

CSA President's Page

Balance Billing: How, Where, and What?

By Edgar D. Canada, M.D., CSA President

Balance billing is an issue that has been front and center for anesthesiologists in California this year. How did we get here? Where is here? What should we do?

How Did We Get Here?

Balance billing is a major concern for the CSA and California anesthesiologists this year because the members of the California Legislature have identified it as a problem for their constituents for which the legislators would like to provide a legislative solution. This year there were three bills related to some aspect of balance billing. This represents the third consecutive year in which at least one bill was introduced in the California Legislature on balance billing. While the elimination of balance billing is opposed by the CSA, it is supported by consumers, health plans, business owners, and the California Association of Physician Groups (CAP-G). This resulted in the California legislators receiving mixed messages from physicians regarding balance billing, i.e., one group of physicians in support of the issue, another group opposed.

Where Is Here?

At the present time, the CSA—in conjunction with the other hospital-based specialties of radiology, pathology, and emergency medicine—have been successful in getting the California Medical Association (CMA) Board of Trustees (BOT) to back away from a compromise position developed by a subcommittee of the CMA's Council on Medical Services. This tentative position, considered but rejected by the CMA BOT on July 29, 2005, would have directed staff to develop legislation that would have created a pilot project in several California counties. This legislation would have eliminated balance billing by the hospital-based specialties of anesthesiology, radiology, pathology, and emergency medicine in those counties. Instead, "baseball arbitration" and/or county medical society mediation would be used for professional fee disputes related to noncontracted physicians in the designated specialties and health maintenance organization (HMO) patients. The pilot project would have been a prelude to a statewide solution for this problem.

The CMA developed this compromise to give physicians some control over the fee dispute resolution process, instead of risking a legislative solution in which physicians may or may not have any control. "A compromise is the art of dividing a cake in such a way that everyone believes he has the biggest piece." The compromise proposed by the CMA fell short of this ideal. However, some legislators remain committed to enacting some type of legislative solution. Interestingly enough, AB 1321—



which proposed to prohibit balance billing by hospital-based physicians and was held in the Assembly Appropriations Committee—was resurrected by its author, Assemblymember Leland Yee of San Francisco, as AB 1116 with the very same provisions as AB 1321. AB 1116 originally had dealt with acupuncturists and had been held by the Senate Business and Professions Committee. Once the balance billing prohibition was amended into it, AB 1116 was immediately returned to the Senate Rules Committee where it likely will remain without further action for the rest of the current session.

What Should We Do?

The CMA BOT will appoint a broadly representative Technical Advisory Committee (TAC) to create a system for balance billing and noncontract fee dispute resolution. The CSA as an organization stands ready to participate in this process which will be particularly important given the intent of some legislators. Hopefully, we will construct, in coordination with our CMA colleagues in other specialties, a palatable compromise which will avoid a legislative solution not to our liking.

On an individual level, you should bill patients responsibly. Excessive professional fees have been one of the arguments used by those who support a prohibition of balance billing. Our recent "Statement on Anesthesia Billing Practices" is shown below.

Editor's Note: The August 2005 ASA Newsletter provides a summary of the most recent ASA Practice Management survey. The survey asked for the contracted conversion factors for the highest-paying non-government health plans/carriers. For California, the mean contracted high payer conversion factor was \$56.07 with a minimum of \$42 and a maximum of \$75.

Statement on Anesthesia Billing Practices

(Adopted by the CSA House of Delegates, May 14, 2005)

1. Bills to patients should not exceed usual, customary or reasonable fees, as defined by the California Court of Appeal in *Gould vs. Workers Compensation Appeal Board* (1992) 4th Cal. App. 4th 1059, taking into account the physician's usual fees and other factors, which particularly include the fees usually charged in the geographic area in which the services were rendered;
2. Fees negotiated by anesthesiologists with health plans cannot be the sole measure by which fees paid by non-contracted plans are determined. Other measures that can be used to determine reasonable fees include the extent that the non-contracted plan provides similar ease of billing, certainty of collection, a comparable volume of referrals and ease of appeal, and also meets other reasonable criteria for comparison; and

3. Anesthesiologists, when billing non-contracted health plan patients directly, whether initially or for balances unpaid by the health plan, should provide an explanation to patients why this process is required, and assist patients in securing payment to the physician by their responsible health plan, seeking patient responsibility only as a last resort when the health plans refuse or fail to make timely payment of reasonable fees for services rendered.

Moreover, using your own words, you should educate your state legislators about the need to keep balance billing. You should contribute to GASPAC if you are not a contributor and you should increase your contribution if you are already a contributor. Balance billing as an issue will not be fading away soon. Working together with diligence and perseverance, we will be successful.

Reference

¹Ludwig Erhard (1897-1977), German political leader and economist

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October 30-November 3, 2006**

**Mauna Lani Bay Hotel
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