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CMS Rule on No Surprises Act Falls Short of Congressional Intent

In an interim final rule issued late last week, the Centers for Medicare & Medicaid Services (CMS) went against congressional intent in favoring insurance companies with a benchmark payment rate over other factors when it comes to resolving disputes.



Over the last three years as Congress deliberated how to address instances when patients were surprised by a health care bill due to an out-of-network provider, WHA strongly supported the idea that patients should not be caught in the middle, but that to resolve any payment disputes the parties should use an independent arbiter to work out differences.

Although Congress had considered establishing a benchmark rate, instead the No Surprises Act that was enacted last December outlined several criteria an independent arbiter should use to determine the appropriate payment rate. These factors include not just the “qualifying payment amount” (QPA), which is the median in-network rate, but also the level of training, experience, quality and outcomes of the provider; the market share held by the provider and/or the plan; patient acuity; and teaching status, case mix, and scope of services of the provider.

But CMS in its rulemaking process has determined that the single most important factor to be used is the median in-network rate. Under the rule, the arbiter “must begin with the presumption that the QPA is the appropriate out-of-network rate for

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EDUCATIONAL EVENTS

October 20

Skills and Best Practices for Administrative Excellence in Health Care Series - Session 2: Everything You Need to Know About Leading Impactful Virtual Meetings
Webinar

October 20

Leveraging Wisconsin’s APC Workforce for Integrated Care Delivery
Webinar

October 20

SHIP Bag Lunch Webinar Series Session 2: How Does Your Hospital Stack up Against Its Peers: A Focus on Quality Metrics
Webinar

Register Today for Virtual Advanced Practice Clinician Conference

WHA webinar to provide guidance on nurse practitioner and physician assistant regulatory issues

[Registration](#) is now open for a WHA half-day virtual conference that will focus on Wisconsin’s advanced practice registered nurse (APRN) and physician assistant (PA) workforce.

Leveraging Wisconsin’s APC Workforce for Integrated Care Delivery

Oct. 20, 2021
9 a.m. – 12 p.m.

This year’s Advanced Practice Clinician (APC) Conference is a follow-up to WHA’s 2018 conference: [A Comprehensive Look at APC Practice Challenges and Opportunities for Integrated Care Delivery in Wisconsin.](#)

This year’s event will focus on key regulations and payment policies impacting organizations that employ APRNs and PAs, as well as clinical practice, education, and workforce supply trends for APRNs and PAs. Topics covered include the following:

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(Register Today for Virtual Advanced Practice Clinician Conference . . . continued from page 1)

- Wisconsin Legislative and Regulatory Update: Impacts on Advanced Practice Nurse and Physician Assistant Care Delivery
Presenter: *Matthew Stanford, WHA General Counsel*
- Billing and Reimbursement for Advanced Practice Professionals – Opportunities and Pitfalls,
Presenter: *Lori Wink, Attorney, Hall, Render, Killian, Heath & Lyman*
- Wisconsin Advanced Practice Clinician Workforce Trends
Presenters: *Ann Zenk, WHA Senior Vice President, Workforce and Clinical Practice, and George Quinn, Wisconsin Council on Medical Education & Workforce Executive Director*

To register for this virtual conference, click [here](#).

DHS Announces Rural Health Care Workforce Grant Awardees

The Wisconsin Department of Health Services (DHS) has awarded more than \$550,000 in grants to nine Wisconsin hospitals to increase access and enhance quality care in rural Wisconsin. These grants, first created by WHA-initiated legislation, aim to expand workforce training opportunities in rural areas and high-demand occupations.

Advanced Practice Clinician (APC) Grants totaling nearly \$250,000 will help rural health care providers increase the number of physician assistants and advanced practice registered nurses by supporting the development of clinical training sites. Hospitals and clinics receiving APC grants are:

- Aspirus – Central Wisconsin
- Cumberland Memorial Hospital – Cumberland, Wisconsin
- Essentia – Northwest Wisconsin
- Marshfield Clinic Health System – Northern, Central and Western Wisconsin
- Prairie Ridge Health – Columbus, Wisconsin

Allied Health Professionals (AHP) Education and Training Grants totaling more than \$325,000 over two years will support education and training opportunities for professionals, including medical assistants, mental health professionals and nursing assistants. Grants were awarded to:

- Gundersen – Friendship & Whitehall, Wisconsin
- Marshfield Clinic Health System – Marshfield, Wisconsin
- Marshfield Clinic Health System – Northern, Central and Western Wisconsin
- Upland Hills Health – Dodgeville, Wisconsin

WHA President and CEO Eric Borgerding noted, “Maintaining and extending Wisconsin’s high-quality health care requires us to continuously develop the workforce necessary to provide care to every community in the state.

These grants will contribute significantly to addressing workforce challenges in rural communities through a proven “grow your own” strategy WHA has long advocated.”

The “Grow Our Own” Equation



(Fast Facts from the WHA Information Center: October is Breast Cancer Awareness Month . . . from page 3)

MYTH: Finding a lump in your breast means that you have cancer.

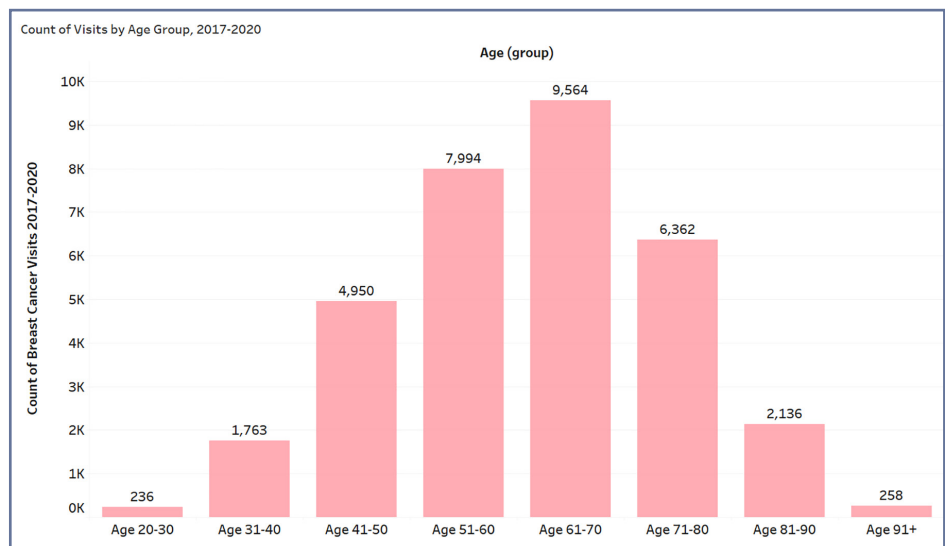
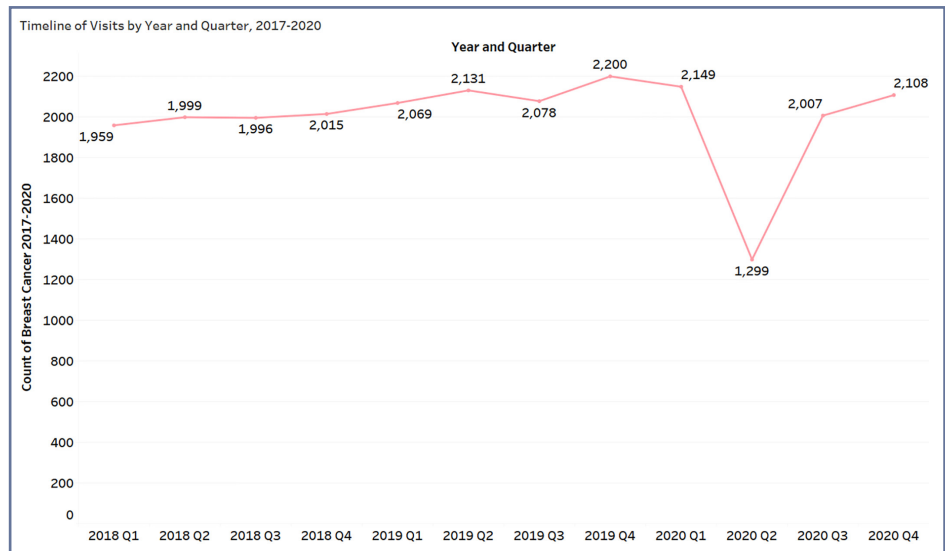
FACT: Only a small percentage of breast lumps turn out to be cancer. But if you discover a persistent lump in your breast that is new or notice any changes in breast tissue, it should never be ignored. It is very important that you see a physician for a clinical breast exam.

MYTH: Men do not get breast cancer; it only affects women.

FACT: Each year, it is estimated that more than 2,000 men will be diagnosed with breast cancer and 410 will die. While this percentage is still small, men should also check themselves periodically by doing a breast self-exam and reporting any changes to their physicians.

MYTH: If you have a family history of breast cancer, then you are more likely to develop breast cancer, too.

FACT: While women who have a family history of breast cancer are in a higher risk group, most women who have breast cancer have no family history. Statistically, only about 10% of individuals diagnosed with breast cancer have a family history of this disease.



(CMS Rule on No Surprises Act Falls Short of Congressional Intent . . . continued from page 1)

the qualified [independent dispute resolution] item or service under consideration.” Further, the rule states the arbiter must select the offer closest to the QPA unless he or she determines “that credible information submitted by either party clearly demonstrates that the QPA is materially different from the appropriate out-of-network rate.”

Prior to the enactment of the No Surprises Act, the Congressional Budget Office had projected the fallout of such a move was that the median in-network rates would become a ceiling for negotiations, and eventually function as government-set benchmark rates for providers. This would reward health insurance companies at the expense of hospitals and other providers, which would be forced to accept lower rates or be threatened with being moved out-of-network. The domino effect could lead to fewer in-network providers for patients.

Under the law, providers can’t bill patients for out-of-network emergency services or for nonemergency services performed by an out-of-network provider at an in-network facility. HHS issued rules implementing that part of the law earlier this summer with a Jan. 1, 2022, start date.

The latest rule was published with an immediate effective date of Oct. 7, 2021. However, CMS is accepting comments on the rule through Dec. 6, 2021. WHA is working closely with the American Hospital Association in pushing back against this rule, given that that it clearly goes against the statute and congressional intent of the bipartisan compromise legislation passed less than a year ago.