American Relief Act, 2025

By Elizabeth Woodcock, MBA, FACMPE, CPC

On December 21, 2024, President Biden signed the American Relief Act (HR 10545) into law. Perhaps more important than averting a government shutdown, the newly enacted law will impact your reimbursement in 2025. Medical practices should be aware of the following changes:

1. Professional fee reimbursement for Medicare is being reduced by 2.83%. The CY 2025 Physician Fee Schedule (PFS) conversion factor is $32.35, a decline of $0.94 from the 2024 conversion factor of $33.29. At the last minute, Congress removed the patch that would have prevented the decrease. While there is still hope for Congressional intervention this winter, it will be challenging to prioritize the topic of Medicare payments to physicians given significant governmental administrative transitions. This federal decision represents another frustrating development for medical practices. A recent analysis by the American Medical Association highlighted that payments for professional services have fallen by a whopping 26% since 2001. Many experts believe the inability to reverse this latest cut may prompt more physicians to retire, further limiting patient access to care – which is arguably

already at a crisis point. While the decline is specific to Medicare, many commercial payer contracts have rates pinned to Medicare's Resource-Based Relative Value Scale, so the impact of this cut has consequences that reach far beyond the Medicare program.

2. While the reimbursements remain on the government's chopping block, telemedicine received a temporary reprieve under the new law. Set to revert to pre-COVID restrictions on January 1, 2025, the federal law extended the current flexibilities for telemedicine coverage for Medicare patients through March 31, 2025. Practices engaged in telemedicine should closely monitor legislative negotiations this winter, as access to this method of care delivery could face restrictions or elimination by the government.

Other changes to the Medicare Physician Fee Schedule in 2025, announced on November 1, 2024, by the Centers for Medicare & Medicaid Services (CMS), were covered in our November issue. We will continue to keep you apprised of reimbursement changes that may affect your bottom line.

Malpractice Lawsuits vs Medical Board Complaints

By Matthew Bauer, JD

The mission of state medical boards is to protect and promote the health, safety, and welfare of the public by licensing physicians and by regulating the practice of medicine. This helps ensure that the public has access to high-quality medical care. As part of fulfilling this mission, state medical boards investigate complaints filed by patients against physicians. A complaint filed with a state medical board is different than a medical malpractice lawsuit filed with a court. In a medical malpractice lawsuit, the plaintiff alleges the physician committed medical negligence and asks the jury to award monetary damages. However, in a medical board complaint, the complainant alleges the physician violated the medical practice act and/or the rules of medical professional ethics of that state and asks the medical board to take action against the physician's license.

SVMIC's policy provides a benefit for state medical board investigations or "licensure proceedings" if the licensure proceeding arises from a medical incident otherwise covered by the policy and meets all other policy terms and conditions. Under this policy benefit,

SVMIC selects and retains counsel to represent our insured physician and pays “licensure proceeding costs” as defined by the policy up to a specified amount to defend our insured physician against the allegations in the medical board complaint.

After a state medical board receives a complaint about a physician, typically an investigator will contact the physician to request the patient’s medical records and/or schedule an interview with the physician. This step of the investigative process gives the physician an opportunity to tell their side of the story and to bring the relevant medical facts and information to the attention of the investigator. Often, after the physician is able to tell their side of the story, the medical board investigation will be concluded as not meriting further action, as demonstrated by the following closed claims.

The 60 YOM patient with a history of opioid abuse and Naltrexone treatment was seen by orthopedist Dr. Smith for wrist pain secondary to a fall at home. Over the course of multiple office appointments, Dr. Smith performed an appropriate work-up, including performing a physical exam and ordering imaging studies; Dr. Smith diagnosed the patient with wrist sprain; and prescribed conservative treatment including non-narcotic pain medication and physical therapy. However, the patient became upset that Dr. Smith would not prescribe narcotic pain medication; the patient was non-compliant with physical therapy appointments; and Dr. Smith referred the patient to another orthopedist for a second opinion. After the referral, Dr. Smith was contacted by a state medical board investigator requesting a copy of the patient’s medical chart and an interview to investigate a complaint filed by the patient alleging “unprofessional conduct.” SVMIC hired an attorney to assist Dr. Smith with producing the medical records and to prepare her for the interview with the investigator. During the interview, Dr. Smith explained her care and treatment of the patient and her medical decision-making regarding the patient’s treatment course (conservative medical management of the patient’s wrist sprain as opposed to the prescription of narcotic pain medication, which would have been medically inappropriate for a patient with a history of opioid abuse under the circumstances) to the investigator with the assistance of her attorney. After the interview, Dr. Smith received a letter from the state medical board investigator stating the complaint had been closed as not meriting further action.

The 55 YOF patient was seen by PCP Dr. Jones over the course of several years for management of her type II diabetes mellitus. Unfortunately, due to a variety of factors including numerous appointment cancellations and non-compliance with a recommended diabetic diet and prescribed medication, Dr. Jones decided to terminate the physician-patient relationship. Consequently, Dr. Jones sent a letter notifying the patient of the termination of the physician-patient relationship and notifying the patient that he would continue to treat the patient for a reasonable amount of time (30 days) while she transitioned her care to another health care provider. Approximately three months later, Dr. Jones was contacted by a state medical board investigator requesting an interview to investigate a complaint filed by the patient alleging “patient abandonment.” SVMIC hired an attorney to assist Dr. Jones and to prepare him for his interview with the medical board investigator. During the interview, Dr. Jones explained his decision to terminate the

physician-patient relationship, stating (a) the physician-patient relationship is based on trust; (b) it appeared the patient did not trust Dr. Jones to take care of her type II diabetes mellitus as she was consistently non-compliant with recommended treatment and prescribed medication; and (c) therefore, he believed it would be in the patient's best medical interest to establish care with another health care provider whom she would trust and whose medical advice she would follow. Dr. Jones further explained there was no "patient abandonment" as he gave the patient notice and a reasonable amount of time to transition her care to another health care provider while he continued to see the patient for office appointments if requested during the transition period. After the interview, Dr. Jones received a letter from the state medical board investigator stating the complaint had been closed as not meriting further action.

It can certainly be alarming and upsetting for a physician to receive contact from the state medical board investigating a complaint filed by a patient. However, with assistance and support from experienced counsel and SVMIC, a medical board complaint can often be resolved and disposed of as an initial matter after the physician is afforded an opportunity to tell their side of the story to the medical board investigator and to present the relevant medical facts and documentation supporting their actions.

Student Athletes and NIL Liabilities

By Jeffrey A. Woods, JD

It's January, and you may be preparing to watch the CFB National Championship game. You may also be wondering, "what does a college football game have to do with a risk liability column?" If you are involved in providing medical care and/or therapy to student athletes, the answer is "plenty".

In 2021, the NCAA implemented rules allowing student-athletes to be compensated for the use of their "name, image, and likeness" (NIL). Student-athletes can now receive payment for endorsements and sponsored social media posts, while collectives (organizations made up of alumni, boosters, and wealthy individuals) offer financial incentives to top high school recruits to attend affiliated colleges or universities. Student-athletes with the most promising futures can now earn millions of dollars each year, consequently increasing the stakes in the event of a malpractice claim.

Working with a professional, collegiate or high school sports team can be very prestigious. That physician/patient relationship can lead to financial rewards, an enhanced reputation in the community, and perks such as attending championship games and television

exposure. However, as with any area of medicine, potential malpractice claims should always be a concern.

Several recent high profile cases involving athletes have reinforced the risks involved in treating these high-income patients. Former Philadelphia Eagles player, Chris Maragos, won a $45 million judgment against an orthopedic surgeon alleging the physician pressured Maragos into rehabilitation too soon following surgery for a torn meniscus. Maragos was never able to return to active status thereby costing him millions in lost earnings.

However, malpractice suits are not limited to professional athletes. Penn State player, Isaiah Humphries, alleged malpractice related to a shoulder injury, asserting "non-medical influences" in that the team physician allegedly took directions from the head coach, prioritizing the team's needs over the individual patient's needs. A "lack of presence" was also alleged as the physician was not on campus full-time, resulting in a lack of care for the athlete. Although this case was ultimately dismissed, it demonstrates the types of claims that student-athletes can assert in a malpractice action.

Generally, malpractice suits for college athletes have not included damages for lost wages from future income because prior to the NIL, college athletes were not compensated and for most, any future income was speculative at best. The NIL changes the playing field, at least for players with high rankings and great future potential. A college athlete who files a malpractice lawsuit against a physician, provider, trainer, therapist, or other healthcare provider can include a claim for lost NIL earnings and lost future earnings as an element of damage as those amounts are less speculative now. For star athletes, these figures could be in the millions. It is important to note that because lost wages and lost future income are economic damages, the plaintiff who is successful at trial would be able to collect the full amount awarded even in states with tort reform legislation, such as Tennessee, since these laws place a cap on non-economic damages - not on economic damages.

What can healthcare providers do in the wake of the NIL to better protect themselves?

- **First**, always practice within the standard of care using your medical judgment for the best care and treatment for the patient. Do not be influenced by outside forces or parties such as coaches and school officials.
- **Second**, thoroughly and timely document all encounters with the patient, including telephone calls.
- **Third**, be familiar with the academic institution's rules, regulations, and policies relating to medical care of student-athletes.
- **Fourth**, consider your professional liability insurance coverage needs.

Should you have any questions, you may contact our Risk Education Department at 800-342-2239 or at ContactSVMIC@svmic.com.

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change over time.