

Improper Billing Is Not a Professional Service

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A New Jersey appellate court has held that two insurers who issued medical malpractice policies had no duty to defend a claim for reimbursement of improperly billed sums because billing is a commercial service, not a professional service, under a professional liability policy. *Hampton Med. Group, P.A. v. Princeton Ins. Co.*, 2004 WL 169810 (N.J. Super. Ct. App. Div. Jan. 29, 2004).

Two different insurance companies issued similar physician's professional liability policies to two medical groups. Both policies afforded coverage for injuries arising out of "the rendering of or failure to render...professional services" associated with a "medical incident." One of the policies defined "medical incident" as "any act or failure to act in the furnishing of professional medical...services." The other policy defined "medical incident" as "a single act or omission or a series of related acts or omissions in the rendering of or failure to render professional services to any one person." The second policy defined "professional services" as "services requiring specialized knowledge and mental skill in the practice of the profession described in the declarations...."

The insureds both contracted with hospitals to provide psychiatric physician services. In the underlying litigation, a health insurance provider sued the medical groups for reimbursement of improperly billed sums, alleging fraud, intentional misrepresentation, negligent misrepresentation and unjust enrichment. The complaint did not allege injury to patients, but rather that the medical groups extended treatment in order to trigger coverage or bill for services not rendered. The insurers denied coverage for these claims and this coverage litigation followed.

The court held that the "claim for reimbursement cannot fairly be characterized as a claim for damages arising out of a physician's rendering or failure to render professional services. Nor do we consider its claim for reimbursement to represent a medical incident." Specifically, the court distinguished between commercial and professional activities. Here, the court reasoned, the allegations of over billing "related entirely to plaintiffs' commercial activities running their business enterprises and did not involve a medical incident." Accordingly, the court found that there was no coverage under the policy. The court distinguished this case from a case involving allegations of patient injury. According to the court, a claim alleging that a patient did not receive the appropriate standard of care would qualify as a professional incident and would be covered by the policies.

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