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HFMA FOCUS

Sarah Norland

HFMA focus financial billing policies for the uninsured

What can hospitals expect from recent legal developments? Learn more in this discussion featuring Richard Scruggs, Joanne Judge, and Richard Clarke.

In lawsuits across the country, hospitals are being accused of setting prices for the uninsured that are unfair and unreasonable and engaging in abusive collection tactics. Over the past year, 68 federal lawsuits of this nature have been filed by a group led by Richard Scruggs, Esq., an attorney who is best known for successfully suing the tobacco industry in the 1990s.

DON'T MISS IT!

"A Look at Not-for-Profit Hospital (Uninsured) Legal Developments" will be offered at this year's ANI. The panel discussion will feature **Richard Scruggs, Esq.**, Scruggs Law Firm, P.A.; **Charles Rehberg, FHFMA, CPA, Cr.FA**, administrator, Albany Surgical, P.C.; and **Joanne Judge, Esq., FHFMA, CPA, Stevens and Lee, P.C.**, moderator. To register for ANI, go to www.hfma.org/ani.

At many hospitals, the suits have presented an opportunity to revisit billing practices relating to the uninsured and underinsured and energize efforts to improve communications of policies that provide financial assistance to these patients. Those opposed to the litigation contend it does nothing to address the true source of the problem and only exacerbates burdens on an already strained public safety net.

In this issue of *hfm*, Scruggs; Joanne Judge, Esq., CPA, a partner with the Pennsylvania law firm of Stevens and Lee, P.C., who frequently represents hospital interests; and Richard Clarke, HFMA's president and CEO, discuss the importance of the lawsuits, what the future is likely to hold, and what

hospital leaders should be doing in regard to their own organization's billing and collection practices.

The media has focused a great deal of attention on hospital billing practices related to the uninsured and underinsured. Why do you think interest in this issue has been so strong?

Scruggs: This is an issue that has the potential to impact each of us. Few people who can afford health insurance choose to forgo it. Those of us fortunate enough to have health insurance coverage are at risk of losing it through job loss, unaffordable cost, or development of a condition that is uninsurable or deemed preexisting.

Expecting the uninsured to pay the full rate, while offering large discounts to those with coverage, is just fundamentally unfair. Most of us know someone who has been hit by a hospital bill that he or she cannot possibly pay. It happens every day in every community, and the public can empathize with those affected. The hardest hit are the working poor, which makes it even worse.

At press time, the cases have made their way to 23 states. So it's safe to say it has also become a hot topic for even those hospitals that haven't been involved directly. What are providers' general perceptions of the litigation?

excellent framework for these policies. Additionally, hospitals must provide effective and ongoing training to staff on how these policies work and for whom they apply. Finally, hospitals must effectively communicate these policies to patients. In all cases, hospital management must balance the medical and social needs of the patient with the effective financial management of the organization.

Externally, hospitals should reach out to community groups interested in expanding access for the uninsured. Often hospitals working with local community groups, local government, and local businesses can develop workable local solutions to some of these problems. Although we need to continue to push for national solutions, incremental steps can be made at the local level. The Patient Friendly Billing web site identified some of these organizations.

Where do you see the issue of hospital financial policies for the uninsured headed in the future?

Judge: As with many challenges and adversities that hospitals have faced, this will ultimately result in clearer policies for billing and subsidizing the uninsured, as well as improved communications with patients. One potentially very negative outcome could be that hospitals will have fewer resources to devote to the care of the uninsured and underinsured because they have been forced to defend themselves in baseless lawsuits. The ultimate tragedy will occur if the costs of this litigation force hospital closures and make fewer resources available to serve the very people who are nominally the beneficiaries of the lawsuits.

A federal panel of judges refused a request to consolidate the cases. With the legal landscape changing, what effect is this likely to have?

Scruggs: Clearly, this issue is going to be decided in the state courts. We wanted to offer hospitals the opportunity to resolve the cases as economically as

possible. Consolidating the cases in one federal court would have minimized the cost and facilitated a quicker resolution of the cases. Apparently the law firms defending the hospitals preferred that they be litigated in state courts. Obviously, the defense bar will benefit from that move, as legal expenses will be duplicated all over the country.

Strategically, state courts are *better* for us. We believe state consumer protection laws will not allow hospitals to continue expecting the uninsured to pay the highest rates. And local judges and local juries will know how these institutions operate, and the impact it has had in the local community. The juries that hear these cases will be very aware of the charging and collection practices of their local hospitals. I have yet to hear an uninsured patient state that his or her community hospital has reasonable rates and is fairly treating the uninsured.

Based on the current status of the lawsuits and public policy pertaining to this issue, the hospital billing environment appears poised to change.

Clarke: I think the lawsuits hurt this process by diverting attention and resources from developing workable solutions to defending against specific allegations of wrongdoing. The money and energy going into defending against the lawsuits, I believe, has been a waste. The changes that hospitals can make were already being made without the lawsuits. I believe those changes will continue to be made and implemented.

I think the biggest concern is the lack of national policy on this issue. And assuming that not-for-profit hospitals will provide the solution by offering free care to anyone who is uninsured or underinsured is ridiculous. We need to focus on the real issue of whether government has a role in ensuring that every American has some type of health coverage. Until we do that, the system will continue to be in disarray. ●

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