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PULSE

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# HHS Seeks Clarity on Government Calls from FCC

A petition from the U.S. Department of Health and Human Services could help inform the FCC's regulation of calls made on behalf of government contractors under the TCPA.

The U.S. Department of Health and Human Services (HHS) has filed a helpful petition with the Federal Communications Commission regarding the Telephone Consumer Protection Act and calls for government contractors under the TCPA.

The HHS petition asks the FCC to clarify that contractors making calls and texts on behalf of the government are not subject to the TCPA in important respects, including when it will become necessary to communicate with Medicaid enrollees about their eligibility for continued coverage when the COVID-19 public emergency ends.

For example, HHS requests assistance from the FCC to confirm that state and federal government employees who deliver such text messages and automated, prerecorded calls to individuals generally will be immune from suit under the TCPA; and state and federal government contractors who deliver such text messages and automated, prerecorded calls to individuals generally will be immune from suit under the TCPA when the government agency authorizes and directs the contractor's actions and the agency validly confers that authorization.

During the ongoing COVID-19 pandemic and public health emergency, HHS reports it has used "continuous enrollment" for Medicaid programs to ensure those who need it had coverage without going through the routine eligibility process.

Enrollment in these programs has increased by more than 20% since the start of the public health emergency.

The FCC sought public comment on the HHS petition on a relatively compressed comment schedule, thus comments opened and closed in May. The comment request focused on seeking clarification that certain automated calls and text messages or prerecorded voice calls related to enrollment in state Medicaid and other governmental health coverage programs are permissible under the TCPA.

The continuous enrollment and flexibilities in renewals for the Children's Health Insurance Program (CHIP) or the Basic Health Program (BHP) may mean eligible individuals may be at risk of losing coverage if they do not have updated communication information on file from the last two years and therefore do not have a way to be notified of renewal deadlines.

"However, concerns about violating the TCPA are hindering state efforts to engage partners who are concerned about potential lawsuits resulting from such text messages or automated, pre-recorded calls," according to the HHS petition.

Because of unclear requirements for how the accounts receivable management (ARM) industry can use modern technologies to communicate with consumers, the industry often remains unable to provide critical financial information in a timely and effective manner.

This is potentially an important development for the ARM industry, especially if your company makes a significant volume of calls on behalf of the government.

A confirmation or clarification issued by the FCC "that specified entities would not be subject to liability under the TCPA when sending these types of messages, would be enormously helpful to state and federal efforts to reach enrollees and prevent gaps in health coverage," the HHS reports.

Each state is developing a unique approach to spread out these Medicaid

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**"Concerns about violating the TCPA are hindering state efforts to engage partners who are concerned about potential lawsuits resulting from such text messages or automated, pre-recorded calls."**

- U.S. Department of Health and Human Services

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renewals over a 14-month period, so eligibility can be renewed for a portion of Medicaid enrollees each month, according to HHS.

It reports that no more than six to eight individual messages will be sent to any individual enrollee through some combination of text messages and automated, pre-recorded calls.

**Comments of Support**

Commenters expressed support for the clarification on TCPA exemptions sought by HHS.

"In this instance, a public affirmation from the [FCC] concerning exceptions to this law based on precedent is paramount," wrote Thomas Leary, senior vice president and head of government relations for the Healthcare Information and Management Systems Society, in a comment letter. "We believe the FCC is in a position to assist the health care sector, and primarily, the patient who, without adequate and appropriate notice of pending lapsed health care coverage, would be at risk. We encourage the FCC to uphold a duty to ensure this communications law does not pose an unnecessary barrier. The request of HHS is simplistic, but the threat of inaction could be catastrophic to unaware patients and consumers."

Community Catalyst, a nonprofit national health advocacy organization, concurred with the HHS petition and other comments of support.

"We respectfully request that the [FCC] issue an opinion that concludes that state Medicaid agencies, local government agencies, Medicaid managed care organizations (MCOs), and other state and local government agency contractors will not be acting in violation of the TCPA when they send such communications," said Emily Stewart, executive director of Community Catalyst, in the organization's letter.

**Notification Timing**

The most recent continued enrollment for Medicaid took effect on April 16, and under current law it extends through the end of the month when there is an announcement that the public emergency ends.

HHS says the Biden-Harris administration will provide at least 60 days advance notice before any expiration of the public health emergency. For example, if the administration determined the emergency would end effective July 15, notice would have been given no later than May 16.

While states are already engaged in other outreach efforts to educate Medicaid and other program enrollees about the changes in communication methods, a decision from the FCC on text messaging and the TCPA is time sensitive, according to the HHS.

States would need to quickly communicate the information to enrollees if the FCC approves the petition to ensure they have consumers' contact information.

"Protecting access to health coverage and minimizing coverage gaps are among my top priorities when the continuous enrollment requirement ends," the HHS petition states. "The strategies outlined in this letter would help state Medicaid, CHIP, and BHP agencies to facilitate renewals, limit additional requests for information from enrollees, and reduce coverage terminations due to enrollee non-response. This would not only reduce gaps in coverage, but would also reduce the administrative burden on state agencies as they navigate an extraordinary volume of renewals."

# Private Payers Pay 224% More for Hospital Services Than Medicare

Private payer hospital charges ranged from about 175% to over 310% of what Medicare would have paid for the identical services, according to a recent report.

A report from the RAND Corporation revealed that on average, private payers paid hospitals 224% of what Medicare would have paid for the same inpatient and outpatient services.

From 2018 to 2020, researchers analyzed hospital claims data from enrollees in employer-sponsored health plans in 49 states and Washington, D.C. The study expands on past RAND reports that looked at Medicare and private payers' payments to hospitals.

According to the research, private payers paid hospitals 224% more than Medicare would have paid for the same services in 2020. This ratio is higher than the 222% price gap in 2018, but lower than the 247% difference in 2019.

The prices paid by private health insurers for hospitals differed greatly among states. Some states, including Hawaii, Arkansas, and Washington, had relative pricing that was less than 175% of Medicare costs. Other states with comparable pricing at or above 310% of Medicare costs included Florida, West Virginia, and South Carolina.

According to the survey, inpatient hospital services had lower relative prices than outpatient hospital services, with inpatient services receiving 217% of what Medicare would have paid, while outpatient operations received 231%.

Additionally, prices for COVID-19 hospitalization were 241% of what Medicare paid for patients.

"Employers can use this report to become better-informed purchasers of health benefits," Christopher Whaley, the study's lead author and a policy researcher at RAND, said in a press release. "This work also highlights the

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# NEWS & NOTES

## Hospital Groups Urge HHS to Expand COVID-19 Public Health Emergency

Twelve hospital organizations, including the American Hospital Association (AHA), have petitioned the Department of Health and Human Services to extend the COVID-19 public health emergency for another 90 days beyond its current July expiration date, according to the AHA.

In a letter addressed to HHS Secretary Xavier Becerra, the groups asked that the department keep the public health emergency in place until the pandemic is over and the associated flexibility and waivers are no longer required.

## Surgeon General Warns of Health Care Worker Burnout

U.S. Surgeon General Vivek Murthy has issued new guidelines on how to care for the health care profession, while also warning the public about the dangers of burnout.

"Health workers have always had our back—it's time for us to have theirs," he wrote in a May 23 tweet announcing the new advisory.

The advisory includes a breakdown of activities to be taken across a range of disciplines in the health care sector, including health systems, policymakers, payers and the general public, as well as a briefing on the prevalence and impact of burnout in the health care industry. The initiatives call for industry-wide structural changes.

Read the full advisory here.

## Read More

For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse-newsletters-archive

## **Private Payers** cont. from page 2

levels and variation in hospital prices paid by employers and private insurers, and thus may help policymakers who may be looking for strategies to curb health care spending."

The report also found that there was no apparent correlation between higher hospital charges and higher quality of care. Hospitals with prices less than 150% of Medicare had lower star ratings than hospitals with higher prices, but medium-priced hospitals had the highest percentage of five-star hospitals.

Health care mergers and market consolidation were partly blamed for growing hospital expenses by researchers. The report found a link between hospital market share and costs, with a 10% rise in hospital market share resulting in a 0.5% increase in hospital prices compared to Medicare. Differences in market share were responsible for 7% of the price discrepancies.

The American Hospital Association has spoken out against the RAND report, claiming it "overreaches and jumps to unfounded conclusions based on incomplete data."

"The report looks at claims for just 2.2 percent of overall hospital spending, which, no matter how you slice it, represents a small share of what actually happens in hospitals and health systems in the real world," Rick Pollack, president and chief executive officer of AHA, said in a statement.

"Further, the results highlight what even the Medicare Payment Advisory Commission (MedPAC) acknowledges: Medicare does not fully cover the cost of providing care to Medicare beneficiaries," Pollack said. "Pinning commercial prices to inadequate Medicare rates would cause even more financial strain to hospitals already facing tremendous challenges as a result of the ongoing COVID-19 pandemic and rising inflation."

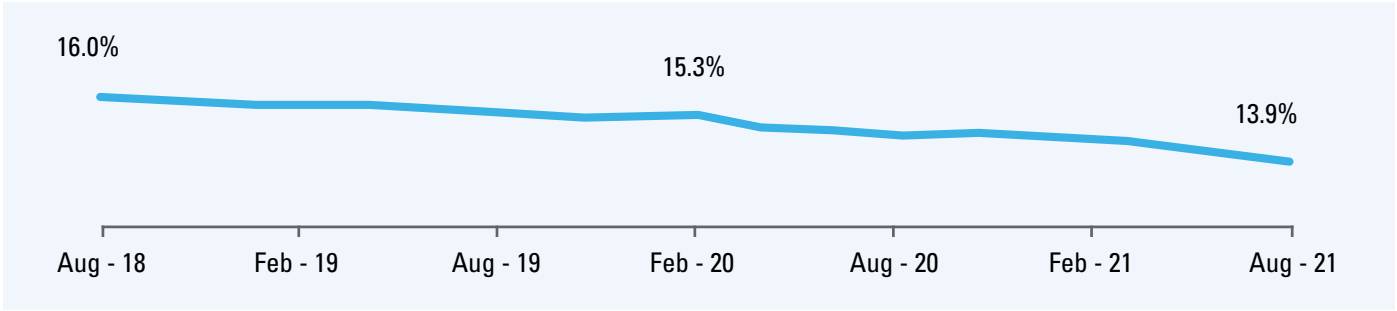
Read the full RAND report here.

# DATAWATCH

## Credit Reports and Medical Debt in Collections

A report from the Urban Institute found the share of adults with medical debt in collections was already on a downward trend before the pandemic, and the reduction continued at a faster pace since February 2020. Sixteen percent of adults had medical debt in collections on their credit report in August 2018, compared to 15.3% in February 2020 and 13.9% in August 2021.

Share of Adults Ages 18 and Older with Credit Records Who Have Medical Debt in Collections, 2018 to 2021




***Source: Authors' tabulations of Urban Institute credit bureau data from 2018 to 2021:*** https://urbn.is/3GjIjFi

PULSE is a monthly bulletin that contains information important to health care credit and collection personnel. Readers are invited to send comments and contributions to:

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