

# Ambulance companies sue Preferred Care

Insurer withholding funds, claiming it paid too much in 2007-08

By WILL ASTOR

Five area ambulance companies say unfair deductions that MVP/Preferred Care is taking from their reimbursements will force them to cut staff and curtail services.

The emergency medical responders—based in Monroe, Wayne and Ontario counties—joined in a federal lawsuit last month, seeking to force MVP/Preferred Care to pay money that the insurance carrier already has deducted from their payments and to stop it from continuing to make the allegedly improper subtractions.

The ambulance companies' court complaint details some \$350,000 in deductions that MVP/Preferred Care plans to make for what the health insurance company states were overpayments made to the five groups in 2007 and 2008. Roughly \$100,000 of those fee reductions had been made as of the action's filing in early January, the complaint states. However, the ambulance companies' lawyer, Bradley Pinsky of Scicchitano & Pinsky PLLC in Syracuse, said this week that one of the plaintiff ambulance companies reported it had been notified of an additional \$18,000 the insurer would shave off its reimbursements.

Deductions taken so far have forced each of the ambulance companies to cut its staff, and if the insurance company keeps taking the deductions, the plaintiffs will be unable to respond to some emergencies, the court complaint states.

Four of the ambulance companies are volunteer non-profits; one is municipally run, Pinsky said.

The volunteer non-profits are Canandaigua Emergency Squad Inc. in Ontario County and the Penfield Volunteer Emergency Ambulance Service Inc., Northeast Quadrant Advanced Life Support Inc. and Chili Volunteer Ambulance Service Inc. in Monroe County. The village of Macedon in Wayne County is the fifth plaintiff.

The case was filed first on Jan. 6 in state Supreme Court in Monroe County but was transferred to the U.S. District Court in Rochester at MVP/Preferred Care's request on Jan. 20.

The complaint separately names Rochester Area Health Maintenance Organization Inc., which does business as Preferred Care, and MVP Health Care Inc. as defendants. The Schenectady-based MVP acquired the Rochester-based Preferred Care in 2006.

Citing a company policy against commenting on active litigation, MVP/Preferred Care spokeswoman Elaine Fallesen declined to speak about the case.

The ambulance companies also would not comment, said Chief Kenneth Beers of the Canandaigua Emergency Squad.

The ambulance companies' court complaint states that MVP/Preferred Care is making deductions to recoup what the health insurer maintains were inadvertent computer-generated overpayments.

The dispute, which concerns only fees paid as reimbursements for services provided to enrollees in the insurance carrier's Preferred Care Gold Medicare HMO, hinges on conflicting interpretations of Medicare rules.

The ambulance companies state in court

papers that they do not have contracts with MVP/Preferred Care and that disputed claims involve service they provided when they answered 911 emergency calls. The ambulance companies had billed the insurer at the same rates, which were "usual and customary rates (and considered) reasonable in the industry," for at least a year prior to 2007, the year when MVP/

**The five ambulance groups in Monroe, Wayne and Ontario counties have already reduced staffing, and they say losing \$350,000 in payments for Medicare HMO patients will force them to cut service.**

Preferred Care claims that it started overpaying them, the complaint states.

The health insurance company reimbursed the ambulance companies for its Medicare-plan enrollees' ambulance bills without protest at first and only later told the ambulance companies it had discovered that the payments exceeded amounts specified by the Center for Medicare and Medicaid Services, a federal agency, the ambulance companies state in their brief.

MVP/Preferred Care first notified each ambulance company of the supposed overpayments in explanation-of-benefits forms mailed in November 2008, blaming the overpayments on a computer-programming mistake, but it has not supplied a full accounting of the mistake, the complaint states. CMS audits of MVP/Pre-

ferred Care's Medicare payouts for 2007 and 2008 noted no irregularities. And, in fact, no such mistakes were possible, the ambulance companies maintain.

MVP/Preferred Care bases the overpayment claims on a classification of the ambulance companies as providers, but the Medicare administration classifies hospitals and doctors as providers and terms ambulance companies suppliers, the ambulance companies maintain. And though Medicare regulations lay out specific reimbursement rates for providers, they do not prescribe a fee schedule for suppliers.

Medicare's only requirement is that payments to suppliers be reasonable, the complaint states. And since amounts MVP/Preferred Care paid to the ambulance companies were in line with industry standards at the time, the ambulance companies maintain, the payments were reasonable by definition. That they may have been higher than CMS' provider schedule is irrelevant.

The ambulance companies are not trying to get MVP/Preferred Care to push rates back up to 2006 levels, but they want to receive the deductions the insurance company has taken so far and to stop it from trying to recoup more of the supposed overpayments, Pinsky said.

Canandaigua Emergency Squad's Beers declined to comment on whether the new lower fees that MVP/Preferred Care apparently intends to keep paying would be a hardship for the local ambulance companies.

A hearing on the ambulance companies' request for a temporary restraining order and preliminary injunction is to be held this month.

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