

May 20, 2008
Emilie Alvarez
Regulations Coordinator
California Department of Managed Health Care
Office of Legal Services

Re: Proposed Adoption of Title 28, Section 1300.71.39 (Control No. 2008-1536)

Dear Coordinator Alvarez,

CALPIRG is a statewide membership-based public interest group that stands up to powerful interests, working to win concrete results for Californians' health and well-being. With researchers, advocates, organizers, and students, we advocate on behalf of consumers and all California's residents

I write to express our support for the DMHC's adoption of Section 1300.71.39, which would prohibit providers from balance billing patients for emergency services. For too long, patients have had to live with the threat or reality of providers sending them bills when they don't actually owe anything. It's long since time that this intolerable practice, aimed at enlisting the patient in the provider's effort to get a larger reimbursement from the insurance plan, was brought to an end, and this regulation is a necessary and significant first step.

Every day in California, consumers – patients – are used as bargaining chips in negotiations between health plans and hospitals over how much out-of-network providers should get paid for services rendered. The obligation to pay for these services rests on the health plan, not the patient. And yet insured Californians, who have paid their monthly premiums to get coverage for emergency services, are again and again surprised by these “gotcha” bills, telling them that they owe the hospital what their insurer has refused to pay.

This is not a small problem. About 1.7 million Californians were balance billed in the past two years. Whether the average bill is for \$300 or \$30 – as is so often the case, the provider and insurer estimates differ – they may frequently be much larger. But in some ways the smaller bills are the more problematic, because they increase the temptation for the patient to just pay the unjust bill and eliminate the source of worry.

Patients pay dearly when they're used as leverage in this way. First, over half of all balance-billed patients do pay at least some of what the hospital says they're owed – and these bills are often inflated, to make up for the fact that others go uncollected. But when the patient rightly insists that they do not owe anything, they risk damage to their credit rating, making it that much harder to get a mortgage, make car payments, or keep up with credit card bills. Further, when patients are press-ganged into serving as pro-bono billing consultants for the provider, the providers thereby unjustly profit from the work of the patient. Finally, large, unjustified bills can cause a huge amount of stress for a patient, just when they need to be resting and recovering from their illness.

And there's nothing a patient can do to stop balance billing. In an emergency, they can hardly be expected to take the time to determine which facilities are in-network for their insurance plan and which are not – indeed, if the emergency is serious enough, the best medical judgment is often to go to the closest available hospital. And of course, patients may be treated by non-contracting doctors even at an in-network hospital.

Once the bill shows up, it's theoretically possible for patients to refuse to play along, by not paying the unfair bill – but that requires, first, knowledge that they don't owe anything, and second, standing by and risking the patient's credit rating.

As a result, consumers are left powerless to stop this unjust practice, and are at the mercy of a provider's decision to dragoon them into the reimbursement fray. Californians need the Department of Managed Health Care to act, through this regulation, to get them out of the crossfire between insurers and hospitals over payment rates.

Against this simple, compelling argument, providers say they need patients' help to get a fair reimbursement rate from the health plans, because otherwise plans will systematically underpay providers and manipulate their contracting networks to extract profit from doctors and hospitals. We support efforts to create dispute resolution systems that quickly and effectively ensure that plans pay providers appropriately, as it is their legal obligation to do so. But it is intolerable to use this as an excuse to allow providers to continue their practice of balance billing.

In the disputes over payment here at issue, nobody holds the patient to be anything but blameless. Yet the status quo puts the onus for breaking the insurer-plan impasse on them, with possibly dire consequences if they fail to do so. Refusing to remedy this injustice until a dispute resolution mechanism that makes both sides happy in effect holds patients hostage to the plans' and providers' failure to reach a settlement. And because the inefficiencies of the status quo are disproportionately borne by consumers, while balance billing is still allowed the incentives for all parties to reach a speedy settlement will be absent.

Throughout the years-long process to address the problems of balance billing, no one has contravened the imperative need to get the patient out of the middle, but the argument is continually made that some exigent circumstance or ancillary concern must be dealt with first.

At long last, it is time to act, simply and decisively, to shield consumers from balance billing, fixing the problem as to them and then focusing on how to resolve provider-plan disputes. The providers' ability to enlist patients as unwilling accomplices must be taken off the table once and for all. Californians should be able to go to the hospital and know what it will cost them, without being surprised by exorbitant, unexpected, unjustified bills, and this regulation is a critical step towards that goal.

Proposed section 1300.71.39 will go a long way towards protecting patients from balance billing, and we urge you to adopt it without delay.

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