as the House of Representatives weighs two competing proposals on the billing issue.

Drilling down on the specifics to resolve the measures' differences has presented a unique issue that is splitting lawmakers not by party, but by industry group — insurers or providers. Representatives on both sides are strongly advocating with lawmakers to achieve solutions most favorable to their camps.

In February of this year, two House committees released new bipartisan proposals as both parties proclaim that they want to get something done. Even so, the sides continue to debate how to best resolve payment disputes between insurers and providers.

The two current proposals trying to make headway are:

• **A House Ways & Means Committee** proposal that leaves out a benchmark payment mechanism that has proved a nonstarter for hospitals and specialty physician groups. Instead, the proposal includes a mediation process for when insurers and out-of-network providers cannot agree on a payment rate. (The Energy & Commerce Committee's 2019 proposal would have decided payment rates based on benchmarks.)

• **A House Education & Labor Committee** proposal that blends two approaches, creating a distinct third plan. These approaches include two separate mechanisms to resolve payment disputes:

1. For amounts less than or equal to $750 (or $25,000 for air ambulance services), the Education & Labor proposal relies on a market-based benchmark of the median in-network rate of providing similar items or services in the same geographic area;

2. For amounts above $750 ($25,000 for air ambulance services), providers and payers may elect to use independent dispute resolution (IDR) to determine a fair payment amount.

Similar disputes between insurers and providers derailed attempts in 2019. The new proposals have until the May 22, 2020, deadline, when major budget bills will be voted on in Congress.

JAMA Study: https://jamanetwork.com/journals/jama/fullarticle/2760735

Gabriela Villanueva is CAP's Government and External Affairs Specialist. Questions or comments related to this article should be directed to gvillanueva@CAPphysicians.com.

Public Policy

Case of the Month

by Gordon Ownby

Surgeon Gets Another Chance for Payment After Coding Error

The Court of Appeal has told a health plan, in effect, "not so fast" after the plan refused to consider a surgeon's attempt to correct an initial coding error after an alleged emergency surgery.

In 2017, a worker who had group health coverage through her employer went to the hospital with "excruciating back pain." An emergency department physician called Dr. Adebukola Onibokun to consult on the patient. Dr. Onibokun, a neurosurgeon and owner of San Jose Neurospine (SJN), determined the patient had lumbar disc herniations and performed a two-level lumbar microdiscectomy that same day.

SJN submitted two claims to Aetna Health of California for reimbursement. Aetna granted the claims only for "non-emergency" surgical services rendered to the patient. According to the allegations relied on by the Court of Appeal, SJN sent a letter within a month of the surgery to "Aetna Provider Appeals" claiming underpayment in an "EMERGENCY SURGERY CASE." Aetna declined to pay the higher rate applicable to emergency services. Two months later, SJN filed a civil lawsuit against Aetna for its "unjustified failure to pay $75,200 for emergency medical services provided by SJN to [the patient]."

In seeking a dismissal of the suit through a motion for summary judgment, Aetna claimed that SJN submitted two bills on Health Insurance Claim Form 1500 using CPT codes 63030, 63035, and 69990, that these were codes for non-emergency services, that it processed the out-of-network services at 180 percent of the Medicare rate, and applied that amount, $2,783, to the patient's deductible. Aetna claimed that since SJN did not use the correct codes, it was not entitled to payment at the emergency tier.

SJN opposed the motion, claiming that its second bill was "rebilled as emergency [services] with 'ER' placed in number 24C of the [billing] form."

The trial court judge granted the dismissal and said, "If the doctor doesn't submit the correct coding on a health insurance claim, he doesn't get paid for it."

The Los Angeles-based Court of Appeal in *San Jose Neurospine v. Aetna Health of California*, however, overturned the trial court judge, saying that there were "triable issues of fact" as to whether SJN rendered and billed for emergency services. (In a motion for summary judgment, a judge may consider only uncontroverted evidence in applying the law; he or she may not "weigh" disputed evidence. That's the job of a jury.)

In reviving the lawsuit against Aetna, the Court of Appeal pointed out that SJN "set forth the term 'ER' three times on the corrected billing form" and said, "The trial court found there were no triable issues of fact because there was no showing what 'ER' means. But there are triable issues of fact regarding the reasonable, well-understood meaning of 'ER' on the corrected claim form. And there are triable issues of fact concerning what a medical insurance company should know and do when it sees such an 'ER' reference."

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"The term 'ER' is a well-known abbreviation for 'emergency room,'" the appellate court continued. "In hospitals, the term 'ER' is commonly used and understood. It is a term well known in common parlance, literature and popular culture." A trier of fact, the appellate court said, could reasonably infer that "ER" on the corrected form referred to the emergency room, that Aetna was consequently on notice that these services were emergency services, and that Aetna was therefore not in a position to claim emergency services were never performed.

The Court of Appeal put the dispute in the context of California's requirement that healthcare service plans have a dispute resolution process accessible to non-contracting providers for the purpose of resolving medical billing and claims disputes. "That demonstrates that the Legislature did not intend to end responsibility for paying claims at the initial claims filing stage. It knew that doctors and healthcare service plans make mistakes on initial claims filings and that there must be a method to allow legitimate claims to ultimately be granted."

In its opinion, the appellate panel explained the need to sometimes look at the bigger picture:

"It has been said the law is based on technicalities. But technicalities that ignore legislation, common sense, and fairness, the law abhors."

Gordon Ownby is CAP's General Counsel. Questions or comments related to "Case of the Month" should be directed to gownby@CAPphysicians.com.

Got CyberNet?

If you are a CAP member, you do.

NAS CyberNet was created to help members of the Cooperative of American Physicians prevent or mitigate damages caused by a data breach. A data breach can be very costly, causing down time to your practice as well as possible fines and penalties for HIPAA violations even if you do have insurance. So how do you prepare?

CAP offers all members NAS CyberNet, a robust online suite that provides you and your practice the most up-to-date data training and support tools developed by certified experts. NAS CyberNet also provides free access to Interactive training courses, sample policies, incident response plan templates, and one-on-one expert consultations. Included is free HIPAA training that provides each employee who takes the course a certificate of completion to meet your annual HIPAA training requirements.

Understanding how to protect your practice is an important component of your risk management plan, as well as having insurance to cover costs and expenses if you were to have an incident. CAP membership also includes a limited cyber risk policy if you were to have a data breach.

To learn more about this significant member benefit, contact CAP Agency at CAPagency@CAPphysicians.com or call 800-819-0061.

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We welcome your comments! Please submit to communications@CAPphysicians.com.