



e.Forum Posit

Posit: "In a free-enterprise system any 'non-contracted' physician has a fundamental right to directly bill patients when insurance does not pay that physician's usual and customary charge."

RESULTS: There were 137 responses; 123 agreed, 9 disagreed, and 5 had no clear opinion. Despite the numbers, commentary from 25 people was extensive and varied, suggesting that the issue is important to members and more complex than it may seem.

"This can only occur when the patient has a choice about access of service; in the ED patients don't have a choice and don't have the luxury of a proactive decision about whether to get the service. To be forced to get the service and then billed full charges are not appropriate and borders on unethical." - Thom Atkins, MD

"As long as [the] patient has been clearly apprised of billing amount and policy/situation in advance, how could anyone disagree with that statement (other than the feds)?" - Nancy Gilbert, MD

"I agree when there is a freely entered contract between a doctor and a patient. But that is not what occurs when a patient is taken to a hospital in an emergency and sees an on-call non-contracted specialist. In this situation, there must be a way for a physician to get paid a reasonable fee without penalizing the patient whose expectation is that they have insurance that will pay. I would rather see regulations that the insurance company is obligated to pay for non-contracted services with an arbitration system to determine what is reasonable. The devil is in the details." - Joanne Berkowitz, MD

"They should remove the rigid controls from the government system on physician fees. No other profession outside of government must face such a non-competitive fixated structure." - Evalyn Horowitz, MD

"NO - it isn't that simple. Healthcare delivery in our state - particularly EMTALA-obligated emergency care - is not free enterprise. Patients generally do not have the understanding to shop for rates/services for such care, nor are they in any condition to do so when they actually need it. EDs are required to evaluate all comers, regardless of ability to pay. Even non-contracted physicians in these settings, conscripted by hospital on-call requirements or their own altruism, often have no choice about whether to provide care to particular patients.

"Physicians DO have a right to expect reasonable compensation for their services, and a right to prompt resolution of disputes with third party payors. Dispute resolution mechanisms should give neither payor nor physician a unilateral ability to dictate fee structure, and should penalize abusive practices at either end. Resolution need not involve the patient, and it is unfair to bill them for disputed amounts about which they have little say. Doing so may balance the books, but it does nothing to address the underlying problems of a broken system." - Paul Phinney, MD

"By current law the insurance company is obligated to pay the physician non-contracted rates for emergency services, thus this should not be an issue. The state needs to enforce this obligation on the insurance companies so that patients are not caught in the middle." -

Katherine Gillogley, MD

"Yes, any service provider has a right to bill for their service. This is especially important for physicians whose altruism, while noble, has contributed to the overall devaluing of medical care. It is helpful for patients to understand the value of the service they have been provided and the extent to which their insurance pays for their care. Altruism can come into play in other ways, such as physicians offering payment plans, suggesting resources for support, or even choosing not to pursue payment on the bill. But the patient should see the bill." - Mark Moeller, MD

"Perhaps I misunderstood this; it seems like a non issue. If a physician does not contract with an insurance company, the physician has no obligation to honor anything the insurance company offers. Waiving the rest of the fee is merely a courtesy to a patient, not a right the patient has." - J. J. Rabinovitz, MD

"I believe within reason a non-contracted physician or medical facility should be able [to] balance bill a patient for services or medical products rendered. Now, what is within reason is debatable, I am sure. Of course it becomes who funds liability costs. And on another subject, what happened to our class action lawsuit about prior HMO billing practices? - P. Fong, MD

"At one time, the Sacramento-El Dorado County Medical Society 'Fee Grievance Committee' addressed complaints of excessive charges. Is this mechanism still functional? Is it, or will it be, needed?" - L. Welter. MD

"When looking at the various components of the US healthcare delivery system, I am not sure that we have a 'free enterprise system' today. While there are many facets to this concept, in the current model the consumer of the product isn't the direct purchaser of that product. The law of supply and demand may...be 'diluted.' Further, the consumer, when accessing one part of system (e.g., a hospital)...doesn't have a choice of some...parts of the system...some of the physicians...radiologists, pathologists, ER physicians. So from a consumer perspective...it may not fit a truly free enterprise model. If we then try to balance bill the consumer, we should consider what the ultimate outcome might be.... [W]e might also caution ourselves when thinking that a single party payment system may hold the answer in helping us achieve what we feel is a fair re-imbusement for our services. We need to recognize that the current direct purchasers of our product (employers, government agencies and some patient/consumers) are ultimately focused on controlling costs.... [S]ingle payer may be even less a "free enterprise model" in that we might be told what we will receive for a given activity and that we cannot balance bill the consumer.... [W]e will have to accept whatever that single payer...is willing to pay us or practice outside the system.... [W]e might not have a hospital in which to practice under such a model." -Frank Apgar, MD

"I don't see any starving MDs in our area, but I do hear lots of patients complain about bills." - Mike Murphy, MD

"The non-contracted physician may directly bill the patient who has agreed to be billed. The 'contract' in this case is with the patient, not the insurer. This is not a fundamental right but a right that derives from the patient's agreeing to be directly billed." - Gil Simon, MD

"It is customary for services to be billed for any profession! Why not physicians?" - Rugmini Shah, MD

"Free enterprise means that each party in an agreement has the right to negotiate their position. If the agreement is not to one party's liking, they have the right to leave and find one that is equitable. In a contracted situation, both parties agree to fix fees for specific services rendered with an assumption that each party is benefited. The reason some physicians choose to not sign contracts is because they either have had a bad experience with insurance companies (most of us), or they want to reserve the right to remain independent and charge what they feel is fair. This free relationship maintains the checks and balances that insure each side (physician and insurance company) act in good faith.

Also, staying independent maintains the receiver of services (the patient) as an integral member of the decision process. If the patient is kept in the loop, the other parties are more likely to act responsibly and the patient actually sees the value in the services they receive." - Donald Hause, MD

"Patients must remain in the reimbursement transaction, or third party payers will inevitably dictate prices and constrict quality and access." - Loren Johnson, MD

"Within limits-the patient has no ability to bargain in an emergency situation and some of our colleagues are downright punitive in their charges." - Patricia Samuelson, MD

"In principle, and under the current capitalist model of healthcare, I agree, but it is imperative to note that free market forces will thereby allow a drop in prices for services rendered.... If insurance companies are to bear the brunt of this onslaught from free market forces, do we honestly think patients will benefit? Without also addressing the litigious backbone of exuberant medical expenses, we must consider alternatives to capitalism - especially when it comes to healthcare.... The question thus becomes whether healthcare is a privilege (amenable to the forces of the free market), or a right (to be guaranteed by the people and their government)...the answer is more challenging as it forces us to reexamine our socio-political paradigm.... [W]hen capitalism is no longer the model for healthcare, one should not accept such free market forces to then drive up the prices of what is considered a human right instead of a privilege." - Syed Ameen Khasimuddin, MD

"There should be a definite limit to the amount that can be billed as all care has a price (but not overprice) and some one lands up paying for it, and the one who should pay is the one receiving it, as there is nothing free." - Elisabeth Matthew, MD

"I agree if the patient agrees to the physician not accepting assignment." - E.T. Rulison, MD

"Whether there is a 'right' to balance bill will, in my opinion, become irrelevant. The way we try to promote health and treat disease is being inexorably shaped by at least two related forces: technologic and socioeconomic. Both these forces have always been a limited part of medical practice. However, they are fast becoming its major determinants to a degree far exceeding the competence or purview of traditional medicine. The way physicians practice will perforce evolve based on this fast changing reality rather than on a medical historic past. Centuries ago physicians were philosophers closely related to religious luminaries. We have gradually become practicing scientists. Today, medicine is only one among many disciplines so affected. For example, we now see a pope rising to the defense of reason, a traditional enemy of faith, in order to resist a threat from religious radicalism." - John Loofbourow, MD

"Shifting the burden to these patients is not really the answer.... We all know that getting reimbursement from private pay patients who are often in precarious economic situations will be time consuming and not cost effective.... [Insurers] need to either provide the services their patients need (i.e., on-call emergency specialty care), or they need to provide reimbursement at the usual and customary fees when a non-contracted physician meets the needs of their patients. There is a reason that physicians don't want these contracts and that is that they usually [shift] cost...to the small business person in a manner that is fiscally untenable. Better contracts mean...more patients getting care from contracted physicians. Bad contracts mean fewer providers and...more patients forced to get care from non-contracted physicians. So this isn't the patient's fault; this is the (insurer's)...fault and the (insurers) should...fix up their own mess." - Connie Mitchell, MD

"For many reasons we are all aware of, it is disgusting that the governor of our state [or] any politician would ever consider removing or interfering with this right of our physicians. This kind of abuse is no doubt the reason a lack of physician availability is developing in our state." - Bryant Sheehy, MD

"The patient plays an essential part in the delivery of their care. They are being preyed

upon by those who imply they have full coverage. More outrageous is the false assertion that the medical services they receive are excessive or too costly. If patients are going to be able to procure good quality care, they need to be actively engaged in their care. To deny them the benefits of participating in their care effectively cuts them out of the equation. We have heard that 'he who pays the piper calls the tune.' The patient should be calling the tune, and not a third party who has designs on control of the medical care community. We are working on a reasonable fee dispute resolution process at CMA. The physician does indeed need to be paid usual, customary and reasonable fees when the service has been provided.

"Patients fundamentally trust the care we provide for them. We strive to provide the best care we can, when we can. We must be fairly recompensed if we want to stay in business. In this regard, the ER call issue is a diversionary attack on private practice. Many of us have spent years on the 'on call ER coverage problem' on endless MEC meetings and finally have the ER call coverage somewhat covered in Sacramento. I understand that the current agreements for coverage have been the result of a difficult and complex series of negotiations and contracts. Denying non-contracted physicians from being paid usual, reasonable, and customary rates will upset that apple cart, and further erode patient choice ultimately." - Lee Snook, MD

"A physician, like...attorneys, auto mechanics, landscapers, beauticians, therapists, etc. provides a service with a client with whom (s)he has a direct relationship.... That client has a direct relationship with another party, THEIR insurance company. They have entered into a contractual relationship with that party; the 'first' party (the physician) has not. The appropriate parties do business: the physician and his/her client, and the insurance company and their client, the 'patient.' Would the public, any client, the 'provider' cosmetologist or any insurance company think it usual, customary, or even remotely likely that a beautician, after doing a \$100 color and perm, was expected to accept, after a \$5 'co-pay', a \$47.50 payment (1 month later) from the lady's insurance company as '...payment in full'?" - Michael Goodman, MD

"Contracting means a physician accepts the insurance company's pay scale. Non-contracting means that we have a choice about who we do and do not give a discount to. Currently, I am only contracted with Medicare. All other patients pay at the time of the visit and, using a superbill I provide, bill their own insurance for reimbursement. This way I don't have to bill either the insurance company OR patient. Needless to say, this policy is foreign to many people. It certainly keeps my volume low, but limits my practice to people who truly value my service. It is interesting (and sad) that some people balk at paying at the time of service, believing that they will incur the full cost of the visit and won't be reimbursed. Funny that it doesn't bother them that I might not have been paid if I had billed their insurance." - Ann Gerhardt, MD

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