



## Regulatory Burdens vs Patient Care

by: Phillip R. Langsdon, M.D.

The TMA, with the support of county medical societies like the MMS, continues to do an exemplary job with many

legislative challenges. Physicians and patients owe the TMA a debt of gratitude for years of good work toward quality patient care. However, there are basic challenges that need more individual and local physician involvement in order to create a community-wide grassroots awareness of the pervasive erosion of time available for our patients. Over the last few decades, physicians have faced numerous regulatory burdens that have become a mounting obstacle to patient care.

Around 1966, as a young boy in the old delta farming community of Osceola, Arkansas, I remember sitting in the waiting room of my family doctors' office. Whether I was there for a sore throat, an ear infection, the flu, or perhaps a sports physical, the clinic was always packed. What struck me, even as a young child, was that everyone in town went to see these doctors; black, white, Hispanic, rich, poor, banker, barber, police officer, the entire community. These doctors were in clinic all day and could be seen returning to the hospital at night to check on patients. And, they turned down no one. If you had insurance, they accepted it. If you did not, they would give you a bill. If you could not pay it, you would be welcomed with a smile the next time you needed care. Charity was part of their practice. The doctors treated when they could cure and gave comfort when they could not. They were missionaries, ministers, and healers, selflessly working to help others. They were truly dedicated to taking care of their patients and that is what they spent most of their time doing. I thought being like those physicians was an honorable mission for one's life! Their dedication to patient care that inspired me to go into medicine is likely not much different than what inspired most doctors in the U.S. or around the world.

Around 40 years ago in 1977, as a first year medical student home on break, I was invited to go to the county medical society meeting with two of our Osceola doctors. As we rode the 14 miles from

Osceola to Blytheville, I sat in the backseat of the car and hung on to every word between these two physicians. They talked about the impact of the relatively new (10-year-old) government program, Medicare. They were telling me that Medicare was changing medicine.

They related that it had **changed the doctor patient relationship**. They explained that before Medicare, the doctor and the patient would discuss the best course for diagnosis and treatment and talk about the costs. After Medicare, the patients began to feel that all the tests and possible treatments should be available to them, even if not relevant, because the government was now paying the bill.

The other **change was new regulations, compliance, and oversight issues**. You had to make sure that not only the doctor, but also office employees knew all the rules and regulations in order to file Medicare because a filing error could have serious ramifications with the government. The doctors were telling this young medical student that government intervention in patient care would one day become a problem. The prescience of these two country doctors is astounding!

While all of us recognize that the advent of Medicare/Medicaid has certainly expanded access to care, especially for complex diagnosis, treatment, and hospitalization, the subsequent explosion of government intervention as well as the evolution of "managed care" has complicated practices, increased the cost of running them, added to the staff workload, and takes more of a doctor's time away from actual patient care.

Today, we have a non-stop flow of requirements from hospitals, state and federal government, CMS, licensing boards, certifying boards, insurance companies, managed care companies, as well as from self-perpetuating entities such as ACCME, ACGME, ABMS, Joint Commission and non-medical agencies such as OSHA. Aside from the normal rigors of practice we now have terms like "meaningful use", "value based care", as well as new demands resulting from EMR, ICD-10 codes, HIPPA, ACA. Each new program, law, or requirement erodes time available for treating patients. One seemingly simple new

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requirement, however justified, such as Tennessee's prescribing practices law may by itself seem like a benign step in a day's work, but add this to multiple other requirements and the load is soon unsustainable. *Regulators have failed to comprehend the aggregate negative impact upon patients and practices.*

Worse, regulators have taken a punitive approach toward doctors. Many programs such as HIPPA, Health Care Fraud Prevention & Enforcement Initiative, and the Affordable Care Act's Medicare Incentive Payment initiative are designed to have punitive consequences, rather than a constructive approach. The recent ACA "claw back" upon primary care doctors is one example. The "claw back" is also an example of regulators' grossly unfair and arbitrary abuse of power against doctors who have little recourse against an arrogant and dysfunctional government system.

A study conducted by the AMA and Dartmouth-Hitchcock Health Care System and published in the *Annals of Internal Medicine* in September 2016 found that almost **one-half of the physician work day** is now spent on electronic health record (EHR) data entry and other administrative desk work while only **27%** is spent on **direct clinical face time with patients**. The conundrum is not limited to a doctor's time. Considering just one requirement, third party authorizations for diagnosis/treatment can cause a delay in care; scheduling hassles; increased office costs, distraction of staff efforts, and patient inconvenience/frustration/confusion. Only then does the game begin with post-authorization denials, delays, underpayment, and sometimes questionable maneuvering by the carrier. If any non-physician is interested in understanding how burdened a day is, ask him/her to compare it to calling your internet service provider/cable company to repair service/correct a bill...and do that at least twenty times/day. Add to this other responsibilities such as, multiple doctor reappointment processes, licensure, hospital mandated programs, the time and expense of fulfilling CME requirements or preparation for MOC (that has no proof of benefit) and there is little time for patient care

or resources remaining to run a practice. In fact, I know doctors who are frequently up until midnight fulfilling "compliance" issues.

Becoming an institutional employee does not solve this problem. Employed physicians must still deal with most regulations and are not immune to clerical claims errors. "Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative" was designed to penalize physicians and they are actively trying to find doctors to use as examples. They actually use the term "strike force" when targeting doctors. Are we the enemy? Something is not quite right with "our" government's attitude toward us citizens.

The emotional impact on the physician of all the pressure cannot be ignored as it has been in the past. The time demands from practice/compliance complexities and stress/fear of malpractice, punitive government action, and the enormous responsibility for our patients' health have a staggering personal impact upon physicians. **The quality of patient care, physician's personal lives and families can suffer.** The Physicians Foundation study (AMA 2016) found that the physician burnout rate was at least 49%, some specialties as high as 60% [#1]. "A frequently cited suicide rate in male physicians is 40 percent higher than in the general male population and 130 percent higher among female physicians than in the general female population" (*AMA Wire*, November 15, 2016). ***I think a burnout rate of 49% says that it is time something is done!***

Today, the practice of medicine is exceedingly more complex than in 1966. The MMS carried out a recent survey that determined many practices need help; 47% with group benefits, 34.4% with staffing assistance, 51.4% with coding and reimbursement. We do not need a survey to tell us that an individual doctor has no influence in managed care negotiations, little ability to understand the legal ramifications of new laws/rules (some that we are not even aware of until we violate them), or that it is a financial burden to be forced to purchase and maintain EMR or spend time on esoteric coding.



The reality is that doctors cannot sustain ever-increasing practice burdens. **Administrative burdens and practice complexities must be addressed.** So, what can we do? We must help our partners in care begin to recognize the human limits of mandates, time, stresses, and distraction from patient care.

1. **Educate Healthcare**

**Regulators/Administrators** – We need to develop a *Patient Distraction Meter*, much like the U.S. debt meter and help the public, government, hospitals, insurers, legislators and the plethora of overseeing bodies understand the impact that **growing administrative burdens** are having on patient care. With the support of the MMS board of directors, we can begin to diplomatically educate through our normal channels, as well as by becoming a real time information source through the web and social media. Done in the right way with careful oversight, we can get our message out.

2. **Support Practices** – We need to provide **advanced practice support.** The challenges to practices are simply staggering for the single or small group and costly to small and large practices alike. We will establish a consensus group that will help MMS determine how we can better assist our membership meet many of the regulatory challenges and mandates. Perhaps we need to create an *Alternative Practice Vehicle* to help physicians. While this might seem like a lofty goal, there is a precedent for meeting big challenges. The best example is the creation of SVMIC.

I think all of us want to preserve that doctor-patient relationship that inspired many of us and is required for good care. So, today we have a choice – to keep medicine a meaningful and fulfilling mission or to allow well-meaning, but sometimes not so well meaning regulators, who know little about caring for

patients to suck the life out of good doctors, complicate practices, and destroy good quality patient care. Only physicians can respond to this. As former Utah governor and Health and Human Services Secretary Mike Leavitt said to the AMA State Legislative Strategy Conference recently, we can be “overcome by events” or we “can lead it...”

Many of our partners in health care claim to understand what it takes to deliver good care. **They want to tell us how to do our job, to accomplish the impossible in less time, under extreme pressure, but then want us to take responsibility when problems occur and costs skyrocket.** I’m reminded of the television commercials for drug advertisements that we see every day urging patients to tell their doctors about the great new drug. The ads designed to indirectly tell doctors what to prescribe, are careful to always add the caveat, “If you have these side effects, call your doctor”. The advertisements don’t say to call your pharmaceutical manufacturer, the hospital medical staff office, state licensing board, CMS, insurance executives or the Joint Commission...they say “call your doctor”. The unstated message is that the doctor is responsible if something goes wrong. If we are going to be responsible, then we need to stop allowing events to overcome us.

We need every doctor to work with the Memphis Medical Society to communicate our message so that our patients, the regulators, insurance companies, hospitals, legislators all understand the staggering negative cumulative impact of their mandates upon the time and resources available to patient care. It is time to address regulatory burdens from government, administrative mandates from hospitals/insurance carriers/overseeing entities, etc., and we must streamline authorizations to treat patients. All most physicians’ want is the time to properly care for their patients.

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#1 Santry, HP, **Surgeons Are Burnt Out and the Numbers are Staggering**, *Physician*, October 23, 2015