



NJ HFMA
Healthcare Current
Events Forum (HCEF)-
June 2024

NJ HFMA – Physician Practice Forum

Agenda

- ✓ **National/State Issues**
 - ✓ Healthcare Regulation and Policy Update
 - ✓ FTC Noncompete FAQs
- ✓ **Part A**
 - ✓ Kaufman Hall Hospital Flash Report
 - ✓ MA Hurting Rural Hospitals
- ✓ **Part B**
 - ✓ Stop Nursing Shortage Bill
 - ✓ 340B Providers
- ✓ **Compliance**
 - ✓ Kaiser Foundation Breach
- ✓ **Payers**
 - ✓ Provider and Payer Issues
- ✓ **Technology**
 - ✓ HHS Invests in Cyber for Hospitals
- ✓ **Next monthly meeting**
 - ✓ Wednesday, September 18, 2024

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✓ National/State Issues

✓ KPMG Healthcare Regulation

- ✓ The Consumer Financial Protection Bureau (CFPB) announced a proposed rule that would remove medical debt from credit reports; if finalized the rule could eliminate \$49B in liabilities for 15M individuals.
- ✓ CMS will recalculate 2024 Medicare Advantage Star Ratings for 2025 Quality Bonus Payments following successful lawsuits from SCAN Health and Elevance Health alleging the agency improperly calculated their Star Ratings, resulting in \$750M+ in lost bonus payments.
- ✓ The Biden Administration partnered with Microsoft and Google to offer free or low-cost cybersecurity products to rural hospitals; cyberattacks against the U.S. healthcare sector increased 128% from 2022-2023 according to the Office of the Director of National Intelligence.
- ✓ HRSA awarded \$11M to 15 organizations to establish new medical residency programs in rural communities, building on the \$64M allocated to the Rural Residency Planning and Development Program (RRPD) since 2019.

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✓ National/State Issues

✓ KPMG Healthcare Law and Policy Update

- ✓ A new report from the CMS Office of the Actuary projects annual U.S. healthcare spending will increase from \$4.8T in 2023 to \$7.7T by 2032; the report cites increasing Medicare enrollment, demand for care, and higher overall insurance rates as primary spending drivers.
- ✓ MedPAC released its annual report to Congress concerning Medicare payment systems, inflation-based updates to the Medicare physician fee schedule, and regulation of Medicare Advantage prior authorization; the committee considered but ultimately made no recommendation to reduce Medicare payment rates for inpatient rehabilitation facility services based upon patient conditions.
- ✓ Steward Health Care secured \$225M for its hospitals to remain open through its bankruptcy; the health system will sell all 31 of its hospitals and physician networks in two auctions beginning in late June.
- ✓ The 9th U.S. Circuit Court of Appeals overturned a district court's decision in favor of Sutter Health in a 2022 antitrust class-action lawsuit citing improper exclusion of evidence, remanding the case for a re-trial; the new case's plaintiffs may seek up to \$411M in damages against the health system.

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✓ National/State Issues

✓ FTC Noncompete FAQs

✓ When does the Rule become effective?

- ✓ The Rule is set to become effective 120 days from the date it is published in the Federal Register, which was April 23, 2024 (“Effective Date”). Pending further action by the FTC and subject to numerous pending legal challenges seeking to enjoin the Rule, the Rule will likely become effective on or around August 21, 2024.

✓ What types of non-compete clauses are barred by the Rule?

- ✓ The Rule bars clauses or provisions that are a term or condition of employment and that prohibit or prevent a worker from or penalize a worker for: (i) seeking or accepting work in the U.S. with a different person where such work would begin after the conclusion of the employment; or (ii) operating a business in the U.S. after the conclusion of employment.

✓ What does the Rule restrict employers from doing?

- ✓ Beginning on the Effective Date, employers are prohibited from entering into new non-competes that are barred by the Rule with any workers. The Rule further prohibits employers from enforcing or attempting to enforce existing non-competes with workers other than senior executives.

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✓ **National/State Issues**

✓ **FTC Noncompete FAQs**

✓ Who is considered a “senior executive” under the Rule?

✓ To qualify as a senior executive, a worker must meet (i) an earnings test and (ii) a job duties test. Under the earnings test, the worker must earn more than \$151,164 annually, as defined under the Rule. Under the job duties test, the worker must be in a policy making position, meaning the worker has final authority to make policy decisions that control significant aspects of the business entity.

✓ Can an employer enforce an existing non-compete against a worker that qualifies as a senior executive?

✓ If a worker qualifies as a senior executive under the Rule and entered into a non-compete before the Rule’s Effective Date, an employer may still enforce the senior executive’s existing non-compete until the expiration of such clause or provision.

✓ Does the Rule apply to independent contractors and other workers?

✓ Yes. The Rule covers any natural person who works or who previously worked for an employer, whether paid or unpaid, including, without limitation, any employee, independent contractor, extern, intern, volunteer, apprentice, or sole proprietor.

✓ Does the Rule apply to non-profit entities?

✓ No, non-profit entities are excluded from the Rule.

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✓ Polling Question #1

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Which of the following is not true about the FTC's noncompete rule?

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✓ **The Centers for Medicare and Medicaid Services (CMS) – Part A Reimbursement**

✓ **Kaufman Hall May 2024 Hospital Flash Report (April 2024)**

✓ **Key Findings**

- ✓ 1. April data show a relatively strong month, with margins and other key performance indicators, including outpatient revenue and OR minutes increasing.
- ✓ 2. Average lengths of stay decreased, reflecting a return to more normal care patterns and the establishment of stronger post-acute care transitions.
- ✓ 3. Emergency department visits have increased and are back up to pre-2020 levels, putting additional pressure on hospitals and health systems.

✓ **Operating Margins**

- ✓ **CYTD – 3.8% Operating Margin April 2024**
- ✓ **Monthly – 4.3% Operating Margin April 2024**

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✓ **The Centers for Medicare and Medicaid Services (CMS) – Part A Reimbursement**

✓ **MA Hurting Rural Hospitals**

- ✓ Studies by Chartis and others paint the bleak picture for rural hospitals. According to a recent estimate by the nonprofit Center for Healthcare Quality and Payment Reform, about 700 rural hospitals are at risk of closing. A recent Chartis report estimated 167 rural hospitals have closed since 2010, with another 418 vulnerable to closure now.
- ✓ According to CHQPR, the median margin on patient services at small rural hospitals is about minus 7%. And according to Chartis, the median overall operating margin for independent rural hospitals is 2.2% in the red. In Floyd's state, the negative margin is 10%.
- ✓ The bulk of those shortfalls come from private payers, and often Medicaid — a problem that isn't new. What is new is the growth of Medicare Advantage plans in rural communities, supplanting traditional Medicare, which is rural hospitals' most reliable payment source, said CHQPR President and CEO Harold Miller.
- ✓ According to the Chartis report, Medicare Advantage enrollment surged in rural communities by 48% from 2019 to 2023, with 35% of Medicare-eligible patients in those areas joining the private plans. At the same time, the data show that while temporary pandemic relief shored up hospital finances during some of that span, the percentage of rural hospitals operating at a loss rose from 43% to 50% in the 12 months before the Chartis report was released in March.

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✓ Polling Question #2

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Which of the following is true about rural hospitals?

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✓ **The Centers for Medicare and Medicaid Services (CMS) – Part B Reimbursement**

✓ **Stop Nursing Shortage Bill**

- ✓ Two U.S. lawmakers on May 9 reintroduced a bill that would create a federal grant program for nursing schools to stand up or expand accelerated degree programs geared toward individuals with an undergraduate degree in another field.
- ✓ The legislation would authorize \$10 million per year in grants for nursing schools to create, expand or support accelerated nursing degree programs. The bill would allow schools to use the funding to hire and retain nurse faculty, expand the number of clinical training sites and offer financial support to students. It was introduced by Michigan Rep. Haley Stevens and Ohio Rep. Dave Joyce.
- ✓ In recent years, nursing programs have turned away thousands of qualified applicants, primarily due to a lack of clinical placement sites and faculty shortages, according to the American Association of Colleges of Nursing.

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✓ **The Centers for Medicare and Medicaid Services (CMS) – Part B Reimbursement**

✓ **340B Providers**

- ✓ A decision issued by an appeals court represents the latest setback for 340B providers hoping to secure widespread access to price discounts on Medicare Part B drugs.
- ✓ The U.S. Court of Appeals for the District of Columbia Circuit on May 21 upheld a district-court ruling that drug manufacturers can impose restrictions on the 340B discounts they offer for drugs dispensed at contract pharmacies.
- ✓ The outcome makes manufacturers 2-0 in such cases at the appellate level, including a January 2023 decision by the Third Circuit Court of Appeals, which combined two lower-court rulings and reversed one of them.
- ✓ The prevailing parties in the latest case were plaintiffs Novartis and United Therapeutics, which were among various manufacturers that placed conditions on contract pharmacy discounts beginning in 2020. HHS and the Health Resources and Services Administration (HRSA), the listed defendants, subsequently issued enforcement letters informing manufacturers they should begin providing 340B discounts through contract pharmacies without restrictions. Those letters have been at the center of the ongoing legal disputes.

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✓ Polling Question #3

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Which of the following is not true regarding the Nursing Shortage bill?

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✓ Compliance

✓ Kaiser Foundation Breach

- ✓ Kaiser Foundation Health Plan has reported a data breach affecting over 13 million people.
- ✓ Kaiser Permanente has determined that certain online technologies, previously installed on its websites and mobile applications, may have transmitted personal information to third-party vendors Google, Microsoft Bing, and X (Twitter).
- ✓ No usernames, passwords, Social Security numbers, financial account information, or credit card numbers were included in the transmission to these third parties.
- ✓ The release of personal information was not due to bad actors hacking into the system demanding ransomware, as has often been the case for the increasing number of cybersecurity incidents at healthcare organizations.
- ✓ An unwanted record was set in 2023 with 725 large security breaches in healthcare reported to the Department of Health and Human Services Office for Civil Rights, according to The HIPAA Journal. This beat the record of 720 healthcare security breaches set the previous year.

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✓ Payers

✓ Provider and Payer Issues

- ✓ Contract negotiations are growing more contentious between providers and payers as both sides battle rising costs.
- ✓ Fueling the tension are persistent economic challenges stemming from the COVID-19 pandemic.
- ✓ Providers are facing higher costs for labor, supplies and pharmaceuticals. In addition, they are fed up with increased payer denials and years of low reimbursement rates, and in some cases, are choosing to cancel contracts altogether.
- ✓ Payers are seeing their medical costs rise as patients seek deferred care and providers charge more to deliver those services.
- ✓ Payers and providers negotiate for a variety of health plans, including commercial coverage and the government-led Medicaid and Medicare programs, to set reimbursement rates and determine any supplemental benefits for members.

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✓ Technology

✓ HHS Invests in Cyber for Hospitals

- ✓ On May 20, 2024, the Advanced Research Projects Agency for Health (ARPA-H) posted an announcement that they are launching a \$50 million program to create tools for information technology (IT) teams to enhance and automate hospital cybersecurity to ensure the continuity of patient care.
- ✓ It is called UPGRADE, the Universal Patching and Remediation for Autonomous Defense
 - ✓ • This program is designed to protect hospital operations, keep devices secured and ensure continuity of patient care.
 - ✓ • This project is intended to build on Health and Human Services' Healthcare Sector Cybersecurity Strategy to support increased security of all sized hospital systems.
- ✓ The project envisions an autonomous cyber-threat solution that enables proactive, scalable, and synchronized security updates. Importantly, this software platform will enable simulated evaluations of potential vulnerabilities' impact and adapt to any hospital environment across a wide array of common devices.
- ✓ UPGRADE has four technical areas:
 - ✓ • Technical area 1 - focuses on the creation of a vulnerability mitigation platform; while
 - ✓ • Technical area 2 aims to create high-fidelity digital twins of equipment in hospital environments.
 - ✓ • Technical areas 3 and 4 seek to develop methods to rapidly and automatically detect software vulnerabilities and then confidently develop defenses for each.

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✓ Polling Question #4

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Which of the following is true about payer and provider issues?

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