



Welcome to *Washington Update*, the weekly e-newsletter on the latest health care happenings in the nation's capital that affect APG's members.

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### **APG Member Groups Evaluating Impact Of FTC Ban On Noncompete Clauses**

The 3-2 vote by the Federal Trade Commission (FTC) to [ban](#) noncompete clauses in employment leaves many APG members contemplating the likely effects on their business. The ban — which will prevent most employers, including physician groups, hospitals, and health systems, from enforcing contract terms that restrict employees from working for competitors — will take effect 120 days from the near-term publication of the final rule.

There are exceptions: Existing non-compete clauses in employment contracts can remain in force for “senior executives” — defined as “highly paid workers with the highest levels of authority in an organization.” The definition leaves somewhat open the question of whether an existing noncompete clause can remain in force for a chief medical officer as opposed to the CEO, for example. Nonprofit organizations are also exempt from the ban, but whether the exemption extends to all nonprofit groups is unclear. And in any case, if a nonprofit generates revenue for a for-profit entity, the FTC will have authority over it to enforce the rule, [legal experts](#) note.

**Mixed opinions:** In a [comment letter](#) to the FTC last year, APG argued that there were circumstances in which non-competes were desirable for physician groups, and that a blanket ban would therefore be undesirable. The letter noted that some APG groups have short, one-year noncompete clauses that apply in very limited geographic areas to deter physicians who have been able to build their practices within one organization to quit and join or open a competitor practice nearby. Views of other health care groups were mixed; the American Academy of Family Physicians, for example, supports the ban, while the American Hospital Association called it “bad law, bad policy.” The U.S. Chamber of Commerce and other groups have already [sued](#) in a Texas federal court, challenging the FTC’s rulemaking authority. APG will continue following developments on this issue and provide ongoing updates.



## **Patient Information Exposure Confirmed By Change Healthcare – And Now, Kaiser**

Since the Change Healthcare cyberattack in February, there have been pronounced concerns that consumers’ [protected health information](#) (PHI) or [personally identifiable information](#) (PII) was exposed in the process. This week Change’s parent, the United Health Group (UHG), announced on its website that it had in fact “found [presumably leaked] files containing [PHI and PII] which could cover a substantial proportion of people in America.”

And separately, Kaiser Foundation Health Plan, also known as Kaiser Permanente, began notifying 13.4 million people that “certain online technologies, previously installed on its websites and mobile applications, may have transmitted personal information to third-party vendors,” according to a statement shared with the technology news website [TechCrunch](#). (Several of the [Permanente Federation](#) medical groups are members of APG.)

UHG reported that 22 screenshots that contained PHI and PII obtained in the cyberattack were posted on the [dark web](#) for about a week. The company said it had not seen evidence that doctors’ charts or full medical histories had been stolen and circulated, but acknowledged that it would take “several months of continued analysis before enough information will be available to identify and notify impacted customers and individuals.” In the meantime, UHG said that a dedicated call center, with “trained clinicians to provide support services,” has been established “to offer free credit monitoring and identity theft protections for two years to anyone impacted.”

The Change Healthcare and Kaiser situations are clearly different, with one stemming from a massive cyberattack and the other appearing to have been inadvertent. Regardless of the cause, the combined breaches

are likely to up the ante on congressional scrutiny of health care cybersecurity. UHG CEO Andrew Witty is scheduled to [testify](#) before the Senate Finance committee next week as lawmakers grapple with [next steps](#) to boost security in the health care sector.



## **New National Appointment Wait Time Standards To Take Effect In Medicaid And CHIP**

APG groups caring for Medicaid and Children's Health Insurance Program (CHIP) enrollees under managed care organization contracts will have to meet new appointment wait time standards due to a new final federal [rule](#). Published this week by the Centers for Medicare & Medicaid Services (CMS), the new standards, which will take effect the first rating period on or after July 9, 2027, permit no more than a 15-business day wait for routine primary care (adult and pediatric) and 10 business days for obstetric/gynecological services. States will also be able to identify one additional service for which to set maximum wait times for on their own.

CMS has left it up to states to determine how to account for the current staffing and capacity constraints facing providers in enforcing compliance with the new standards. APG member groups concerned about these issues will need to consult with relevant state agencies as the standards are implemented.



## **Changes Could Improve Performance Of ACOs, Congressional Budget Office Says**

Although the Medicare Shared Savings Program (MSSP) has saved money for Medicare for the [past six years](#), representatives from the Congressional Budget Office (CBO) have sometimes seemed to downplay the results – noting in congressional [testimony](#) last year that “the program was associated with small net budgetary savings in the early years of its operation.” But a new CBO [report](#) homes in on the useful evidence that some MSSP participants have delivered better results than others and reiterates that new policy approaches could further boost performance.

For its latest analysis, CBO said it had not only reviewed the relevant research literature, but also “consulted with outside experts from eight organizations, including industry executives, academic professors, former government officials, a leader of an ACO, and representatives of a philanthropic organization.” It cited the clear evidence that ACOs led by independent physician groups, or with a larger proportion of primary care providers (PCPs), are “associated with larger savings” than groups led by hospitals since “independent physician groups have clear financial incentives to reduce hospital care and thereby generate shared savings,

whereas hospital-led ACOs have conflicting incentives.” It also noted, not surprisingly, that ACOs “whose initial baseline spending was higher than the regional average” also turned in greater relative savings.

**More lures – or goads – to participate?** The CBO report summarized a range of policies that could both boost existing ACOs’ performance and draw more providers into the voluntary MSSP program. One option would be to “make non-participation less attractive,” such as by applying site-neutral payments to hospital outpatient facilities owned by health systems that choose not to participate, or by excluding health systems that choose not to participate from the 340B drug-pricing program. The report also cited primary care capitation payments as a potential lure for more providers, as will now be tested under the [ACO Primary Care Flex model](#) (see [Washington Update](#), March 22, 2024.)



## APG Announcements And Offerings

- APG will host a members-only informational webinar on the **2025 MA and Part D Final Rule** on Monday, April 29, 12:00 – 1:00 pm ET. Register [here](#).
- APG will host its second members-only focus group on the **Medicare Advantage Request for Information** on Thursday, May 2, 12:00 - 1:00 pm ET. Register [here](#).
- APG will host an **Emerging Trends in Health Care Webinar** on May 16, 12:00 pm – 12:45 pm ET, with guest Rebekah Gee, MD, CEO of Nest Health. Register [here](#).
- Registration is open for the **APG’s Spring Conference** in San Diego from May 29-31. Register [here](#).
- Want to get more involved in APG’s Federal advocacy efforts? [Join APG Advocates today](#).

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