



# Washington State Medical Association v. Kreidler, 2013 Wash. App. LEXIS 1221 (Wash. Ct.App. 2013)

Topics Covered: Emergency Services, Managed Care Payments and Payment Issues (for Physicians)

**Outcome: Very Unfavorable**

## **Issue**

The issue in this case was whether the Washington State Insurance Commissioner should interpret a Washington statute to require that insurance companies pay for out-of-network emergency services according to billed charges, as opposed to in-network charges.

## **AMA Interest**

The AMA supports prompt and fair payment for emergency services.

## **Case Summary**

RCW 48.43.093 is part of the Washington State Insurance Code. The relevant provisions are as follows:

“(a) A health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed.

(c) Coverage of emergency services may be subject to applicable copayments, coinsurance, and deductibles, and a health carrier may impose reasonable differential cost-sharing arrangements for emergency services rendered by nonparticipating providers, if such differential between cost-sharing amounts applied to emergency services rendered by participating provider versus nonparticipating provider does not exceed fifty dollars.”

The Washington State Medical Association (WSMA) helped to craft this law when it was enacted in 1997.

When the statute was enacted and for many years thereafter the Washington Insurance Commissioner interpreted it to require health insurers to pay for out-of-network emergency services, except for those copayments and deductibles that would apply to in-network services, plus a maximum \$50 differential. However, the Insurance Commissioner subsequently reconsidered his interpretation and decided that health insurance companies need only pay for out-of-network emergency services at the rates paid to in-network services. The patients would

then be liable for any shortfall. Those physicians who provided the emergency services would also suffer a shortfall, if the patients required the proceeds of their insurance policies to make the payments.

WSMA and the Washington Chapter of the American College of Emergency Physicians (Washington ACEP) sued the Washington Insurance Commissioner, Mike Kreidler, seeking a writ of mandamus and a declaratory judgment, which would compel the Insurance Commissioner to require health insurance companies to pay the entire out-of-network billed charge, except for copayments and deductible that would apply to in-network services and a maximum \$50 differential.

The Superior Court entered summary judgment against the plaintiffs. It held that it lacked jurisdiction, as “a health carrier ... is a necessary party for adjudication of relief.”

WSMA and Washington ACEP appealed to the Washington State Court of Appeals, but the Court of Appeals affirmed the lower court ruling, holding that the case could not be properly adjudicated. A health insurance company which had underpaid benefits for emergency services (according to WSMA’s interpretation of RCW 48.43.093) was a necessary party for the declaratory judgment claim, and the case failed to meet the criteria needed for a mandamus action.

### **Litigation Center Involvement**

The Litigation Center contributed toward WSMA’s legal expenses.