
Who foots the bill for medical mistakes?

10 states waive fees for worst mistakes, but most will charge you or insurer

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When Kevin Baccam of Urbandale, Iowa, went in for hernia surgery in August 2005, he expected to come home with a scar on the right side of his groin.

But the 33-year-old school district controller actually wound up with two scars in the delicate region — one on each side — after the surgeon mistakenly operated on the left and had to start over.

Nearly as painful, Baccam said, was when he opened his mail a few weeks later and saw his health insurance had been billed for both operations.

"I'm not really a very litigious person," Baccam said. "But that's when I got a little more angry."

Baccam's going to court now, records show, suing Dr. Frederick S. Nuss and The Iowa Clinic, who declined to comment on the pending lawsuit. It's the principle of the thing, said Baccam, who's hoping for a settlement.

But if the mistake had occurred at a different time, or in a different state, Baccam might not have been billed at all.

Spurred by federal and industry moves to cut payments for avoidable mistakes, hospitals across the country have joined a growing movement not to charge patients or their insurers for serious, preventable errors.

Since last fall, hospitals in 10 states have agreed to waive fees for certain rare errors dubbed "never events" because safety experts say they should never happen at all.

The National Quality Forum (NQF), a health care safety advocacy agency, has identified 28 such events ranging from giving a mother the wrong baby to leaving objects behind after surgery.

The list includes so-called "wrong-site" procedures, in which doctors operate on the wrong body part, the wrong place and, in some cases, the wrong person. There are 1,300 to 2,700 wrong-site procedures performed in the U.S. each year, according to a 2006 study in the Archives of Surgery.

40 states may still bill

Still, that leaves 40 states — including Iowa — where patients can expect that they, or their insurance providers, still may be billed for errors that one association leader called "no-brainers."

"There's no denying it if you've done surgery on the wrong person or the wrong body part. That's black and white," said Joseph M. Letnaunchyn, who heads the West Virginia Hospital Association.

Letnaunchyn expects his agency on March 6 to join the parade of states adopting voluntary no-payment policies. West Virginia's plan would cover eight of the most serious NQF errors, and include guidelines to help decide whether to pay for other mistakes, he said.

Only four states have agreed to waive fees for all "never events." Other states have agreed not to charge for eight, nine or 10 mistakes, or created their own lists based on NQF standards. In Delaware and Massachusetts, for instance, the short list of non-billable errors includes artificial insemination with the wrong donor sperm or donor egg. Pennsylvania's list adds "unexpected removal of an organ" and "unexpected amputation of a limb."

While it's not clear how many patients are charged for hospital errors, the federal government has an idea. In 2006, Medicare was billed 764 times for objects left behind after surgery, resulting in an average payment of nearly \$62,000 per event. The agency was billed 33 times for patients who got the wrong blood, at an average cost of \$46,000 apiece, and nearly 323,000 times for the worst kind of pressure ulcers, a preventable problem, at a cost of \$40,381 apiece.

'For God's sake, don't pay it'

Not charging for the egregious errors is the least that hospitals can do, said Patty Canakar, 62, of St. Augustine, Fla. Her 67-year-old brother, Blake Oliver, died in December after receiving the wrong type of

blood during a simple surgery at Bert Fish Medical Center in New Smyrna Beach, Fla.

Hospital officials admitted a technician mistakenly tested Oliver's roommate before the surgery and then supplied blood based on the wrong man's type. Even worse, the estate of Oliver, a retired airline pilot and classic car buff, was billed for part of the operation, Canakaris said.

"I said, 'For God's sake, don't pay it. Let them turn blue,'" Canakaris said. "I think it's unconscionable for a hospital or a physician to expect remuneration for this type of an outcome."

Though it seems like a simple, compassionate stance, not charging for hospital mistakes is not as easy as it appears, some hospital representatives said.

Defining what constitutes a mistake, whether it was preventable, and who's responsible requires reviewing a labyrinth of actions and reactions, noted Debby Rogers, vice president of quality and emergency services for the California Hospital Association. That state has endorsed voluntary guidelines for non-payment, but still allows hospitals to evaluate errors on a case-by-case basis.

"If we're supposed to cut off the right leg and we cut off the left leg, that's pretty clear cut," she said.

But if a surgeon operates on a person's third cervical vertebrae instead of the fourth, and the hospital staff prepared the correct site, who should pay? "Is that the hospital's fault?" Rogers asked.

Doctors and administrators worry that if hospitals waive fees for errors, they'll be admitting liability that could hurt them in court.

Medicare decision sparks change

Health association officials acknowledge they've been spurred to action by federal Medicare officials and a few large insurance companies who have moved recently to improve patient safety and cut health costs by refusing to pay for hospital errors.

Starting in October, Medicare will no longer pay the extra costs of treating patients who develop eight serious, preventable conditions after they've been hospitalized. The much-debated list includes falls from bed, catheters-associated urinary tract infections and pressure ulcers. The nation's largest insurers, including Aetna Inc. and WellPoint Inc. are moving toward similar policies.

In South Carolina, BlueCross BlueShield officials negotiated a voluntary deal with state hospital association members not to charge the insurance company for 10 preventable errors. Everyone else will still be billed, acknowledged Dr. Rick Foster, senior vice president for quality and patient safety.

He said he's looking forward to creation of a national, universal standard that patients, providers and insurers can share.

"The goal is to have these guidelines in every state, not having three or four different standards," he said.

Like Foster, many hospital representatives across the country say they've long waived fees for errors on a case-by-case basis and that they've been considering adopting uniform non-payment policies for months, even years.

'It's just the right thing to do'

"It's not peer pressure, it's doing what's right for the patient," said Danny Chun, a spokesman for the Illinois Hospital Association, which has formed a task force to consider non-payment policies.

"It's just the right thing to do," agreed Wayne Smith, president and chief executive of the Delaware Healthcare Association, which announced a no-payment plan Feb. 13. "We thought we'd be more proactive about it."

But consumer and patient advocates say they're skeptical of the sudden altruism. They say they've argued for years — to no avail — that hospitals shouldn't charge for egregious errors, only to see fragile patients wind up facing staggering bills or high court costs to fight them.

"I've been talking about this since 2003. What's taken them so long?" said Nora Johnson, director

of education and compliance for [Medical Billing Advocates of America](#), which helps mostly uninsured and under-insured patients with billing problems.

Although there's a perception that most injured patients sue to recover damages, many lack the skills or resources to go to court, and many others are rejected when malpractice lawyers won't accept their cases, Johnson said.

It's no coincidence that states are rushing to adopt no-payment policies now, only months after federal officials announced the Medicare reimbursement changes, said Lisa McGiffert, manager of the [Stop Hospital Infections program](#) run by Consumers Union, a nonprofit patient advocacy group.

"I think the most important thing is money talks and it's a powerful incentive for change, and that's what the goal is," McGiffert said.

Many hospitals have pledged publicly to waive fees for errors even in the absence of state policies. Since 2006, about half of some 1,300 hospitals enrolled with [The Leapfrog Group](#), a voluntary health care safety agency, said they wouldn't bill for "never events," spokeswoman Kat Song said.

That includes Northwest Community Hospital in Arlington Heights, Ill., where president and chief executive Bruce Crowther said hospitals are moving in the right direction toward transparency. Punitive measures such as withholding funding are not likely to be effective, he said.

"I don't know that we'd work any harder or faster than we do now," he said.

Last summer, the American Hospital Association urged its members to develop voluntary guidelines for nonpayment, noted Nancy Foster, the agency's vice president for quality and safety policy.

"When think that when such an event occurs, when it's preventable and when it's in the control of the hospital and it clearly was a mistake, hospitals should not be expecting to receive payment to treat the problems," she said.

Improving safety is the goal, said Andy Davidson, president and chief executive of the Oregon Hospital Association. Last week, the agency joined neighboring Washington in announcing its hospitals would no longer charge for any of the 28 errors included on the NQF list.

"At the end of the day, this is really a path toward accountability on a lot of fronts," he said. "This is about hospitals regaining that position of being a trusted community asset."

If errors are so rare, why charge?

Consumers should keep in mind that preventable, serious errors are very rare, accounting for about .02 percent to .03 percent of all hospital admissions, Davidson and officials across the country said. In Washington state in 2007, for instance, that meant there were 193 adverse events out of 630,000 admissions.

That very scarcity ought to prompt doctors, hospitals and other providers to make sure that patients injured by mistakes aren't charged for the ordeal, said Kevin Baccam.

"He billed me for both surgeries," Baccam said, still incredulous at the thought. "If I would not have reviewed my insurance bill, I would not have caught it."

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