

Prospect Medical Group, Inc. v. Northridge Emergency Medical Group, recent decision by the Supreme Court prohibiting the practice of balance billing

In Prospect Medical Group, Inc. v. Northridge Emergency Medical Group (Jan. 8, 2009) 08 C.D.O.S. 266, the California Supreme Court granted the petition for review made by the Prospect Medical Group, a “delegate” of health services plans that is statutorily obligated to pay for emergency services provided to subscribers of those health plans. Prospect had lost at the appellate court level on the issue (among others) of whether emergency physicians who have not directly contracted with the patient/subscriber’s health service plan may be permitted to bill a patient/subscriber directly for the difference between what the emergency physician billed and what the health service plan paid for services rendered. The Supreme Court held that physicians may not balance bill patients for the amount billed that the provider did not reimburse. The Court said:

We conclude that billing disputes over emergency medical care must be resolved solely between the emergency room doctors, who are entitled to a reasonable payment for their services, and the HMO, which is obligated to make that payment. A patient who is a member of an HMO may not be injected into the dispute. Emergency room doctors may not bill the patient for the disputed amount.

Although the court uses the term “emergency room doctors,” given the reasoning and authorities cited, the balance billing prohibition should apply to any non-contracted provider including anesthesiologists, hospitals, and physicians in other specialties who are not contracted with a responsible payor. The court also used the shorthand term “HMO,” but the balance billing prohibition should apply to preferred provider organizations and point of service plans licensed under the Knox-Keene Act and regulated by the Department of Managed Health Care.

In brief, the Prospect decision declares illegal any attempt by a non-contracting provider rendering emergency medical services to a health care service plan patient from “balance billing” that patient for any part of a disputed reasonable payment amount. It also eliminates any obligation on the part of the patient to pay the disputed amount and therefore any pressure that might be placed on the responsible payor by the patient/subscriber to resolve the dispute. The court’s recognition that the non-contracting provider is entitled to a reasonable payment for its emergency services from the responsible payor, and that a physician may sue the responsible payor directly to resolve billing disputes provides little consolation. The Department of Managed Health Care will almost certainly assert it may fine providers who balance bill in light of the Prospect decision. Whether or not the Department of Managed Health Care has the authority to fine physicians, we suspect (and certainly recommend) that all non-contracting providers refrain from balance billing patients in any situation where the decision applies.