

WSMA Files Writ with Supreme Court Seeking Enforcement of State Law on Payment for Services

Note: WSSA President James Stangl, MD, and Immediate Past President James Burkman, MD, provided testimony this fall to Representative Eileen Cody's Balance Billing Work Group. The following is excerpted from WSMA's Monday Memo, December 13, 2010.

There has been considerable discussion – internally within the profession and with legislators and health plans – over the Insurance Commissioner's non-enforcement of a 1997 state law on health insurer payment for emergency services, and legislative pressures to ban balance billing for some, or all, emergency services.

Last Thursday, in an effort to seek clarification and to set a "baseline" for the debate, the WSMA (with the participation of the state chapter of the American College of Emergency Physicians) filed a Writ of Mandamus with the State Supreme Court seeking to require Commissioner Mike Kreidler to enforce the statute (RCW 48.43.093) that requires health insurers pay for the emergency services of their policyholders, even when the physician providing those services is not contracted with the insurer. The law requires health insurers to pay the billed charges of nonparticipating providers for emergency services, less the specific cost-sharing arrangements permitted in the subscriber's coverage with the insurer, and up to \$50 additional. The law, passed in 1997, was enforced by Commissioner Kreidler's predecessor, Deborah Senn.

The law was enacted to ensure that patients get the care they need in an emergency without delay or unnecessary expense. It was part of a larger health insurance reform bill, and established for the first time in state statute the coverage requirements and conditions for emergency services provided in a hospital emergency department. It requires health insurers to cover the cost of emergency services necessary to screen and stabilize the patient.

Health insurers previously had agreed to comply with the law. In fact in 2000, then Commissioner Senn conducted a statewide campaign imploring Washington state residents to call 9-1-1 and not their insurers' customer service numbers during an emergency. The message was, "Washington state law requires insurers to cover the cost of screening and stabilizing emergency department patients when a prudent layperson would have sought emergency treatment under the same circumstances."

Points we've made in public discussion about this issue:

- This is about giving insurance company subscribers piece of mind that should they go to the hospital ED they will be treated and will not have unanticipated out of pocket expenses beyond what is defined in their coverage.
- Commissioner Kreidler's interpretation of the 1997 law allows insurance companies to pay non-contracting physicians (those who haven't signed a contract with the company) in the ED whatever they wish, sometimes at up to 50% discounts, forcing many physicians to balance bill the patient for the amount necessary to cover their expenses.

- Requiring the commissioner to enforce the 1997 law will mean insurance companies will have to cover their subscribers' expenses when they go to the ED (to the limits of their policies) and patients don't have to wonder who is, or is not, a contracting physician with their insurance company when they visit the ED.
- We don't want to continue to have insurance companies transfer the risk they assume when premiums are paid to them to physicians who treat their subscribers in the ED.

Why now? There were five bills submitted during the 2010 legislative session dealing with emergency services balance billing by physicians who are not contracted with the patient's insurance carrier (i.e., to limit or prohibit altogether). Some proposals would have applied to all services provided by any non-contracted physician all along the chain of care beyond services provided in the ED. We succeeded in having action on all five bills deferred so negotiations with legislators toward some sort of acceptable policy could take place over last summer. They have taken place; but to no avail. So far. And, pressure to pass some sort of balance billing legislation will be exerted in the coming legislative session.