THE DAILY RECORD

Joseph A. Schwartz, III: Behind the workers' compensation announcement

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The Maryland General Assembly's Workers' Compensation Benefit and Insurance Oversight Committee announced on Feb. 3 that there would not be legislation for the next two years (2015, 2016 legislative sessions) relating to physician dispensing of medicines to workers' compensation patients. This announcement ended a 3½-year saga that pitted workers' compensation insurers and municipal governments versus doctors, lawyers for injured workers and organized labor over legislation which would limit or eliminate the practice of physicians dispensing medicines from their offices to injured workers.

This saga began in the fall of 2011, when the Maryland Workers' Compensation Commission (MWCC) proposed a regulation to drastically reduce the amounts paid to doctors for medicines dispensed from their offices. Doctors complained that the regulation would effectively end the dispensing because they would be paid less than the amount that they had paid for the medicines in question.

The regulation went before the General Assembly's AELR Committee and was turned down by a vote of 14-1. Subsequently, workers' compensation insurers filed legislation in the 2012, 2013 and 2014 sessions aimed at eliminating physician dispensing or imposing tight price controls on the amounts paid by insurers. This legislation was unsuccessful each year.

The basis for all of this activity stemmed from reports developed by the Workers Compensation Research Institute (WCRI), an insurance company funded organization. According to WCRI reports on the Maryland system, doctors were dispensing 40 percent of all workers' compensation prescriptions and were capturing 55 percent of all dollars paid for prescriptions.

WCRI maintained that this out-of-control dispensing was driving up costs to the system and needed to be brought under control. Throughout the legislative debate, opponents questioned the accuracy of the WCRI figures, which were being used in state after state around the country to pitch for —reforms.

The reason for the recently announced moratorium was the independent determination by the MWCC that the WCRI figures were grossly inflated. The MWCC did its own independent study and determined that, contrary to the WCRI data, physicians in 2013 only accounted for 15.7 percent of all prescriptions as opposed to the 40 percent postulation by WCRI.

It turns out that the WCRI data – which has driven the entire debate – was wildly exaggerated and inaccurate. WCRI expostulated from data that reflected prescriptions from approximately 12 percent of Maryland cases, while the MWCC data covered 92 percent of all prescriptions. It would be the equivalent of deciding last year's Maryland governor's race on the basis of the vote in Montgomery County and ignoring the 23 other jurisdictions (sorry, Gov. Hogan!)

This is a cautionary tale for all legislators. Public policy was being manipulated by WCRI for the benefit of its member insurance companies, which pay membership fees of up to $220,000 per year. See, www.wcrinet.org. This research organization effectively manipulated data to generate conclusions which were untrue. Because of this manipulation, countless hours were spent by all interested parties in legislative hearings, workgroups and the like.

Credit belongs to the MWCC and its chair, R. Karl Aumann, for properly investigating and discovering the truth. The Maryland Workers' Compensation Commission remains one of the best in the country and Maryland's rates are some of the lowest (Maryland is ranked the 35th lowest out of 50 states in premium costs to employers according to the most recent Oregon Report).

Mark Twain is reported to have said that there were three types of lies: lies, damn lies and statistics. The Maryland debate over physician dispensing of medicine has illustrated what happens when the third type gets inserted into a public policy debate.

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