

# Medicare sued again over doctor payment differential

SANTA CRUZ -- Yet another class action lawsuit has been filed in an attempt to remedy a 10-year-old problem: Medicare underpayments that doctors say result in overcharging patients in more than 200 counties nationwide including Santa Cruz.

A 283-page complaint was filed Feb. 18 against Kathleen Sibelius, secretary of the U.S. Department of Health and Human Services.

Last fall, the Ninth Circuit appellate court ordered the district court to reconsider the matter. The U.S. District Court in San Francisco had rejected the claim, partly because it was filed on behalf of counties instead of individual doctors.

This time, the plaintiffs include Dr. Linda Wolbers and Dr. Lawrence Poree of the Pain Clinic of Monterey Bay in Aptos and Dr. Theodore Mazer, a head and neck surgeon from San Diego.

"We will study the lawsuit, but we generally don't comment on pending litigation," said Jack Cheevers, spokesman for Medicare.

The lawsuit was filed by Milbrae attorney Dario de Ghetaldi, whose brother Larry is a physician who heads the Palo Alto Medical Foundation Santa Cruz.

The attorney contends Medicare owes Santa Cruz and six other counties a total of \$3.2 billion. In 2007, when he filed the first lawsuit, the claim was for \$2.4 billion. The lawsuit argues:

- Medicare bases payments on a fee schedule not updated since 1996 despite significant changes in demographics, recognition of the inequities by Congress and the Government Accountability Office, and pleas from state physician groups.
- Doctors in Santa Cruz and other counties are paid 12 percent to 23 percent less than colleagues in neighboring counties for the same services because of the outdated fee schedule.
- Medicare patients in these counties are harmed two ways; it's difficult to find a doctor because the payment is inadequate and patients themselves are overcharged because they pay 20 percent of the bill.
- The more than 200 counties where doctors are underpaid are being denied equal protection of the law. "Tens of thousands" of doctors are affected nationwide.

California is the hardest hit, with more than \$500 million in underpayments to doctors in 10 counties, according to deGhetaldi, alleging their counterparts in 40 other counties receive "windfall overpayments."

Cuyahoga County in Ohio claims the most underpayments, more than \$240 million, followed by San Diego County, claiming more than \$225 million.

The federal government uses a more accurate method to determine hospital payments, basing them on costs in localities defined by the Office of Management and Budget and regularly updated, according to deGhetaldi.

Hospitals in Santa Cruz County are paid at the highest rate in the nation, he observed.

Since 2006, six studies have proposed more than 20 ways to make the doctor fee schedule more accurate but Medicare has taken no action because of "concern with the backlash it might receive from eliminating windfall overpayments," according to deGhetaldi.

He quoted Glenn Hackbarth, chairman of an advisory commission to Congress, who said in 2006: "If you have a system based on the principle that we ought to adjust for geographic differences and practice costs and the payments ought to be adjusted correspondingly, it seems to me that you buy into periodic adjustments... To say we're going to freeze it in perpetuity based on a snapshot that was taken in 19-whatever, just doesn't seem reasonable."