California and National News

Wal-Mart CEO on Health Costs: Wal-Mart Stores Inc. Chief Executive Lee Scott said Sunday that soaring health-care costs were among the biggest challenges facing retailers and called on the U.S. government to help. In a speech to the National Retail Federation convention in New York, Scott said the U.S. health-care system was in "crisis."

"We believe it is time for the government to step in...and get a handle on health-care costs," Scott said. He gave no examples of potential remedies. In an address that Scott acknowledged sounded defensive at times, the CEO of the world's largest retailer repeatedly chastised the media for its extensive coverage of Wal-Mart, joking that it had become the "poster child" for concerns about the U.S. trade gap with China.

Although Wal-Mart is the largest U.S. importer of Chinese goods, Scott said the retailer believed in buying American and was willing to pay more to put U.S. goods on its shelves. Scott said manufacturing work would continue to move to China, but he said cheap labor was not the only factor, with some manufacturers moving production to escape steep U.S. health-care and workers' compensation costs. (From the *Los Angeles Times*, January 12, 2004.)

Medical Spending Rises 9.3% in 2002: Health-care spending in the U.S. surged to $1.6 trillion in 2002–about $5,440 for every American–and outpaced growth in the rest of the economy for a fourth straight year.

Hospital spending and prescription drug costs fueled the 9.3 percent increase over 2001, the federal Centers for Medicare and Medicaid Services said. Early indications, however, are that growth in spending slowed in 2003, according to the report. (From the *Los Angeles Times*, January 9, 2004.)

Medicare HMOs Trim Premiums, Boost Benefits: Several of California's largest health insurers said Monday that they were slashing premiums and increasing benefits for seniors in Medicare HMOs, reversing a four-year industry-wide retreat from the federal program. The actions by PacifiCare Health Systems Inc., Aetna Inc. and others came in response to a Medicare overhaul that took effect January 1. It is expected to renew competition among HMOs that insure the elderly and disabled.

The government announced last month an average Medicare payment increase to health plans of 10.6% in 2004, up from the 2-3% increases of previous years. Federal officials hope the premium hike will encourage health plans to remain in Medicare, which covers 40 million disabled and elderly patients, and to improve benefits. Since 1999, health plans have shed more than 2 million Medicare beneficiaries because payment increases haven't kept pace with annual 10% jumps in healthcare costs. Insurers said they were using their federal payments increases to lower the cost of HMO programs for seniors and to enhance benefits. If approved by Medicare, the coverage plans would take effect March 1. (From the *Los Angeles Times*, February 3, 2004.)

Appeals Court Supports MICRA in Partnership Case: The First District Court of Appeal in San Francisco recently affirmed that MICRA protections cover physician partnerships in some circumstances.

In its decision, the court ruled that a partnership composed strictly of physicians, and formed for the practice of medicine, is entitled to legal protection under California's Medical Injury Compensation Reform Act (MICRA), if the partnership is sued as a result of the conduct of its employee physicians.

In this case, *Lathrop vs. Healthcare Partners*, the patient sued Healthcare Partners and several licensed physician employees for negligent failure to diagnose and treat her breast cancer. A San Francisco Superior Court jury found Healthcare Partners partially at fault and ordered it to pay $400,000 for economic losses and $2.1 million for non-economic losses.

Healthcare Partners requested the court reduce the judgment, in accordance with MICRA's $250,000 cap on non-economic damages, but the Superior Court judge denied the motion. The judge ruled that Healthcare Partners is not a "health care provider," but rather a "managed-care entity," and as such is not entitled to MICRA's protections. Healthcare Partners appealed.

CMA filed an amicus brief with the appellate court, which pointed out that California law has long recognized that lawfully organized physician groups are "health care providers." The brief argued that the trial court undermined MICRA and ignored the Legislature's clear demarcation between the liability faced by health plans and the liability faced by health care providers. The brief also noted that identical issues were recently decided in favor of a medical group by a state Court of Appeal in San Diego in *Palmer vs. Superior Court (2002)*. In that case, the appellate court ruled that California law does consider medical groups to be health care providers.

In a multi-part ruling, the appellate court initially agreed with the trial court, finding that Healthcare Partners is not a health care provider and on that level did not qualify for MICRA protections. The court also found no direct negligence by the physician partnership. The appeals court went on to rule that the partnership, as an employer sued for the negligence of its physician employees, is entitled to MICRA protections. "Exempting vicariously liable defendants from the $250,000 damages cap would undermine the legislative goal of replacing unpredictable jury awards with an across-the-board limit," wrote Judge Linda Gemello in the ruling. "Plaintiffs would need only to sue the entity employing the negligent physician to circumvent the MICRA cap." Contact: CMA's legal information line, (415) 882-5144 or **legalinfo@cmanet.org**. (From *CMA Alert*, February 5, 2004.)

Some Doctors Drop Malpractice Insurance: With medical malpractice insurance premiums climbing steeply, a growing number of physicians are taking a radical step: They're canceling their coverage altogether. Going bare, as it is known, or "self-insuring," means that doctors, rather than insurance companies, are responsible for legal fees and any judgments or settlement if they are sued. Many of the physicians going bare so far practice in Florida, which consistently has some of the highest malpractice insurance rates in the nation.

The phenomenon is most common in high-risk specialties such as neurosurgery and obstetrics, but even primary-care physicians are forgoing insurance. As premiums edge beyond the reach of physicians in other states, doctors elsewhere are studying, and in some cases adopting, the option. As a result, some in the medical profession expect the phenomenon to continue to spread. Many of the doctors dropping malpractice insurance are sheltering assets in sophisticated trusts or partnerships, safely out of reach for legal judgments down the road. In Florida, doctors know that assets such as their homes and annuities are protected by state law from creditors, one reason why so many doctors in the state are accepting the risk of no coverage.

Nobody knows for sure how many doctors are bare nationwide. The American Medical Association has changed its policy to reflect the growing number of uninsured physicians, especially from Florida. In the past, the doctors' group recommended that physicians carry sufficient malpractice insurance to protect themselves and their patients. But in December 2002, AMA policy makers voted to cut the recommendation and leave the decision to doctors. Most states actually don't make doctors carry malpractice insurance. But hospitals and managed-care organizations often have insurance requirements, which makes

going bare impractical for many physicians. (From *The Wall Street Journal*, February 2, 2004.)

Judge Upholds Injunction Against Cuts to Medi-Cal Reimbursement: A federal judge has denied a request by the state Department of Health Services (DHS) to reconsider its Dec. 23 ruling that the state's 5 percent cut to Medi-Cal reimbursement rates was illegal. U.S. District Judge David F. Levi said in yesterday's ruling that the DHS did not produce any new evidence or information that would cause the court to reconsider its earlier decision. In December, Judge Levi ruled that the cuts scheduled to take effect on Jan. 1 could not stand. In that ruling, he said that the state of California failed to consider how the hundreds of millions in cuts would affect access to care for poor, disabled, elderly, and children whose health care is provided by Medi-Cal.

CMA and other health care advocates had filed the lawsuit last fall, citing the Social Security Act, which says that a state plan for medical assistance (Medi-Cal in California) must assure that payments are "consistent with … economy and quality of care," and are sufficient to enlist enough providers so that services are available at a level equal to those available to the general public. According to the lawsuit, the number of primary care physicians per capita for Medi-Cal patients was one-third less than for the general population using 2001 figures from the Medi-Cal Policy Institute. The figure for specialists is 50 percent less than for the general population; and for surgeons it is two thirds less. Further cuts would have made the disparities larger.

Despite the preliminary injunction, the Schwarzenegger administration has proposed an additional 10 percent cut to Medi-Cal reimbursement rates in this year's budget. CMA has said it is clear that the ruling could be expanded to apply to these proposed cuts, should they go into effect. Contact: CMA Government Relations, (916) 444-5532 or **hcampbell@cmanet.org**. (From *CMA Alert*, February 12, 2004.)

Abbott: State Law Precedes Federal Medical Privacy: Texas Attorney General Greg Abbott has ruled that the state's public information law takes precedence over a far-reaching federal medical privacy law, a legal opinion he called the strongest in the nation. His decision means Texas media outlets and individuals will have access to public information that some hospitals and authorities have declined to release under the Federal Health Insurance Portability and Accountability Act, known as HIPAA.

"In Texas, government records are presumed open unless a specific exception applies. HIPAA is not an exception to the rule of openness in the state of Texas," Abbott told the board of directors of the Freedom of Information Foundation of Texas. HIPAA, a sweeping overhaul of the federal health care privacy laws that took effect in April, has frustrated journalists and others who have found most basic information hard to come by.

"What this means is, governmental bodies who've been using HIPAA as a shield just lost that protection," Abbott said. Texas authorities worked closely on the language of the ruling with the U.S. Department of Health and Human Services, which created the privacy regulations under the law. Still, Abbott said, he wouldn't be surprised if the ruling was challenged in court. (*Associated Press*, February 14, 2004.)

More Retirees to Face Fewer Health Benefits: More Americans are likely to learn in the next three years that they will retire without any health-care benefits, according to a survey of some of the largest U.S. companies. Citing the rising costs of health care, 71% of 408 companies surveyed by the Kaiser Family Foundation and Hewitt Associates said they had made retired workers shoulder a bigger share of insurance premiums in the last year. About 10% said they had eliminated subsidized health benefits for future retireees, and 20% said they probably would eliminate them by 2007.

Kaiser, a nonprofit health policy organization, and Hewitt, a consulting firm, did not identify the companies surveyed but said they included 45% of the Fortune 100. Each of them has more than 1,000 employees. Companies across a number of sectors–including phone company SBC Communications Inc., computer services firm NCR Corp., and Tribune Co., a large media company and owner of the Los Angeles Times–are shifting more health costs to retired workers. (From the *Los Angeles Times*, January 18, 2004.)

Non-contracting Physicians: Beware of CIGNA EOBs: Non-contracting physicians providing emergency services to CIGNA patients should pay close attention to any payment they receive from the health plan. CMA has learned that physicians have received EOBs from CIGNA that state, "Paid at prevailing rate. For non-contracting physician, cashing check is payment in full less co-insurance and co-pay. Call CIGNA before billing patient."

Physicians should understand that acceptance of the accompanying checks indicates acceptance of the CIGNA rate as payment in full. CMA is very con-

cerned about this payment practice. The law requires health plans to pay the reasonable rate, not simply what is "prevailing."

CMA urges non-contracting physicians to review their EOBs to see if they have been paid their reasonable rate and, if they have not, to make it clear to CIGNA that acceptance of the check does not constitute payment in full. This can be accomplished by writing on the check itself a notation that "acceptance of the check does not constitute accord and satisfaction." Physicians should also contact CIGNA to explain why the amount paid is not reasonable.

Health plans are required by law to consider a host of factors when determining what constitutes a reasonable rate, all of which are outlined in CMA ON-CALL document #0130, "Non-contracting Physician/Implied Contract" ON-CALL documents are available free to members at CMA's members-only Web site. Nonmembers can purchase ON-CALL documents for $2 per page at the CMA bookstore.

Physicians who are still unable to get paid at a reasonable rate should file a report with the Department of Managed Health Care (DMHC) and notify CMA's reimbursement advocates at the number below. Physicians may also want to contact their attorney as to the advisability of balance-billing patients for un-reimbursed emergency services.

CMA plans to work with CIGNA and DMHC to resolve the association's concerns about this unfair payment practice.

Contact: CMA's Reimbursement Hotline, (888) 401-5911. (From *CMA Alert*, February 12, 2004.)

CMA Revives Law that Allows Physicians to Speed to Emergencies: Thanks to the initiative of longtime member James N. Eustermann, M.D., CMA and the California Highway Patrol (CHP) have put life back in a state law that allows physicians to exceed speed limits when driving to emergencies.

The law, which was passed in the 1970s, but never implemented, provides a waiver of most speeding laws when the physician's vehicles displays a CHP-approved emblem. The exemption applies unless the vehicle is being operated recklessly or without regard for the safety of others. This is a major break for physicians who live in rural areas, and for those in cities as well. In an emergency, even an extra minute can make a difference, said Dr. Eustermann, a surgeon in King County. When I am racing across the county at two in the

morning to handle a gunshot wound, I'll be happy to not have to worry about getting pulled over.

The new CHP-approved emblem is now available through CMA. Members may receive one free, in either magnet or sticker form, with additional emblems costing $10 each. The nonmember charge is $50 each. (Allow 4 to 6 weeks for delivery.)

For more information, contact CMA publications line, (800) 882-1262 or **bsotkiewicz@cmanet.org**. (From *CMA Alert*, February 26, 2004.)

The High Cost of Medical Care

The following is an excerpt from a personal letter written by Stan Laurel (of the famous comedy team, Laurel and Hardy) to a friend (Ernie), dated January 19, 1960. It was published in the Intra-Tent Journal (Issue #111, Winter, 2003) of the International Laurel and Hardy Society (The Sons of the Desert), the local "tent" of which your Editor happens to be president. It shows how the issue of the high cost of medical care, access to care, and excessive pharmaceutical costs have not meaningfully changed in 44 years.

Dear Ernie:

I remember now the news article you sent me about Jackie Gleason and Mickey Rooney intending to do a film of Laurel and Hardy. Rooney did contact us in regard to the matter some six months ago, but being unable at the time to get Gleason, he gave up the idea, as Gleason had just opened in a (very successful) show on Broadway.

Am terribly sorry to hear of your health condition and sincerely hope the check-up and findings will prove negative. **The cost of medical attention these days is a shocking situation–as you say, many people die because they can't afford treatment and the high cost of drugs is incredible, a bottle of pills that cost 25 cents you are charged 7-10 dollars. I do know that Babe's (Oliver Hardy) year of illness cost over $30,000. They had to sell the home to clear this amount.**

Love and bestest from both of us here. Take care of yourself. Good luck and God bless.
As ever:

Stan (Laurel)