

Rhode Island Health Care:
Symptoms, Causes
and Solutions

Presented to the

Rhode Island General Assembly
Joint Legislative Committee on Health Care Oversight

Monday, February 23, 2004



Rhode Island Medical Society



EXECUTIVE SUMMARY

Rhode Island has much to be proud of in health care. It has world-class institutions and outstanding professionals who deliver excellent care. The state stands out among other states in maintaining a high proportion of the population with health insurance, offering good access to services, protecting women and children, and continually raising quality standards.

All of these accomplishments are now threatened, however.

Salient problems of the Rhode Island health care system in 2004 are:

- High and rising cost of health insurance
- Rising numbers of uninsured Rhode Islanders
- Demoralization of the professional health care community
- Growing fragility of patient access to quality health care.

Legislation can ameliorate some of these problems by:

- Reforming the liability system
- Revisiting existing statutes and regulations governing health plans
- Enhancing transparency and accountability of insurers
- Reorganizing and redirecting Blue Cross & Blue Shield of Rhode Island
- Restoring a measure of balance to the relationship between insurers and professionals.



RHODE ISLAND HEALTH CARE:
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I. Symptoms and Causes

High and rising cost of health insurance

- Average group medical costs for Rhode Island employers have increased by 46% over the last 3 years (*Rhode Island Area Employer-Sponsored Medical & Dental Benefits Survey*, Bluff Head Enterprises, Inc., Wakefield, RI).
- In 2002, Rhode Island employers paid 22% more than the national average and 20% more than the Northeast regional average for HMO coverage for their employees (*ibid.*)
- They paid 17% more than the national average and 12% more than the region for PPO products (*ibid.*)
- The impact of health insurance increases falls disproportionately upon small businesses (a category that includes virtually all medical practices) and their employees.
- These increases have cut into company profits, depressed employee wages and salaries, and slowed hiring by Rhode Island employers.
- Rhode Island employers increasingly require employees to share in the expense of their own health coverage.

These cost burdens are a problem for employers in the health care sector itself, which is a major part of the Rhode Island economy. As of November 2003, a total of 53,433 Rhode Islanders, or 11.8% of the workforce, worked in health care (New England Health Care Institute survey).

Many of these health care workers are employed by medical practices, which, like hundreds of other small businesses in Rhode Island, are struggling with the high and rising cost of health insurance. No doubt this burden is one reason Rhode Island ranks near the bottom nationally in job growth in the health care sector.

The principal drivers of cost in Rhode Island are much the same as in other states and in many other countries of the world: technology, pharmaceuticals, an aging population, and consumer demand.

Insurance company profits are also a factor in high insurance premiums. Health insurers in Rhode Island have been profitable during the past four years. Indeed, Rhode Island's dominant insurers have been more profitable than their counterparts in other jurisdictions (*The Health of Rhode Island's Insurers*, Bruce Cryan, MBA, MS, RI Dept of Health, October 2003).

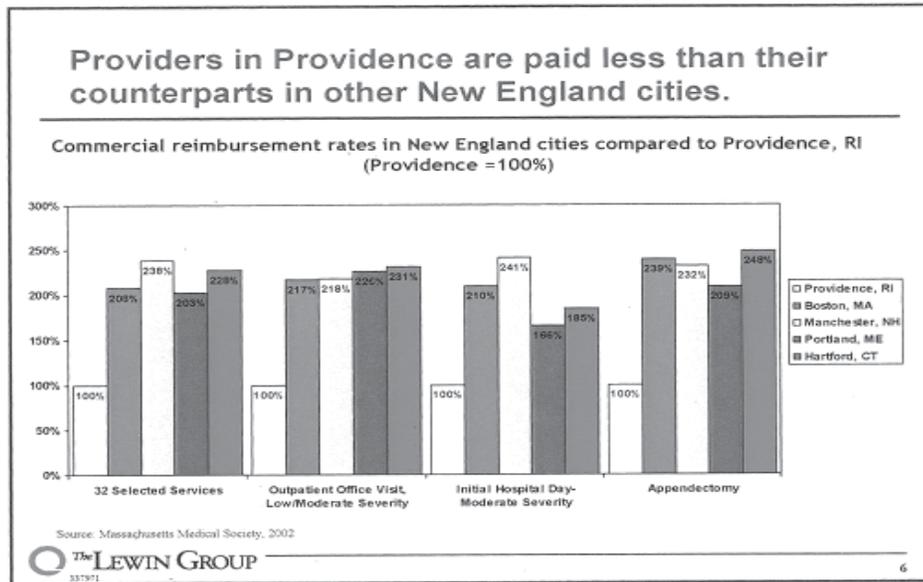
Blue Cross & Blue Shield of Rhode Island (BCBSRI) announced at the end of 2003 that it expects to post a surplus of \$70 million for 2003. The for-profit United Health Group has reported that its net income nationally for 2003 was \$1.83 billion, a 35% increase over 2002. The profit margin for United's local unit, United Healthcare of New England, has been approximately 9.5% annually.



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I. Symptoms and Causes (continued)

Paradoxically, however, all parties acknowledge that Rhode Island health plans reimburse health care professionals at rates that are *far* below those that prevail in the rest of New England and the rest of the nation. (More on this below.)



Rising numbers of uninsured Rhode Islanders

The proportion of the Rhode Island population that has no health insurance has increased significantly and rapidly in recent years, from 6.4% of the population in 1999 to 9.8% in 2002. The rate of growth in the ranks of the uninsured is greater in Rhode Island than in the nation as a whole. (U.S. uninsured grew from 14.5% in 1999 to 15.2% in 2002.)

Demoralization of health care professionals

On March 12, 2003, over 700 Rhode Island physicians and other health care professionals rallied at the State House to demonstrate their frustration with the health care system.

Today, eleven months later, frustration levels are even higher. A survey conducted by the Rhode Island Medical Society during the week of February 9, 2004, asked doctors “Compared to one year ago, how has the environment for medical practice in Rhode Island changed for you?” 1% said it had “improved,” 21% said it had “stayed about the same,” and 77% said it had “become worse.”

The contrast between the hostile practice environment in Rhode Island and comparatively attractive environments in neighboring states and elsewhere is stark. Moreover, physicians here are increasingly



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I. Symptoms and Causes *(continued)*

aware and resentful of the “Rhode Island penalty.” Rhode Island is therefore at a marked disadvantage in competing to maintain its workforce of qualified health care professionals.

While the overhead costs of maintaining a medical practice in Rhode Island are higher than the national average and higher than much of the rest of urban New England (cf. Medicare’s Geographic Practice Cost Indices), Rhode Island physicians are paid at rates that are close to the lowest in the nation and are generally less than 50% of what physicians in Hartford (CT), Boston (MA), Manchester (NH) and Portland (ME) receive for the same services.

Two additional factors make this persistent inequity intolerable in 2004:

- 1) Premiums physicians pay for health insurance and professional liability insurance, already high, have been rising steeply in recent years.
- 2) Medical practices have little or no ability to pass on rising overhead costs, because health plans are generally able to dictate fees to physicians, often actually decreasing rather than increasing them.

Most Rhode Island physicians have not seen a meaningful change in the level of their reimbursements since 1991. Meanwhile, of course, every element of their practice overhead (rent, wages, benefits, utilities, supplies, administrative costs, regulatory burdens) has increased dramatically in the course of the past 13 years.

In each of the past 2 years alone, most Rhode Island physicians have seen their professional liability premiums increase by 35% or more; hundreds saw increases of 80% in 2003 and another 38% on top of that in 2004.

Surveys conducted in February of 2003 and February of 2004 by the Rhode Island Medical Society indicate that the unrelenting, steep annual increases in the health insurance premiums doctors pay for themselves and their employees, and the unrelenting, steep annual increases they pay for professional liability insurance are two very strong and roughly equal concerns to physicians.

Growing fragility of patient access to quality health care - Rhode Island is at a marked disadvantage in attracting and retaining physicians.

The difficulty of recruiting physicians to Rhode Island is a frustration that Rhode Island doctors cite with increasing frequency. A majority of physicians have first-hand experience with the challenge of persuading a newly trained, debt-ridden young physician to come to a state where prevailing reimbursements are about the lowest in the nation and are very remarkably lower than those in neighboring New England states. (The average educational debt of a U.S. medical graduate in June 2002 was \$104,000.)



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A survey conducted by the Rhode Island Medical Society during the week of February 9, 2004, of physicians practicing in Rhode Island, yielded the following data:

- 42% of physicians responding believe that Rhode Island does not have an adequate supply of doctors in their specialty to meet the needs of Rhode Islanders. This is a remarkable statistic because, in effect, these 42% of physicians are saying that they need more competitors. Moreover, this number has grown since February of 2003, when 34% of respondents indicated that they had too few colleagues/competitors in their specialty to serve the needs of Rhode Island.
- 61% of respondents said they had experienced difficulty retaining a colleague in their practice or their hospital.
- 70% of respondents said they had experienced difficulty recruiting a colleague to their practice or their hospital.
- 56% of respondents said it takes more than a year to recruit a new doctor to Rhode Island.
- 22% of respondents said it takes more than two years to recruit a new doctor to Rhode Island.

Rhode Island's inhospitable practice environment is eroding patients' access to care. This erosion is increasingly visible. The potential exists for a crisis to develop quite suddenly, because so little margin remains in the system.

The following areas especially bear watching:

Mental health

The Brown University Medical School's residency program in psychiatry has trained 85 physicians in adult psychiatry over the past decade. Of those 85, only one has chosen to remain in Rhode Island in full-time private practice accepting medical insurance.

In general, few psychiatrists in Rhode Island accept medical insurance because reimbursements are inadequate. The resulting barrier to patient access for psychiatric services creates a serious burden for Emergency Departments of every hospital in Rhode Island and results in millions of dollars in uncompensated care and liability exposure for those institutions.

Pediatric psychiatric services are almost unavailable in Rhode Island.

Women's health

The combination of below-cost reimbursements and high liability premiums associated with mammography is reducing the availability of this important and potentially lifesaving service.



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I. Symptoms and Causes *(continued)*

- Waits of 6 months or more for a mammography appointment are now common.
- The state's largest radiology practice once had 51 radiologists reading mammograms; today only 9 do this work .

High liability costs and low reimbursements have led obstetricians to cease performing deliveries and to offer gynecological services only; others no longer perform gynecological surgery of any kind.

Moreover, in the past year, a number of family physicians in Rhode Island have stopped delivering babies because the liability exposure and expense have become prohibitive; whether the state's remaining obstetrical services can absorb the additional 1500 or so deliveries performed by these family physicians annually is a serious concern.

It is notable that some hospitals in Rhode Island have found it necessary to subsidize liability premiums of obstetricians in order to keep their obstetrical services open.

General surgery

All of Rhode Island south of Providence is currently facing a potentially catastrophic shortage of general surgeons in the near future because of high liability costs, low reimbursements, and stressful demands of on-call schedules.

General surgeons are a backbone of the health care system. They perform surgeries of all kinds, including most cancer surgeries, as well as emergency surgeries, for which they must arrange to be available 24 hours a day.

For every general surgeon who leaves southern Rhode Island in discouragement, the on-call schedule becomes that much more burden some for those who remain.

Dr. Elizabeth Conklin, an alumna of Cranston West High School and Brown University, and a 1990 graduate of the University of Vermont Medical School, closed her busy general surgery practice at South County Hospital in early 2003; she now works locally as a consultant.

General surgeons are in increasingly short supply in the United States.

The prospect is real that more of Rhode Island's general surgeons will leave practice here and move to neighboring states, where they know they can earn 70% more and enjoy a less confining lifestyle.



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II. Solutions and Recommendations

The General Assembly and the Governor can take a number of steps to improve the affordability, efficiency, and fairness of our health care system.

Reform the liability system

The expense of medical liability litigation has far-reaching effects. It raises health care costs, reduces access and lowers quality of care.

Rhode Island has an important opportunity to stabilize medical professional liability costs by enacting careful legislative reforms. Stabilizing liability costs is an obvious, necessary and effective way to relieve pressure on medical practices in Rhode Island.

What is more, Rhode Island's liability system can be improved for the advantage of all parties to litigation, as well as to the health care system and the public at large. Bringing Rhode Island's processes more into the mainstream with other states' practices will enable the system to work more quickly and more fairly at lower cost.

Delay is a significant driver of unnecessary cost in Rhode Island. According the U.S. Department of Health and Human Services, it takes longer in Rhode Island (6.4 years on average), to adjudicate a claim than in any other state (*National Practitioner Data Bank 2001 Annual Report*, p. 18, and Table 9).

A principal cause of costly delay in Rhode Island is the excessive rate at which prejudgment interest accrues: 12% per annum, fixed in law. In addition, an ineffective statute of limitations and inefficient rules of discovery contribute further to delays and costs.

Recommendation:

The Rhode Island Medical Society recommends enactment of measures to bring the liability process closer to national norms and provide for full, fair and fast compensation of patients who are injured in the course of medical treatment. Specifically, Rhode Island should enact the following changes:

Prejudgment interest

Prejudgment interest should provide an incentive for timely filing, timely disclosure of expert testimony, and timely preparation for trial. For example, upon the filing of a case, interest may accrue at an annualized rate of 5% until disclosure is made of the substance of expert testimony supporting the suit. Upon such disclosure, the rate may rise to 8%. Interest should cease to accrue when a plaintiff attorney seeks a continuance of an assigned trial date.

Certificate of merit

Plaintiff attorneys should be required to certify that a qualified expert has affirmed that a good faith basis exists for the lawsuit.

Non-economic damages

Awards for reasonably quantifiable damages should not be limited. (Quantifiable damages include lost wages, future wages, loss of homemaker services, unpaid medical expenses, architectural and other accommodations



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for special needs, etc.) Other damages that cannot be objectively quantified (“pain and suffering”), should be limited, for example to \$250,000.

Disclosure of evidence

Within one year of filing a medical liability suit, plaintiff attorneys should be required to make substantive disclosure of the expert testimony they will present in support of the suit.

Statute of limitations

When grounds for a medical liability claim reasonably remain unnoticed until after the normal 3-year statute of limitations has expired, plaintiffs’ claims should be required to be filed within one year of the time they became aware or should have become aware of their reason for suing. For minors, the 3-year statutory limit should begin running at age 8.

Revisit existing statutes and regulations governing Rhode Island health plans

Much of Rhode Island’s legal and regulatory apparatus was erected in the wake of the failure of the Clinton Health Plan in 1994 and in recognition of the need to protect the public from the abuses of managed care.

Even older, in some cases, are certain legal mandates for some 18 benefits that must be offered by health plans.

Releasing insurance plans from some of the current legal and regulatory requirements could reduce costs without compromising patients’ rights, safety or access.

Recommendations:

The Rhode Island Medical Society recommends a comprehensive and systematic review of mandated benefits and the repeal of any that may have outlived their usefulness. The Society also recommends a comprehensive and systematic review of laws and regulations governing utilization review as well as the HMO Acts and the Health Care Accessibility and Quality Assurance Act of 1996.

The Small Employer Health Insurance Availability Act of 2002, including its effectiveness and the degree to which insurers have complied with or failed to comply with it, is also worthy of review.

Comment:

All of these reviews should be undertaken in the context of the legal and regulatory environment as a whole, rather than piecemeal, with an eye to eliminating burdens that may contribute to high insurance premiums without bringing a concomitant advantage in consumer rights, system fairness or patient safety.

Enhance insurer transparency and accountability

The Rhode Island Department of Business Regulation, which has an internal insurance regulation division, sees its role as limited to monitoring and assuring insurers’ solvency. (Marilyn Shannon McConaghy, director, DBR, *Providence Business News*, 3/24/03.)



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Recommendation:

Rhode Island should create a dedicated insurance regulatory agency and an independent, cabinet-level position for an Insurance Commissioner who has authority to assert the public interest in adequate rates, fair premiums, reasonable but not excessive reserves, competitive reimbursement levels, and fair contracting and business practices of insurance companies. The Commissioner's authority should extend to purveyors of medical professional liability insurance as well as health and other insurance.

Comment:

To the extent health insurance is currently regulated by both the Department of Health and the Department of Business Regulation, consolidation under a single entity could produce efficiencies.

Reorganize and redirect Blue Cross & Blue Shield of Rhode Island

The strong market dominance of Rhode Island's home-grown, locally controlled health insurer, Blue Cross, represents a unique and invaluable opportunity for the state and its people. By reconnecting Blue Cross with its community mission, Rhode Island could significantly reorder its health care system and take an important step toward national leadership in health care.

Blue Cross & Blue Shield of Rhode Island (BCBSRI) was created by state laws in the 1940's as a tax-exempt "charitable corporation" for the "public convenience and advantage." Today, the policies and practices of BCBSRI have alienated the company from many parts of the community, particularly from the very employers, patients, institutions and professionals with whom Blue Cross must work in partnership if it is to fulfill its legislated purpose.

Imperviousness of Blue Cross to the needs and concerns of the community has contributed to broad dysfunction and inefficiency. In consequence, the value of BCBSRI's products has diminished, even as the price of those products has risen.

Experienced physicians can cite multiple examples of counterproductive, patient-unfriendly insurance company policies that enforce wastefulness, cause needless inconvenience and danger to patients, and raise patients' out-of-pocket expenses.

Emblematic of Blue Cross's failure to cultivate a productive working relationship with the community is the fact that for most of the calendar year 2003, Blue Cross employees at all levels were forbidden by their employer to communicate with the leadership or staff of the Rhode Island Medical Society. Significantly, the board of directors of Blue Cross condoned this communications freeze by its own silence and inaction.

Recommendation:

The Rhode Island Medical Society recommends that the state use its authority to reassert the public's interest in a stable, transparent, accountable, non-profit health insurer to serve Rhode Island. Specifically, the General Assembly should restructure and reconstitute the board of directors of BCBSRI to better reflect the community it serves and establish accountability to the community.



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Comments:

The advantages of taking this decisive step are potentially far-reaching. The leverage of the 63% market share enjoyed by BCBSRI could be turned to public advantage by promoting standardization of such things as credentialing, eligibility requirements, eligibility verification, data collection, data sharing, and drug formularies, and by establishing a uniform infrastructure for data exchange, electronic medical records, electronic prescribing of pharmaceuticals, and supporting patient compliance.

By these strategies, and by engaging the professionals who take care of patients in meaningful, continual dialogue about quality, efficiency, and safety, Rhode Island could accomplish much to reduce waste, control costs, improve quality and enhance patient comfort, safety and convenience.

There is wisdom in the words of Ted Almon, CEO of the Claflin Company: “Competition is not the answer. It is part of the problem.” (Annual meeting of United Nurses and Allied Professionals, Biltmore Hotel, November 13, 2003). By their nature, health care services are not ordinary commodities that comply neatly with the classical laws of supply and demand. Health care, in Mr. Almon’s view, is more a social program than a business, and it might therefore best be funded through what he terms “a benevolent monopoly.” State oversight would be needed to enforce the benevolence of any monopoly.

Given the current market dominance of a single payer that also happens to be a public asset, Rhode Island may have a unique and historic opportunity to move to a simpler system that would reduce much of the current dissonance in health care and focus resources better on patients. In so doing, Rhode Island would be building upon and taking advantage of what it already has: a near-monopoly insurer. This strategy may be more realistic and successful than waiting and expecting that competition will someday restore stability and affordability to Rhode Island’s small health insurance market.

Restore balance in the relationship between insurers and professionals

The 7000 Rhode Island physicians and other health care professionals who devote their daily lives to patient care are inappropriately disenfranchised and overwhelmed by the power of insurance companies.

Physicians and other professionals are forced to spend far too much time seeking or fighting for payers’ approval for medications, laboratory tests, procedures and referrals for their patients. They and their office staff spend far too much time submitting claims, resubmitting lost claims, tracking claims, and fighting with payers for the reimbursements they have earned.

The time and resources devoted to these daily battles take away from physicians’ time with their patients and erode the quality of the patient-doctor relationship.

As independent small businesses, medical practices are generally barred by antitrust law from banding together to correct abuses, disruptions and inefficiencies imposed by insurance companies. However, the state can provide a safe harbor for such negotiations under the so-called “state action exemption” to antitrust law.



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Recommendation:

The Rhode Island Medical Society recommends the enactment of the Health Care Fairness Act, which would enable professionals, under the supervision of the Office of the Rhode Island Attorney General and the courts, to bring payers to the table and to address systemic abuses that tend to increase costs and bureaucracy at the expense of patient care and access to care, and contribute to making Rhode Island unattractive to new doctors.

Comment:

The Health Care Fairness Act is no panacea. It would not create a “level playing field” between professionals and insurance companies. It would, however, restore an important and needed measure of balance and provide a safety valve in a relationship that is currently out of balance to an extreme degree.