

## Ruling removes billing headache from emergency room visits

**Patients can't be billed when their HMOs fail to pay, the California Supreme Court says. Doctors say they're being squeezed.**

By Lisa Girion  
January 9, 2009

Winding up in the emergency room is bad enough. But the California Supreme Court ruled Thursday that patients no longer have to worry about getting billed for emergency treatment charges that their HMOs fail to pay.

Health maintenance organizations and patient advocates hailed the decision as an important protection against gouging by hospitals and physicians. But doctors said it would encourage greedy HMOs to underpay them and that that could put emergency rooms in jeopardy.

The decision resolves one part of a contentious debate that has vexed courts, lawmakers and regulators for years. But it leaves open the question of what constitutes reasonable payment for emergency services. Regulations require HMOs to pay hospitals and physicians reasonable fees but do not set out specific amounts.

An issue in the case is a practice known as balance billing, a practice that typically occurs when a patient is treated for an emergency at a hospital that does not have a fee contract with the patient's HMO.

In such cases, HMOs say, physicians and hospitals often submit inflated charges. But hospitals and physicians say that without minimum fee requirements, HMOs routinely underpay them.

Disputing such underpayments is impractical and costly, physicians say, so they bill patients for the balance, hoping the patients' complaints will prompt the HMO to pay in full.

Gov. Arnold Schwarzenegger praised the ruling because it "reaffirms that patients should not be put in the middle of billing disputes between providers and health plans."

Two years ago, Schwarzenegger directed his Department of Managed Health Care to adopt regulations banning balance billing, and last year he vetoed a bill that would have set minimum payments for emergency care.

Chris Ohman, chief executive of the California Assn. of Health Plans, said the ruling would help contain healthcare costs and give consumers "the peace of mind they should have with health insurance."

"They will no longer face the threat of receiving bills from emergency room doctors who want more than the fair payment a health plan is willing to cover," he said.

Physicians said they were disappointed by the decision and bristled at the notion that they would overcharge. They said the loss of patient billing removed what little leverage they had with big HMOs to get fair payment.

"I understand taking the patient out of the middle, but you can't just give a blank check to the HMOs at the expense of doctors," said Dev A. GhanaDev, president of the California Medical Assn. and a trauma surgeon at Arrowhead Regional Medical Center in Colton.

"Me, the little trauma surgeon, going up against Blue Cross of California is like David against Goliath -- no chance," he said.

The case considered by the Supreme Court stemmed from a dispute between emergency physicians and the Prospect Medical Group, a Southern California physician organization that operates like an HMO. It centered on emergency care rendered to its patients at Saint John's Health Center in Santa Monica and Northridge Hospital Medical Center.

In August, after failing to negotiate a compromise between physicians and HMOs, the Department of Managed Health Care issued regulations banning balance billing.

Since then, some HMOs and large HMO-like physician groups have declined to renew or have canceled contracts with emergency room physicians in apparent attempts to avoid paying negotiated rates, said Andy Selesnick, a lawyer for the emergency room physicians in the case. "Everybody wants 24-hour service, but nobody wants to get a bill," he said.

Many doctors say they fear that any loss in income resulting from the ruling could further strain already strapped hospital emergency rooms and discourage specialists from taking emergency cases.

"This is really bad for emergency medicine," said Dr. Ramon Johnson, an Orange County emergency room physician. "This is going to shift a lot of money to HMOs and away from people who actually provide the care."

Representatives of the Prospect group did not return calls.

DMHC Director Cindy Ehnes praised the ruling and sought to allay physicians' concerns. "We won't retreat from efforts to make sure that doctors are paid fairly," she said.

Much work is ahead for the DMHC and the Department of Insurance, which also supervises health insurance, said Bryan Liang, executive director of the Institute of Health Law Studies at the California Western School of Law in San Diego.

"The court really avoided the big issue -- what is 'reasonable and fair' payment" for doctors and hospitals,

he said. The DMHC and Department of Insurance "will have to weigh in on this, and how the amounts will be determined."

The ruling could affect a battle between Kaiser Permanente and Prime Healthcare over bills the hospital chain sent to thousands of Kaiser members for emergency care. Kaiser said it was pleased by the decision.

"The decision provides much needed protection for California patients, taking them out of the middle of billing disputes between providers and health plans," said Benjamin Chu, president of Kaiser's Southern California region. A representative of Prime Healthcare could not be reached for comment.

## **Patients off hook in emergency room fee dispute**

[Bob Egelko, Chronicle Staff Writer](#)

Friday, January 9, 2009

Emergency room doctors who think a patient's HMO has underpaid them can't bill the patient for the difference and must seek whatever redress they can from the health plan, the state Supreme Court ruled Thursday in a big-money dispute in the medical industry.

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The unanimous ruling won praise from consumer groups and state officials but was lamented by the California Medical Association, which said it will hurt emergency care in the state.

"California emergency rooms are really in bad shape, and this will make the situation significantly worse," said the association's president, Dev GnanaDev, a trauma surgeon in Colton (San Bernardino County). He said the ban on billing patients would shift costs from health maintenance organizations to doctors, some of whom will end their affiliations with emergency rooms.

But Cindy Ehnes, director of the state Department of Managed Health Care, which regulates HMOs, said the ruling lifts "a crushing economic burden off the backs of California health care consumers." She said it also confirms her department's decision to issue regulations in October that prohibited the billing practice that the court outlawed Thursday.

"The ruling puts the burden of disputed medical fees where it belongs, on insurers and doctors, not on the patients who are far too often caught in the middle," said Jerry Flanagan of the advocacy group

Consumer Watchdog.

More than 21 million Californians are covered by HMOs. The case involves a limited but relatively common type of fee dispute, over the cost of caring for HMO members who receive emergency care at hospitals that don't have contracts specifying the amount the health plans will pay them.

State law entitles doctors and hospitals to receive reasonable fees for their services, but doesn't define those amounts, giving rise to frequent disagreements.

GnanaDev said the amounts in dispute for physicians are usually modest - perhaps \$20 to \$100 for typical emergency room care and up to \$1,000 for surgery. But statewide, he said, doctors claim underpayments of about \$200 million a year, and contested hospital bills are probably higher.

The scope of the issue is also illustrated by the state regulatory department's pending lawsuit against Prime Health Care, which owns a group of hospitals in Southern California, said department spokeswoman Lynne Randolph. She said the company sent bills to 6,000 Kaiser customers last year for amounts the HMO had refused to pay for emergency and post-stabilization care.

Thursday's ruling should invalidate those bills, Randolph said. But she said patients often pay such bills, sometimes under pressure from a collection agency, and can't get their money back under current regulations.

The justices overturned lower-court rulings that had allowed doctors at two hospitals in Los Angeles County to bill patients for unpaid amounts in emergency care bills. Although no California law specifically prohibits such billing, the court said, the statutes that regulate emergency care express an intent to "transfer the financial risk of health care from patients to providers."

"We perceive a clear legislative policy not to place patients in the middle of billing disputes," said Justice Ming Chin in Thursday's ruling. "Emergency room doctors must resolve their differences with HMOs and not inject patients into the dispute."

Randolph, the Department of Managed Health Care spokeswoman, said the department allows doctors to submit such disputes to an independent review panel whose decision on reasonable fees is binding

on both sides. GnanaDev, the medical association president, said the department's system is useless - bureaucratic and far too costly in time and effort for the amount of fees at stake - and physicians have no real recourse in most cases.

"The court gives you an option to go to court against an insurance company," he said. "How many doctors have the time and money?"

The case is Prospect Medical Group vs. Northridge Emergency Medical Group, S142209. E-mail Bob Egelko at [beigelko@sfchronicle.com](mailto:beigelko@sfchronicle.com).

## State Supreme Court backs ER patients over billing

By Bobby Caina Calvan  
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In a decision with broad implications for health care consumers, the California Supreme Court has ruled that medically insured patients may not be billed for emergency care that their health plans refuse to pay.

In a unanimous decision released Thursday, the high court provided strong support to patient advocates who claimed that emergency room doctors and hospitals were unfairly going after consumers and putting patients in the middle of billing disputes with health maintenance organizations, or HMOs.

But the court declined to inject itself into the emotionally and politically charged debate over what constitutes reasonable charges and payments, long a sticking point between medical providers and insurers – and the underlying controversy over the practice known as balance billing.

The reluctance to weigh in on the issue will likely return the debate to state lawmakers.

"The court case is good news for consumers, but we still believe that legislation that enacts a fair dispute resolution process between health plans and ER physicians is needed," said Lisa Page, a spokeswoman for Gov. Arnold Schwarzenegger.

One idea being touted is a winner-take-all arbitration process that allows each side to submit what it considers a fair resolution. An independent arbitration board then picks the better of the two solutions.

Balance billing occurs most often in medical emergencies, when patients are treated by so-called out-of-network doctors and hospitals. Health plans negotiate fees with hospitals and doctors and establish

health care networks. But providers who aren't part of the network aren't bound by those fees – and when an insurer declines to pay the full bill, physicians and hospitals try to collect the balance directly from the patient.

Since 2006, more than 1.75 million Californians who received emergency room care were billed by doctors and hospitals for balances – totaling about \$528 million – beyond their co-pays, deductibles and what their insurance plans paid, according to the California Association of Health Plans, the trade group that represents the state's HMOs.

State regulators have attempted to mediate balance billing disputes but have been stymied by the lack of participation by physicians and health plans.

"We have not been able to find a common ground," said Lynne Randolph, spokeswoman for the Department of Managed Health Care.

Consumer groups were pleased with Thursday's decision. "The bottom line is that this is a dispute between insurers and doctors," said Jerry Flanagan, the health care policy director for Consumer Watchdog. "It's up to the doctors and insurers to work out what the fair rate is to be paid. The patients shouldn't have to pay a dime."

The high court's ruling calls balance billing a practice meant to frighten consumers into paying bills that HMOs should pick up.

"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," Justice Ming W. Chin wrote.

The decision in Prospect Medical Group v. Northridge Emergency Medical Group overturns earlier rulings that sided with Northridge, an emergency caregiver that argued state law does not prohibit balance billing.

The court also signaled that it may be wary of arguments presented in another balance billing case, in which the California Medical Association is seeking to undo a state regulation that went into effect in October classifying balance billing as an unfair practice.

Schwarzenegger, who directed the Department of Managed Health Care to draft the regulations, applauded the ruling.

"This ruling will protect Californians who have done the right thing by obtaining insurance, but then later receive burdensome medical bills that they do not owe," Schwarzenegger said in a statement.

The CMA expressed disappointment in the decision, which it considered a blow against the state's emergency rooms.

In its analysis of state data, the CMA said that emergency rooms in California absorbed more than \$1 billion in unpaid services from June 30, 2006, to June 30, 2007.

The ruling's prescribed recourse – take billing disputes to court – is not feasible and could add to doctors' expenses, said Dr. Dev A. GnanaDev, CMA president and a trauma surgeon at Arrowhead Regional Medical Center, the county hospital in San Bernardino.

"It's your little practice going after a company with a lot more resources," he said. There is no incentive, he said, to go after deep-pocketed insurance companies for relatively small amounts of money.

The decision takes away what little leverage doctors have against big insurers, he said. "Let's put some pressure on insurance companies to pay fair rates," GnanaDev said.

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## **Calif court protects ER patients from doctor bills**

By PAUL ELIAS, Associated Press Writer

Thursday, January 8, 2009

(01-08) 14:50 PST San Francisco (AP) --

The state's high court on Thursday barred emergency room doctors from directly billing insured patients when their HMOs refuse to pay the entire bill.

The ruling affects California's roughly 21 million HMO members when they are treated by emergency room doctors who aren't covered by their plan. An unanimous California Supreme Court ruled that doctors who feel shortchanged by HMOs for ER visits must take up the issue with insurance companies rather than patients.

The practice — known as "balance billing" — is becoming increasingly common in California and has touched off fierce political and legal debate.

"Emergency room doctors must resolve their differences with HMOs and not inject patients into the dispute," Justice Ming Chin wrote for the seven-member court. "We perceive a clear legislative policy not to place patients in the middle of billing disputes between doctors and HMOs."

Ching noted that a 1994 law requires HMOs to pay for out-of-system emergency room visits and it also empowered doctors to sue the managed health care insurers if they were underpaid.

"These provisions strongly suggest that doctors may not bill patients directly when a dispute arises between doctors and the HMOs," Chin wrote.

The California Medical Association, which filed a friend-of-the-court brief in the case, complained Thursday that the court's ruling left emergency room doctors unfairly at the mercy of HMOs when it comes to determining the value of their work.

"This court ruling basically says if I do my job as I see fit and HMOs don't want to pay, tough luck, go to court," said CMA president Dr. Dev A. GnanaDev, who is a trauma surgeon. "I signed up to be a doctor, not a lawyer."

GnanaDev said that the ruling will add to the financial problems of overburdened emergency rooms throughout the state. He said 70 emergency rooms have closed in the state since 1990.

Thursday's ruling overturned two lower court decisions allowing the billing for emergency room visits. It stemmed from a lawsuit by Los Angeles-based Prospect Medical Group Inc., representing HMOs, filed against two Southern California companies that provided emergency room doctors to area hospitals.

The Supreme Court left unresolved other out-of-system visits that result in patients receiving out-of-system doctor bills, though the bulk of the fast-growing dispute between doctors and managed health care plans are emergency room treatments.

State and federal laws require emergency room doctors to treat everyone regardless of insurance status or ability to pay.

The state Department of Managed Health requires HMOs to pay emergency doctors "reasonable" costs and that's where the trouble starts. HMOs complain bitterly about doctors inflating their bills. The doctors complain that HMOs routinely shortchange them, and many then bill patients directly for the difference.

The lobbying group California Association of Health Plans said the overwhelming majority of patient bills result from emergency room visits. The association estimated that 1.76 million Californians received

such doctor bills in 2005 and 2006 totaling \$528 million and that more than half the patients paid the bills.

Association chief executive Christopher Ohman called the billing practice "predatory" and said the Supreme Court's "ruling will help ensure consumers have the peace of mind they should have with health insurance."