



Merkle v. Aetna Health, 940 So.2d 1190 (Fla. Dist. Ct. App., 4th Dist. 2006)

Topics Covered: Payment Issues (for Physicians), Managed Care Payments and Usual, Customary and Reasonable Payments

Outcome: Very Favorable

Issue

The issue in this case was whether an out-of-network physician could sue HMOs to recover the full value of his fees for emergency services provided under statutory mandate to the HMOs' beneficiaries.

AMA Interest

The AMA supports fair payments to physicians for their medical services.

Case Summary

Dr. Merkle, an orthopedic surgeon, sued four HMOs in the Circuit Court for Palm Beach County, Florida, alleging that he was outside the HMOs' networks but regularly provided emergency medical services for their beneficiaries. For these services, the HMOs paid him at Medicare reimbursement rates, "plus a small premium." The HMOs' payments systematically fell below his usual charges, and they also fell substantially below the usual and customary charges for such services in Palm Beach County.

The Florida Emergency Services Statute specifically required Dr. Merkle to provide his emergency services to HMO patients, even though he was out-of-network, yet the law prohibited him from balance billing the patients. However, Florida law also required the HMOs to reimburse him for his services at the lesser of (a) his charges, (b) the usual and customary charges for similar services in Palm Beach County, or (c) whatever charge the HMOs and he agreed upon within 60 days of the submittal of his claim. Since he had not come to an agreement with the HMOs, their payments fell below the legally designated standards.

The HMOs argued that the Emergency Services Statute was not intended to allow physicians or other providers of emergency medical services to bring a lawsuit against them to recover fees. Rather, they argued, the providers were constrained to follow a complex administrative procedure of the HMOs and the Florida Agency for Health Care Administration, as their exclusive remedy. The trial court accepted this argument and entered judgment for the HMOs. Dr. Merkle was not permitted to file an amended complaint, and he appealed.

The Florida District Court of Appeal reversed the trial court and found for Dr. Merkle, holding that the Florida Emergency Services Statute implied a private right of action and he was thus entitled to bring a lawsuit for its violation.

Litigation Center Involvement

An amicus brief, submitted by the Litigation Center, the Florida Medical Association, two specialty medical societies, and the Florida Hospital Association, argued that the Florida legislature intended to allow providers of emergency medical services to sue the HMOs for the fair value of their fees.

Fourth District Court of Appeals brief