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Bob Ciglione

HEALTH INSURANCE RATES GET A CLOSE EXAMINATION

**'Usual and customary rates' used to calculate
reimbursements the subject of inquiry**

Ophthalmologist Charles Rothberg
said the current system puts a
wedge between patients and physicians.



If you've ever wondered whether your medical bill seems high for out-of-network care, you've probably chalked it up to health care inflation. The big surprise: If you think you should be paying less, you're right.

Questions, investigations and court cases are swirling around what's known as usual and customary rates – rates used by insurers to calculate the portion of out-of-network charges they will cover.

New York State Attorney General Andrew Cuomo has launched an inquiry into whether many insurers are using a database that leads to overcharging patients for out-of-network care in New York. He has subpoenaed records from 16 insurers.

With in-network care, insurers work out deals with providers who agree to accept whatever the insurer offers, leaving patients with clear co-pays.

But costs for out-of-network care are arrived at by a far different system that has long prompted concern and is now facing scrutiny. Providers usually get paid based on what the insurer says is the standard charge for that particular service, known as the usual and customary rate, and not based on the actual bill.

That's designed to let the insurer pay based on what the bill ought to be, shielding it from excessive costs. Patients must pay the difference between the UCR and the actual provider's charge.

New York isn't the only place where these rates are being questioned.

New Jersey District Court Judge Faith S. Hochberg in September approved a \$225 million settlement regarding charges that insurer Health Net in that state used a database provided by Ingenix, an information provider for the health care industry, to unfairly underpay members for out-of-network care.

Many insurers in New York also use Ingenix, which is also a subject of industry investigations.

Doctors for years have argued insurers were setting the UCR at artificially low levels, forcing patients to pick up an excessive portion of the tab. And lately, they've

found some evidence they're right in one and possibly more cases.

Although Health Net didn't admit wrongdoing, it agreed to pay 14.5 percent above Ingenix rates for the duration of the contract, which expires in 2012. Health Net also agreed not to renew the contract and to create an independent appeals process for patients.

Judge Hochberg said Ingenix used a system with "serious flaws" and the settlement "raises a clarion call for greater disclosure about the databases used for health care coverage." Hochberg also faulted Ingenix for throwing out what it dubbed as "high fees," using procedure codes inappropriately and only using data insurers chose to submit.

Attorney General Cuomo's investigation – looking at both insurers and Ingenix, which provided the databases – continues. Wellpoint, the parent of Empire Blue Cross and Blue Shield, said it can't comment, because the investigation is ongoing.

"Ingenix is in discussions with the New York attorney general and we are cooperating with his office," said Joan Schimml, a spokeswoman for Eden Prairie, Minn.-based Ingenix. But Charles Rothberg, an ophthalmologist in Patchogue, believes insurers have long pitted patients and doctors against each other by supplying artificially low estimates of reasonable charges.

"It puts a wedge in the doctor-patient relationship. You don't want your patient disappointed," Rothberg said. "The insurer has set the bar so the patient feels the doctor's a crook."

Dr. Rothberg also said it "turns out that Ingenix is a subsidiary of United Healthcare," a possible conflict of interest that could prompt the firm to come up with rates favorable to insurers. United Healthcare, parent of Ingenix, declined to comment.

Physician groups believe UCRs are open to manipulation since they're not

subject to scrutiny.

"Of course unfair usual and customary fees are a major issue for New York physicians," said Lynda Lees Adams, a spokeswoman for the Medical Society of the State of New York in Lake Success.

Dr. Robert Goldberg, president of the Medical Society of the State of New York, said United Healthcare through Ingenix created an "institutionalized practice of determining payment using faulty data that is not subject to oversight or audit." He said patients are often told the numbers are based on "independent research," which he disputed.

Deborah Silverman, a partner at law firm Garfunkel, Wild & Travis in Great Neck, said UCRs are calculated in ways that put patients and doctors "at the mercy" of the insurer. She said while UCRs are arrived at through complicated formulas, others are based on Medicare rates, easy to verify and understand.

"Some payers pay at a percentage of Medicare," Silverman said. "You know what that is. You can calculate it. You can value it."

Other experts said the problem is that UCRs typically aren't based on providers' expenses, a hard number that could be verified.

"There's no way to know if they're accurate or not," said Lin Osborn, director of Healthplan Navigator, a Hastings-on-Hudson-based organization that assists people having trouble with medical plans. "They're not attached to any cost reporting."

Osborn said tying reimbursements to costs would be one way of determining reasonable charges. "There's not a connection from the cost to the UCR," Osborn said. "You can't draw a straight line or even a curvy line."

Howard Gold, senior vice president for managed care and business development at the North Shore-Long Island Jewish Health System, said unless people know how rates are obtained, there's no way to know whether they're fair.

"The UCR is what the plan will pay," he said. "It is what it is. I don't know where they get it."

Osborn said health care providers have long complained about out-of-network costs, but patients have been less vocal. "Usually, they're reasonably grateful they have any benefit at all," she said. ■