TEXAS NEUROLOGICAL SOCIETY

Broca's Area

The Voice of Texas Neurology

Fall 1994

Health Care Issues for the 74th Texas Legislature

Provided by the Texas Medical Association Division of Public Affairs

"I hate to make predictions, especially about the future." Yogi Berra

The following is TMA's best guess at the major health issues the 74th Legislature will consider. This is an abbreviated list. It is not intended to exclude other significant, recurring medical legislative priorities, such as anti-tobacco reforms, specific appropriation concerns in the public health sector or medical workforce initiatives.

CONGRESSIONAL DOWNLOAD OF NATIONAL HEALTH CARE DEBATE

TMA anticipates that the 103rd Congress, out of political, economic and legal necessity will send a number of proposed health care "reforms" to the States for implementation. Similarly, the congressional debate will generate state legislative interest and momentum for issues that otherwise only receive periodic state scrutiny and activity:

Health Insurance Reforms. The 73rd Legislature enacted a set of small group reforms (HB 2055) that included basic insurance regulatory measures, such as a standard set (multi-tiered) of benefits, policy portability, and rate banding. Because most of the health insurance market is, in effect, exempt from state regulation, an alliance of medical and business organizations is urging the Congress to extend state authority to regulate all forms of health insurance in this manner. TMA supports this approach, and was part of the coalition supporting HB 2055 in 1993. TMA created a similar multi-disciplinary coalition in 1989, and urged these same reforms in the 1991 Legislature.

Managed Care Regulation / Physician and Patient Legal Rights: The 71st and 72nd Legislatures, at the urging of the Texas Medical and Hospital Associations, enacted regulations and laws governing insured Preferred Provider Organizations (PPOs) and utilization review activities, respectively. Again, these laws and regulations have limited application because of federal and state exemptions. Because there are no ground rules in Texas' managed care market, managed care companies and other proprietary entities have undertaken the systematic, arbitrary denial of physician and consequently patient access to managed care systems. Competent physicians with unimpeachable credentials are being sum-

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marily dismissed without cause from managed care plans, with no opportunity for appeal. Because of managed care network "saturation"—a view taken by the managed care entity that their operation has too many physicians—physicians are being "de-selected", thus finding that percentage of their patient base removed from their practice by a 30 day notice letter. TMA is seeking a series of due process, appeal and negotiation rights in the Congress and ultimately in the 74th Legislature for physicians in managed care systems.

Liability Reform. TMA anticipates that the Congress is unlikely to enact substantial reforms that pre-empt state laws and previous state constitutional rulings regarding medical liability. The congress may enact incentives for states to pass certain "boilerplate" tort reforms (eg, non-economic damage caps, collateral source rule, structured awards, contingency fee limitations). Texas' medical liability system is characterized by a high frequency of marginal and frivolous suits, perverse incentives to settle groundless cases, particularly in obstetrical cases, and wide variances in litigiousness by jurisdiction. TMA will pursue reforms that are specific to those priorities, rather than generalized tort reforms that will have an uneven, or negligible effect on medicine's most urgent concerns.

Allied Health Scope of Practice Expansion. The perennial efforts by non-physicians to expand their scope of practice beyond their training and license will be encouraged by the Administration. Nurse Practitioners will seek, as they did in the 73rd Legislature, independent practice and prescribing authority, hospital admitting privileges, and direct third party payment equal to medical reimbursement. Similarly, psychologists, optometrists, chiropractors, pharmacists, lay midwives and still other non-physician organizations will seek access to hospital, inpatient services, prescription authority, use of lasers and other surgical procedures, etc. Physicians and business health organizations have consistently testified to the effect that adding non-physicians to the system seriously compromises the quality of care (since those providers' level of skill and professional training are by definition subordinate to medical training), and subjects patients to potential exploitation and unnecessary services. TMA will continue to oppose these efforts, but will attempt to design a medically supervised delivery system for rural and underserved areas that fully utilizes nurse practitioners and PA's in collaboration with physicians. TMA added provisions to their 1991 Omnibus Rural Health Recovery Act that extended limited prescriptions and treatment decisions for nurse practitioners and physician assistants in rural, underserved, and public health settings.

Physician Hospital Organizations—Vertical Integration and Corporate Practice. Hospital organizations have perennially sought exceptions from an outright repeal of the prohibition of corporate practice in the Medical Practice Act.

The aggressive expansion of MCOs into Texas has sharpened the hospitals' desire to repeal or modify the statute. Ongoing discussions with the Texas Hospital Association have sought to clarify and strengthen the separate votes of hospitals and doctors and have led to a conceptual agreement to preserve physician clinical autonomy in hospital settings.

STATE FINANCES & TAX REFORM

TMA believes that sooner or later, the state budget will crash, forcing a debate on state financing. In 1991, under similar circumstances, a coalition of capital intensive businesses and business organizations sought to revise the franchise tax, convert it to a corporate income tax, and extend that tax (4 1/2% of *(continued page 8)*

Health System Reform Then and Now

by Louis J. Goodman, PhD

One year after President Clinton announced the Health Security Act, launching what has come to be known as health system reform, the act and its many imitators are apparently dead for this session of Congress. Several journalists have already written post-mortems and the finger pointing frenzy of blame was temporarily interrupted by the invasion of Haiti.

It is not clear whether the banner of health system reform will again be taken up in 1995 or will await the hubris of election year politics in 1996.

Suffice it to say that the American public, the medical profession and probably Congress itself are sick and tired of this ill-defined and sharply divided debate over what is best for America.

Recent survey results paint an interesting story: it's not always instructive to interject some science into a discussion based on emotion and anecdote. Texas Medical Association's recent survey [1] of 600 randomly selected physicians (representative of physicians across the state) found that two-thirds of physicians are talking to patients about reform issues.

In a recent random sample poll of 1,204 registered voters, Eppstein[2] found that 57% of voters supported the concept of universal health care, but opposed (60%) a government-run national health care plan. Significantly, 90% of respondents said that health insurance plans should be required by law to allow patients the right to choose their own doctors.

Taken together, these poll results send a clear message to anyone willing to listen: "health care is too important and complicated for an 1960's brand of social engineering." In a recent editorial in the *Wall Street Journal,*[3] Rothschild compared the IBM mainframe ideology to the administrations' Health Security Act -- centralized control with little room for innovation and much room for central planning—but IBM was forced to abandon this ideology in favor of a localized personal computer that can be tailored to individual and "network" needs. This response was dictated by the "market;" perhaps Washington policy thinkers and makers are beginning to hear the beautiful cacophonous music that is a market.

The Texas Medical Association agenda [4] for health system reform is market-based and has never changed from that focus. Whenever or whoever picks up the banner for health system reform, the TMA is well prepared and in fact translates health system reform in Texas to preparing physicians for leadership roles in managed care. Keeping physicians as their patients advocates is at the heart of the Association's plan in addressing the challenge and opportunity of managed care.[5]

References

[1] Lone Star Research, 1994 Survey of Texas Physicians, July 1994.

[2] The Eppstein Group. Texas Interested Citizens Poll, September, 1994.

[3] Wall Street Journal, September 22, 1994. "Why Health Reform Died," Michael Rothschild.

[4] Texas Medical Association, Health System Reform for Texans, Austin, 1994.

[5] Texas Medical Association, A Guide to Physician-Directed Managed Care Networks, AMA, Chicago, 1994.

Louis J. Goodman, PhD, is the Director of the Division of Medical Economics for the Texas Medical Association.

President's Message

Blake O'Lavin, MD

Practice economic issues are presently important to all neurologists. We know that by having an organization in which Texas neurologists can interact we will be able to learn what we all need to know. Discussion at the fall Executive Board Meeting and discussions at the May, 1994, Annual Meeting indicate that since we are a small specialty, our interests and opinions may be ignored! The American Academy of Neurology has proposed the term and concept of "principal care." This is an important concept for the care of many of our patients, especially those who have a neurological condition but are otherwise fairly healthy.

We are a specialty that deals with conditions and diseases that mystify other physicians. We are important to these other physicians and to our patients, but not to payors. Payors seem to see us neurologists as a nuisance because of our small numbers and the strange, often disabling illnesses in our patients. Often times, primary care physicians see themselves as being just as able to take care of strokes, epilepsy and Parkinson's disease as are neurologists. They, waste time and money on inappropriate tests, hospital time and treatment. We have to be proponents of our special skills in evaluating and caring for neurological patients. One of our members has complained that MRA has been considered "experimental" by some carriers, even though the test has become a new and effective tool to evaluate both intracranial and extracranial vascular circulation. It can be effectively used to avoid cerebral arteriograms in many cases. Informing carriers of these changes in practice is helpful to medicine and to our patients.

Forming local groups of neurologists is a realistic way of keeping our special talents under our control in our communities. By joining together, we can practice as general neurologists and keep our areas of special interest as well. If we are diluted into multispecialty groups or managed care pools, others can tell us how to practice. We can't just wait until something happens in Washington. Many others are planning on the way they will control physicians. We must be active now. It will be an interesting decade. We hope the TNS can keep neurology "special."

Update on Physical Therapist's Performing EMGs

Of some concern to Texas neurologists in recent months have been reports of physical therapists performing electromyography and nerve conduction studies without referral by a physician or the supervision of a competent electromyographer. The Texas State Board of Medical Examiners defines the performance of EMG and nerve conduction tests as procedures which constitute the practice of medicine and as such the performance of EMG's cannot be delegated. Failure to follow this rule subjects the physician to discipline under the medical practice act and Texas Civil Statutes. However, the Board of Physical Therapy Examiners includes EMG and nerve conduction tests in the definition of physical therapy practice (proposed expansion of physical therapist's role published in Texas Register, August 27, 1993).

The Board of Directors of the Texas Neurological Society, on behalf of its membership contacted the Texas State Board of Medical Examiners to express concern about this practice. The letter received from the Board of Medical Examiners in response stated that the Board had tabled this issue and was not interested in discussing it further. After discussion of possible options for TNS to pursue, the TNS officers determined that the most effective response would be to encourage members of the Texas Neurological Society to write letters to the State Board of Medical Examiners expressing their opinion on this matter. Each TNS member is encouraged to write the Board and make the voice of Texas neurologists heard. If you are aware of physical therapists in your area performing EMG's, please contact the TNS office or one of the officers.

Welcome New TNS Members

The following have been elevated from Provisional to Active membership at the May 14, 1994 Annual Business Meeting.

George H. Cirkovic, MD, Midland
Michael C. Graeber, MD, Longview
Nancy L. Griffin, MD, Texarkana
Stephen F. Hart, MD, New Braunfels
Richard Homan, MD, Lubbock
Eugene C. Lai, MD, Houston
Augusto Lastimosa, MD Arlington
Ralph B. Lilly, MD, Houston
John S. Luther, MD, San Antonio
David W. Morledge, MD, Austin
Michael Newmark, MD, Houston
Anthony R. Riela, MD, Dallas
Ernest S. Sears, Jr., MD, Houston
William T. Tobleman, Jr., MD, Dallas
Francine Vriesendorp, MD, Houston
David L. Weir, MD, Longview
L. James Willmore, MD, Houston
W.K. Alfred Yung, MD, Houston

The following members were elevated from Provisional to Resident membership at the May 14, 1994 Annual Business Meeting.

Tarif Bakdash, MD, Houston
Laurence Bower, MD, San Antonio
Stephanie Carinci, MD, San Antonio
Joseph D. Clark, MD, Lackland AFB
Patricia A. Evans, MD, Dallas
Rodolfo Fierro-Stevens, MD, Houston
Annie Lincoln, MD, Lubbock
Charles A. Popeney, DO, Houston
Terry Rolan, MD, Lubbock

Pending Applications

Faiz Ahmed, MD, Weslaco
Nancy A. Allemier, DO, Houston
Jerry D. Boggs, MD, Lackland AFB
Lester B. Collins, MD, Tyler
Lourdes Flanagan, MD, Galveston
Randy C. Gardell, MD, Galveston
Richard A. Hamer, MD, Rockwall
Zuka Khabbazeh, MD, Port Arthur
John C. Krusz, MD, PhD, Dallas
William B. Lujan, MD, Lackland, AFB
Cherry Mathew, MD, Lufkin
William E. McIntosh, MD, Fort Worth
Richard Payne, MD, Houston
Kristi J. Posey-Merkl, MD, Houston
Vinaykumar K. Puduvalli, MD, Houston
Britta O. Shoaib, MD, Houston
Robert G. Smith, MD, Houston
Azreena B. Thomas, MD, Houston

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Upcoming Conference

UPDATE ON EPILEPSY: What We Know & What We Don't

The University of Texas Southwestern Medical Center and John Peter Smith Hospital/ Tarrant County Hospital District are cosponsoring a seminar designed for physicians with an interest in new clinical techniques and new medications in the treatment of epilepsy. The program features nationally known speakers who will address various aspects of treatment. The seminar will be held on Friday, November 4, 1994, 7:30 a.m. to 4:00 p.m. at the Ramada Hotel Downtown, Fort Worth.

Cost of the symposium is $75 per person ($25 for students) and includes lunch. This program has been approved for 6 credit hours of continuing medical education in Category 1 of the Physicians Recognition Award of the AMA.

For more information contact: Shirley Molenich, MD, Course Director, 1350 South Main Street, Ft. Worth, TX, 76104; 817-336-3968; or Physician Services, John Peter Smith Hospital, 1500 South Main St., Ft. Worth, TX, 817-927-1173,

Specialty Legislative Retreat

by Connie Mawer,
Administrative Director, TNS

Recognizing a need for political education for specialty society leaders, TMA's Specialty Society Management Services coordinated a legislative retreat August 5-6, 1994 at Lakeway Inn and Conference Center. The objective was to provide needed political education to specialty society leadership as well as to strengthen unity among participating medical groups. The retreat emphasized the keys to effective advocacy of medical issues including topics such as:

"Planning and Communication"

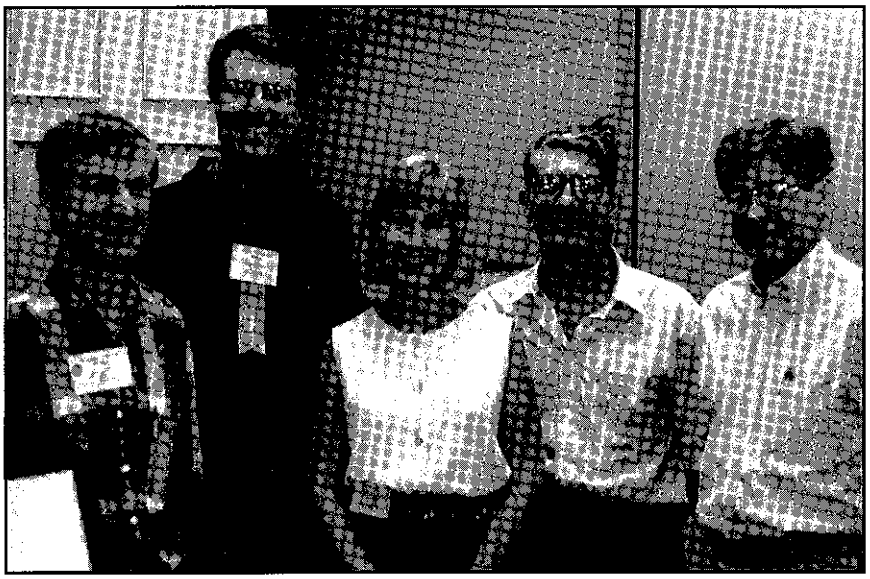
" Working with the Legislative Process"

"Do's and Don'ts for Physicians"

Representatives from twenty-three medical specialty societies attended the retreat. Current TMA President Betty Stephenson, MD, gave the opening address. Speakers included TEXPAC Chairman, Sheldon Gross, MD, TMA staff members Kim Ross and Alfred Gilchrist, TMA Consultants George Shipley and Goseph Gagen, and former Texas legislators Mike McKinney, MD and Parker McCollough. Attendees consisted of 34 physicians, 16 staff, 5 lobbyists, 8 speakers and 29 spouses for a total of 92. This exceeded the projected number of 70.

The Texas Neurological Society was represented by Blake O'Lavin, president, Ernesto Infante, president-elect and Bob Fayle, immediate past president. These representatives learned about the legislative process and the TMA legislative goals. Dr. O'Lavin commented, "We learned how bills are created and guided through the legislature. It is not a pretty process and principle usually gives way to expediency and practicality. The current thrust of the TMA legislative team, including TEXPAC, is incremental: get a little more of the agenda passed each legislative session. When our attention is on practicing neurology, we miss some of the war going on on our behalf. The battles may be important. We need to know."

Program evaluations were uniformly positive. Every survey respondent said he or she would recommend this program to their colleagues, would recommend another legislative program prior to the 1997 legislative session and found the program to be entertaining as well as informative.



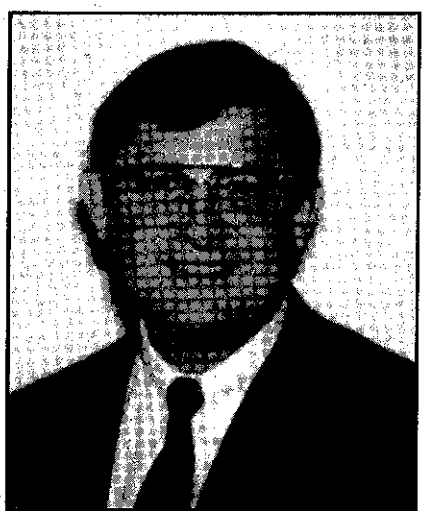
TNS representatives attended the Specialty Legislative Retreat. L toR: Blake O'Lavin, Alfred Gilchrist of the TMA, Connie Mawer, Ernesto Infante, and Bob Fayle

RICHARD HOMAN, MD, TNS VICE PRESIDENT

Richard W. Homan received his MD from State University of New York in 1966. His neurology residency training was at Albany Medical Center and UCLA Center for Health Sciences. Dr. Homan was a research Fellow at Albert Einstein College of Medicine. He is currently Professor and Chairman of the Department of Neurology, Texas Tech University Health Sciences Center. He comes to Texas from Medical College of Ohio. From 1975-1989 Dr. Homan was Associate Professor of Neurology at Southwestern Medical School in Dallas. Dr. Homan was elected at the 1994 Annual TNS meeting.

EDITORIAL COMMENT

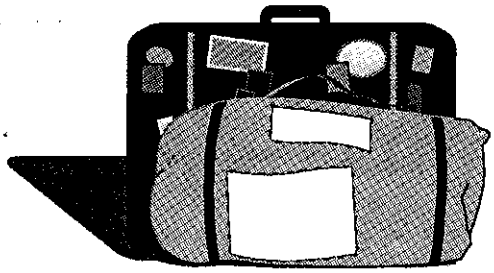
Tom Hutton, MD



Tom Hutton is out of the country. He is leading an international delegation of neurologists to China where they will meet with their counterparts in the Chinese Medical Association to present information and discuss treatment of Parkinson's disease in their respective countries.

Delegates on this trip are from 8 different countries and it is anticipated that the exchange of information among the delegates themselves will be as productive as the exchange with their Chinese counterparts.

The editorial for the next issue of Broca's Area will address the results of this two-week traveling seminar to China.



Broca's Area

A periodic newsletter of the Texas Neurological Society

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net, or 4.5 mil per capital, whichever is greater) to professional associations, professional corporations, and sole proprietorships—in other words, physicians. TMA successfully opposed this tax, arguing that a tax on medical care compounds the trend of rising costs and decreasing access. However, TMA believes that Legislature's appropriations process and tax system have serious statutory, constitutional and procedural flaws that have fostered increasing inequities between the state's needs and the ability to meet those needs on a rational, prioritized basis. (One obvious example—Texas borders Mexico, not Canada, and endures unique health care problems as a result.) Texas' public health system is recurringly on the brink of collapse, the Medicaid system is seriously overextended, and the sales and property taxes are at the point of diminishing returns. Most of the state budget cannot be appropriated due to statutory and constitutionally dedicated entitlement. TMA will appoint a special medical task force to study health care financing and examine the probable impacts of the various finance and spending reforms to the cost and availability of medical care.

MEDICAID & WORKERS COMPENSATION

Budget pressures will compel the State to seek a federal waiver to reduce a multi-billion dollar deficit in Texas' Medicaid program to conduct managed care pilots and other strategies, then codify those modifications in statutes. Allied health groups will scramble to gain an expanded role in managed care systems. The scheduled 1993-94 sunset review of the Texas Workers Compensation Commission, as well as the uncertain legal status of the Act currently under review by the State Supreme court, will potentially open up debate on the medical care component of those 1989 and 1991 reforms. TMA supports a rational, predictable cost containment system that assures the availability of proper medical care for injured workers, and will seek the extension of utilization review regulations successfully negotiated with the insurance industry in 1991 to the workers compensation system.

CONCLUSION

The Legislature will be forced by federal mandates as well as legal and economic necessity to consider a number of major legislative issues that will directly and indirectly limit or expand the availability and affordability of medical care in Texas. The potential for significant social progress in providing the highest quality medical care anywhere in the world is matched by the equal risk of compromising Texas' health care system and damaging it beyond repair.

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