

Department of Managed Health Care Financial Solvency Board

February 11, 2013

California Chapter of the American College of
Emergency Physicians

Emergency Medical Treatment and Active Labor Act (EMTALA)

- Emergency physicians are required by law to provide emergency care regardless of the patient's or payer's ability to pay for the care
- Huge uncompensated care burden

Risk Bearing Organization

- Risk Bearing Organizations (RBOs) are delegated by the health plan to assume financial responsibility for claims payment
- Complex payment scheme with multiple levels of sub-contracting medical groups and IPAs
- Claims payment may be managed by Medical Service Organization (MSO)

Impact of RBO Insolvency

- RBO is unable to pay claims
- RBO is unable to pay claims in a timely fashion
- RBO holds payment
- RBO does not pay interest penalties
- RBO do not respond to claims status inquiries
- RBO loses claims or fails to acknowledge claims receipt
- RBO underpays claims i.e. downcoding, bundling, payment drastically below usual and customary charges
- EMTALA obligated providers absorb millions of dollars in losses

Impact of RBO Insolvency

- Reduced ability of ER groups to recruit and retain qualified providers to staff California ERs
- Abandonment of ER backup on-call rosters by specialists
- Increasing demands on financially troubled hospitals to support ER and on-call specialist services
- Closure of ERs, especially in already underserved communities
- Longer waiting times in over-burdened and underfunded ERs
- More patient transfers to other hospitals
- More ambulance diversions to hospitals further away

Appeals

- File complaints to DMHC
- File complaint to DHCS
- File complaints with Health Plans
- File complaint in Court

Appeals

- DMHC implements Corrective Action Plan
- DMHC issues cease and desist order
 - Order issued against Santa Barbara IPA and BC
 - SBIPA and BC challenged order in court – court says DMHC has jurisdiction to directly regulate RBOs
- Health Plan cap deducts RBO
- Health Plan pays Medi-Cal claims
- Health Plan terminates agreement with RBO
- Health Plan does nothing
- Disputes resolved through settlements

Problem Payers

- 48 problem payers
- 14 placed on corrective action plan
- Several RBOs dissolved

Causes of Action for Negligent Delegation to LaVida

1. In light of Prospect v. Northridge, Ochs v. PacifiCare, and Bell v. Blue Cross, Plans have a duty to ensure that RBOs pay delegated ECP claims.
2. Plans failed to ensure La Vida maintained sufficient capital to pay these claims
3. La Vida required by delegation contracts to maintain financial solvency.
4. Beginning in 2007, La Vida failed to maintain sufficient working capital, tangible net equity, cash to pay claims, unable to make timely payments.
5. La Vida submitted financial statements to Plans quarterly and annually (DMHC also informed).
6. October 2009, La Vida advised Plans (and DMHC) that its lender, Textron Financial, filed bankruptcy, and withdrew \$4 M from LaVida account.
7. Despite this information, and notices from unpaid providers, Plans continued delegating to La Vida.
8. Plans knew this would result in unpaid ECP claims, ignored the warning signs, and advised providers to continue submitting claims to La Vida.
10. June 2010, *years* after La Vida first demonstrated financial instability, Plans finally discontinued capitation payments, terminated delegation contracts
11. Plans refused to cover unpaid ECP claims.

Deposition of LaVida Medical Director Christopher Chidi, M.D.: “La Vida doesn’t have funds to buy a stamp.”

Solution

- Require Health Plans to take financial responsibility for claims payment of delegated RBO when claims are not paid in a timely fashion
- Health plans sends RBO a fourteen day demand letter to pay outstanding claim(s)
- Health Plan cap deducts RBO, including interest, if no response to demand letter
- Payment based on Medi-cal allowable, Medicare allowable or 50th percentile of Fair Health

Solution

- Require health plans to create risk pools
- Allows payment of claims if RBO goes bankrupt