October 14, 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445–G
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Brooks-LaSure:

The undersigned organizations representing state medical associations and the nation's medical specialty societies write to express our strong concerns over unfair business practices with respect to electronic payments in health care. For over seven years, many of our organizations, as well as our individual members, have urged the Centers for Medicare & Medicaid Services (CMS) National Standards Group to clarify and enforce the right of physicians to receive electronic payments via the Automated Clearing House electronic funds transfer (EFT) standard without being forced to pay percentage-based fees for "value-added" services. In the absence of clear guidance and related enforcement on this issue, physicians have been plagued by financial losses and administrative burdens—an alarming result, given the efficiencies expected with the adoption of an electronic transaction standard. **We request that the Biden Administration swiftly address this problem by (a) issuing guidance that affirms physicians' right to choose and receive basic EFT payments without paying for additional services and (b) undertaking the associated enforcement activities.**

EFT Transaction Standard: Promise vs. Practice

The EFT transaction standard facilitates streamlined payer-to-provider claim payments and eliminates the manual burdens associated with processing paper checks for both health plans and physician practices. The 2020 CAQH Index estimates the per-transaction savings of replacing paper checks with the EFT standard for health plans at $0.49 ($0.57 vs. $0.08), with providers saving $1.99 per claim payment ($3.18 vs. $1.19).[1] This finding aligns with CMS' expectation in its final rule implementing the EFT standard, which anticipated that the creation of an efficient, uniform method of electronic payment " . . .will make health care claim payments via EFT more cost effective and will therefore incentivize increased usage of EFT by physician practices."[2]

Unfortunately, an increasing number of our physician members report that they are forced to incur mandatory, percentage-based fees for the receipt of electronic payments from health plans for payments made via the EFT transaction standard. A recent poll by the Medical Group Management Association (MGMA) confirms this trend: 57 percent of medical practices surveyed by MGMA reported that health plans charge fees that *the practice has not agreed to* when sending payments via the EFT standard, with

[1] 2020 CAQH Index, p. 6. Available at: https://www.caqh.org/sites/default/files/explorations/index/2020-caqh-index.pdf. Note that these costs include the labor time required to process the payment.
[2] 77 Fed. Reg. 1556 (Jan. 10, 2012) at 1575.

86 percent reporting average fees of two percent–three percent of the claim payment.[3] These fees are most often assessed by third-party vendors with which health plans require physicians to contract for EFT payment processing and represent charges for additional "value-added" services, such as customer service hotlines. While we recognize that some physicians may elect to receive supplementary services to the EFT standard for additional fees, these vendors do not offer physician practices the choice of electing basic EFT payments without charge. Consequently, physicians are left with no option but to "pay to get paid." **This outrageous situation is analogous to an employee being required to enroll in a program that would deduct a percentage of each paycheck to receive direct deposit payments from an employer.**

Beyond just representing an unfair business practice, these coercive EFT fee-based programs can result in downstream negative consequences for patient care. Physician practices that lose up to five percent of claims payments due to EFT fees are less able to invest in the additional staff, medical equipment, data analytics, and information technology that could improve care access and quality. In addition, physicians and their staff report significant administrative burdens when they attempt to disenroll in EFT fee-based programs. This represents valuable practice time and resources that would be much better spent on direct patient care.

Existing Statutory and Regulatory Enforcement Authority

The National Standards Group has been reluctant to address this issue, citing doubts regarding its authority to publish clarifying guidance and enforce this administrative simplification issue. **We respectfully argue that CMS currently possesses sufficient statutory and regulatory authority to act and protect physicians' right to receive EFT payments without percentage-based fees, as outlined below:**

- 42 U.S.C.A. §1320d - §1320d-9 delegates to CMS the authority to adopt and enforce use of standards for "financial and administrative transactions," including "[e]lectronic funds transfers." The statute states that adopted transaction standards "shall be consistent with the objective of reducing the administrative costs of providing and paying for health care."
- The statute stipulates that "an insurance plan may not delay [a] transaction, or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction."[4] Federal regulation reiterates this prohibition: "A health plan may not delay or reject a transaction, or attempt to adversely affect the other entity or the transaction, because the transaction is a standard transaction."[5] **When health plans or their contracted payment vendors force practices to enroll in EFT programs that impose percentage-based fees, they are clearly adversely affecting the physician and adoption of the EFT transaction standard—<u>an obvious statutory and regulatory violation</u>.**
- Regulation also states that "A health plan that […] requires an entity to use a health care clearinghouse to receive, process, or transmit a standard transaction may not charge fees or costs in excess of the fees or costs for normal telecommunications that the entity incurs when it directly

[3] MGMA Stat. More than half of medical practices report being forced to pay to receive electronic payments from insurers. August 11, 2021. Available at: https://www.mgma.com/data/data-stories/more-than-half-of-medical-practices-report-being-f.
[4] § U.S.C.A 1320d-4.
[5] 45 CFR 162.925(a)(2).

transmits, or receives, a standard transaction to, or from, a health plan."[6] Health plans contracting with vendors for EFT transactions is comparable to a plan's use of a clearinghouse (the situation described in regulatory language). **As such, this provision establishes that physicians should not be forced to absorb the costs associated with a health plan's decision to employ third parties for processing electronic transactions on behalf of the plan.**

- CMS clearly did not anticipate the assessment of percentage-based fees for EFT payments, as stated in the final EFT rule's Regulatory Impact Analysis: "[We] estimate there will be no direct costs to physician practices and hospitals to implement the health care EFT standards."[7]

In sum, statutory and regulatory language grants CMS the authority to immediately act to protect the right of physicians and other health care professionals to choose EFT payments without being forced to pay for additional services.

Recommendations

At the time of the final rule implementing the EFT standard, CMS could not have foreseen that some industry players would view electronic health care payments as an opportunity for financial gain beyond the savings associated with the transition away from paper checks. As such, appropriate safeguards for this specific situation were not directly addressed in rulemaking. To be clear, our organizations are not advocating that "value-added" EFT payments should be prohibited; rather, we believe that physicians should have the opportunity to make an informed business decision regarding their electronic payment choices. The alarming rise in complaints from physicians being forced to enroll in fee-based EFT services warrants immediate guidance and enforcement from CMS to ensure fair business practices in health care, per the following recommendations:

- **CMS should swiftly issue guidance stating that all health plans and their contracted vendors must offer at least one EFT standard transaction that does not require purchase of extra services for an additional fee.**
- **This guidance should also require full transparency from health plans and their contracted vendors in all EFT enrollment communications, to include (a) the clear option to select basic EFT without additional fees and (b) for any enhanced options with additional costs, a complete description of the "value-added" services and associated fees.** Please review the attached example from the AMA Insurance Agency for an example of how various EFT options can be properly communicated to physician practices.
- **The CMS Division of National Standards should appropriately enforce compliance with this guidance, to ensure that health plans and their vendors are offering physicians the option of receiving EFT without additional services/fees and that this choice is clearly communicated in all EFT enrollment materials.**

By taking these actions, CMS will be supporting the underlying administrative simplification goals intended by the EFT regulation and creating the much-needed transparency that physicians and other providers need to make informed, independent choices regarding the appropriate payment method for their businesses.

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[6] 45 C.F.R. § 162.925 (a)(5).
[7] 77 Fed. Reg. 1556 (Jan. 10, 2012) at 1582.

Conclusion

CMS and organized medicine share a mutual goal of improving the quality and efficiency of health care in our country. We are hopeful that the Biden administration offers the opportunity for a fresh look at this concerning issue that has financially and administratively burdened our nation's physicians for far too long. Should you have any questions or wish to discuss this matter, please contact Laura Hoffman, American Medical Association Assistant Director of Federal Affairs, at laura.hoffman@ama-assn.org.

Sincerely,

American Medical Association
American Academy of Allergy, Asthma & Immunology
American Academy of Dermatology Association
American Academy of Emergency Medicine
American Academy of Neurology
American Academy of Otolaryngic Allergy
American Academy of Otolaryngology – Head and Neck Surgery
American Academy of Pediatrics
American Association for Hand Surgery
American Association of Clinical Endocrinologists
American Association of Clinical Urologists
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American College of Allergy, Asthma and Immunology
American College of Cardiology
American College of Gastroenterology
American College of Medical Genetics and Genomics
American College of Osteopathic Internists
American College of Physicians
American Gastroenterological Association
American Orthopaedic Foot and Ankle Society
American Osteopathic Association
American Rhinologic Society
American Society for Clinical Pathology
American Society for Dermatologic Surgery Association
American Society for Laser Medicine and Surgery
American Society for Radiation Oncology
American Society of Anesthesiologists
American Society of Dermatopathology
American Society of Neuroradiology
American Society of Plastic Surgeons
American Urological Association
College of American Pathologists
Congress of Neurological Surgeons
International Society for Advancement of Spine Surgery
Medical Group Management Association
Society for Cardiovascular Angiography and Interventions

Society for Pediatric Dermatology
Society of Cardiovascular Computed Tomography
Society of Interventional Radiology
Spine Intervention Society

Medical Association of the State of Alabama
Alaska State Medical Association
Arizona Medical Association
Arkansas Medical Society
California Medical Association
Colorado Medical Society
Connecticut State Medical Society
Medical Society of Delaware
Medical Society of the District of Columbia
Florida Medical Association Inc
Medical Association of Georgia
Hawaii Medical Association
Idaho Medical Association
Illinois State Medical Society
Indiana State Medical Association
Iowa Medical Society
Kansas Medical Society
Kentucky Medical Association
Louisiana State Medical Society
Maine Medical Association
MedChi, The Maryland State Medical Society
Massachusetts Medical Society
Michigan State Medical Society
Minnesota Medical Association
Mississippi State Medical Association
Missouri State Medical Association
Montana Medical Association
Nebraska Medical Association
Nevada State Medical Association
New Hampshire Medical Society
Medical Society of New Jersey
New Mexico Medical Society
Medical Society of the State of New York
North Carolina Medical Society
North Dakota Medical Association
Ohio State Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society

South Carolina Medical Association
South Dakota State Medical Association
Tennessee Medical Association
Texas Medical Association
Utah Medical Association
Vermont Medical Society
Medical Society of Virginia
Washington State Medical Association
West Virginia State Medical Association
Wisconsin Medical Society
Wyoming Medical Society

Enclosure