

State Rule Pre-empts Decision on Hot-Button Billing Practice

By Evan George
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LOS ANGELES — With no end in sight to the longtime legal standoff between HMOs and hospital physicians over billing practices, state officials have stepped in with a new rule that has health plans applauding and doctors dogging.

The proposed regulation comes months before the state Supreme Court could hear oral arguments on a similar matter.

The court battle concerns what recourse doctors and hospitals have when an HMO pays too little, or sometimes not at all, for treating their customers in emergency rooms. *Prospect Medical Group v. Northridge Emergency Medical Group*, 136 Cal.App.4th 1155 (Cal. App. 2nd Dist. 2006).

Hospitals sometimes bill patients directly for the check's balance, a scheme known as balance billing that many say unfairly holds insurance enrollees hostage with medical bills.

The Department of Managed Health Care,

which patrols HMOs, will air the new rules today at a public meeting in Irvine. The pending regulation would ban physicians from billing enrollees but does not address the larger dispute of doctor fees.

The department's solution to balance billing is "to define it as an unfair billing practice," said Lynne Randolph, a spokeswoman for the Department of Managed Health Care.

"That way the department would have the enforcement capacity to stop medical providers from balance billing patients," Randolph said.

HMOs and other managed care groups have cheered the new regulation. The new proposal is the third and most straightforward attempt at barring the practice.

"The draft regulations from the department are a good first step," said Chris Ohman, president and CEO of California Association of Health Plans, which has long lobbied to ban the practice.

But the crackdown, physicians' attorneys said, strips medical providers of their only means of recouping expenses for costly care.

They complain that health plans routinely underpay for services, and that state regulators have steered clear of patrolling what constitutes reasonable payments, deferring instead to the HMOs' wishes.

"No one wants to get a bill, but when the [HMOs] don't reimburse fairly, it becomes a problem," said Andrew Selesnick, a partner with Alleguez & Selesnick in Encino.

"If physicians aren't getting fair reimbursement, then everyone suffers," Selesnick said. He added that the new rule could dramatically impact emergency services if doctors believe they won't be paid.

Selesnick represents the defendants in the balance billing case being heard by the state Supreme Court.

In 2006, the 2nd District Court of Appeals sided with the defendants, finding that state law does not prohibit hospitals from billing patients for the balance of emergency services, if a provider does not have a contract with a managed care plan, and that the government's Medicare

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rates cannot be considered the standard reimbursement for doctors.

The case, which has been fully briefed but not yet scheduled for a hearing, would almost certainly impact whatever regulation state officials pass.

"I think the *Prospect* case does show that we need to move forward with a regulation," Randolph said.

"But in the meantime, we do not want to wait. The governor feels very strongly that we need to move as quickly as we can to remove patients from the middle of these billing disputes," she said.

State regulators have received 148 calls from HMO enrollees angry over being billed since 2004 and complaints are growing.

Nearly 100 instances of balance billing have been reported in the last month, Randolph said, due to an escalating battle between a system of hospitals called Prime

Healthcare and Kaiser Permanente, the nation's largest HMO.

The two sides have repeatedly clashed over payments for Kaiser patients being treated in Prime Healthcare emergency rooms.

Lawyers for Prime filed lawsuits against Kaiser and three other health plans earlier this year. The hospital chain, which operates nine facilities on a balance billing-dependent model, says it is seeking a definition for what reimbursement it can legally levy from health plans.

HMOs also want a definition, said Ohman, of the health plan trade group. They hope to negotiate lower reimbursement rates than what hospitals like Prime Healthcare charge for treating their patients.

"Once we get the practice of balance billing banned, the next step is to establish a fair process for resolving payment disputes between health plans and health care providers," Ohman said.