

Payment Delays: Interest and Penalties



September 1, 2017

Sue Birch, MBA, BSN, RN

Executive Director

Colorado Department of Health Care Policy and Financing

1570 Grant Street

Denver, CO 80203-1818

Dear Director Birch:

I am writing on behalf of the many physician members of Colorado Medical Society (CMS) who are suffering financial harm from the delay in claims processing and payments submitted for care and treatment of Colorado Medicaid enrollees. CMS members acknowledge and appreciate the State's efforts to resolve the program's payment problems which arose with implementation of a new system by a new vendor. However, there have been and remain a myriad of problems resulting in lengthy payment delays to physician practices. Those amounts are large, for some providers totaling hundreds of thousands of dollars. Since physicians submitting claims did not experience these problems prior to the March 1, 2017 change in vendors, it is clear that the delay is solely attributable to the new system and vendor.

CMS and the physicians are looking to the State and its leaders to diminish the harm. Since enactment of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), Federal law requires state Medicaid programs to pay 90% of "clean claims" within 30 days of receipt of the claim, and 99% of "clean claims" within 90 days of receipt of the claim. See 42 U.S.C.(a)(37)(A), which states the State Medicaid program must :

provide for claims payment procedures which ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims.



The definition of “clean claims” in 42 CFR 447.45 includes properly submitted claims delayed by the State’s Medicaid system, such as the claims at issue here. We are unaware whether or not the State has either sought or obtained a waiver from CMS of these regulatory requirements. Since these regulations are clearly intended to protect the State Medicaid participating providers, we believe that a court would likely find an implied right of private action on behalf of aggrieved physicians under the above laws.

Additionally, the Colorado statute concerning the Prompt Payment of Claims (C.R.S. 10-16-106.5) recognizes that the delay in payment of claims causes an unwarranted drain on the financial resources of health care providers and requires the payment of not only interest but a penalty as well. As a financial hardship has clearly been demonstrated to be the case for some physicians, we ask that the State commit to not only pay interest but penalties as specified in C.R.S. 10-16-106.5(5)(b). Again, such statutes are increasingly being recognized by courts around the country to provide an implied or private cause of action for physicians. *See Maimonides Med. Ctr. v. First United American Life Ins. Co.*, 116 A.D.3d 207 (N.Y.App. 2014); *Foundation Health v. Westside EKG Assoc.*, 944 So.2d 188 (Fla. 2006).

CMS requests that you confirm in writing that physicians who submitted what would be “clean claims” but for the software problems caused by the new vendor are entitled to recover from the State of Colorado interest at reasonable rates for delayed payments. CMS suggests that the interest rates promulgated by the Bureau of Fiscal Affairs of the Department of the Treasury which apply to delayed Medicare payments is reasonable compensation for “clean claims” not paid within 30 days. The interest rates for 2017 are:

Jul-17 - Dec-17	2.375%
Jan-17 - Jun-17	2.500%

CMS shares the State’s goal of encouraging physicians to participate in the Medicaid program and provide care to Colorado’s underserved populations. Confirming the payment of interest on overdue amounts may help prevent an exodus of providers from the Medicaid program and demonstrate the State’s understanding of the hardship on Medicaid providers. It may also avoid the State and aggrieved participating providers from engaging in protracted expensive lawsuits over reimbursement issues. At a minimum, it will help offset the losses being incurred by the participating providers.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Lozano MD". The signature is fluid and cursive, with the "MD" part being more distinct and written in a slightly different style than the name.

Katie Lozano, MD, FACR, President
Colorado Medical Society

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Colorado Academy of Family Physicians (CAFP)
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Colorado Chapter of the American Academy of Pediatrics

cc: Honorable John Hickenlooper, Governor, State of Colorado
Honorable Donna Lynne, Lt. Governor, State of Colorado
Jeff Hinson, Regional Administrator, Centers for Medicare and Medicaid
Services, Region VIII