

March 26, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Request for reissuance of electronic payment guidance

Dear Administrator Verma:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to express our strong concerns over unfair business practices with respect to electronic payments to physicians—namely, virtual credit cards (VCCs) and the Automated Clearing House electronic funds transfer standard (EFT standard). The AMA applauds CMS' Patients Over Paperwork initiative and in keeping with those efforts, we urge you to clarify the agency's policy on electronic payments.

Because of VCCs, physicians are facing up to a five percent payment cut and increased administrative burdens (which take physicians away from providing patient care). Health plans and their vendors are increasingly issuing claims payments to physicians and other health care professionals using VCCs, a nonstandard form of electronic payment. While we welcome the opportunity for physicians to voluntarily accept VCCs, **the Centers for Medicare & Medicaid Services (CMS) must make clear to all involved stakeholders that physicians and other health care professionals may not be forced to accept VCCs** because of several burdens they place on the practice:

- First, providers must manually enter VCC information into their credit card merchant payment system to receive payment for their services. Practices typically receive different VCC numbers for each claim, resulting in increased time spent performing administrative tasks and increased possibility of payment delays due to VCC number entry errors. Adding to this burden is the fact that VCCs require manual posting, as they cannot be processed using a Health Information Portability and Accountability Act of 1996 (HIPAA)—compliant electronic remittance advice.
- Second, as with traditional credit card payments, VCC payments are subject to interchange and transaction fees, with percentage-of-payment interchange fees running as high as five percent. Such fees can add up quickly for physicians: a large radiology practice in North Carolina spent over \$30,000 on VCC fees in fewer than 10 months in 2014—resources that could have been otherwise directed to new equipment or staff that would benefit patient care.

- Third, while physician practices lose contracted payment dollars from VCC use, health plans stand to profit from this payment method. Plans often receive “cash-back rewards” of up to 1.75 percent of the revenue generated by VCC merchant fees, essentially amounting to a kickback that renders VCC usage a profit center for plans.
- Finally, health plans and vendors frequently require providers to “opt-out” of, rather than “opt-in” to, this alternative form of payment, which is a coercive strategy resulting in additional strain on the practice’s staff. In fact, the large North Carolina radiology practice mentioned above spent months contacting **48** separate health plans and vendors to transition away from VCC payments.

In addition to VCCs, some health plans and their contracted payment vendors charge physicians fees for payments made via the EFT standard, a process similar to an employee receiving direct deposit payments from an employer. In such cases, physicians are required to pay for additional “value-added” services, such as customer service hotlines. While the AMA recognizes that physicians may elect to receive supplementary services to the EFT standard for additional fees, some health plans and their contracted payment vendors *force* providers to use the “value-added” EFT standard. In such cases, physicians are left with no choice but to “pay to get paid.”

By way of background, the EFT standard facilitates streamlined payer-to-provider claim payments and reduces manual processing for both insurers and physician practices. CMS expressed in its final rule implementing the EFT standard that the intent of the standard was to reduce burden on physician practices by creating an efficient, uniform method of electronic payment for practices.¹ The rule also notes CMS’ “estimate [that] there will be no direct costs to physician practices and hospitals to implement the health care EFT standards.”²

CMS issued guidance via Frequently Asked Questions (FAQs) last summer that provided critical protections to health care providers by pushing back on coercive and unfair practices by health plans. For instance, one FAQ stated that if a provider requests claims payment via the EFT standard, a health plan must comply³ and do so without charging the provider any fees.⁴ Additionally, CMS explicitly stated that “a health plan cannot require a provider to accept virtual credit card payments.”⁵ Yet, despite CMS’ regulatory language and in the absence of CMS’ FAQs, some health plans and vendors still require physicians to switch from paper checks to either VCCs or a fee-based version of the EFT standard.

We would like to stress that this guidance offered critical protections to fair business in the health care industry **without** interfering with competition or business interests. In fact, the AMA is staunchly pro-business given that many physicians are business owners.⁶ As such, we are not advocating that use of VCCs or “value-added” EFT payments should be prohibited; rather, we believe that physicians should have the opportunity to make an **informed business decision** regarding acceptance of these payment methods. Physicians need appropriate industry safeguards to successfully run their businesses as they see

¹ 77 Fed. Reg. 1556 (Jan. 10, 2012) at 1557.

² 77 Fed. Reg. 1556, at 1582; *see also* HHS Adopts Operating Rules for Electronic Funds Transfers/Remittance Advice, available at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2012-Fact-sheets-items/2012-08-07.html> (Aug. 7, 2012).

³ 45 CFR 162.925(a)(1), stating, “If an entity requests a health plan to conduct a transaction as a standard transaction, the health plan must do so.”

⁴ FAQ #22281, attached; *see also* 77 Fed. Reg. at 1582.

⁵ FAQ #22285, attached.

⁶ The AMA’s 2016 Physician Practice Benchmark Survey shows that 55.8 percent of physicians work in practices that are wholly owned by physicians.

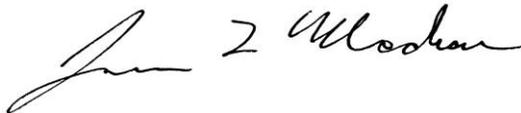
fit. **The CMS FAQs endorsed honest, fair business in the health care industry by enabling physicians to make informed, independent choices regarding the appropriate payment method for their practice.**

Unfortunately, CMS' FAQs have been removed from its website for the second time in six months, leaving physicians with uncertainty, potential administrative hassles, and the challenge of fighting coercive payer business tactics. Moreover, the ambiguity left in the wake of the FAQs' removal undermines widespread industry efforts to increase voluntary adoption of the EFT standard, reduce manual burdens, and achieve significant cost savings.⁷ The AMA has been in touch with CMS about this issue, but we have not received an adequate explanation about why the Administration removed the FAQs. **Accordingly, we urge CMS to republish its FAQ guidance as soon as possible.**

We applaud the recent emphasis that CMS has placed on reducing regulatory burdens for health care professionals and increasing the time available for direct patient interactions. **As one significant step towards achieving these goals and eliminating administrative waste in our health care system, we request that CMS immediately reissue guidance on electronic payments that addresses the key points outlined above.**

Should you have any questions or wish to discuss these issues, please contact Laura Hoffman, American Medical Association Assistant Director of Federal Affairs, at laura.hoffman@ama-assn.org or 202-789-7414.

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

⁷ See 77 Fed. Reg. 1556 (Jan. 10, 2012) at 1569, stating, “any delay in the adoption of EFT and ERA operating rules delays industry opportunity for efficiency and cost savings.”