Doctors are waiting for their ACA payday

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When the Affordable Care Act was signed into law in 2010, Sacramento pediatrician Dr. Ravinder Khaira saw an opportunity he was particularly well positioned to take advantage of.

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Sacramento pediatrician Dr. Ravinder Khaira

Under the new health care law, physicians were to be paid increased amounts to take on more patients under the Medicaid program, the federal government's main health care program for the poor. More doctors would be needed to serve Medicaid recipients as eligibility for the program was expanded, and millions more patients would sign up.

Khaira, a Sutter Health independent contractor, owns four pediatric clinics in the region. He upgraded those clinics and increased their staffing in anticipation of more patients and larger reimbursements. He also bought a new building for his clinic in Land Park.

Other doctors pursued similar strategies, expecting that their practices would benefit from Section 1202 of the ACA, referred to by some as the "Medicaid primary-care fee bump." It was intended to get primary care physicians — pediatricians, family practitioners and internists — to take on more patients in the Medicaid program.

Pursuing those patients advanced a main aim of health care reform — expanding access to preventative health services.

But some doctors say that that it has turned out to be bad business. Reimbursements under Section 1202 have been caught up in insurance industry bureaucracy and a lack of support in Congress. The result has been millions of dollars in losses for some doctors who have taken on more low-income patients, and ongoing legal disputes.

"I think it backfired because it was implemented so poorly," said Dr. Gilbert Simon, a pediatrician and medical director of Sacramento Family Medical Clinics Inc.

The higher reimbursements under Section 1202 were offered for a particular group of services, including vaccinations and examinations. Physicians like Khaira were to be paid for providing those services to Medicaid patients at parity with the rates paid under the Medicare program. In some cases that was multiple times more than previously would have been paid under Medicaid. A vaccination, for example, was expected to net a physician almost triple the amount he or she previously had received.

"Since it's a matter of cost versus benefit, I thought, 'What better way to go ahead and invest?' " recalled Khaira. "That extra income is to update the office and get an efficient system in and of itself."

He didn't anticipate, however, that health plans and their affiliated independent physician associations would fail to pay the increased amounts promised under Section 1202, leaving him on the hook for more than $1 million.

A recent arbitration victory speaks to the validity of his claims, Khaira said.

Other local doctors also say they were not adequately compensated under the program.

How the program worked

Prior to the ACA, a pediatrician would receive about $9 under the Medicaid program for each vaccination. During 2013 and 2014 with the Medicaid fee bump, they were authorized to receive $26 per vaccination, Khaira said.

For more intensive services and certain office visits, the fee bump could increase from $80 to more than $200, according to the fee schedule on the website of the California Department of Health Care Services. The higher reimbursements were only offered in 2013 and 2014. After that, Congress did not reauthorize them.

The federal government distributes Medicaid dollars to the state Department of Health Care Services. The state contracts with managed care plans such as Anthem Blue Cross and Health Net. The health plans and their affiliated physician associations send their patients to doctors like Khaira for treatment. Under Section 1202 of the ACA, the doctors who performed services submitted claims and were then to be reimbursed at the increased rate, according to Brian Taylor, Khaira's attorney.

2 more doctors, 10 assistants...

Khaira, who operates pediatric clinics in Sacramento, West Sacramento, Roseville and Carmichael, said that of the 39,000 patients on his caseload, roughly 9,000 were Medi-Cal patients who came into his clinic under Section 1202. Medi-Cal is California's implementation of Medicaid.

To handle the added patient load, Khaira says he hired two physicians, 10 medical assistants and three nurse practitioners — expecting the reimbursement from the fee bump to pay for those added services. He also added exam rooms to some of his clinics.

"We were given an estimate that we'd probably have around 2,500 to 3,000 new (Medi-Cal) patients," Khaira said. "The premise of it was to entice other physicians to join. When it didn't pan out that way, the 3,000 estimate turned into 9,000 patients. ...Instead of having like 30 or 40 (new) patients a month, we had more like 150."

Although the Medi-Cal patients came, Khaira said the fee bump never did. He continued to be paid under the old Medi-Cal rate, not the updated rate under Section 1202. That prompted Khaira and his clinic group's co-owner, Dr. Lakshmi Avala, a pediatrician who works at the Roseville clinic, to sue the health plans involved.

Their suit against Health Net, its commercial Medi-Cal unit Health Net Solutions, and affiliated physicians groups River City Medical Group and Hill Physicians Medical Group is still pending in Sacramento County Superior Court.

Another of Khaira's suits, against California Health and Wellness, was settled by a commercial arbitration tribunal last month. California Health and Wellness is owned by Centene Corp. and Health Net.

Khaira alleged in the lawsuit that he was due roughly $17 per service performed on each Medi-Cal patient he saw under California Health and Wellness's plan in 2013 and 2014 — a total of 1,250 claims.

Attorneys for California Health and Wellness declined to comment on the case but stated in court filings that Khaira had been paid for the vaccination services that were performed, and that he was overstating the amounts that were due.

But the tribunal arbitrator, William J. "Zak" Taylor, agreed with Khaira's claim, awarding him $21,372.

His third lawsuit, which is also before a commercial arbitration tribunal, is against Anthem Blue Cross and affiliated independent physician associations, according to Khaira's attorney, Taylor.

Khaira is seeking more than $2 million in total damages for both pending suits, based on the number of claims he alleges were not adequately paid under the framework set up in Section 1202. He's also seeking interest.

Khaira said his recent arbitration victory against California Health and Wellness is proof he has a solid case in his pending lawsuits against Health Net, Anthem Blue Cross and their contracted independent physician associations.

Khaira also said that not all health plans and independent physician associations treated him unfairly.

In treating Medi-Cal patients from Yolo County under Partnership HealthPlan of California, Khaira said he received the total fee bump he was due under Section 1202, and in a timely manner.

The Sacramento Business Journal reached out to attorneys and representatives for the health plans and independent physician associations involved in the pending suits.

Michael McClelland, attorney for River City Medical Group, declined to discuss details of the case due to the pending litigation. He said in an email, however, that "River City is proud of the services its physicians provide to tens of thousands of Medi-Cal members in the Sacramento area. We are confident that a thorough vetting of the plaintiffs' claims will demonstrate that River City has met all of its obligations."

Attorneys for Hill Physicians did not return calls from the Business Journal.

Attorneys for Health Net said in court filings that their clients had "fully performed each, any and all obligations under all statutory and/or contractual requirements with the plaintiff."

Attorneys for the defendants in Khaira's lawsuits also maintain that his claims are barred by the statute of limitations and failures to submit required paperwork to the health plans in a timely manner.

"There are no untimely claims. Not one single claim is untimely, and we have proof of that," Khaira responded.

Other doctors' issues

Section 1202 of the ACA took effect in 2013 but only lasted until December 2014, after federal lawmakers failed to reauthorize the fee bump, according to a May 2015 article in the health policy journal Health Affairs. After federal lawmakers didn't reauthorize the bump, California declined to continue paying the enhanced rates.

In its relatively short life, other Sacramento area doctors say they also were burned by the policy.

Medical director Dr. Gilbert Simon of Sacramento Family Medical Clinics, which has seven locations in the region, called the Section 1202 program "a disaster."

He also hired an attorney to pursue money he said he was due from some health plans under Section 1202. Simon's dispute was resolved without having to go to court, his attorney said.

"It was millions," Simon said. But the resolution was reached "only with great effort, months to years" after the program ended.

He estimates nearly all of his clinics' patients — around 30,000 — are Medi-Cal recipients, so he had a "huge stake" in the program.

Simon said half of all Medicaid services are provided by federally qualified health centers, and those centers with that designation locally were exempt from the benefit.

"The benefit was only to go to the private doctor," Simon said. "Most private doctors are individuals. And some have one office and a small number (of patients). So the vulnerability is limited. Khaira and myself had maximum exposure because of our size. The scale worked against us."

Felicia Sze, a San Francisco-based health care attorney who specializes in Medicare and Medicaid matters, said it's difficult to say how many doctors had similar problems. Health care providers often have arbitration provisions in their contracts, so their legal issues are handled privately, not in public courts. Sze represented Simon in his out-of-court resolution.

Health care's complexity

Sze said that part of the problem with Section 1202 may have been that — with the complexities of health plans and the entities they contract and subcontract with — it may not have always been clear who was responsible for the fee bump. Sze also said there were uncertainties about the methods and processes for calculating fees under the rule, and how primary care services were supposed to be documented.

"And so getting all of that information communicated, especially to the extent that plans were contracting to another entity and then to a provider, you had sort of a game of telephone going on, and how the information gets transmitted through, or doesn't get

transmitted through was really unique to each contract situation," Sze said. "That probably led to a lot of disparities and whether or not payments were actually making their way through to primary care providers."

Some plans, Sze said, took some portion of ACA fee bump payments and paid that money to their subcontractors. "And their expectation was that those subcontractors would then make those payments on down the food chain," she said.

"That's typically where we saw more problems, but even in situations where a plan is taking on the obligation to pay the providers of service, there could be a problem that arises to the extent that you have the claims from the ultimate provider of service going to a subcontractor, and the subcontractor submitting or not accurately submitting the encounter data back to the plans," she said. "Because that's ultimately the basis (on which) the plan knows what to pay."

Sacramento pediatrician Dr. Stephanie Walton owns Walton Pediatrics and Medical Associates, with two offices in Sacramento, and a third shared with another pediatrician. She said 90 to 95 percent of her patient population receives Medi-Cal.

Walton said initially she was thrilled after hearing about Section 1202 of the ACA. "Historically, reimbursement for Medi-Cal is extremely low...so we were very excited when President Obama decided to give us some retroactive pay during that time period," Walton said.

The excitement, however, didn't last. Walton said the way the money was disbursed was "disorganized" and "chaotic." "I, like most pediatricians, except for Dr. Khaira, just kind of took what we got and that was it. We didn't fight it. We didn't question it. We just said, 'OK, thanks' and kind of moved on."

Walton said she doesn't have the resources to go "line by line" to follow up on all of her individual claims to determine whether she's owed money under the program. "I would imagine that all of us probably didn't get exactly what we were owed according to the way that the act or the law was enacted," Walton said.

Lack of enforcement

Khaira's attorney Taylor said he believes the plans aren't rushing to pay what they owe for the fee bump because there's no oversight at the state level to ensure the payments are made.

The state Department of Health Care Services sent a letter to all Medi-Cal managed health care plans in May 2015, stating that they were to provide documentation of Section 1202 payments made to eligible providers.

The Business Journal asked a department spokesman if there is an enforcement mechanism to ensure doctors were properly paid by the health plans under the ACA. The department emailed a statement saying that it "has the power to investigate compliance with, and enforce, its contracts with the health plans. These contracts require documentation that the additional payments were made to the qualified providers, and all our plans provided the required documentation pursuant to their respective approved compliance plans."

But the department also said "the plans and providers are also well positioned to resolve payment disputes with each other, and contractual and judicial dispute resolution mechanisms are available for that purpose."

Khaira said the department has not been any help in resolving his situation, and that the agency is "100 percent culpable" for his predicament. "DHCS is supposed to go out and police (the health plans), and they are not," Khaira said.

"Each plan is trying to be as creative as they can, for whatever reasons they can come up with, to get out of paying this money," attorney Taylor said.

A trial date has not been set in Khaira's suit against Health Net in Sacramento County Superior Court. Khaira said his complaint against Anthem Blue Cross will go back before an arbitration tribunal in June. Khaira said he doesn't expect to recover the $310,000 in attorneys' fees he's spent on the cases, even if the judges rule in his favor.

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