

Annual Legislative Brunch

Sunday, May 17, 2009



hosted by

Richmond County Medical Society

Allan B. Perel, M.D., President



Founded in 1806

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Legislative Committee

Mark Carney, M.D., Chairman

Ralph K. Messo, Jr., D.O., Co-Chairman

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Neil Nepola, M.D.
Carl Scousa, M.D.
Donna Seminara, M.D.
Radha Syed, M.D.
Dorothy Wludyka, M.D.
Thomas Vazzana, M.D.
Theodore Strange, M.D.

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Honored Guests

- Dr. David Hannan, President Medical Society of the State of New York
- Moe Auster, Esq., MSSNY Counsel, Division of Governmental Affairs
- Congressman Michael McMahon
- Senator Diane Savino
- Assembly members
 - ◆ Michael Cusick
 - ◆ Lou Tobacco – Represented by Chief of Staff, Michael Coppotelli
- Council members
 - ◆ Vincent Ignizio
 - ◆ Ken Mitchell
 - ◆ James Oddo
- LaRay Brown, Senior Vice President Corporate Planning, Community Health & Intergovernmental Relations - NYC HHC
- Carol Dunn,
- Anthony Ferreri, CEO, Staten Island University Hospital
- Angelo Mascia, Executive Director, Seaview Hospital Rehabilitation Center & Home
- Dr. Parag Mehta, President, Medical Society of the County of Kings

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Dr. Mark Carney, Chairman RCMS Legislative Committee



Insurance Reform

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The Challenge

- Market dominance of health insurers over consumers, businesses & health care providers has undermined the healthcare economic engine & weakens the economic infrastructure across NYS
- Health plans continue to exhibit unacceptable market conduct practices that delay or deny care for patients, and payment to providers.
- Ingenix is the most blatant, but far from the end...



Cost of Health Care vs. Spending on Health Care

- Often the terms are intermingled, but THEY ARE NOT THE SAME
 - Cost is the amount it costs employers for health care, the largest portion of which is health insurance premiums.
 - Spending is the amount actually paid to providers (hospitals, physicians, etc)

The Cost of Health Care

- Administrative cost – prevents access to patient care, constrains reimbursement for patient care
- Advertising
- Executive compensation
- Shareholder profit

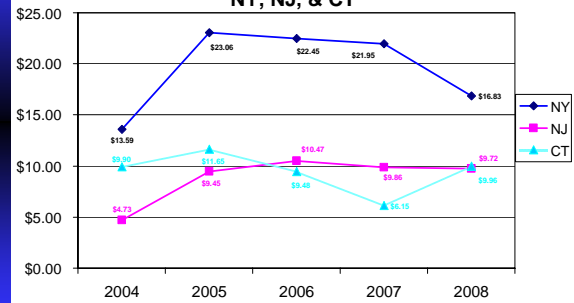
Market Dominance

- 74% of NYS managed care enrollees are insured by 5 health plans – HIP/GHI (24.1%), Oxford/United/Americhoice (14.6%), Empire (13.8%), MVP-Preferred (11.7%), and Excellus (9.6%)
- Enormous economic clout
- “Take it or leave it”

The Health Insurers' Economic Model

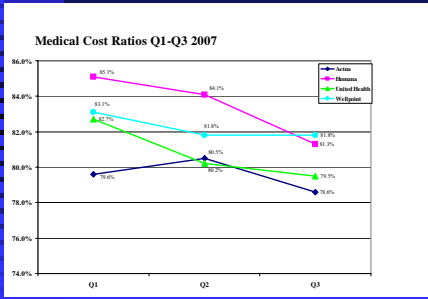
- Measure value by Return to Investors
- Manage dollars - not Health Care
- Pay dividends to shareholders
- Focus on the management of Reserves

HMO Net Income, Per Member Per Month: NY, NJ, & CT



Adapted with permission from material provided by HealthLeaders-InterStudy, TriState Health Plan Analysis, Fall 2008 Vol. 10 No. 4

How Do Insurers Spend Those Premium Dollars?

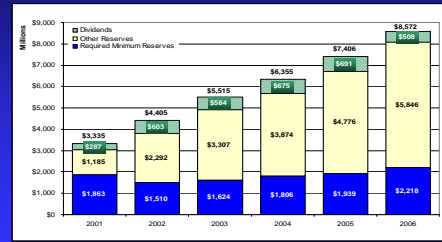


- Medical cost ratio = medical costs as a percentage of premium revenues*
- The trends in graph at left continue today with all for-profit health insurers

*As defined by multiple publications from health insurers, including the 2007 Annual Report from United Healthcare.

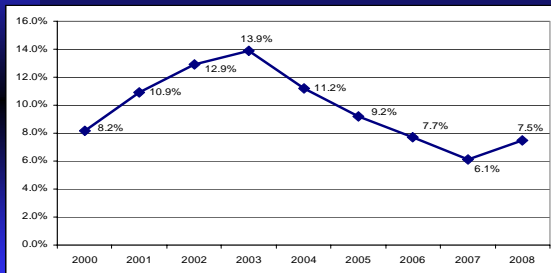
Source: Compiled from publicly available SEC filings and quarterly financial statement. Also cited in "The Verden Report, Special Edition: Cost versus Profit in Managed Care Today," November 1, 2007. www.theverdenreport.com *Figures for 2008 are projections.

New York State Health Plan Reserves: 2001 – 2006



Source: National Association of Insurance Commissioners (NAIC) financial statement filings.

Rising Cost of Health Insurance Premiums 2000-2008*



Source: Kaiser HRET Survey of employer sponsored health benefits, 1999-2007, also cited in "The Verden Report, Special Edition: Cost versus Profit in Managed Care Today," November 1, 2007. www.theverdenreport.com *Figures for 2008 are projections.

Solution – Managed Care Reform

A.3341-

- 1) prohibits health plans from determining refund amount through extrapolation
- 2) requires health plans code review policies to follow CPT rules
- 3) limits unilateral contract amendments

A.3591-

- 1) require payment of electronic claims in 15 days, paper claims in 30 days.
- 2) Increase "Prompt Pay" law fines
- 3) prohibit altering contracts mid-term

Health Care Reinvestment Act

Insurance Reform

- **A.3537** – require health plans not meeting “minimum loss ratios” to contribute to health care reinvestment pool.
- Fund Excess Malpractice Coverage?
- Fund struggling hospitals?

Managed Care Reform Act

- Governor Patterson – May, 2009
- Bring health care premium payments back into health care system

We Ask YOU to...

- Review the data
- Understand how this negatively impacts patients, businesses and physicians in our region and across the State
- Act – the time is now, the need has never been greater, and the opportunity is here

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Medical Liability Reform 2009

- **WHY HAS IT BEEN SO QUIET???**
- WHAT DID WE ACHIEVE IN THE LAST YEAR?
- WHAT DO WE HAVE TO LOOK FORWARD TO?
- HOW MANY MORE PHYSICIANS WILL RETIRE EARLY, OR LEAVE NEW YORK DUE TO THE HIGH PREMIUMS?
- WHO WILL DELIVER OUR BABIES?
- HOW CAN WE FIX THE PRIMARY CARE SHORTAGE WHEN MANY NEW GRADUATES DO NOT WANT TO STAY IN THIS STATE BECAUSE IT LACKS TORT REFORM?



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Dr. Ralph K. Messo, Jr. , Co-Chairman RCMS Legislative Committee



Medical Liability Reform

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Medical Liability Reform 2009

The Immediate problem...

- ❖ August 2008 a measure was enacted which froze for 1 year the already outrageously high liability insurance premiums paid by physicians.
- ❖ While vitally important, this only provided a temporary reprieve.
- ❖ Unless additional legislative action taken, we will be faced with further increases in our premiums (MLMIC has requested a 7.2% increase for 2009-2010)

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Medical Liability Reform 2009

- August 2008 editorial from *NEWSDAY*, this temporary freeze "...won't end the punishing long-term run-up in the cost of the insurance. But it does buy time for *Albany* to fashion a more lasting remedy-time that must be put to good use."
- And as **Governor Paterson** himself said in signing the legislation creating the freeze:
- "I want to thank the Legislature for stabilizing malpractice rates for the **short term**, thereby insuring our doctors can continue to **provide quality care** in New York without getting suffocated by more back-breaking fiscal burdens..."
- "...However, our work is now cut out for us, and we remain committed to creating **comprehensive and meaningful medical malpractice reform.**"



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Medical Liability Reform 2009

- Some cases of malpractice are frivolous, often complicated by "**expert witnesses**" who are "**not**" experts in the field, only experts at testifying!
- Other cases are cut-and-dry...and we don't disagree on these cases...
- In a recent *New England Journal of Medicine* article, it was shown that at least 1 out of 4 claims, a patient was awarded payment where there was **no negligence** committed, or a patient was not awarded payment where there **was negligence**.



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Medical Liability Reform 2009

- **COMPOUNDING FACTORS...**
 - ◆ Malpractice premiums have gone up **55-80%** in the past 5 years
 - ◆ Despite the freeze in 2008, the following rates currently exist for a single year of coverage:
 - ◆ A Long Island neurosurgeon pays over **\$300,000**;
 - ◆ An OB-GYN in Queens, Brooklyn, and Staten Island pays over **\$170,000**;
 - ◆ An orthopedic surgeon in Westchester County or Manhattan pays almost **\$110,000**.
- From 2003-2008, liability insurance costs for ER physicians rose 72-80%, general surgeons 72-80%, neurosurgeons 72-80%, internists 72-80%, radiologists 63-72%, and OB-GYNs 63-72%.
- The cause of the problem...
 - ◆ These enormous costs are driven by a **wildly unpredictable** medical liability adjudication system that numerous studies have concluded results in cases where awards are made despite the **absence of any negligence whatsoever**. Moreover, under the current system studies have shown that often those truly injured by negligence do not sue.

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Medical Liability Reform 2009

- The famous **Harvard Study**, cited by the trial bar as an example of incompetence in the health care system, was actually an indictment of the civil justice system. It showed that over **80% of the persons who sued for malpractice were not victims of negligence**.
- And yet 71% of the neurosurgeons currently insured by MLMIC have been sued, 67% of its OB-GYNs, and 62% of its surgical classes.
- **So what did we learn from Texas?**
 - ◆ **7000** doctors have moved to Texas in the last 3 years.
 - ◆ So many doctors want to practice there that the state has had trouble keeping up with the requests for licenses.
 - ◆ How come the flood? A clampdown on damages in malpractice suits has made Texas a very attractive place to practice medicine.
 - ◆ The most significant change was a **\$250,000 cap** on non-economic damages, such as pain and suffering and loss of companionship.
 - ◆ **Average award went from \$1,200,000 to \$880,000.**

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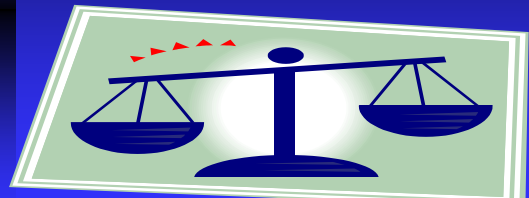
Medical Liability Reform 2009

- **What we learned from Texas...**
 - ◆ Malpractice suits have plummeted.
 - ◆ In 2003, before the caps took effect, there were **1,108** medical liability suits filed in Dallas County.
 - ◆ Only **142** cases in 2004.
 - ◆ Only **184** in 2005.
 - ◆ Did physicians suddenly become more competent, or did trial lawyers realize that the "sky wasn't the limit"!
- **As a result, many physician shortage areas in Texas no longer exist.**
- As we continue to *work on this crisis...*
- As we continue to *provide the best care to our patients...*
- As we continually *struggle* to run our "small businesses" in NYC, struggle to pay our overhead despite insurance reimbursement decreasing and malpractice rates increasing...

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Medical Liability Reform 2009

Please continue to fight for malpractice reform, so we can continue to be there providing quality care for our patients. Thank You!!!



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Medical Liability Reform 2009

...We must keep our friends close...

...Like all our elected officials, especially NY State Assemblyman **Lou Tobacco** who helped fight our fight on the Capitol steps in 2008
IN THE POURING RAIN!



...and we must keep our enemies closer...

...Like NY State Assemblyman **Sheldon Silver** (who *adamantly opposes tort reform* and is a principal lawyer in the **Weitz and Luxenberg** Medical Malpractice Law Firm...



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Morris M. Auster, Esq.

Associate Counsel
Division of Governmental Affairs



Medical Society of the State of New York

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2008/2009 TUMULTUOUS YEARS

- Spitzer
- Bruno
- Transformational Election
- Legislative Leadership
- Economy - Huge Drop in State Revenue

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STATE BUDGET

Physician Victories

- Continues new investments in Medicaid primary/preventive care (\$68M/2 year total of \$188 M)
- Defeat of proposed registration fee increase from \$600 to \$1,000
- Defeat of proposed 9.63% tax of health insurers on office-based surgical/radiological procedures
- \$0.80 for each Medicaid e-prescription
- Protection of “prescriber prevails” under Medicaid PDL

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STATE BUDGET

Overall

- Closed a \$20 Billion Budget Deficit for 08- 09 & 09-10
- \$306 M cost-containment for hospitals in 2009-10
- \$225 M cost containment for nursing homes in 2009-10
- \$69 M cost-containment for home care in 2009-10
- \$28 M cost containment on pharmacy in 2009-10
- \$853 M in new assessments on health insurance companies

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MEDICAL LIABILITY REFORM

- Able to achieve freeze on rates in August 2008 when 11-30% were on the table (exp. 7/1/09)
- In approving freeze, Governor called for (and has continued to call for) comprehensive reform in 2009
- March 3 Lobby Day – 1,000 physicians
- MLMIC files for 7.2% increase
- Negotiations as part of the State Budget
- Negotiations Ongoing

Defeat of Legislation that would make problem worse:

- Statute of Limitations expansion (S.1729, Schneiderman/A.4627-A, Weinstein)
- Wrongful Death Expansion (S.2136, Kruger & S.2391, DeFrancisco/A.2872, Weinstein)
- Eliminate Contingency Fee Limitations (S.2040, DeFrancisco)
- Pre-Judgment Interest (A.6757, Brennan)

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MANAGED CARE REFORM

- AG Cuomo's Ingenix settlements/UCR
 - 10 health insurance companies agreed to discontinue of use of flawed database
- SID Coordination of Benefits Regulation Approved
 - 60 Days to submit to proper carrier upon receipt of denial
 - Health insurer to provide documentation of other financially responsible carrier
 - Health insurer to be financially responsible if other coverage not confirmed
- Work with Insurance Department/Governor's Office to develop reform legislation

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MANAGED CARE REFORM

Collective Negotiation Legislation

- 5 Companies insure nearly 75% of NY's managed care market
- A.4301 (Canestrari)/S.2886 (Bonacic)
- S.5204 (Breslin)

NO-FAULT LEGISLATION

- S.3554 (Breslin) – Would assure that physicians are appropriately reimbursed for providing necessary emergency care to an intoxicated person in a general hospital.
- Passed Assembly (A.6843, Dinowitz)/Before Senate Insurance Committee
- Send a letter from MSSNY's Grassroots Action Center

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MANAGED CARE REFORM

Contracting Reforms (S.5472, Breslin/A____, Morelle)

- Prompt Pay – 45 days to 15 days electronic
- Further limitation of health plan overpayment recovery
- Addressing Pre-Authorization Delays
- Preventing technical denials of claims
- 90 days notice of material adverse reimbursement changes
- Provisional Credentialing if not completed in 90 days

Administrative Reforms (S.5470, Breslin/A.8280, Morelle)

- Prior Approval of Premium Rates
- 85% Minimum Medical Loss Ratios

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DEFEAT OF SCOPE OF PRACTICE EXPANSION BILLS

- Optometrists- A.3718 (Paulin)/S.2667 (Valesky)
- Podiatrists - A.2518 (Pretlow)/S.2992 (Klein)
- Naturopaths - S.1930 (LaValle)/A.1370 (Hoyt)
- Dentists - A.4656 (Morelle)/S.2937 (Klein)
- Pharmacists (Collaborative Drug Therapy - S.3292 (LaValle)/A.6848 (Canestrari)

GRASSROOTS ACTION ESSENTIAL

- MSSNY's Grassroots Action Center:
 - <http://capviz.com/mssny/state/main/?state=NY>
- Liability Reform Hotline - 1-866-728-3397 - To send a faxed letter in support of medical liability reform to Governor, Speaker and Senate Majority Leader
- Assembly 518-455-4100
- Senate 518-455-2800

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FEDERAL ADVOCACY

- Medicare Payment Reform
 - 2008 Veto override preventing 10.6% cut for 2008 and providing slight increase for 2009
 - Need to prevent 21% Medicare physician cut for 2010
- Health System Reform Discussions