Managed Care Challenges and Strategies

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California Hospital Association

Insurer Accountability

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Agenda

- CHA's Advocacy Agenda
- Recent Data Findings
- Recent and Ongoing Litigation
- Vitality Index

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CHA's Advocacy Agenda

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Headwinds: A Challenging Public Narrative

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CHA Advocacy Agenda: Insurer Accountability

Hospitals report significant challenges with health plans, including

- Claim denials and payment delays
- Authorization denials for medically necessary services
- Inadequate network adequacy, particularly for post-hospital services
- Failure to provide necessary and required care coordination services
- Lack of timely communication

Due to these harmful practices, hospital capacity and financial stability are threatened, and patient outcomes are compromised.

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CHA Advocacy Agenda: Insurer Accountability (cont.)

The CHA Board has established *Insurer Accountability* as a key priority for 2024 advocacy

CHA's strategy includes several interrelated components, designed to:

- Press for HHS enforcement of laws governing insurers' practices
- Advocate for meaningful state and federal policy changes
- Pursue litigation to reset the tone
- Educate policymakers — tell the patient and hospital story
- Build data needed to advocate near- and long-term for sound payment practices

CHA Advocacy Agenda: Insurer Accountability (cont.)

CHA's Key Messages

- **Care that is delayed is care that is denied, and insurance company practices are getting worse, not better.**
- **Insurers are violating state laws that require them to ensure patients receive timely, medically appropriate care — and to adequately pay providers for that care.**
- **State regulators must hold insurance companies accountable by enforcing existing state laws.**

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Recent Data Findings

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Unfair Payment Practices

2023 Data Collection Effort

- Data from a sample of hospitals and health systems on their accounts receivables (AR) trends
- Goal is to demonstrate that payers are increasingly failing to pay their bills on time
- Analysis marries this data to HCAI financial data to understand the share of total claims that go unpaid and for how long

Figure 1. Accounts Receivable Sample as Share of Non-Kaiser Hospitals

	Population	Sample	Sample as Share of Total
Size			
Number of Hospitals	367	71	19%
Licensed Beds	71,185	15,875	22%
GACH Inpatient Days	15,457,178	3,183,266	21%
GACH Inpatient Discharges	2,656,214	601,322	23%
ED Visits	11,811,888	2,983,017	25%
Characteristics			
Member of Health Systems	68%	97%	
Organized as a Non-Profit	51%	64%	
Rural	16%	9%	
Hospital Council	45%	62%	
Hospital Association of South California	48%	28%	
Hospital Association of San Diego and Imperial Counties	7%	10%	
Averages			
Average Licensed Beds	194	224	
Average GACH Inpatient Days	42,118	44,835	
Average GACH Inpatient Discharges	7,238	8,469	
Average GACH Length of Stay	5.8	5.3	
Average ED Visitors	32,185	42,014	
GACH Medicare Payer Mix	39%	40%	
GACH Medi-Cal Payer Mix	34%	36%	
GACH Commercial Payer Mix	24%	22%	

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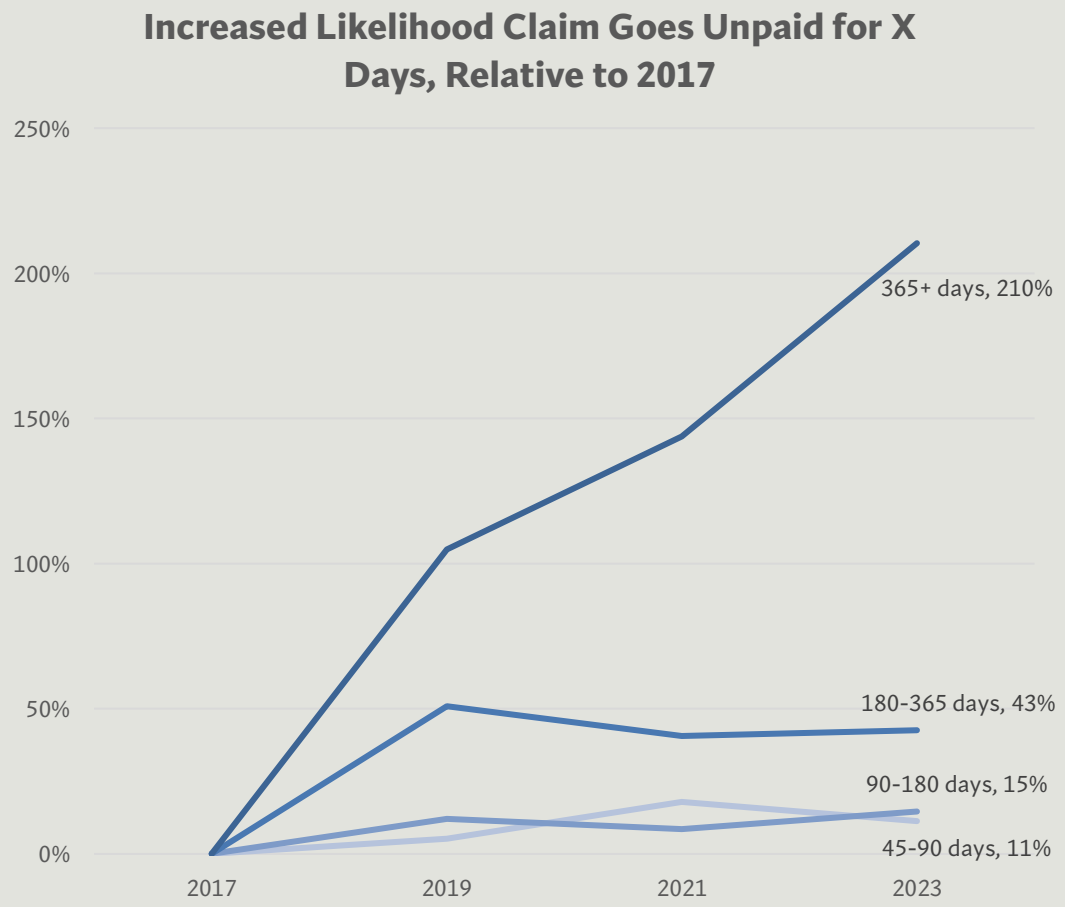
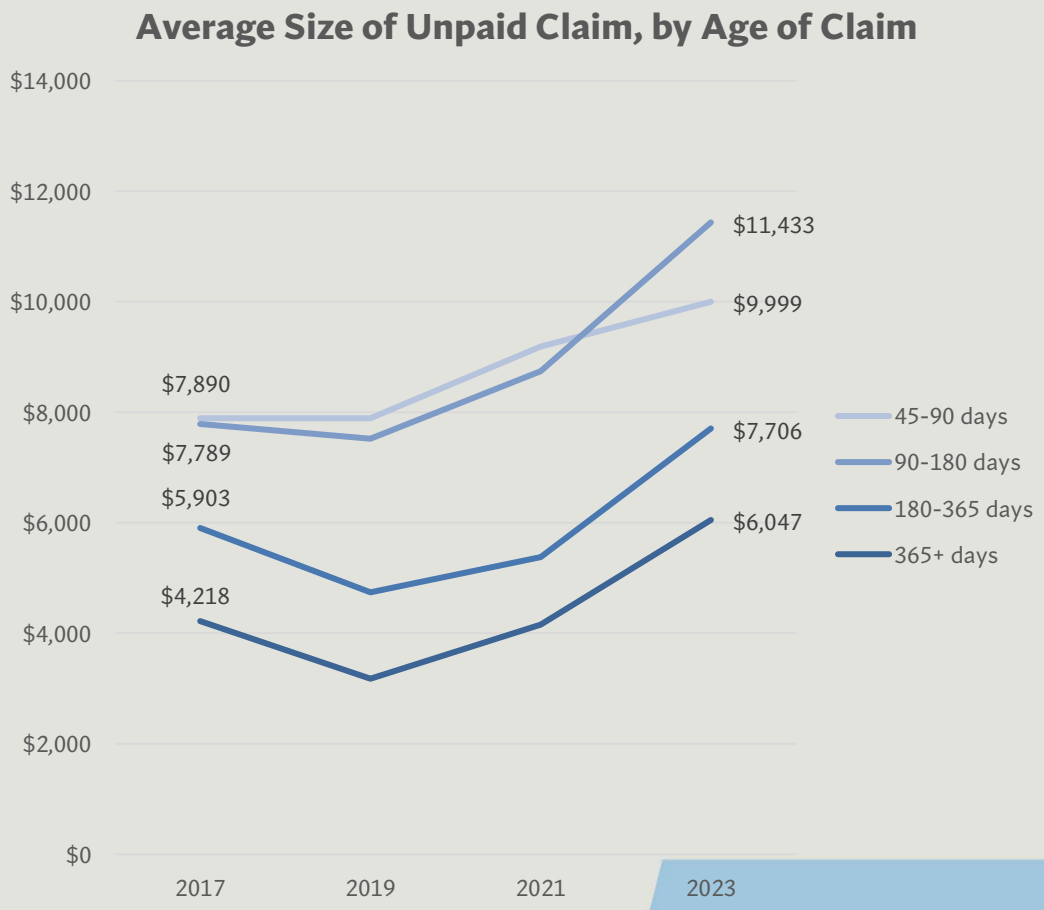
Unfair Payment Practices (cont.)





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Unfair Payment Practices (cont.)

Assuming a quarterly return on investments of about 3% (the average for S&P 500), insurance companies can earn **“$1 million a day”** on the float from unpaid claims, or around **$350-$400 million annually.**

Payment Delays and Denials

- Delay tactics
  - Pending accident Information
  - Pending other coordination of benefits information
  - Anthem - request for itemized bills
- Medical necessity denials for trauma claims
- Ignoring appeals

Anthem IB Policy Change

- Anthem requesting itemized bills for all IP claims over $50,000 and all OP claims over $20,000
  - September 2023 – announcement re: fully-insured policies
  - December 2023 – expansion to self-funded plan types
- Various hospitals have objected to the policy change
  - Contract
  - Knox-Keene objections
- Impact varies by hospital
  - Policy applies to reimbursement based on a % of billed charges

Denial of Payment for Emergency & Trauma Care

- Common with ERISA Self-Funded Plans
- May rely on exclusions for “illegal” activities
- May rely on grandfathered status under the Affordable Care Act

- **With the advent of the No Surprises Act, grandfathered status under ACA does not matter**

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Recent and Ongoing Litigation

No More Surprises … For Now?

- Litigation over the QPA/IDR has settled down; appeals continue at the Fifth Circuit
- November 2023 Proposed Rule re Batching; Comment period closed
- Starting to see a wider variety of ongoing litigation

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No Surprises Litigation Update

The *TMA* cases

- *TMA II* Appeal Before the Fifth Circuit [Feb. 6, 2023 judgment vacating rules favoring QPA]
- *TMA III* [Aug. 24, 2023 judgment vacating rules re calculation of QPA using "ghost rates," etc.]
- *TMA IV* [Aug. 3, 2023 judgment vacating rules re batching and IDR fees]

Other Litigation

- *Haller v. HHS* Second Circuit reversal
- Litigation re enforcement of IDR awards
- Litigation over notice & consent to be balance billed

TMA II (February 6, 2023)

- Overturned portions of Final Rule that required Independent Dispute Resolution (IDR) arbiters to presume the credibility of the QPA and give it greater weight
- Appealed to the Fifth Circuit
- Oral arguments held Monday, February 5, 2024
- Decision forthcoming

Tex. Med. Ass'n v. United States HHS, 654 F. Supp. 3d 575 (E.D. Tex. 2023)

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TMA IV (August 3, 2023)

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- Overturned portion of the October 2021 Interim Final Rule that limited the **batching of services in IDR**
  - The rule permitted batching only of the same or similar CPT codes
  - Also increased administrative fee to $350
- November 3, 2023 proposed rule created new arrangement for batching – same patient encounter, up to 25 lines
- AHA February 5, 2024 comment letter largely supported new proposals, with some modifications

Tex. Med. Ass'n v. United States HHS, No. 6:23-cv-59-JDK, 2023 U.S. Dist. LEXIS 135310 (E.D. Tex. Aug. 3, 2023)

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TMA III (August 23, 2023)

- Overturned portions of Interim Final Rule calculation of QPA – “ghost rates”
- Currently on appeal
- TMA’s brief due in the Fifth Circuit on March 13, 2024
- Amicus briefs in support of TMA to follow shortly thereafter

Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs., No. 6:22-cv-450-JDK, 2023 U.S. Dist. LEXIS 149393 (E.D. Tex. Aug. 24, 2023)

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Haller v. HHS, 2024 U.S. App. LEXIS 1477 (Jan 23, 2024)

- Second Circuit affirmed dismissal of takings clause challenge to No Surprises IDR
- Alleged "taking" was the right to bill the patient
    - In NY, patient apparently assigns to provider the right to pursue the insurer for payment
- Remanded to permit plaintiff, Dr. Daniel Haller, to amend complaint with respect to "common-law cause of action against insurers," as opposed to patients

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Litigation re Notice & Consent

- The *Plastic Surgery Center, P.A. v. Aetna*, No. MON-C-140-23 (New Jersey state court, filed December 14, 2023)
- OON physician who performs nonemergent plastic & reconstructive surgery at in-network facilities
- Obtained notice & consent forms from patients providing their informed consent to be balance billed
- Suit for higher OON reimbursement and injunction
- Aetna's January 30, 2024 opposition argues physician is not eligible because he is the only specialist and there aren't in-network specialists [42 U.SC. § 300gg-132(b)(2)(D)]
    - Enforcement mechanism – no "cause of action" under NSA

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Litigation re IDR Outcomes

- NSA incorporates Federal Arbitration Act's standard for challenging arbitration awards – but not all FAA procedures
- **PHI Health, LLC v. BCBS of AZ, No. 23-cv-2001-MTL (D. Ariz.)** : Case where provider sought, based on FAA, to force "confirmation" of IDR awards in its favor which insurer refused to pay. Case settled January 11, 2024.
- Cases were provider unsuccessfully sought to vacate IDR:
  - GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield, No. 22-6614 (KM) (JBC), 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sep. 8, 2023) – applied FAA standard
  - Med-Trans Corp. v. Capital Health Plan, Inc., No. 3:22-cv-1153-TJC-JBT, 2023 U.S. Dist. LEXIS 195736 (M.D. Fla. Nov. 1, 2023) – dismissed suit challenging how QPA was calculated; plaintiff sued both the payor *and the arbiter who had decided the IDR*

SB-510 (Covid-19 Testing) Update - CMA v. Watanabe

- California Medical Association filed writ of mandate in SF Superior Court on February 28, 2024
  - Challenges DMHC All Plan Letter (APL) 23-021
- *CAHP v. Watanabe litigation* – June 2023 ruling
  - Upheld the retroactive application of SB 510
  - Testing claims from Mar. 4, 2020 thru Dec. 31, 2021
- APL 23-021 was then issued in November 2023
  - Gave the health plans a “pass” on interest
  - Instructs health plans not to pay if dispute w/RBO

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Vitality Index

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Why Vitality?

The CHA Board endorsed member participation in the Vitality Payer Scorecard

- The Vitality Payer Scorecard will collect comprehensive, objective, and timely data to support advocacy efforts, including requesting greater regulatory oversight.
- Provides a mechanism to track changes and trends over time, allowing CHA to assess impact of policy changes and advocacy efforts over time.
- The automated process reduces the need for additional CHA member surveys, which are administratively cumbersome for hospitals.

Help us help you!

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2024 Momentum

- National partnership with the American Hospital Association
- 24 partnerships with State Hospital Associations
- Almost 1,000 hospitals contracted in the last 12 months
- Over 400 hospital's data loaded
- Goal is over 2,000 hospitals contracted in 2024

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How will the Vitality data be used?

CHA will use the data to identify and demonstrate harmful payer behavior, such as:

- Failure to comply with prompt payment laws
- Inappropriate payment reductions and claim denials
- Unnecessary and excessive record requests

The data will inform and support CHA's advocacy efforts

- Federal regulatory changes (e.g. Medicare Advantage, Interoperability final rules)
- State legislation (e.g. legislation on plan oversight)
- Local Medi-Cal managed care payment issues
- CHA litigation against health plans

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Vitality Implementation Overview

- Hospitals install PHI Scrubber to de-identify the 837/835 data
- Two years of historical claims (837s) and remits (835s)
- Data Validation
- Trainings
- Monthly refresh of claims and remit data
- Payerscorecard.com

HYVE HEALTH

Payer Scorecard

12 months ending 12/31/2023

Home | Prompt Pay | Reimbursement | **Denials** | National

State: All | Payer Type: All | Patient Type: All | Specialty: All

Full Denial (%)

6.3%

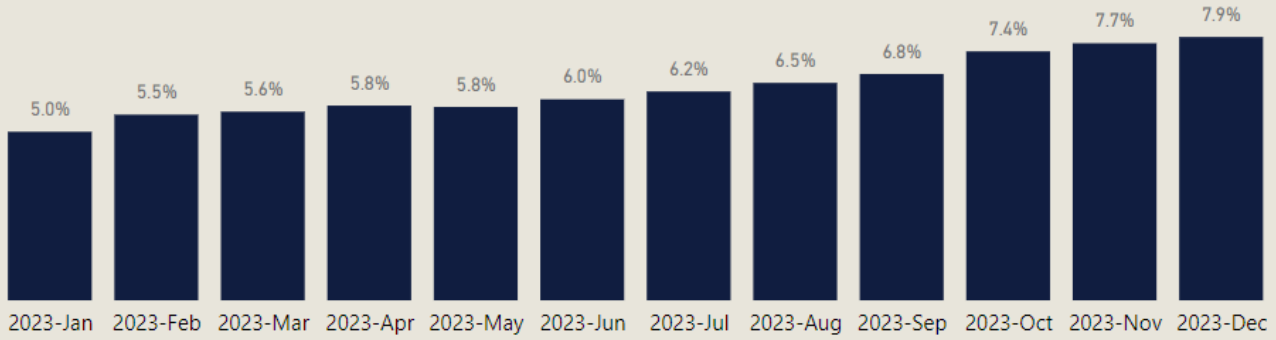
The percent of the remits the payer has declined to provide any reimbursement or coverage for the services rendered.

Payer by Specialty

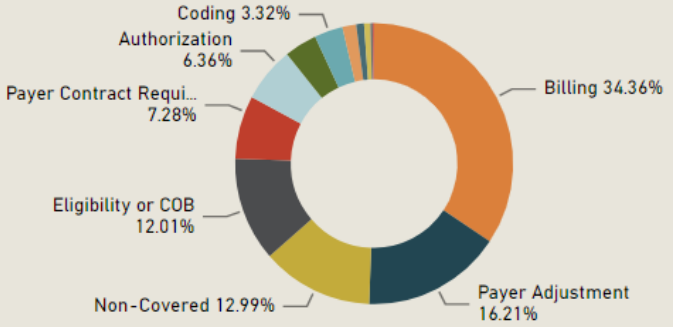
Payer by Category

- [x] Payer
- [ ] Specialty
- [ ] State
- [ ] Hospital

Full Denial % by Month



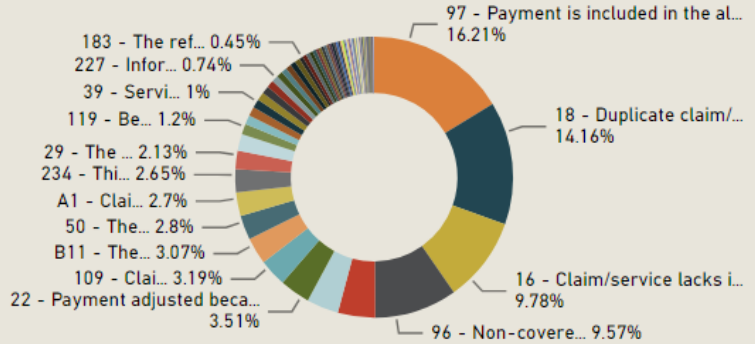
Full Denied Remits by Category



Denial information for all categories, all codes, all months.

Payer	Total Remits	Remits by Selected Denial	Full Denial Remits (#)	Partial Denial Remits (#)	Full Denial (%)	Full Denial ($)	Impact Last Month ($)
Blue Cross/Blue Shield	6,555,116	6,555,116	457,921	1,139,389	7.0%	4,959,452,954	113,106,743
Medicaid	2,567,881	2,567,881	313,238	567,146	12.2%	4,915,660,486	41,154,829
United Healthcare	3,904,697	3,904,697	248,557	1,131,984	6.4%	3,903,662,603	68,677,661
Medicare	6,681,488	6,681,488	171,401	2,077,023	2.6%	2,899,294,869	31,237,089
Other	443,942	443,942	60,397	112,353	13.6%	1,526,116,653	15,421,524
Humana	1,419,939	1,419,939	59,398	149,462	4.2%	1,312,849,561	18,155,985
Aetna	1,011,269	1,011,269	80,343	310,145	7.9%	998,635,492	27,243,766
Molina Healthcare	438,959	438,959	34,483	85,968	7.9%	656,952,023	6,111,261
HealthNet	73,871	73,871	18,206	26,619	24.6%	629,420,902	4,551,250
Cigna	386,302	386,302	38,796	107,256	10.0%	574,894,347	9,223,950
Kaiser	120,212	120,212	10,757	59,352	8.9%	329,835,847	4,583,831

Full Denied Remits by Code



Denial Map

Now is the Time

- Data is the primary difference between why payers are winning and hospitals are losing
- Payers are leveraging their data across many hospitals
- Our industry needs normalized, national and state data to go on the offense against payers
- You can’t manage what you can’t measure
- We are laying the foundation for the future, the time to start is now…

Questions?

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Thank You

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