Prompt Payment Laws

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Understand how prompt payment laws protect you -- and how to get the most out of the laws.

When several states began creating prompt pay legislation in the late 1990s to curb systemic payment problems and questionable practices of payers, physicians breathed a collective sigh of relief. At last, they thought, someone is paying attention.

Placing the issue on legislators' radar screens and crafting bills to stem payer abuses have had a beneficial impact, but the resulting statutes are so riddled with loopholes that the net effect has hardly been a total fix. And many physicians either aren't aware of their rights under the laws or are uncertain how to access the statute to get overdue money in the door. Furthermore, in some states, payer contracts supersede the prompt pay laws, so physicians may not benefit from some of their provisions.

Still, there is good news in some quarters and hope on the horizon. Forty-seven states now have some form of prompt pay law and more than a dozen have proceeded to "version two" to close loopholes and give the laws -- and the agencies charged with enforcing them -- more teeth. The trends are promising, but the loopholes -- notably the widely varying or altogether absent definitions of what constitutes a "clean claim" -- are thwarting the statutes' intended purpose of dealing with the problem. Twelve states have attempted to resolve the definition dilemma, but it remains a serious roadblock to enforcement.

"That's one of the areas we're still concerned about," says Timothy Flaherty, MD, chairman of the AMA board of trustees.

"In many states with laws on the books, [the statutes] have been unenforceable because of problems with that definition." In addition, most prompt pay laws exempt self-insured ERISA plans, and Medicare+Choice and Medicaid managed-care plans are governed by federal laws regulating payer practices, so prompt pay laws don't necessarily apply.

Still, Flaherty is optimistic that the tide is beginning to turn. The laws, and the AMA's work at the state and national level, have exposed the problem of delayed or withheld payments and given physicians an avenue for redress. "This has put the spotlight on the situation, and now that insurance commissioners are imposing significant fines, things are changing. Rather than ... playing banker with us, insurers are [incurring] fines," Flaherty says. Most of the current laws require payment within 30 to 60 days, depending on the situation and claim status. Interest rates on late balances run from 10 percent to 18 percent annually.

To benefit from the "full force" of law, it's important to first understand what it does -- and doesn't do. "The first thing physicians should do is get a copy of the [regulations] and make sure they understand them," says Kathy Cartwright, a consultant with HCDS Consultants in Houston, who works with physician practices on practice management and contracting issues.

Knowing whether a payer is in violation of the law also means having a good handle on the practice's finances and contracts, Cartwright says. Too often, physicians don't have systems in place that monitor payments from and incorporate the contracted rates.

"With many practices, this is a hit-or-miss situation, and if you don't know what you're supposed to get paid -- whether it's 120 percent of Medicare or X-percent of billed charges -- a prompt pay law isn't going to help much," she says. But practices with good systems are reaping the benefits. In Texas, where payers incur a $1,000 fine and pay full-billed charges if they don't pay claims within 45 days, hospitals and practices using effective monitoring systems are seeing their bottom lines boosted.

"Some providers and hospitals have systems that auto-generate a letter on the 46th day -- to both the payer and the state," Cartwright says. "That's a powerful way to use the law."

The Ohio State Medical Association (OSMA) plans to offer its members a way to take the automatic monitoring of claims to a higher level. "When we surveyed our members, their number one challenge was claims management," says Mark Jarvis, managing director of OSMA Advantage, the medical
association's business arm. So next year, OSMA will introduce a custom-developed application service provider that not only tracks late claims but also generates letters to payers and the state, and calculates the interest due on late claims.

But physicians can't simply expect that because the law exists their payment problems will go away. The best way physicians can take advantage of the law is to get their own houses in order first, says Reece Hirsch, a healthcare attorney with Davis Wright Tremaine in San Francisco.

"Inevitably, these laws will move HMOs and other payers away from the practices [that result in payment delays]. But as a practical matter, that will happen only if the laws are enforced and if physicians take responsibility for pushing that forward," Hirsch says. That means working with professional organizations on collective efforts, ensuring that claims have been properly filed, and filing complaints formally.

States that have implemented a formal complaint process -- using either the AMA's template or their own version -- have seen compelling results. In New York, for example, the Department of Insurance received 63,500 complaints in the first two years after the state's prompt pay law was enacted, and levied fines accordingly.

In Oregon, a joint AMA-Oregon Medical Association (OMA) initiative has produced results as well. Jim Kronenberg, OMA's associate executive director, says that since the organization began vetting and then funneling complaints to the insurance department, payers have taken notice. "We're receiving a lot of calls from insurance companies asking, 'Have you received any complaints against us?' It's at least having a salutary effect," Kronenberg says.

Oregon's prompt pay law is one of several that don't specify a structure for fines. For that reason, the OMA's 6,500 members devised a way to get regulators' attention. After conducting a survey of physicians regarding payers' practices, the OMA backed up its findings by conducting a follow-up project in which several hundred physicians tracked every single claim from the time it was filed until it was paid -- or not paid. "That's a big task, when you're talking about big clinics that generate 3,000 to 4,000 claims a day," Kronenberg says. But the substantial documentation of process has spurred the insurance department into action. "The 'opposition' couldn't complain that [the findings were] self-reported," he adds.

In Texas, a revision to the 1999 prompt pay law was vetoed last summer by Gov. Rick Perry. The setback prompted the Texas Medical Association (TMA) to use other means to address the problem of the clean claim definition. In addition to providing the state with evidence of the scope of the problem -- a recent survey found that 15,000 Texas practices had accounts receivable beyond 45 days totaling more than $60,000, for a total estimated $90 million in overdue payments -- the TMA pushed the insurance commissioner to institute a clean claims work group. But the most effective initiative has been the TMA's Hassle Factor dispute resolution program. TMA representatives compile complaints and meet with payers on a regular basis to discuss member physicians' grievances and push for resolution. "This has probably been the most effective thing we've done," says Rick Johnson, TMA's director of medical economics.

In New Mexico and Georgia, medical associations have worked with insurance departments to institute claims tracking systems and have warned HMOs that the prompt pay laws will be aggressively enforced. The highly public approach is working. Georgia has aggressively fined violators, and New Mexico's claims-tracking effort has been so effective that physicians are now receiving payments for claims they'd long since given up on, says AMA's Flaherty. "The New Mexico Medical Association's use of this [tracking] system has produced enough publicity," he says, that payers began making good on old claims just to avoid being in the spotlight. "No one wants to be the worst one on the list."

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