

May 1, 2024

The Honorable Morgan Griffith
Chair
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Kathy Castor
Ranking Member
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chair Griffith and Ranking Member Castor:

On behalf of the physician and medical student members of the American Medical Association (AMA), we appreciate the opportunity to submit the following letter to the Committee on Energy & Commerce, Subcommittee on Oversight & Investigations as part of the hearing entitled, “Examining the Change Healthcare Cyberattack.” The AMA commends the Subcommittee for focusing attention on and exploring solutions to the massive cyberattack on Change Healthcare and the resulting outage that is impacting patients, physicians, hospitals, pharmacies, labs, and countless additional health care professionals, providers, and entities across the country. The AMA has been particularly concerned about the impact of the outage on small and independent physician practices that live financially on the margins and do not have the resources to weather a storm such as this. As such, much of this letter focuses on issues and actions needed to protect the sustainability and solvency of those critical but vulnerable practices.

Although the hackers are ultimately to blame for this breach, the AMA has been disappointed by the response of many of the most resourced players in the health care system to meet the moment thus far, especially in their failure to support physician practices serving small, rural, or underserved communities. We hope that Congressional interest in the actions, or inaction as it may be, of these players will serve to ignite a sense of corporate citizenship in time to help the many physicians in crisis.

I. Impact of Change Healthcare outage on physician practices

Although Change Healthcare was not a well-known entity until recently, it is a health care giant. Even *before* UnitedHealth Group’s (UHG’s) subsidiary Optum purchased Change Healthcare in 2022, the company facilitated over 15 billion health care transactions and approximately \$1.5 trillion in adjudicated claims—more than one-third of all U.S. health care expenditures annually.¹

For many physicians, hospitals, and health insurance companies, Change Healthcare serves as a clearinghouse through which eligibility inquiries are received and responded to, claims are submitted and processed, and remittance is sent back to the physician or health care provider. For some payers, Change Healthcare even handles claims payment. Change Healthcare’s importance as the “middleman” transmitting health care claims from physicians and hospitals to insurance companies in the United States

¹ Change Healthcare Annual Report (Form 10-K) for year ended Dec. 31, 2020, available at https://ir.changehealthcare.com/node/7326/html#tx904010_8.

cannot be overestimated. But that does not even come close to covering the extent of Change Healthcare's reach in the health care system. Change Healthcare also plays a primary role in communicating prescriptions to pharmacies and determining pharmacy, insurance, and patient costs. It facilitates exchanges between physicians, hospitals, and labs—including the ordering of labs and the sending of results. Change Healthcare supports the exchange of information related to prior authorizations (PA) and other utilization management requirements. And it has products and services that reach into practice management systems and electronic medical record (EMR) systems for dozens of other practice management, clinical, and revenue cycle purposes. Therefore, when Change Healthcare turned off its systems on February 21 upon news of the cyberattack, the US health care system more or less came to a screeching halt.

Ten weeks later, for many physicians, functionalities dependent upon Change Healthcare systems and products are still not up and running, at least not completely, and practices continue to try and function without all the Change Healthcare services on which they depended.

The AMA has fielded several surveys during these 10 weeks to better inform our understanding of the impact of the outage on physicians and their practices. Each survey has yielded heartbreaking results showing physician practices being financially devastated by the Change Healthcare outage. Our most recent survey, conducted between April 19 and April 24, strongly disputes UHG's assurances that systems are nearly back to pre-outage functioning and claims are again flowing through the system. Quite the contrary—physician practices, particularly small and independent practices, are still very much in crisis and not receiving the resources or information they need to navigate the outage or breach.

Financial impact

The financial impact of the Change Healthcare outage on physician practices has been massive. According to our most recent survey, as of last week, 90 percent of respondents continue to lose revenue from unpaid claims because of the outage, 80 percent are losing revenue from the inability to submit claims, and 63 percent said they are losing revenue due to the inability to charge patient co-pays or remaining obligation. More than one-quarter of respondents reported that their practice revenue for the last week was down by more than 70 percent compared to an average week before the cyberattack.²

The outage is also requiring additional staff time and resources to complete revenue cycle tasks, with an overwhelming 91 percent of our most recent survey respondents reporting such commitments.

This decrease in revenue, along with increased demands on staff, is forcing physicians to make some difficult financial decisions in order to buy supplies, pay their staff, handle overhead costs, and pay their vendors. A band-aid solution has been to use personal funds to cover practice expenses or take out loans. But the potential long-term impact of this outage is the permanent loss of many small and independent practices that simply will not be able to keep their doors open. Predictably, the AMA surveys show that practices of 10 or fewer physicians appear to be particularly hard hit. The AMA has heard from physicians stating:

² <https://www.ama-assn.org/system/files/change-healthcare-follow-up-survey-results.pdf>

- *“Having to borrow from my bank at 14 percent interest is a hardship I will never recoup;”*
- *“I am now going to get acquired by a hospital system because I just can’t bear the financial responsibility;”*
- *“This almost put me out of business. Had to use retirement money to cover payroll;”*
- *“[I am] on the verge of losing my practice;” and*
- *“[This] may bankrupt our practice of 50 years in this rural community.”*

It is clear that the repercussions of this crisis will be felt by communities long after Change Healthcare is back up and running.

Claims processing and other process disruptions

As stated above, physicians’ experiences with claims processing and other revenue cycle services through Change Healthcare systems do not seem to be lining up with the narrative coming from UHG that functionality is essentially restored. In fact, many practices are still facing the inability to submit electronic claims, and even more are not receiving payment on claims submitted. According to our most recent survey, 75 percent of respondents still face barriers with claim submission, and 85 percent continue to experience disruptions in claim payments.

Many practices are also unable to electronically check insurance information for patients prior to care. Among those responding to our most recent survey, 60 percent of physicians continue to face challenges in verifying patient eligibility. Standard operating procedures for most physician practices include submitting batch electronic eligibility requests every evening to confirm insurance coverage, benefits, and co-pay amounts for patients with appointments scheduled for the next business day. Without this information, practices are essentially flying blind and facing extreme uncertainty regarding insurance coverage—leading to difficult choices.

Additionally, the AMA has heard from physician practices who are unable to obtain electronic remittance advice (ERA) from health plans, even when they receive payment. Essentially, practices may be getting checks from plans with no information about what claims the payment applies to, if any claims were denied or downcoded, the patient cost-sharing associated with the payment, etc. As a result, practices have no ability to reconcile payments with claims and are not able to collect patient cost-sharing, which for many practices represents significant portions of their revenue—particularly during the first months of the year, when many patients have yet to meet their out-of-pocket deductible.³ In fact, our most recent survey indicates that 79 percent of respondents still cannot receive ERAs on claims. Unraveling this ERA mess and accounting nightmare will take months or years for practices. Unfortunately, for some, the financial resources and staff time that will be required to reconcile the claims with payments are not available, meaning many practices will have to forgo much-needed revenue from being unable to appeal inappropriately denied claims and face an ongoing challenge of unbalanced books.

³ <https://www.ama-assn.org/practice-management/sustainability/change-healthcare-outage-leaves-physician-practices-reeling>

The AMA has also received significant feedback related to disruptions in electronic lab ordering. For example, the AMA recently heard from a physician at a small maternal-fetal medicine practice serving 45 percent of high-risk pregnancies in New Mexico who has been unable to electronically communicate lab orders and results for nearly two months because its electronic clinical system is connected to Change Healthcare. Outages in practice clinical systems not only result in significant workflow disruptions and burdensome, manual processing; they also lead to negative impacts on patient care. For example, a physician respondent to the most recent AMA survey stated that, “The difficulty in accessing lab, radiology, and hospital records is causing a dangerous delay in diagnosis and treatment of my patients.”

Difficulty switching clearinghouses and employing workarounds

Practices are working tirelessly to establish workarounds for the Change Healthcare outage. For example, 31 percent of physicians who responded to a recent AMA survey said they are using manual and electronic workarounds to simply get paid on claims and to be able to submit claims to payers. As part of these efforts, physician practices are having to enter into new and potentially costly arrangements with alternative clearinghouses. An AMA survey found that nearly half of physicians who responded have engaged alternative clearinghouses to conduct electronic transactions, and comments such as “[it is costing] \$10,000 just for the set-up of a ‘back-up’ clearinghouse” were common responses.⁴ Unfortunately, we have also received comments that indicate some clearinghouses may be taking advantage of this crisis by increasing costs and extending minimum lengths of contracts, placing further pressure on practice finances.

While switching clearinghouses has been an option, albeit a difficult one, for some practices, many practices are unable to switch or are choosing not to switch due to substantial barriers. According to our most recent survey, for those physician respondents who have not switched clearinghouses, the time and costs involved in making a switch (54 percent and 25 percent respectively) were significant obstacles. Additionally, 32 percent of those respondents said a switch was not supported by their EHR or practice management system and 36 percent cited incompatibilities with payers’ systems or restrictions due to contract exclusivity.

The AMA has been disappointed by health plans’ and their associations’ disregard for these barriers and their disingenuous suggestions to policymakers that switching clearinghouses is a reasonable solution for physician practices, including small independent practices. To be clear, quickly switching clearinghouses in order to meet urgent practice needs is not feasible for many physicians.

II. AMA recommendations to address the Change Healthcare cyberattack and resulting outage

The AMA seeks assistance from Congress to ensure physician practices recover from this crisis, as well as to establish protections in anticipation of a similar future attack.

1. Provide financial assistance to impacted physician practices

The AMA has been advocating for immediate and targeted financial relief for physician practices from all payers in the form of advance payments based on claims history. For many physician practices devastated by the Change Healthcare outage, such payments can serve as a lifeline. As such, the AMA is grateful to

⁴ <https://www.ama-assn.org/system/files/change-healthcare-survey-results.pdf>

the Centers for Medicare & Medicaid Services (CMS) for quickly standing up the Change Healthcare/Optum Payment Disruption (CHOPD) Accelerated Payments to Part A Providers and Advance Payments to Part B Suppliers in March. Given that this program was initially set up to provide just 30 days of payment, the AMA urges CMS to distribute additional funds to physician practices still financially struggling to ensure their stability. In addition, it is important to emphasize that CMS should ensure that any advance payment recoupment processes do not begin until this situation is completely resolved. More information on recoupment and repayment is included below.

The AMA also welcomed the March 15 Center for Medicaid & CHIP Services Informational Bulletin providing enforcement discretion to allow Medicaid programs to elect a State Plan Amendment (SPA) option for implementation of interim payments to Medicaid fee-for-service providers. It is important to note the particular vulnerability of many physicians who care for Medicaid patients and may not have access to other forms of advance payment while serving marginalized communities. The AMA continues to urge state Medicaid directors to take advantage of this SPA option.

Additionally, UHG should be recognized for the resources it has put behind its advance payment program. While initially many physicians who applied saw inconsequential amounts being offered and walked away from the program, it is our understanding that UHG's loan program now provides funding not just based on estimates of unpaid UHG claims since the outage, but all insurer claims, to assist struggling practices and hospitals. The AMA is aware of many practices that have been able to keep their doors open to patients because of this assistance. Unfortunately, our survey results continue to show that many small physician practices do not seem to be benefiting from UHG's advance payment program in the same way as larger practices and have not received financial assistance for a number of reasons including a lack of outreach or follow-up. The AMA recognizes that it is the bigger systems that make the headlines, but stresses that smaller physician practices serving underserved communities are too important to ignore.

Disappointingly, we have seen very few other health insurers establish any advance payment or loan programs to help their contracted physicians. According to the recent AMA survey data, only 4.5 percent of respondents have received assistance from commercial health plans other than UHG. To the AMA, that is appalling. During the suspension of claim submission and payment, health plans have retained premium dollars and, in fact, collected interest on those patient, employer, and government payments for over two months. For companies that make billions of dollars in profit each year and purport to be partners with physicians in patient care to feel no sense of obligation to support our health care system when it is in crisis is unconscionable and a crisis in and of itself. **The AMA asks Congress to urge commercial payers to provide advance payments to physician practices impacted by the Change Healthcare service outage, and especially to small, independent practices.**

2. Immediately suspend prior authorization, quality reporting and other administrative requirements

The Change Healthcare outage has impacted the ability of practices to exchange information needed for payer's administrative requirements such as PA and quality reporting. For example, the outage has obstructed both the electronic exchange of PA information between physicians and many health plans and pharmacy benefit managers, as well as access to the clinical guidelines used by many payers, making completion of these requirements difficult, if not impossible. Moreover, the outage's impact on pharmacies', labs', and imaging centers' communications has significantly complicated utilization management processes.

Additionally, the Change Healthcare outage has required an “all-hands-on-deck” approach to keep physician practices running and patients being seen. Nearly all of the respondents in our most recent survey (91.2 percent) stated that as of last week, they are still requiring additional staff time and resources to complete revenue cycle tasks in order to receive payment. We already know that physicians and their staff spend an average of two working days each week on PA alone, even as these processes threaten patients’ access to care. Always, but especially now, physician and staff time could be much better spent on addressing outage issues and reducing the toll that service disruptions are having on the provision of care, rather than dealing with PA hassles.

Unfortunately, our most recent study shows that many health plans, including national commercial plans and Medicare Advantage plans, are maintaining utilization management requirements such as PA during this critical time period and applying it to those claims that can be processed. As such, **the AMA urges Congress to quickly ensure that all health plans suspend their utilization management programs and other unnecessary administrative requirements, including post-payment audits and medical record requests, on physician practices during this crisis and its aftermath.**

Of note and importantly, CMS extended the 2023 Merit-based Incentive Payment System (MIPS) data submission deadline and reopened the 2023 MIPS Extreme and Uncontrollable Circumstances Exception Application to provide relief to clinicians impacted by this cybersecurity incident. The AMA recognizes the relief this has provided to practices and **urges Congress to press for an extension of this reprieve (which expired on April 15) and for other payers to follow with similar administrative relief in their quality reporting programs.**

3. Prevent denials on claims and appeals impacted by the outage

As described above, practices continue to face significant barriers to obtaining patient’s health insurance information, including their coverage information, cost-sharing responsibilities, and utilization management requirements, due to the Change Healthcare outage. Without these capabilities, physicians continue to care for their patients, but could later be liable if a patient’s coverage has lapsed or other insurance requirements were not met. The AMA supports physicians’ efforts to secure continuity of care for their patients throughout this crisis and believes health plans and policymakers should as well.

As such, **the AMA is urging policymakers to ensure that health plans refrain from denying claims impacted by this outage based on lack of patient insurance eligibility or completion of health insurer administrative requirements.**

Many health plans enforce deadlines for timely filing of claims based on the date of service. However, given the extensive challenges with claim submission resulting from the Change Healthcare outage, many physician practices are not currently able to meet those deadlines and will continue to have delays in claim submission. Enforcement of these timelines could result in nonpayment to practices, further exacerbating the financial impact of this crisis.

We note that some practices are already reporting denials due to late claim submissions resulting from the service disruption. Indeed, 27 percent of physicians in the AMA’s most recent survey already report that claims have been denied for failing to meet timely filing requirements. However, given that many filing deadlines are 90 days, the AMA is fearing a wave of denials in the coming weeks and months, as claims continue to sit with clearinghouses without being processed or are unable to be submitted.

Therefore, **the AMA is urging policymakers to ensure that all health plans are required to waive timely claim filing requirements. Any time limitations on the filing of appeals should be waived as well.**

Without plans in place to alleviate the burdens and chaos that are bound to ensue as Change Healthcare comes back online and processes resume, the stability of physician practices will remain threatened.

4. Improve the transparency and accuracy of information going to physicians

The AMA is very concerned that information being provided to physicians about what can be expected in terms of restoration is limited and inaccurate. In our most recent survey, 84 percent of respondents indicated that they are not receiving information, or are receiving inaccurate information, regarding service restoration from UHG and its subsidiaries. The AMA notes that while Change Healthcare may announce a date for a certain system or product to be restored, they often fail to highlight the restoration is going to take place on a rolling or incremental basis. For small physician practices who are having to make difficult decisions about loans, clearinghouses, etc., it is imperative that they receive information from UHG and Change Healthcare specific to their practice, including realistic timelines for service resumption.

5. Focus on restoring function for small, independent physician practices

Certainly, the best solution for many physician practices is to have their Change Healthcare products restored and functioning again. Media reports suggest that for many large systems and hospitals, functionality is returning. However, given member feedback, the AMA fears that small physician practices outside of large systems are not a priority for service restoration. While understanding the reasoning behind prioritizing reconnection of systems that move large claim volumes, the AMA stresses that it is the smaller practices that may not have received advance payments or have the ability to take out loans or dip into personal savings that are now teetering on insolvency. In fact, AMA survey respondents have reported tens of thousands of dollars in unexpected costs to reestablish a portion of their business operations. Some practices have even reported that their EMR developer has been required to rewrite software to reconnect to Change Healthcare's systems—with practices incurring additional fees in the process. As such, **the AMA asks Congress to help ensure that small and independent physician practices are not the last in line when it comes to restoring functionality.**

6. Ensure the HIPAA-related reporting requirements and notification obligations fall upon Change Healthcare and not physicians and other providers

The AMA believes it is critical that the Office of Civil Rights (OCR), and perhaps Congress, clarify responsibilities and assure affected providers that any Health Insurance Portability and Accountability Act (HIPAA) reporting and notification obligations associated with this breach will be handled by Change Healthcare. As such we suggest the following Congressional actions:

- Request that OCR publicly state that their breach investigation and immediate efforts at remediation will be focused on Change Healthcare, and not the providers affected by Change Healthcare's breach.
- Request that OCR affirm its position that the breach was perpetrated upon Change Healthcare, whose status as a health care clearinghouse makes it a covered entity under HIPAA and thus responsible for the breach of any protected health information (PHI) that it processes or for which

it facilitates processing. Because Change Healthcare experienced impermissible access to unsecured PHI that it processed on behalf of other covered entities, no entities other than Change Healthcare, its parent company UHG, and their corporate affiliates such as Optum, bear responsibility for this breach and are under any legal reporting or notification obligation as a result of it.

- Given the Statement by UHG that, “UnitedHealth Group has offered to make notifications and undertake related administrative requirements on behalf of any provider or customer,” OCR should confirm that any affected provider may rely upon that Statement and, as UHG bears sole responsibility for the breach, no breach notification requirements apply to any affected medical provider.

Additionally, the AMA stresses that the credit monitoring services being offered for impacted individuals for two years must align with the following provisions:

- Change Healthcare must reach out directly to assist impacted individuals to access these services, rather than necessitating that they navigate various websites to reach portals, resources, and services.
- No individual must be required to waive any rights or legal remedies in order to access these services.

7. Establish flexibility and leniencies in loan repayments and recoupments

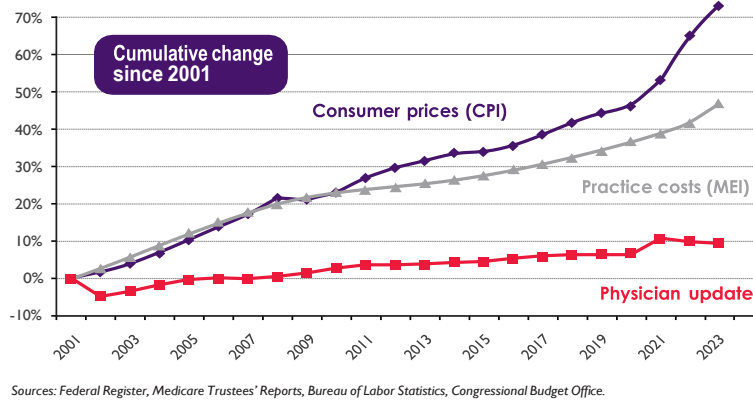
Many physician practices have accepted advance payments and loans through UHG, Medicare, and Medicaid that are helping maintain their financial viability. However, there is growing concern about the repayment expectations and the impact that premature or aggressive recoupment would have on practices. In fact, we understand that recoupment has already begun for some advance payments, including some under the CHOPD Accelerated Payments to Part A Providers and Advance Payments to Part B Suppliers.

The AMA asks Congress to help ensure flexibility and leniencies in loan repayment requirements to ensure that the rug is not pulled out from under financially vulnerable practices just as they are beginning to reestablish their footing. It will be important for the sponsors of advance payments to ensure that claim submission and payment processes are functioning for all of a practice’s payers, rather than just the sponsor’s plan, before requiring repayment. Additionally, it will be critical that sponsors clearly communicate with practices in advance about how recoupments will be processed and specifically identify amounts withheld for loan repayments on remittance advice to differentiate them from other payer recoupment processes.

8. Ensure the long-term financial stability of physician practices through Medicare payment reform

This crisis underscores the fragility of physician practices and the need for Medicare payment reform. According to data from the Medicare Trustees, Medicare physician pay has increased just 9 percent over the last 23 years, or 0.4 percent per year on average, including the temporary 2.93 percent update expiring at the end of this year. In comparison, the cost of running a medical practice increased 54 percent between 2001 and 2024, or 1.9 percent per year. Inflation in the cost of running a medical practice, including increases in physician office rent, employee wages, and professional liability insurance premiums, is measured by the Medicare Economic Index. As shown in the chart below, when adjusted for inflation in

practice costs, Medicare physician pay declined 29 percent from 2001 to 2024, or by 1.5 percent per year on average.



Physician practices cannot continue to absorb increasing costs or weather crises such as the Change Healthcare outage while their payment rates dwindle. **Congress must act to reform the Medicare payment system and ensure that our independent physician practices have the financial stability to make it through the next cybersecurity crisis.**

III. Future actions for consideration to deter cyberattacks and protect patients and physicians

While immediate and near-term relief and flexibilities for physicians and patients are paramount, the AMA urges Congress to begin considering long-term policy changes and protections needed to both deter future cyberattacks and protect physician practices if—and realistically, when—they happen again. The AMA anticipates that Congress and the Administration will investigate the causes of this breach, whether existing cybersecurity laws are strong enough, and whether such laws were being enforced and followed.

The AMA hopes that Congress will also look at where response requirements can be strengthened to include approaches that will immediately trigger the positive financial incentives and structural supports physician practices need to keep their doors open and continue providing care to their patients in the event of the next large-scale breach. For example, Congress should consider resiliency requirements for health plans and intermediaries.

The AMA also urges Congress to consider whether more flexibilities are needed for federal and state governments to respond to health care cyberattacks, perhaps similar to or in conjunction with those flexibilities provided for public health emergencies. Moreover, we encourage Congress to work with the Administration to ensure health information technology developers adopt security-by-design principles as well as investigate the creation of a publicly funded cybersecurity insurance program for health care providers.

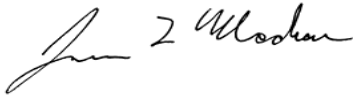
Additionally, we strongly urge Congress to consider why consolidation, and particularly vertical integration, is permitted in the health care sector to the extent that a single company can have such indisputable dominance over the entire health care system that when they are attacked, the entire health care delivery system nearly collapses.

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Finally, the AMA urges Congress to reevaluate the environment that has led so many physician practices to be in the position of financial vulnerability. Ensuring physician practices have resources to weather a crisis like the Change Healthcare outage and continue serving their patients has to start with ensuring physicians' financial security.

Thank you for the opportunity to submit this letter. We look forward to working with the Subcommittee to address the immediate and long-term needs of physician practices in light of the Change Healthcare cyberattack and outage.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD