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Healthcare Law News

Centinela v. Health Net: HMOs now have to pay ER physicians if the HMO knows or has reason to know that the IPA will be unable to pay.

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Both federal and California state law requires emergency doctors, and the hospitals in which they work to provide emergency care. The federal EMTALA statute at 42 U.S.C. § 1395dd(b) is perhaps best recognized as a requirement for emergency room doctors to provide "necessary stabilizing treatment for emergency medical conditions and labor." California law is also clear that emergency care "shall be provided to any person requesting the services or care" at any hospital with appropriate facilities and qualified personnel. Emergency services and care are to be provided without regard to the patient's "insurance status, economic status [or] ability to pay." Health & Saf. Code, §1317, subd. (b). Emergency services and care shall be provided without first questioning the patient's insurance or ability to pay. Health & Saf. Code, §1317, subd. (d).

What is your choice of law?

Several years ago there was much litigation in the California courts with physicians seeking payment from HMOs due to the financial insolvency of several Independent Practice Associations (IPAs). In a series of cases brought by physicians seeking payment from HMOs due to the failure of IPAs, several health plans were successful in causing the IPAs, and the physicians, to bear the burden of these losses. See e.g. *California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.* (2001) and *Desert Healthcare Dist. v. Pacificare FHP, Inc.* (2001) 94 Cal. App. 4th 781. All of these cases went against the plaintiff physicians and continue to be good law.

On February 19, 2014, emergency room physicians won a significant decision in *Centinela Freeman Emergency Medical Associates, et al. v. Health Net of California, Inc.*(2012) 225 Cal. Ap. 4th 237 that required HMOs that delegated the payment of emergency room doctors to IPAs that could not pay, where required to pay the emergency room physicians directly:

> We hold that where: (1) a physician is obligated by statute to provide emergency care to a patient who is enrolled in both an HMO and an IPA with whom the physician has no contractual relationship; (2) the physician provides emergency care to the patient; (3) the HMO, which has a statutory duty to reimburse the physician, chose to delegate that duty to an IPA it knew, or had reason to know, would be unable to fulfill the delegated obligation; and (4) the IPA fails to make the necessary reimbursement, the resulting loss should be borne by the HMO and not the physician. In short, we hold that the HMO has a duty not to delegate its obligation to reimburse emergency physicians to an IPA it knows or as reason to know will be unable to pay. This duty is a continuing one, and is breached by an HMO's failure to act when it learns, after an initial delegation, that its delegate is no longer able to fulfill its obligations.

Centinela, at 146.

The court was careful to distinguish the facts in *Centinela* from the earlier cases where the health plans prevailed. For instance, the emergency doctors in *California Medical Assn* and *Desert Healthcare* voluntarily contracted with the IPA. A major distinction in *Centinela* was that the emergency room doctors did not choose to join the IPA, but were instead required to provide emergency room services through the IPA.

Centinela also placed great emphasis on *Prospect Medical Group, Inc. v. North Ridge Emergency Medical Group* (2009) 45 Cal. 4th 497 rejection of dicta in *Ochs v. PacifiCare of California* (2004) 115 Cal. App. 4th782 suggesting that balance billing may be permissible.

"Rather, it mandates that the HMO pay the doctor directly. It does not involve the patient in the payment process at all. This strongly suggests that the Supreme Court would not permit an emergency physician, unpaid by an insolvent IPA, to balance bill the patient, who would then have a remedy against the HMO." *Centinela*, at 158.

While the ruling requires the HMOs to pay emergency room doctors, it does not resolve how much a particular emergency room doctor will be paid by the HMO. "The reimbursement is to be 'the reasonable and customary value' for the services provided. (Cal. Code Regs., tit. 28, § 1300.71, subd. (a)(3)(B).)" See Footnote 11 of *Centinela*. The emergency room doctors will be paid, but the amount of payment is not addressed. Presumably, what the IPA paid the emergency room doctors (when they were paid) would come into play.

Centinela is also clear that only emergency room doctors get the benefit of the ruling. "To the extent the radiology plaintiff continues to pursue its claim for reimbursement of non-emergency services, we reject the argument. As we shall discuss, the statutory requirements and policy concerns which motivate our result in this case and to which this opinion is limited, relate only to compulsory services provided on an emergency basis." Footnote 8.

This is a well won victory for emergency room physicians.

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***Frank P. Fedor** is a partner and leads the firm's Healthcare Practice Team. He has successfully represented healthcare providers in obtaining or defending over $100 million in disputes with managed care payers and in Medicare reimbursement appeals. Frank is an AV® Peer Review Rated lawyer and was recognized in 2008 and 2009 as a Northern California Super Lawyer® in the field of healthcare.*

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