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Anesthesia Billing Cases Allege Rampant Fraud
Inability to audit claims at heart of suits
by Adam Marcus

A New York anesthesiologist is the driving figure behind a pair of lawsuits involving millions of dollars in what he claims are fraudulent anesthesia billing claims.

The physician, Berton Forman, MD, and his lawyers allege that for years hospitals have been dramatically overcharging patients for anesthesia services—doubling or tripling bills and even charging for general anesthesia when none was provided. Dr. Forman says the scope of the fraud could total more than \$1 billion nationally.

Meanwhile, Dr. Forman, who stands to make millions should he win the suits, said a major insurer for whom he conducted a fraud inquiry to detect precisely such misconduct failed to act on his findings out of fear that it would lose the business of preferred provider organizations (PPOs). These companies act as middlemen between physicians and insurers and, according to Dr. Forman, force the latter to sign contracts that prevent them from carefully auditing claims. In return, insurers receive discounts, ranging from 10% to 35%, from providers in the network, savings that in theory they can pass along to plan members.

The two suits are now in trial courts in New York and California.

Sutter Hospitals

The California case involves Sutter Hospitals, a 24-hospital chain covering the northern part of the state, and two PPOs, MultiPlan and Private Healthcare Systems, Inc. (PHCS), which MultiPlan bought in 2006. Dr. Forman, through his company Rockville Recovery Associates Limited, has accused Sutter of passing on bogus anesthesia bills to insurers and the two PPOs of taking part in the scheme. In April, Dave Jones, California's insurance commissioner, agreed, joining Rockville in the whistleblower suit and taking the legal lead in the case.

The California suit alleges that Sutter was billing insurers for anesthesia services when no anesthesiologist was present. The suit also claims that Sutter's anesthesia charges often greatly exceeded what would have been appropriate for a given procedure, and that it was misusing a billing code, 37x, to generate time-related charges for one-time items or practices.

According to the civil complaint, "Comparable rates apply at all Sutter hospitals, and the rates have only increased over time. As a consequence, Sutter hospitals routinely charge, on average, \$3,000 to \$5,000 under the 37x code, when they are entitled to no more than \$150 to \$250 under that code, if anything. These 37x charges so far exceed actual costs that it is clear [Sutter, MultiPlan and PHCS] are actually double billing for costs captured in the anesthesiologist's bill or in other revenue codes, or are simply billing for services not actually provided."

"Sutter's alleged fraud comes at the expense of the private health insurance industry, which initially pays for the services, but, ultimately, this unjust burden falls on the shoulders of California's consumers, who must foot the bill for inflated health care premiums," Mr. Jones said in an April 13 statement. "We believe the amount of the fraudulent charges is in the hundreds of millions of dollars, if not more."

The state is asking for triple damages for each claim and up to a \$10,000 fine per violation.

As a whistleblower, Dr. Forman stands to benefit substantially, too. He is eligible to receive up to 40% of any money recovered (California would get the rest).

MultiPlan has denied the fraud allegations. "As an intermediary between payers and providers, MultiPlan arranges for negotiated rates of reimbursement," the company said in a statement. "MultiPlan does not have any involvement with or responsibility for the hospital billing methodology."

MultiPlan also disputed the assertion—by Dr. Forman and Mr. Jones—that its contracts prevent insurers from auditing procedure claims. "This statement is based on an allegation in dispute which MultiPlan has denied on the record."

Pam Walker, a spokeswoman for MultiPlan, would not provide *Anesthesiology News* with an example of a contract or the language specific to claims audits.

Nimish Desai, an attorney with Leiff Cabraser Heimann & Bernstein, the San Francisco firm representing Rockville in the California case, said a confidentiality agreement prevented him from discussing specifics of the lawsuit. However, he said PPO contracts “greatly limit audit rights” even if they do not explicitly forbid them.

MultiPlan handles more than 100 million medical claims each year, covering the services of more than 5,000 hospitals and “more than half a million” health care providers, according to the company. In 2010, two private equity firms, BC Partners and Silver Lake, purchased MultiPlan from the Carlyle Group in a deal worth \$3.1 billion, according to *The Washington Post*.

Guardian Case

The Sutter case stemmed from an investigation Rockville conducted for Guardian Life Insurance of New York, which had hired him to uncover fraudulent claims. Dr. Forman said that after six years of digging through claims, he eventually presented Guardian with \$46 million in overcharges. The insurer ultimately refused to pursue the cases.

Dr. Forman, inventor of a software program that he says can detect billing fraud, is suing Guardian for breach of contract and other alleged violations of their work agreement. He said the company’s reluctance to go after the money stems from its unwillingness to lose the business of the PPOs that were passing on the fraudulent claims.

Dr. Forman and Rockville are asking for \$12 million in damages (roughly equivalent to the 25% he would have received had Guardian successfully recovered the overpayments), legal fees and punitive damages. Richard Jones, a Guardian spokesman, declined to comment on the litigation but provided a written statement:

“Guardian believes that Dr. Forman’s claims—including his assertion that Guardian’s PPO agreements preclude audits—are unfounded. Guardian has a pending motion to dispose of Dr. Forman’s ongoing breach of contract claim, and given the unsubstantiated nature of his allegations, we are confident that Guardian will prevail either at summary judgment, or at trial.”

Kenneth Kutner, Dr. Forman’s attorney in the New York lawsuit, said Guardian has filed a motion for summary judgment in the case, which the court is scheduled to hear on June 1. A ruling on that motion likely would come within 60 days, Mr. Kutner said.

The American Society of Anesthesiologists declined to comment on the lawsuits. For his part, Dr. Forman said the cases hold a lesson for his clinical colleagues: “The anesthesiologist needs to be aware that his services are being billed by the hospital, and it’s pretty funny because the hospital is often adversarial.