

A January 14, 2008 Virginia State Corporation Commission (SCC) ruling will protect Anthem HMO patients from unnecessary emergency health care costs and ensure that non-participating physicians who provide emergency care are paid fairly for services that are required under federal law (EMTALA).

This is a huge win for Virginia's emergency physicians, representing EMTALA specific AOB, ensuring that healthcare dollars are used for quality emergency care. VACEP leadership will work with the MSV to ensure that the definition of "medical screening and stabilization services rendered to meet the

requirements of the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd)" as referenced by Virginia Code §38.2-4312.3 and the SCC Settlement Order conforms to well-established federal guidance.

To find the case on the SCC website, you have to go to the docket search page: <http://docket.scc.state.va.us/> Under "Search Cases," enter INS-2007-00225

SCC ruling a huge win for patients and Virginia's emergency medical safety net

Reprinted from MSV E-News

A recent ruling by the Virginia State Corporation Commission (SCC) will protect Anthem HMO patients from unnecessary emergency health care costs and will ensure that non-participating physicians who provide emergency care are paid fairly for services that are required under federal law (EMTALA). This was achieved through a collaborative effort of Anthem subscribers, emergency medicine physicians and medical specialists. The ruling will also ensure that health care dollars are retained within the health care system, allowing them to be used for quality care.

"Quality emergency care requires quality staffing, which requires adequate and fair reimbursement," said Todd Vanden Hoek, MD, MBA of Chesapeake Emergency Physicians. "This ruling not only helps Virginia emergency physicians, but also helps the specialists taking call in Virginia's emergency departments and the hospitals that must provide call coverage; all of which improve the quality and timeliness of emergency care. The winners are the patients we serve," he continued.

The history

On January 14, 2008, the SCC released a final order in the case SCC v. Peninsula Health Care, Inc., HealthKeepers, Inc. and Priority Health Care, Inc. (collectively "HealthKeepers") regarding HealthKeepers HMO emergency coverage reimbursement policy for non-participating physicians. The SCC's consideration of this issue was prompted by an analysis sent to the SCC in late 2006 by Thomas K. Norment, Esq., counsel to several groups of emergency medicine physicians, on behalf of physicians and in response to a number of concerns raised by patients in his Virginia Senate district.

Norment filed the analysis after hearing from constituents who were unhappy about the change in Anthem's HMO payment policy that was implemented on July 1, 2006. This change, which affected HMO patients receiving care from non-participating physicians, resulted in Anthem reimbursing only for an amount that corresponded to its internal fee schedule, not the cost that was associated with the service that was provided. The patient was left with the potential for a balance bill from a non-participating physician that was formerly covered in full by the insurer. In addition, as payment was sent to the subscriber, physicians were often not reimbursed for care they were obligated to provide under EMTALA.

Norment also learned of the ongoing challenges of staffing the safety net of Virginia's emergency departments, maintaining an adequate call schedule of specialists, and of physicians' frustration in seeing health care dollars leave the health care system while resulting in increased emergency care costs for patients. His legal analysis challenged Anthem/HealthKeepers non-participating provider payment policies and argued that these policies were in violation of Virginia law that governed reimbursement for emergency care rendered to HMO enrollees.

After months of review and discussion, the Bureau of Insurance (BOI) ruled in favor of patients and physicians and advised Anthem/HealthKeepers that it was not in compliance with existing Virginia law. Anthem/HealthKeepers was instructed to reimburse non-participating providers directly for EMTALA services at a level such that the patient would owe no more than his or her copay.

“This ruling not only affects care rendered to Anthem HMO subscribers, but also sends a clear message to all insurers that health care dollars must be used for quality health care,” said Dr. Vanden Hoek.

On November 16, 2007, Anthem/HealthKeepers submitted a written proposal to the BOI outlining its plan to correct payments made for emergency services rendered between July 1, 2006 and December 31, 2007. In the proposal, Anthem/HealthKeepers described its plan for changing to a different payment methodology effective January 1, 2008.

Beginning February 18, 2008, HealthKeepers began sending retrospective payment letters to non-participating providers who submitted EMTALA claims during the 7-1-06 to 12-31-07 time period. HealthKeepers will also notify their HMO plan members that their non-participating provider is receiving a retroactive payment. These letters will be sent out approximately two weeks after the providers are notified, so that they may reconcile their accounts should members contact them for refunds.

Going forward

A remaining issue between physicians providing emergency care and Anthem is the determination of what constitutes an EMTALA required service. At present, Anthem has developed internally a more limited definition of those claims than is required in existing guidance from the Centers for Medicaid & Medicare Services (CMS). The more limited that definition, the more emergency care costs will be shifted to subscribers. The Medical Society of Virginia will be assisting emergency medicine physicians and other on-call physicians in working with Anthem to adopt a definition of EMTALA claims that accurately tracks state and federal law.

“We fully support these essential discussions,” said MSV president, Richard M. Hamrick III, MD, MBA. “The Medical Society of Virginia will work closely with physicians to provide education, seek answers to questions from Anthem and do all that we can to facilitate the implementation of this ruling. These efforts are important as they will have an effect on Virginia’s health care system; specifically on patients’ ability to access quality care from physicians.”

Physician advocacy and collaboration

Although the SCC final order directly affects only non-participating Anthem HMO emergency care and on-call providers, it sets a clear precedent that any HMO patient should be protected from unnecessary health care costs when they seek emergency care. During the 2007 session of the Virginia General Assembly, Del. Lee Ware patroned legislation that propelled the importance of these public health issues to the forefront. “This ruling is the result of years of legislative relationship building by physicians and of patient education and involvement,” said Dr. Vanden Hoek. “The toughest battles are won through relationship building, collaboration, education, and perseverance, with the true winners our patients.”