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Submitted Online (www.townhall.com) and Sent Via Email (Jimeequa.Williams@dmas.virginia.gov)

Re: VACEP Public Comment on Intent to Amend the State Plan – Emergency Room Charges

The Virginia College of Emergency Physicians are writing today in strong SUPPORT of DMAS’ Notice of Intent to Amend the Virginia State Plan for Medical Assistance to eliminate the provision that allowed the pending, reviewing and downcoding of fees for “avoidable” emergency room claims. This provision must be eliminated, as required by a federal court order that was issued on April 27, 2023 (*Va. Hosp. & Healthcare Assoc., et al. v. Roberts, et al., 3:20-cv-00587-HEH*), which VACEP was a party to. We agree with DMAS’ proposal to change and repeal the downcoding provision as described in Notice, which is consistent with the court order.

Back in June of 2020, VACEP strongly OPPOSED the implementation of the ER Utilization program. We believed- as we still do today- that the Prudent Layperson Standard obligates Medicaid programs and managed care organizations (MCOs) to reimburse doctors and hospitals for the delivery of emergency medical care based on presenting symptoms and NOT using diagnosis lists. This standard is reflected in CMS guidance and remains in effect today.

Removing this provision will have a positive impact on the emergency physicians across the Commonwealth who report to work every day to serve and save the lives of our patients. The unfair reduction in their reimbursements over the last three years has had a very significant impact on their practice and the ability to appropriately staff emergency departments. Emergency physicians and hospitals are obligated to treat everyone who comes into the ER, regardless of their ability to pay under the federal Emergency Medical Treatment and Active Labor Act (“EMTALA”).

As we, MSV and the VHHA addressed in previous public comment, EMTALA requires us to provide medical screening exams to everyone who comes in to determine whether an emergency medical condition exists. The downcoding provision conflicted this obligation, forcing physicians to continue to care for patients yet not get a commiserate reimbursement for the care that was provided. Our hope is that the removal of this penalty will help to reduce some of the financial strain our physician practices are under as we strive to serve an ever-increasing number of patients, especially Medicaid patients who continue to struggle to find available primary care and preventative care.

Finally, we want to emphasize that we remain committed to working with DMAS and the Commonwealth to support programs that truly reduce emergency department utilization by Medicaid patients. Not paying the physicians for the care they provide has no impact on patient behavior. In 2021, DMAS issued a good roadmap for better options- the “Medicaid Payment Policy and Care Coordination Workgroup Report.” After two years of stakeholder meetings, the consensus recommendations focused on improving access to primary care, providing more complex care coordination, targeted rate increases, and improving access to behavioral health providers. We also look forward to continuing to work on programs such as the Emergency Department Care Coordination Program to really work to help patients get the wraparound services they need to stay healthy and out of the ER.

Again, we appreciate the opportunity to comment and strongly support DMAS’ proposed removal of the Downcoding Provision from the State Plan. If you have any questions or require clarifications of our comments, please feel free to contact Aimee Perron Seibert at aimee@commonwealthstrategy.net