

California Supreme Court Extends Ban on Balance Billing of Non-Contracted HMO Members

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In the long-awaited decision in *Prospect Medical Group, Inc. et al. v. Northridge Emergency Medical Group, Inc. et al.*, the California Supreme Court ruled on January 8, 2009, that balance billing for emergency services is illegal, even if the provider does not have a contract with the health care service plan (i.e. HMO).

The *Prospect* case addresses the issue of whether California law prevents a non-contracted emergency room physician from billing a member of an HMO when the HMO fails to adequately reimburse the provider for emergency services. The Court of Appeal previously ruled that Health and Safety Code §1379, which requires that a contract between an HMO and a provider contain a provision barring balance billing, did not apply to non-contracted emergency services providers. The Supreme Court reversed, concluding "that billing disputes over emergency medical care must be resolved solely between the emergency room doctors, who are entitled to reasonable payment for their services, and the HMO, which is obligated to make payment." The Supreme Court based its decision on the entire statutory scheme, which the Court stated was intended to transfer the financial risk for emergency services from the patient to the HMO. Where the HMO is required to pay for the services and the provider has legal recourse against the HMO, the Court held that "the only reasonable interpretation" is to preclude balance billing for emergency services. The Court specifically declined to address the situation where a provider may not have legal recourse directly against the plan; for example, if the HMO is "unable to pay or disputes coverage." The Court also declined to delve into the contentious issue of what constitutes reasonable value for the services.

Other Balance Billing Developments

The *Prospect* decision comes on the heels of the Department of Managed Health Care's recent regulation, Title 28, §1300.71.39, which defines balance billing for amounts owed by an HMO for emergency services to be an "unfair billing pattern." The regulation became effective on October 15, 2008. In November 2008, a state trial court denied providers' challenge to this regulation. Based on this regulation and the *Prospect* decision, balance billing members of HMOs for amounts owed by the plan for emergency services is prohibited. Providers may only bill members for co-pays, cost-shares, and deductibles owed by the patient.

Also dramatically changing the landscape for provider billing is AB 1203, effective January 1, 2009, which prohibits hospitals from balance billing HMO members for any post-stabilization services owed by the plan. The legislation further provides that hospitals that do not have a contract with an HMO must now call the HMO prior to providing post-stabilization inpatient care or risk non-payment from the plan. Under AB 1203, hospitals may bill members for co-pays, cost-shares, and deductibles owed by the patient; in situations where the patient refuses to be transferred to an in-network provider; or when the hospital is unaware the patient is insured with an HMO.

Neither *Prospect*, the DMHC regulation, nor AB 1203 applies to non-HMO patients such as those insured with PPO plans or traditional indemnity plans. Therefore, non-contracted providers may continue to bill non-HMO members for amounts not paid by the plan.

What This Means to You if You are a Provider

1. Do not balance bill members of an HMO for any emergency services, whether or not you have a contract with the HMO and regardless of whether you are a hospital, physician, or any other provider. If you are a hospital, do not balance bill the member for post-stabilization services.
2. Establish a written policy regarding balance billing, including implementation of AB 1203, if you are a hospital.
3. If an HMO fails to pay the reasonable value of the emergency services provider, seek to recover from the HMO. It is probably best practice to appeal first to the HMO. If the HMO denies your appeal, you may file a dispute with the DMHC or pursue legal recourse against the HMO directly in a civil lawsuit.

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