



American Academy of  
Orthopaedic Surgeons

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## SEPTEMBER 2001 STATE LEGISLATIVE UPDATE

September was supposed to have been about the continuing redistricting battles in the state legislatures and keeping a wary eye on the nascent economic downturn. Like for all Americans, the infamous acts of September 11<sup>th</sup> changed the outlook for legislators around the country.

Not that the old issues disappeared, however. State legislatures in September went forward with redrawing legislative district boundaries. The partisan rancor might have been toned down slightly, though. Here in **Illinois** the Democrats proposed a map that lumped Republican incumbents in new districts all over the state. The Democrats amended the map to make it friendlier to the Republicans before its approval. The cynic in me thinks this was done not out of the kindheartedness of the Democrats, but out of political calculation that the changes increase the chance of judicial approval of the map.

The more pressing problem in state capitols is the fear that the attacks and their aftermath will be a catalyst for a quicker and steeper economic downturn. Budgets were already tight before September 11<sup>th</sup> with states, such as **North Carolina** and **Tennessee**, fiercely fighting over whether taxes needed to be raised. The layoffs in the airline, hotel and travel sectors and decreased sales taxes from people unwilling to travel will hurt the states' bottom line.

Earlier in the year most state legislatures were looking at how to rein in the state Medicaid budget. As the situation worsens the lure of saving money by decreasing physician reimbursement will be harder for legislators to resist. It will be imperative upon physicians in the coming year to stay vigilant over state fiscal issues.

As of the end of September, the following state legislatures were in regular session or in recess: **MA, MI, NC, NH, NJ, NY, OH, PA** and **WI**. Through September there have been 174,422 bills introduced in the states and 37,507 have become law.

Some of the bills the Department of Health Policy is tracking are outlined below. If you have any questions please give Jay Fisher a call at 800-346-2267, x4336.

### **INSURER LIABILITY**

**Massachusetts** is one of the states still considering legislation this year to allow patients a right to sue their HMO. The Massachusetts Taxpayers Foundation released a study in September claiming that passage of a right to sue would raise health care costs anywhere from \$138 million to \$563 million with premiums rising anywhere from 1.4% to 5.7%. Not surprisingly, the Massachusetts Taxpayers Foundation is described as an employer-supported research center. Their conclusion differs from an AMA study done by William M. Mercer, Inc. which projected premium increases only rising between 0.2% and 1.8%.

## HIPAA

States are continuing to advocate that the federal requirements in the HIPAA privacy regulation are unduly burdensome. The Medical Association of the State of **Alabama** has joined the lawsuit filed by the **South Carolina** and **Louisiana** medical societies claiming the privacy regulation is unconstitutional. The Association of American Physicians and Surgeons has also filed suit against the regulation alleging that it is unconstitutional. Interestingly, the AAPS suit alleges different bases for unconstitutionality than the medical society suit.

The National Governors Association called on Congress to require a single compliance date for the myriad HIPAA regulations. This new date would be farther in the future than the current compliance dates set by the government.

## TORT REFORM

September saw no decrease in the malpractice crisis in certain states. Premiums are higher than at anytime since the mid 1980's. Insurers blame the increases on rising jury awards. Data from Jury Verdict Research show the average jury award in 1999 at \$3.49 million, up 79% from 1993. Insurers also unwisely increased the amount of stock that they held, up to 10.6% of their holdings in 1999. The market correction has seriously hurt the insurers' bottom line. Phico Insurance was taken over by **Pennsylvania** regulators when its reserves fell perilously low. Physicians in **West Virginia** are organizing a grass roots campaign to convince the Governor to call a special session in October to deal with tort reform.

## PROMPT PAYMENT

Much of the prompt pay legislation in the states this year dealt with giving the government more power to enforce and punish violations of the existing laws. September saw a lot of governmental enforcement activity. The **Arkansas** Insurance Department fined United Healthcare of Arkansas \$250,000 for prompt pay violations. It then stayed \$180,000 of the fine pending prompt pay compliance through December.

The **Maryland** Insurance Administration fined five insurers for prompt pay violations: Aetna was fined \$600,000, United Healthcare of the Mid Atlantic was fined \$300,00 and forced to pay \$202,000 in back interest, Magellan Behavioral Health was fined \$150,000 (after being fined \$300,000 last December) and two dental insurers were fined \$75,000 and \$25,000.

The **Texas** Lieutenant Governor appointed a special Senate Committee to study the problem of slow payment of claims. The Texas State Insurance Commissioner adopted new rules to increase prompt payment in Texas. The new rules deal with the time an insurer may audit a claim it has questioned, restrict submissions of information not in the provider's control and restrict the avoidance of the law through contractual language. In other news from Texas the Attorney General is investigating physician complaints that several HMOs are breaking the prompt payment law. The physician complaints allege that HMOs are illegally bundling services, denying payment for pre-authorized services and reimbursing providers at a lower than agreed to rate.

Right after the prompt pay law went into effect in **New Hampshire** earlier this year insurers began routinely sending "claims pending" letters with a variety of excuses why the insurer needed additional time to pay the claim. This is within the bounds of the law, but the medical community in New Hampshire believes that this is being done just to delay payment as long as possible. Possible solutions are under consideration.