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PROFESSION

Calif. doctors sue to ensure nurse anesthetists are supervised

The case was prompted by the governor's decision to opt out of a Medicare provision requiring physician oversight of CRNAs in hospitals.

By **AMY LYNN SORREL**, *amednews* staff. *Posted Feb. 22, 2010.*

Patient safety remains at risk unless a new California regulation allowing nurse anesthetists to administer anesthesia to hospital Medicare patients without physician supervision is withdrawn, according to a lawsuit initiated by two state physician organizations.

The suit, filed Feb. 1 by the California Medical Assn. and California Society of Anesthesiologists, seeks to block Gov. Arnold Schwarzenegger's decision to opt out of a Medicare provision requiring physician supervision of certified registered nurse anesthetists.

Federal Medicare rules allow states to opt out of the requirement as long as they meet certain conditions. In a June 2009 letter to the Centers for Medicare & Medicaid Services, Schwarzenegger exercised the option to use the exemption, concluding it was "in the interests of the people of California."

But doctors say the move violates state laws specifically prohibiting nurse anesthetists from administering anesthetics independently. They allege that the governor failed to follow federal provisions mandating that such opt-outs be consistent with state scope-of-practice laws and that governors consult with their states' respective medical boards on the issue in determining any potential public benefit.

Because the administration of anesthesia typically involves dangerous drugs and high-risk procedures that can pose serious risks to patients, "California [through state law] has made the choice that physician supervision is required to address those patient safety concerns," said Francisco Silva, the CMA's general counsel.

Physician oversight also is recognized in state nursing regulations and legal precedents set by the state attorney general and the courts, he added. Doctors are asking a San Francisco County Superior Court to enforce state law and order the governor to rescind the opt-out.

Physicians and nurses work as a team to serve patients, and "the safety issue really has to do with physician involvement in patient care," said CSA President Linda B. Hertzberg, MD. "Physicians have the training and background to assess not just what's going on with the anesthesia, but all the other medical conditions that may impact the anesthesia, as well as the surgery, all of which affect the care one receives."

Access issues

Such patient safety risks were disputed, however, by hospitals and nurse anesthetists who said the order will help access to care.

"This is simply a matter of expanding the options hospitals have," particularly for rural hospitals that may face a shortage of anesthesiologists, said California Hospital Assn. spokeswoman Jan Emerson. The organization was not named in the lawsuit, nor was it involved in the governor's opt-out decision.

15 states have opted out of Medicare's rule requiring physician supervision of nurse anesthetists.

"Patient safety is at risk when we don't have this option, because many patients will not have access to the care they need," she said, citing situations involving emergency surgery or baby deliveries.

American Assn. of Nurse Anesthetists President James Walker, CRNA, said nurse anesthetists typically work in collaboration with the operating surgeon. But nurses' education and training enables them to deliver anesthesia safely without supervision, while allowing physicians to focus on patients' medical and surgical needs.

"We are very clear about what our knowledge and scope of practice are, and if an issue arises outside of that, [nurses] have a physician to consult," Walker said, adding that 14 other states besides California have opted out of the Medicare supervision rule. "Nurse anesthetists provide safe and effective care, and in none of the states that have exercised the opt-out has there been evidence of negative patient outcomes."

Nurse anesthetist services also can be more cost-effective, particularly for rural hospitals with smaller budgets, Walker said.

Schwarzenegger spokesman Mike Naples defended the opt-out as consistent with state law, saying it "maintains patient safety at lower costs to consumers."

But the CMA's Silva said the governor took no steps to study or validate whether any access-to-care issues existed to justify overruling the need for physician oversight.

"Whenever patient safety is concerned, you don't issue a blanket rule. You look at the individual needs, and [the state] didn't do that."

Dr. Hertzberg also noted a disparity in Medicare payment rules that allows rural hospitals to share some of their payments with nurse anesthetists, without affording the same benefit to anesthesiologists.

It remains unclear to what extent, if any, California hospitals have taken steps to change physician supervision protocols in light of the governor's opt-out decision.

Still, the move "has created a state of confusion that is not optimal for patient care," Dr. Hertzberg said.

This content was published online only.

ADDITIONAL INFORMATION:

Case at a glance

Does opting out of Medicare rules requiring physician supervision of nurse anesthetists violate California law?

A state trial court could decide.

Impact: Physicians say the governor's decision to eschew physician supervision puts patients at risk because nurse anesthetists lack the training to deal with medical issues that can arise. State officials and hospital and nurse anesthetist organizations say the move will help access to care.

California Society of Anesthesiologists and California Medical Assn. v. Arnold Schwarzenegger as governor of the state of California, San Francisco County Superior Court

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