Washington Watch

by Kathleen Ream

Injury in Hospital Garage Does Not Equate to Patient Dumping
On February 17, 2006, the U.S. District Court for the Northern District of California ruled that California Pacific Medical Center (CPMC) did not violate the federal patient dumping law under EMTALA when the hospital did not immediately transport a woman, injured in the facility's public parking garage, to its emergency department.

The facts in the case – Addiego v. City and County of San Francisco (N.D. Cal., No. C 05 04819 CRB, 2/17/06) – involve Maria G. Addiego who went to CPMC for a follow up medical appointment. Addiego's daughter drove the plaintiff to CPMC, parking in the hospital's public parking garage. When Addiego got out of the car, she slipped on a portable sign, injuring herself. The daughter alerted the parking attendant. That employee, following workplace policy, contacted the hospital security; who responded twenty minutes later by phoning the San Francisco emergency medical services. The ambulance arrived and transported Addiego 30 yards away to the CPMC emergency department, where she was treated and later admitted to the hospital.

Addiego sued CPMC in state court for claims related to the incident and her injuries. She filed a second suit in federal court alleging that CPMC violated EMTALA; plus she added claims against the city and county of San Francisco.

The U.S. District Court ruled against Addiego stating that EMTALA imposes no obligations for a hospital prior to the time a person presents at a hospital's ED. Thus, CPMC did not violate the law absent a policy requiring its personnel to screen or treat Addiego in the parking garage. Furthermore, the court wrote that the plaintiff did not show cases that "suggest EMTALA requires a hospital to use its own personnel to transport people requesting services from the parking garage to the emergency room, or, in the alternative, to send emergency room personnel to a parking lot to 'screen' and 'stabilize' a person requesting emergency services."

Regarding the claim that CPMC and the government EMS denied her a speedy and efficient screening examination, the court determined that there is no precedent implicating a fundamental right to have hospital employees transfer Addiego to the ED from the parking garage, or to receive EMS in the garage.

Contractual Rights Rule
Many ED physician groups have contracts with health care service plans (or their delegates) to provide medical services to patients of said plans. Sometimes circumstances arise when health care service plan subscribers in need of emergency medicine are not taken to facilities staffed by the contracted ED doctors, so the subscribers obtain the services of non contracted ED physicians, who under state law and federal EMTALA regulations are required to treat all patients in emergency situations without regard to ability to pay [42 U.S.C. 1395dd (a)]. After the services are rendered, the health care service plan (or its delegate) must reimburse the non-contracted doctors [42 U.S.C. 1371.4, subds. (b) & (e)]. Sometimes when the reimbursement is less than the total invoiced by the ED doctors, the doctors then bill the patients/subscribers directly for the difference. This is referred to as "balance billing."

On February 17, 2006, the Court of Appeal of California, Second Appellate District, Division Three ruled on a case concerned with balance billing – Prospect Medical Group Inc. v. Northridge Emergency Medical Group, Cal. Ct. App., No. B172737, 2/17/06. In this case, the court determined that:

- Section 1379 does not prohibit ED doctors who do not have a contractual relationship with a patient's health care service plan from balance billing of the fee not paid by the health plan or its delegates;
- ED physicians are not required to accept the Medicare rate as full reimbursement from a health care service plan; and
- The health care service plan has standing to litigate the reasonableness of the amount of reimbursement sought by ED doctors.

This ruling involves the plaintiffs and appellants, Prospect Medical Group, Inc., Prospect Health Source Medical Group, Primary Medical Group, Inc., doing business as Sierra Medical Group (collectively Prospect) who appealed a trial court judgment in favor of defendants and respondents Northridge Emergency Medical Group and Saint John's Emergency Medicine Specialist, Inc. (collectively Emergency Physicians). Initially Prospect filed two lawsuits, which became consolidated, seeking declaratory relief that Emergency Physicians were entitled only to "reasonable" compensation equivalent to 100 percent of the Medicare rate for medical services provided to their subscribers. Prospect argued that section 1379 prohibited the defendants from balance billing subscribers because Prospect alleged that it and Emergency Physicians had an implied contractual relationship, owing to EMTALA obligations, that would bar balance billing. The trial court entered judgment for Emergency Physicians. Prospect appealed.

The appeals court found that section 1379, subdivision (a), refers to and includes within its scope only traditional voluntarily negotiated contracts between providers of health care services (e.g., Emergency Physicians) and health care service plans (e.g., Prospect), not "implied contracts" as Prospect argued. It is within these [written] negotiated plans that algorithms exist for determining how much the plan will pay for a particular medical procedure. But absent a pre-existing contract, the court also determined that Emergency Physicians was not regulated under section 1379, subdivision (b), which prohibits contracting providers from attempting to collect "sums owed by the plan" from a patient/subscriber. "A contrary interpretation of section 1379, subdivision (b)," wrote the appellate court, "would be untenable because the parties would be forced to negotiate their contractual rights after the provision of medical services."

The California court noted that the state's Department of Managed Health Care "recognizes the practice of balance billing by providers of health care services which do not have a pre-existing voluntary contractual relationship with a health care service plan (or its delegate)." This finding provided further justification for the court that Emergency Physicians did not violate section 1379, subdivision (b), when it engaged in the practice of balance billing subscribers of health care plans in which Emergency Physicians did not have a pre-existing contractual relationship.

As to Prospect's argument that it can impose the Medicare rate for reimbursing the defendant for the emergency medical services provided to Prospect subscribers, the court disagreed on the grounds that no such authority, statutory or otherwise, exists employing any sort of across the board rate mechanism, such as the Medicare payment schedule. The standard that does exist is that of reimbursing health care providers for a "reasonable" amount for emergency services provided. Prospect failed to present any authority to determine that Medicare constitutes a "reasonable" rate for all emergency medical services provided. However, the appellate court determined that Prospect, which is statutorily obligated to pay for emergency services, must have a forum in which to contest whether the rates charged by the defendant were reasonable.

The full text of the decision is available at **http://www.courtinfo.ca.gov/cgi bin/opinions.cgi?Courts=B, and scroll to February 17.**