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Breaking

Suit targets hospital costs for uninsured

By SANJAY TALWANI Independent Record Sep 20, 2011

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A lawsuit filed last week against St. Peter's Hospital by an uninsured patient is taking aim at the discounts that hospitals provide for health insurers, saying that such arrangements illegally fix prices and discriminate against the uninsured by sticking them with higher rates while doing nothing to reduce overall health care costs.

“There are several parts of the health care finance system that we believe are unlawful and wrong and this is one of them,” said John Morrison, the Helena lawyer representing the patient along with Lawrence Anderson of Great Falls. “This case seeks to change the system ... Charging uninsured people 25 percent more than insured people for the same medical services is unfair and, we believe, unconstitutional.”

The case in Lewis and Clark County District Court seeks certification as a class action, meaning that if successful, it could involve anyone who received care at the hospital and had no insurance, or whose insurer paid more than the least expensive rate for the services. It seeks an injunction against such contracts and reimbursements for anyone determined to have overpaid over the past five years.

The only defendant in the case is St. Peter's, but Morrison, a former state auditor and insurance commissioner with extensive experience in class-action suits, said that if the case is successful and establishes legal precedent, similar suits could arise against other hospitals in the state.

The case was filed Sept. 13 on behalf of Jessica Gazelka, 20, described in the complaint as a part-time worker and student who is one of about 165,000 people in Montana without health insurance.

She was injured in a traffic accident and went to St. Peter's emergency room, later receiving a bill of \$2,121.43, which she paid in full, the complaint says.

But if she had been covered by Blue Cross and Blue Shield of Montana, the bill would have been about 20 to 25 percent less, thanks to its arrangement with the hospital, the complaint says.

Such “preferred provider agreements” were developed in urban markets where multiple insurers and multiple hospitals negotiate to provide affordable options for consumers, the suit says. But in Helena, St. Peter’s is the dominant provider. And statewide, Blue Cross controls 60 percent of the individual health insurance market and 55 percent of the group insurance market, according to the complaint.

In this case, “Where a dominant insurer fixes prices with the only hospital, there is no cost control or competition,” the complaint says. “(Blue Cross) gives St. Peter’s hospital the rates it wants in return for a guarantee that others will have higher rates than (Blue Cross) insured, ensuring the continued and ever increasing dominance of the insurer and uncontrolled costs. Uninsured patients, and patients covered by other insurers, have no choice but to go to the only hospital and pay more for the same service.”

The complaint says the charges by the hospital violate the Montana Constitution’s guarantee of equal protection under the law, and unlawfully restrain trade.

“This case points out to the court that the Montana Constitution is very clear that the right to pursue health care by any lawful means is a fundamental enumerated right,” Morrison said, “And therefore, when you discriminate among people based on the fact that they are uninsured, or based on what insurance coverage they have ... it can only be permitted if there is a compelling state interest, and I think no one can argue that there is a compelling state interest.”

Morrison said the suit would not affect Medicare or Medicaid payments since those are set by the government, not negotiated by individual hospitals.

Blue Cross, which is not a defendant in the suit, would not comment on the matter.

“St. Peter’s follows normal business practices associated with discounts,” hospital spokeswoman Peggy Stebbins wrote in an email to the Independent Record. “This appears to be a broader health care policy argument facing the entire country.”

Morrison noted that the Montana Constitution’s guarantee of equal protection is greater than that of the U.S. Constitution and most state constitutions. But the issue of unequal reimbursement has a major impact on health care delivery generally, he said.

“I think there’s really a broad, gut-level objection to uninsured people being charged more than insured people,” he said. “I believe this whole system ... is one of the obstacles to accomplishing affordable coverage for all.”

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Read the complete lawsuit (/read-the-complete-lawsuit/pdf_8df3ecf2-e3c4-11e0-998f-001cc4c03286.html)

 Sep 20, 2011

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