



Report to the New England Council of State Medical Societies
Freeport, Maine, Saturday, April 30, 2011

Gary Bubly, MD, President

Provider tax litigation

After an investment of three and a half years and \$200,000, the Rhode Island Medical Society lost its challenge to the constitutionality of two provider taxes enacted by the Rhode Island General Assembly in 2007. The taxes amount to 2% of the gross receipts of high-end imaging studies as well as of surgical and endoscopy services performed in physician-owned facilities.

We knew going in that our 14th Amendment/equal protection argument was a long shot, but our RIMS membership was fired up about the issue, and even doctors who were not directly affected by the new taxes understood that they had a stake in the fight.

Though our expectations were appropriately low, we were still disappointed with the judge's ruling when it came in November 2010, just after we returned from AMA in San Diego. The judge turned back every last one of our arguments. We decided against an appeal to the Rhode Island Supreme Court in part because we did not want to risk elevating the visibility of another potentially negative result.

We are grateful to the Litigation Center of the American Medical Association and State Medical Societies for contributing \$20,000 to the effort. The American Osteopathic Association, the American Academy of Ophthalmology and the American Academy of Dermatology contributed another \$12,500 to our cause. We raised about \$155,000 from our own members and ended up taking about \$13,000 from our endowment to close the final gap.

State budget

Perhaps our provider-tax protest at least had the positive effect of discouraging state leaders from looking disproportionately to doctors for solutions to our state budget crisis. After decades of shell games by politicians who cared more about votes and cronies than about responsible public finance, Rhode Island now can no longer defer hard decisions to another administration or another generation. Our new General Treasurer says that Rhode Island must find \$7 billion just to shore up its public employee pension funds. That alone is equivalent to Rhode Island's entire state budget for one year.

To begin to meet these challenges, Governor Lincoln Chafee proposes to lower Rhode Island's 7% sales tax to 6% but generate more revenue by broadening it to apply to many more goods and services, including professional services. Under the Governor's plan, professional membership dues would also become subject to a 6% sales tax. That would push Rhode Island Medical Society dues up over the \$500 mark (to \$503.50), a psychological threshold that some members might be reluctant to cross.

The Governor's budget proposal also foresees additional cuts in core government services, including a further 5% cut in human services. This comes on top of years of already brutal cuts in state spending and state workforce that have impaired public services and left no easy, low-hanging fruit.

At least we now have a new Governor, a Lieutenant Governor, a new General Treasurer and a new mayor of our largest city (Providence) who seem, at least initially, to be willing and able to work together and to face with honesty and integrity the deep financial hole we have dug for ourselves. Unfortunately, if they show real leadership and do what they must do, they risk being turned out of office in the next election.

State legislation

Given the state's desperate need to generate revenue as well as control health care spending, one might think that the political environment would have been ripe last year and is even riper this year for passing a tax on sugary beverages. Perhaps the time has come. But so far, it's remarkable how opponents can light up the lines of rabid radio talk shows on the issue of taxing soft drinks.

"I'm sorry" legislation is also on our agenda again this year. We have some hope that Rhode Island will finally join 35 other states, including the rest of New England, in passing this benign legislation.

Other items on our list are:

- Good Samaritan protection for anybody who administers an opioid antagonist to prevent a drug overdose
- Liability immunity for PAs working unsupervised in emergency situations
- Expanded reporting requirements for providers of professional liability coverage. The intent of this bill is to provide a more comprehensive picture of actual claims, settlements, judgments and arbitration awards in Rhode Island by requiring off-shore hospital captives to be more transparent; three of these entities, one in Bermuda and two in the Cayman Islands, now serve, in aggregate, at least 40% of Rhode Island doctors.
- Prohibition on the use of tanning facilities by minors, unless prescribed by a doctor
- A tax credit for physicians providing on-call emergency services
- Ignition locks for persons convicted of driving offenses involving drugs or alcohol
- Repeal of the imaging and surgery/endoscopy taxes enacted in 2007 (see above)

Prospective utilization review

We are also seeking legislation to ameliorate the burden of health plans' prior authorization requirements for non-emergent high-end imaging. Specifically, we seek to require that ordering physicians have the option to delegate the pre-authorization process to others, notably imaging facilities.

This issue has consumed a huge amount of the Medical Society's resources off and on for a full decade, and the matter is acute again right now, particularly because the Rhode Island Blues have contracted with MedSolutions of Tennessee to "manage" the imaging benefit using a blanket approach.

We understand and support the need to assure appropriate utilization, but we fail to understand how, in 2011, after years of effort, contention and discussion, BCBSRI can still lack tools to do the logical and efficient thing: identify outliers and focus on them.

Physician morale

Prior authorization requirements, of course, apply to a host of other things in addition to imaging, including referrals, pharmaceuticals and various procedures. All these burdens come on top of pressure for "meaningful use"; the hassle of PECOS; and the threat of Red Flags, RAC audits,

HEDIS audits, and on-again, off-again SGR cuts of 29%. We know that “maintenance of certification” is to be followed soon by state “maintenance of licensure” requirements, not to mention the huge vagaries of “payment reform” and the Improvised Explosive Device known as ICD-10, which is coming to a roadside near all of us in October 2013.

Last Tuesday, on April 26, the Rhode Island Medical Society and the NORCAL Mutual Insurance Company jointly sponsored a CME-bearing program entitled “Beating Physician Burnout.” Our faculty was a leading expert in this area, psychiatrist Ron Hofeldt, MD, of Salem, Oregon.

Registration for the two-hour evening course topped 125 individuals. Little wonder!

ACOs, COOPs, MEWAs

We had almost as big a crowd on April 14 when we brought AMA’s top anti-trust lawyer, Henry Allen, and one of AMA’s favorite attorneys from Holland & Knight, Elias Matsakis, to talk to our members about the new ACO regulations and the so-called COOPs. It was a lively and enlightening evening.

The general consensus at the end was that ACOs, at least as initially proposed, do not offer great new opportunities for Rhode Island physicians.

We have been grateful to our colleagues, especially CSMS and their EVP Matt Katz, for the opportunity to powwow recently with our counterparts in New England and the Northeast and explore ways to help our doctors successfully meet the challenges that are rapidly bearing down upon them.

Dr. Peter Hollmann, Chair to-be of the CPT Editorial Panel

We are also grateful for the support of Dr. Butch and the New England Delegation for the elevation of Dr. Hollmann to chair the CPT Editorial Panel.

Dr. Hollmann was first nominated to serve on the CPT Panel by his fellow geriatricians of the American Geriatric Society in 2003. The AMA Board of Trustees appoints all members of the Panel and appoints the Chair every two years, a process which includes nomination by the Executive Committee of the Editorial Panel, recommendation by staff, and consideration by the Nominating Committee of the BOT.

New England can be proud to be represented on the Panel by Dr. Hollmann, who is a star presenter on the subject of CPT. As many doctors and office managers in Rhode Island, Connecticut and elsewhere know very well, Dr. Hollmann can make CPT astonishingly entertaining and even LOL funny, possibly even ROFL.