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THE WEEKLY NEWSPAPER FOR THE LEGAL PROFESSION **ALM**

Hospital class actions start to settle

Tenet, Minnesota actions critical.

By Tresa Baldas
STAFF REPORTER

TWO MAJOR developments may alter the course of more than 100 state and federal lawsuits

nationwide alleging that hospitals are gouging the uninsured with dramatically higher rates, according to plaintiffs' attorneys.

In a recent class action settlement involving Tenet Healthcare Corp.—scheduled to go before a Los Angeles Superior Court judge for approval on Aug. 5—the health insurer has

agreed to refund millions of dollars to uninsured patients and change its pricing policies as part of a class settlement.

Lawyers claim that the settlement with Tenet—one of the largest health care providers in the United States—could have a ripple effect in pending hospital litigation and serve as a model

for pricing reform.

Also, in a separate but related development in Minnesota, more than 60 hospitals in recent weeks have signed agreements with the state attorney general's office promising to give the uninsured discounts on their medical bills. Earlier this year,

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HARDS/APP

REPUTATION AND RECRUITMENT

Firms take steps to mitigate bad news.

By Leigh Jones
STAFF REPORTER

RECRUITING THE country's top talent can be competitive enough among even the most esteemed of law firms looking to

When a public relations imbroglio arises, keeping a brave face is critical to stopping the momentum that unfavorable headlines can create. Whether the damage comes from a firm's own wrongdoing, from the loss of a major client or the departure of key players, once its community gets wind of the troubles, the problems can

JACKSON LAW GROUP PLLC
831 E MOREHEAD ST STE 550
CHARLOTTE NC 28202-2777

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Settlements seen in hospital rates class actions

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the Minnesota attorney general had threatened to sue hospitals that continued to use two-tier pricing policies.

"As each case goes down, it provides more precedent to us in the pursuit of our cases," said Milwaukee attorney Willard Techmeier. Techmeier cited the Tenet agreement in complaints that he filed recently against three Milwaukee hospitals—all sued for allegedly overcharging the uninsured and abusing their tax-exempt status. *Garza v. Aurora Health Care*, No. 04-CV-008982 (Milwaukee Co., Wis., Cir. Ct.).

"I referred to the Tenet agreement as my model, so to speak," said Techmeier, of the Techmeier McCormick Group in Milwaukee.

"Tenet was a for-profit institution and its main business was to make money, and even there it has agreed to charge

Plaintiffs also view the Minnesota pacts as a bargaining tool.

the uninsured what it charges the insured, so why wouldn't nonprofits do the same thing?...I would think that will be raised in briefs and oral arguments."

Plaintiffs' attorneys also view the Minnesota agreements as a potential bargaining tool in settlement talks, noting the deals have been raised in recent discussions with hospital attorneys and referenced in pleadings.

The most talked-about feature of the Minnesota deal is a new promise by hospitals not to charge uninsured patients who earn \$125,000 or less a higher rate than what they charge their biggest insurance customer.

"It sets an industry standard and it just underscores the fact that the uninsured paying two to three times the rate of an insurance company is unconscionable....It's price gouging at its worst," said Minnesota Attorney General Mike Hatch.

Hatch said he plans to meet with attorneys general from around the country next month to discuss his latest hospital pricing plan. "I hope the rest of the country will follow it."

Hatch, who admitted to threatening to sue hospitals if they didn't sign on to his plan, credited the hospitals for cooperating, saying, "It was very clear we were going down the litigation route....I think they were smart to do what they did."

But hospital advocates argue that the health care industry has already been doing the right thing when it comes to helping the poor and uninsured.

They argue that the Tenet settlement and the recent Minnesota reforms aren't groundbreaking, but merely reflect a national trend in which hospitals are increasingly offering discounts to the uninsured with limited means.

"The hospitals are already taking proactive measures to deal with the problem," said Melinda Hatton, chief

Washington counsel to the American Hospital Association (AHA). "Hospitals around the country have been updating and revising their billing and collection practices and their charity care for well over a year now."

To date, Hatton said, more than 4,200 of the nation's 5,000 hospitals have confirmed that they have either changed their billing practices—or already had fair ones in place—that put them in compliance with new AHA guidelines that call for disclosing charges, developing fair billing policies and providing financial counseling.

There are currently 45 million Americans without health insurance, and hospitals have provided \$24 billion in charitable care.

In the last year, 110 state lawsuits have been filed against hospitals over billing practices. Another 76 federal cases were filed within the last year, of which 13 are still pending, according to Hatton. She added that 37 federal cases have been dismissed, and that plaintiffs voluntarily dismissed another 22.

The Tenet case

On March 10, Tenet Healthcare faced unfair pricing lawsuits targeting 114 hospitals in 17 states. The insurer agreed to settle a class action involving 6 million uninsured patients who allege they were overcharged by up to 70% more than health maintenance organizations (HMOs) and insurance companies. *Tenet Healthcare Cases II*, J.C.C.P. No. 4289 (Los Angeles Co., Calif., Super. Ct.).

As part of the proposed settlement, Tenet will offer uninsured patients discounts comparable to those offered to managed care insurers, along with rebates to those who may have been overcharged during a five-year period.

Tenet also agreed to the following for a period of four years:

- Provide financial counseling to all uninsured patients.
- Disclose charges for anticipated treatment up-front.
- Offer uninsured patients reasonable payments and payment schedules, with no interest for the first 120 days after discharge. If a patient has applied for financial assistance, Tenet will not attempt to collect fees while the application is pending.
- Follow a uniform credit and collection

policy, including, among other things, a commitment not to pursue legal action for nonpayment of bills against the unemployed or poor, or place a lien on a patient's home.

For plaintiffs' attorney Gary Jackson, who is handling nine class actions against North Carolina hospitals accused of overcharging the uninsured, the Tenet deal has given him something new to talk about with his opponents. He believes the settlement will bolster his cases.



STEVE BERMAN: Plaintiffs' attorney said Tenet settlement will make hospitals nervous.

"We have used the settlement in discussions with the hospitals," said Jackson of the Jackson Law Group in Charlotte, N.C. "We tell them, 'If they can do it, why can't you do it?'" said Jackson. "I think when you get that kind of information in front of a judge, while it's not a legal argument, it could be persuasive."

That's what Steve Berman of Seattle's Hagens Berman Sobol Shapiro, the plaintiffs' attorney in the Tenet case, is counting on.

"I assume and I believe [this settlement] will make a lot of hospitals nervous," said Berman, who is also currently handling a rate lawsuit against Rush Medical Center in Chicago on behalf of a single mother who was charged \$22,000 for a 24-hour emergency room visit. According to the complaint, that same visit would have cost an HMO \$6,534.

"The uninsured just haven't stepped forward and rallied behind the issue," Berman said. "It is a new legal area where there isn't a lot of precedent, and I'm not sure people thought it would be a lucrative area for plaintiffs' lawyers to do these kinds of cases."

Tenet's lawyer, Rod Stone of Gibson, Dunn & Crutcher in Los Angeles, did not return calls seeking comment.

Tenet Healthcare spokesman Steve Campanini said the settlement offer was an attempt to "put these issues behind us."

"As a health care company, it's unconscionable to have litigation coming from the very same group that we are here to treat," Campanini said.

Campanini also noted that the California settlement was an outgrowth of a program that the company had rolled out in 2003 called Compact with Uninsured Patients, which provided managed care-style pricing to the uninsured. The program was part of a settlement reached with and co-developed by a Latino group that had organized litigation against Tenet over its billing practices. He said that implementing the program has taken a few years because the health care industry was confused about whether offering discounts would upset requirements to participate in federal programs. "To anyone who is saying that it took this litigation to make a change, we would offer that this is a program that has actually been in place in various stages over the course of the last year and a half," Campanini said.

The 'smell of litigation'

Plaintiffs' attorneys adamantly disagree.

"The hospitals have already admitted that, beginning in 2004, they began to change their charity care policies. And they did it, no matter what they say, because the smell of litigation is in the air," said Mississippi attorney David Merideth, co-counsel in 70 federal and state suits

filed against 400 hospitals in 26 states.

Merideth of the Law Offices of David Merideth in Jackson, Miss., believes the Minnesota deals could give leverage to ongoing litigation, noting that they have been raised in discussions with opponents and in court pleadings.

"It's all very helpful because of the colorful language that Hatch put on the hospital practices by labeling what they do consumer fraud," Merideth said.

"If all the AGs' offices would get after hospitals in a similar fashion, it would render these types of lawsuits unnecessary and moot," said attorney Ricky Richards of the Richards Law Firm in Jacksonville, Texas, who is handling a lawsuit that alleges a nonprofit Texas hospital engages in unfair pricing policy and improperly holds nonprofit status. *McCoy v. East Texas Medical Center*, No. 2:04 CV 223 (E.D. Texas).

"I would hope that our Texas AG's office would learn from Minnesota and do the same thing," Richards said.

James Cooney, who is defending five North Carolina hospitals in unfair-billing lawsuits, denied allegations that hospitals take advantage of the poor.

"Somewhere between 85% to 92% of uninsured patients in North Carolina never pay any money for their care," Cooney said. "So I think the notion that somehow hospitals are using the uninsured as a profit center, at least in this state, just simply isn't even close to the

truth. The hospitals are eating all that care. We're talking about hundreds of millions of dollars."

Cooney of Womble Carlyle Sandridge & Rice's Charlotte, N.C., office also denied allegations that hospitals are inflating their prices for the uninsured.

"Everyone gets charged the same price. Are there discounts that are given to large providers? Sure....they've got purchasing power that you or I, if we were uninsured, just don't have," Cooney said.

But the uninsured are also getting breaks in North Carolina, he said. For example, many hospitals offer them discounts, negotiate terms on cash payments or don't charge interest rates.

"All of our clients are doing a substantial amount for the uninsured and the poor at this point and they'll continue to do so," Cooney said.

But plaintiffs' attorney Pete Strom, whose law firm is handling more than 20 lawsuits against 40 North Carolina and South Carolina hospitals, believes the uninsured are still getting a raw deal on hospital charges.

"I think the solution is a model very close to the Tenet model," said Strom of the Strom Law Firm in Columbia, S.C. "We think that a model where the hospitals agree to charge uninsured patients at a rate comparable to a managed care rate makes a lot of sense....I think you're going to see hospitals moving in that direction."

Strom also sees a lot of promise in the Minnesota agreements.

"If every hospital in the country stepped up and adopted a plan like [Minnesota's], and like Tenet's, most of the threat of this litigation would probably go away," he said. ■



DAVID MERIDETH: Hospitals began changing their policies because of the litigation.



MIKE HATCH: The Minnesota AG said his state's settlements set a standard for the industry.

AP/WIDE WORLD PHOTOS