

JORDAN'S JOURNAL – 2003

Abraham Lincoln once wrote a review:

“People who like this sort of thing will find this is the sort of thing they like”

An apt appraisal of our annual attempt at amusement and abridgement, analyzing all it meant.

Jordan's Journal adjourns our recent trials, and sojourns to nascent trails with a “textbook” analysis of unresolved attempts to avoid being forced into thinking “this time it's different.” The changes we see are only those of degree as we can't agree on how to do what when. So we begin with the basics.

Introduction	Insanity in individuals is rare, but in groups, parties, nations and epochs it is the rule – Nietzsche
Government	I don't mind what Congress does as long as they don't do it in the streets and frighten the horses – Victor Hugo
Economics	Mathematics has given economics rigor, but alas, also mortis – Robert Heilbroner
<i>Short Subjects</i>	
History	The only thing we learn from history is that we do not learn – Earl Warren
Medicine	My doctor gave me two weeks to live – I hope they're in August – Ronnie Shakes
Philosophy	If at first you don't succeed, failure may be your style – motivational poster
Conclusion	What if the hokey pokey really IS what it's all about?

There's an appendix. Please remove it. If you can't stomach the rest of the report, this gives a digest of the California carrier system and a tract on our expanded contracts and services.

If you enjoy it, let someone else know.

INTRODUCTION

If a pig loses its voice, is it disgruntled? From Twin Towers tragedy to corporate corruption comedy, we search for a remedy to the nation's ills. From prosperity to austerity we wonder where our gruntlement went, with all the money spent and peace gone if the Pentagon decides to bomb Saddam or let Pyongyang go bang.

Recent years have gone from bad to worse, but I'm not averse to using verse to convey increasingly adverse conditions. It's less a question than a quest to discover if there is a best way to lay a path toward positive positions. I assumed there was cause for gloom but have tended toward doom with millennial musings and what became less amusing in subsequent editions. Such a destructive pattern has led to some constructive criticism:

You "can compress the most words into the smallest idea of any man I've ever met" --- A Lincoln
The fact that no one understands you doesn't make you an artist
I can see your point, but I still think you're full of it

Critics say the darnedest things – but I see their point. The question remains whether there are any answers or only better questions. "In a time when technology is widely accepted as a substitute for ideas, where action all too often preempts thought and where instant analysis masquerades as understanding"* we question our assumptions, our beliefs and our knowledge. Not as cynics, which leaves us no hope, or using clerics, which leaves us with too much, but as skeptics, which leaves the hope of a balance. The ancient Greek skeptics believed that all knowledge is uncertain. That led them to keep asking questions rather than becoming silenced by certainty. In such times, who can be certain of anything, as chaos theory becomes less dreary and challenges us to revel in revelations (or read Revelations) and permit new permutations to our thinking. So, in the end, we ask

Who's Afraid of Virginia Woolf? "We are floating in a medium of vast extent, always drifting uncertainly, to and fro; whenever we think we have a fixed point to which we can cling and make fast, it shifts and leaves us behind; if we follow it, it eludes our grasp, slips away and flees eternally before us. Nothing stands still for us. This is our natural state and yet the state most contrary to our inclination. We burn with desire to find a firm footing, an ultimate, lasting base on which to build a tower rising up to infinity. But our whole foundation cracks and the earth opens" (Virginia Woolf, *Pensees*)

That's what I was going to say, except

Drink and dance and laugh and lie
Love the reeling midnight through
For tomorrow we shall die
(But alas we never do)

Dorothy Parker

* Statement in Wellesley College catalogue

GOVERNMENT

Democracy – n. A government of the masses. Attitude toward law is that the will of the majority shall regulate, whether it is based on deliberation or governed by passion, prejudice and impulse without restraint or regard to consequences. Result is demagogism, license, agitation, discontent and anarchy – U.S. Army Training Manual No. 2000-25, 1928-32

UN inspectors brought their detectors
To see what weapons they would find
Seoul can't muster much faith that cross the 38th
They'll avoid a parallel bind

Hussein is insane and Jong's wrong to remain
In control of that which they cannot
When Bush comes to shove ya know George wants a Dubya
Not requiring nor firing a shot

From Iraq attack to his need to sack
Some dead wood working in his cabinet
Paul O'Neill couldn't deal with less mettle than steel
Pitt-ing Lindsey against Wall Street and debt

Bush hopes his new selections resemble the elections
It looks like he made some progress
Where he let Karl Rove the Democrats dove
For cover costing them the Congress

Walter must have been Wellstoned to think his ventura toned
For a state that was now shy a retiring Jesse
Better than Toricelli, who not doing so well he
Quite the race and let Lautenberg wear a New Jersey

From Trenton to Trent off who had too much to quaff
Mississippin he Strommed an off color tune
By casting his Lott with what we are not
Segregating himself from his post much too soon

The MD from Tennessee waltzes in, now we'll see
If Frist can be first to pass patients' rights
Armeys' retreat was not delayed, Gephardt's departure soon relayed
The vote was not close, he gives way to Pelosi
Who brings women of the House to new heights

It shouldn't be chancy with the Reps led by Nancy
But the Dems dominate our electoral slate
Gray stays in despite the black outs, Simon lays on too many doubts
But no doubt we're in debt and an uncertain state

FEDERAL

The domestic President won't be domesticated and rattles sabers overseas while he labors locally to overcome vocal opposition with tax cutting remarks. The Democrats' lack of articulation left them out of circulation in leadership circles. Bush's mid mandate gives him room to concentrate on the state of the union. He must take action to cause distraction from the challenges that face him, or voter dissatisfaction will erase him in the next race (like father, like son):

- 1) Despite all that was said and done, more was said than done. A promising agenda remains just that, as proposals fell flat and inflation followed creation of an unexpected budget deficit of over \$100 billion.
- 2) Tax cuts, shrinking capital gains with strained stock growth and a slowing economy all contributed to losses, along with new demands for military and bioterror preparedness and a delayed response to the new realities.
- 3) While the market was melting, Treasury Secretary O'Neill was being cool with Bono and asked Fortune magazine on his return "what should the Treasury Secretary do to restore confidence?" (that probably wasn't it – bye bye Paul)
- 4) With the demand for executive accountability, Congress Harkens to the sound of scandal from that energy company and the President's role, while more scandal rolls over his Vice President and how much Halliburton was hurtin' when he pumped up earnings as CEO.
- 5) Gore is no more, but the Clintons never rest as Hillary ascends the ranks and Kerry Masses an assault
- 6) And if there is war? And where? And how long? And if victorious, would that be glorious, or will George the Younger follow his father in the ignominy of a single term?

Be Prepared

The Bioterror Bill (PL-107-188) prepares us for the worst but first we need to spend \$4.6 billion. The Total Information Awareness office (TIA) is created in a major stroke and the ACLU will have a stroke. Bigger must be better so we'd better set up national licensure for health plans:

- 1) Forgetting and avoiding the regulatory limits now set in 50 states
- 2) An "Association Health Plan" will somehow leverage larger numbers and create more economic efficiency in plans that would not normally associate with one another
- 3) Chartering will also allow carriers to bypass state regulation and thus close scrutiny – isn't Medicare a big enough problem already?

Be Scared

The number of uninsured insures political posturing to straighten out a health system that refuses healing. In what has been described as a "forerunner of much larger increases to come" (Families USA) and the "beginning (of) the effects of the recession and rising health care costs" (BNA) The total has climbed to 41.2 million. Proposals include:

- 1) Tax credits for the purchase of health insurance (White House and Congress)
- 2) Require companies with 100 or more employees to pay 75% of the premium (Senate)
- 3) Subsidies to pay 75% of COBRA premiums (House)

One bill did pass which allows the 75% subsidy for workers whose jobs are displaced by foreign competition (when domestic will just not do...)

The 1999 study by IOMA induced literary coma as it focused on potential hospital death. The Commonwealth Fund now calls this the “tip of the iceberg” chilling us with the news that 22% of Americans have reported they or a family member have experienced a medical or drug error (could 78% simply have not noticed?). A bipartisan bill is being sought by Senator Kennedy...

Who believes efficiency is effected by effortless spending, both here and in his proposal to pay \$100 billion in matching funds to administer a program to lower health administration costs by prescribing electronic orders for all drugs (this Senatorial suppository got an oppository response)

Partisan preaching beseeching voters to support the “party that cares” wasn’t reaching them. The leeching of Medicare (a political example of “death by a thousand cuts”) has no blood lines to either party, but proposed solutions foretell financial hemorrhaging:

- 1) Medicare Modernization Act: \$350 billion over 10 years to add prescription coverage and boost payments to doctors. It also subsidizes private health plans to sell drugs to seniors and to keep offering Medicare HMO plans

So it’s a public improvement; no, private; and the Medicare premiums will increase \$20 to \$40 per month and still require seniors to pay a substantial share of drug costs – and Medicare cut doctor payments by 4.4% this year and will cut another 5.4% in 2003.

- 2) Compromises failed along party lines
- 3) Drug discount proposals were discounted despite recounts
- 4) President Bush now wants to create a new agency under Health and Human Services called “Medicare Benefit Administration” whose mandate will include running a new drug benefit

What Me Scared?

Despite national news coverage of physicians’ failure to fulfill patient demands due to malpractice fears (and the fearful reality of insurance costs), reform was rebuffed. Less than a week after a Presidential address to address the problem, the Senate delivered a message of their own – return to sender.

We can’t cure what ails Medicare, but President Bush signed a new law (Health Care Safety Net Amendments of 2002) for only \$1.34 billion in the first year and “as needed” for the next four):

- 1) Create 1,200 new and expanded health care centers
- 2) National Health Service Corps puts professionals in shortage areas and forgive school loans
- 3) Community Access Program to coordinate health care services for the poor and uninsured

A quick fix will mix well with a proposal that is now less cure than well cured – the Patient Bill of Rights. Even the new Senate majority leader acknowledges: “Its (passage) is not as important as it was 3 years ago because the private sector has adopted probably 90% of what is in the bill” So the market rules! Well not quite:

Reform Repaired

As Congress repairs to older proposals, showing why Washington is laid out in a circular pattern. John Breaux, a leading proponent of any reform that can pass and elevate him to national candidacy, said "I think we've been trying to piecemeal it for so long, it's gotten so convoluted and so complicated. I think we ought to just brush the slate clean and say 'everybody in American ought to have health insurance'" The overall concept goes by different names ("pay or play" or "universal access") but it means one thing only – mandates. Fueled by a report from the National Academy of Sciences that says we have a health care crisis and need leadership review to propose solutions, including universal coverage, we have the following suggestions:

- 1) Al Gore may be no more but he can still bore with a core proposal to have "national health" but failing to bore in on specifics (no wonder his political ox was gored two years ago)
- 2) Governor Dean of Vermont, in the main devolves to the mean, requiring Federal responsibility for citizens over 65, states for those under 23 and the private employee based market for everyone else (and those not fitting these categories?)
- 3) Vocal disgust has also gone local (see "State" section)

The real problem, of course, is that additional money is needed when fewer businesses, state governments or individuals have it, and reports make it clear that international models most admired are also mired in a monetary medical morass. For example, Germany will surpass its 2001 deficit of \$2 billion euros in 2002, and Canada seeks to overhaul its provincial system.

We take a dim view of the few bright spots, but someone bright did spot opportunities for expanded contracts and compacts this year:

- 1) Long Term Care: PL 107-104 allows long term care purchased by federal employees to be exempt from state and federal income tax. The President has endorsed a similar tax break for those of us not lucky enough to work for the federal government.
- 2) Job Creation and Workers Assistance Act:
 - a) Archer Medical Savings Accounts extended through 12/31/03
 - b) Extended penalties for failure to comply with the Mental Health Parity Act
- 3) Flex Plans: Bush budgeted some carryover provisions
- 4) HRA: The IRS specified, in part, a version of Medical Savings Accounts for large companies
- 5) The self employed will get a full deduction for their health insurance in 2003

Remains Deformed

Medicare. They can't fix it. They can't kill it. Everyone wants it, but no one wants to pay for it. It needs to cover more but cost less. The government purports to support it, but reports reductions in payments. An additional \$190 billion was budgeted, but many believe \$300 billion is needed. More than \$12.1 billion was improperly paid last year and now they think PPOs will work better than HMOs. The Tenet scandal shows how to take advantage of administrative lapses in the law.

So we should consider national health care?

STATE

I love California. I practically grew up in Phoenix – Dan Quayle

We are in a troubled state. Davis debated what Simon said and stated lies of blue skies ahead. Then Gray saw red and we saw with dread that programs promised now lay dead for lack of funds. We're assured a long, hot summer and a budget shortfall as campaign pledges mean nothing at all. Davis dredges for dollars without making sense and the needy will holler without recompense. But at least he's no longer on the fence about the presidency and will maintain his California residency (lucky U.S.)

Voter turnout reflected burnout so ballot propositions didn't manage much opposition and won with a 21% majority. Simon spent a lot of bills but Schwarzenegger gave more thrills as he campaigned for campus preservation, leaving no reservation about his fitness for the Governor's race ("I'll be back")

Returning to reality, it's hard to get some clarity on what has happened haphazardly and seems unhappily hazardous in an attempt to pull together the resources we have remaining to keep from fiscal straining while feigning fealty to the Democratic social agenda. What was once rejected is now proposed as a dejected Davis tries to look composed as he composes the measures for downplaying a deficit of \$31 billion

Budget Know How

The budget was finally finalized for \$99 billion with significant social service reductions. Now these are further reduced:

- 1) An early promise to find \$160 million to expand "Healthy Families" took an unhealthy turn:
 - a) Legislative proposals for expansion were vetoed
 - b) Medi-Cal and Healthy Families outreach programs are de-funded
- 2) The Safety Net has been re-sewn with larger holes
 - a) School streamlining for student enrollment in Medi-Cal is cut
 - b) Earlier approval for \$155 million in Medi-Cal provider reimbursement rates has been withdrawn and now reimbursement will be cut \$249 million instead
 - c) A planned expansion of eligibility to 2 parent families was dropped and now will cut out 150,000 families below a certain income threshold
 - d) New quarterly status reports may cause an additional 250,000 (?) to drop off
 - e) Eliminate Medi-Cal coverage for dental, psychiatric and chiropractic
 - f) Significant cuts for community clinics and other local services (to be offset, it is hoped, by Bush's pledge to support and expand these entities)

If no, how?

Better budget repression makes more bitter business depression, given the impression they will be taken. Can employers bear the burden of what has occurred in the last year? The legislature seems to think so, albeit indirectly and in two key ways:

Major – Should have a direct impact, eventually

California Family Leave (SB 1661)

“Californians should never have to make the choice between being good workers and good parents. This bill will help millions of California workers meet their responsibilities to both their families and their employers” – Governor Gray Davis

He doesn't explain the “employer responsibility” part, but the law is clear:

- 1) Begins July 1, 2004 and applies to employers of all sizes
- 2) Does NOT apply to employers whose employees do not pay into SDI
- 3) Small employers (under 50 employed) need NOT hold open the employee's position when they are on leave
- 4) Leave only required for those who care for a “seriously ill child, spouse, parent or domestic partner or to bond with a newborn infant” (including adoption)
- 5) Assumes no other caregiver is available
- 6) Medical verification may be required by the employer
- 7) May require employees to use 2 weeks of paid vacation first
- 8) Leave taken is counted against the Family Medical Leave Act
- 9) Allows total leave of 12 weeks
- 10) Payment and Benefits:
 - a) Employee charged \$11 to \$70 per year, added to SDI (no employer cost)
 - b) Workers receive up to 55% of salary for up to 6 weeks
 - c) Maximum weekly benefit is tied to the Workers Comp maximum (below)

Speaking of which...

Workers Compensation (AB 749)

Insurance Commissioner Harry Low approved a WCIRB request for a base premium increase of 10.1% taking effect July 1, 2002. Benefits increase beginning 1/1/03:

- 1) From \$490 to \$602 to start - \$728 in 2004 and \$840 in 2005
- 2) Raises the minimum and maximum allowances for permanent partial disability
- 3) Death benefits will double in 2006

Major Minor – You can't see it but you'll still feel it

Insurance carriers have a grand tradition of sharing their costs with their customers. Here's what will be costing them more money:

COBRA Expansion (AB 1401)

- 1) Applies to those who have exhausted their COBRA coverage as of 1/1/03 forward
- 2) Allows coverage up to 36 months (was 18 or 27 months for loss of eligibility)
- 3) Subsequent qualifying events allow for an additional 36 months of coverage
- 4) Does not apply to specialty health plans (e.g. chiropractic)
- 5) The employer must notify COBRA recipients of their conversion rights within 15 days of COBRA expiration

Major Risk Medical Insurance Program (also AB 1401)

This requires federal approval and appropriation and has a 4 year sunset provision:

- 1) Effective September 1, 2003, it revises coverage requirements for conversion plans
- 2) New standardized plans to be developed for MR MIP, but the annual maximum must be increased from the current \$75,000 to \$200,000
- 3) All carriers must allow movement from COBRA to a guaranteed issue plan after COBRA expires. Those carriers not in the individual market must use their most popular plan design at a rate no higher than 110% of what the individual would have paid if enrolled in MR MIP
- 4) Conversion rights must be offered when employer group contract terminates

Expanded "guarantee" Market (AB 2178)

Enables employers covered by a living wage statute to be considered a "small group" for purposes of obtaining health care coverage (then guaranteed acceptance):

- 1) Begins January 1, 2003 but sunsets January 1, 2007
- 2) Only applies to employees subject to local living wage law
- 3) Employer must have provided coverage to affected employees the last 12 months
- 4) Employer must have 50 or fewer other employees to whom they have not previously offered coverage

Minor Minor

Nursing Staffing Ratio Improvement

Takes effect January 1, 2004. Adding staff adds cost, but the bigger question is where will they find new nurses when everyone is leaving the profession, the area, retiring or dying (the average age of RNs in the Bay area is over 50)

Emergency Contraception

"Morning After" pills must be covered by HMOs in case of rape or failed contraception (how do they prove the latter?)

Privacy (SB 168 – Took effect July 1, 2002)

- 1) Prohibits use of Social Security numbers in benefit mailings
- 2) Businesses may not use Social Security numbers for new hires
- 3) Social Security numbers may be on some forms, but these were not specified
- 4) By July 1, 2005, will prohibit the use of all Social Security numbers in health insurance transactions

How Now?

Employers don't get all the fun – or funding

COBRA Expansion

Just because it is available doesn't make it free – the recipient must still pay a premium and it may be steep

Medi-Cal

Patients will pay more, not only because some services will no longer be covered, but co payments will be raised, access to providers may be cut, or they will lose eligibility and have to get private insurance

Healthy Families

Cutbacks may mean less children covered, particularly when parents can't afford standard insurance premiums

Maternity – good, bad and ugly

The good news is that individual plans may no longer impose (as of July 1, 2003) a separate co payment for maternity. The bad news is that this will automatically raise the cost of all individual health plans. What could get ugly is if carriers either eliminate maternity coverage altogether or require it with only certain plan designs. That may already be rich in design and designed for richer clients.

Medicare – Expanded eligibility – and cost

- 1) All Medicare beneficiaries will have a 30 day “open enrollment” period to choose any equal or lesser supplemental plan
- 2) Loss of benefits under Medicare + Choice plan entitles a subscriber to sign up for any Medicare supplemental plan

No Way, No How

Hit by a fusillade of bad bulletins, employers can hail the misdirection of certain bad benefit bullets which were detected but rejected:

- 1) Cal Health: new state program to run Healthy Families and Medi-Cal (or what's left of them, which is already run by a state board)
- 2) Healthy Families: small employer subsidies to cover those without (required funding)
- 3) Continuity of Care: allow managed care enrollees to keep seeing providers not renewing their plan contracts (cost would be passed on to the employer or individual plan subscriber)
- 4) Physician Suits: Doctors may sue HMOs if they feel they are not paid reasonably and fairly (why limit this to doctors? Let's all sue when we are not paid what we think is fair)
- 5) Prescription Relief: Health plans must cover all medically necessary out patient drug bills (a prescription for disaster)
- 6) Administration: requires health plans to define administrative costs and only made "reasonable and necessary" profits (this state administration can read a P&L?)
- 7) Substance abuse: carriers must pay for all substance abuse programs and may not delegate responsibility to any outside managing entity

No Way, No Wait – Who? How?

He's Back...

Quackenbush got Chucked and lies low while Harry Low ran things to the end, he now gives way to Garamendi who will weigh in with his proposal for universal coverage

It's Back...

Which he covered in his last term as Commissioner after commissioning a study where anybody with an opinion voiced it. Times like those were like times like these, and they suppose everyone agrees that this time we'll take time to do it right. Bodaken is knockin a system protecting Blue Shield while Jackie Speier gives an ear to consumer fear. It won't be long before the medical throng joins forces and forces a new ballot proposition on the supposition that this time it's time. "Universal access" has either failed the vote or failed the test in the rest of the states where mandates prevailed, mainly because no one wants to pay for what they think is their right or someone else's responsibility. Yet for every entity that cries for quality or quantity in access, there's less success even in keeping reforms which were sweeping states before.

Setting a Tone, Silently

SB 842 gave the Department of Managed Health Care the authority to determine all drugs a plan must offer. Designed to keep plans from prohibiting essential drugs for AIDS, cancer and heart disease, it became an open ended bureaucratic boondoggle.

SB 1092 requires the same department to establish the Consumer Participation Program by July 1, 2003. This allows payment of reasonable advocacy and witness fees to any person or organization demonstrating that they represent the interests of consumers and have made a substantial contribution on their behalf to the adoption of any regulation.

THE OTHER 49

“The Torch” sang a new tune when caught with bank notes, and simply withdrew, causing Democrats to deposit a retired Senator at the Supreme Court door, sparking Frank discussion. The party boast was confined to the coast since no such toast was made in Minnesota, where Mondale’s move went on the Fritz in the electoral Paul cast by the Senator’s death.

Paul Wellstone’s plane crash dashed many liberals hoping for ways of coping with mental health issues and other needed reforms. Minnesota will be lucky to keep one iota of the dignity and passion of the Humphreys and Wellstones it produced. Passage of meaningful legislation is a matter of perception and priority, in the absence of federal authority or reception of the major issues. States are challenged by:

- 1) Severe budgetary problems, thus leaving the uninsured that way
- 2) Cutbacks and bioterrorism funding needs
- 3) Backlash against rising prices and rising requirements

Nibbling at the edges of the issue gives the appearance of activity:

- 1) Privacy rules going beyond Federal HIPAA
- 2) Calling for more health plan responsibility for payment and medical liability
- 3) Increasing the number of mandated services

Or decreasing them, to improve choice or enfranchise those who would not have bought coverage without changes (Utah, Pennsylvania, New Jersey, Minnesota, and Colorado)

Or increasing its market influence (Hawaii and Minnesota have group rate regulation)

Or simply dictating the market (several states require prescription subsidies to seniors, using Medicaid rates or a general discount – California, Massachusetts, Maine, Florida and South Carolina) or taking it over in part (Texas will now impose a sales and use tax on carriers in addition to the premium tax) or in full (Oregon’s Measure 23 would have a state run health care system, but it was defeated by a 4-1 margin)

LEGAL

Great Moments in Litigation

Q: Doctor, before you performed the autopsy, did you check for a pulse?

A: No

Q: Did you check for blood pressure?

A: No

Q: Did you check for breathing?

A: No

Q: So then it is possible that the patient was alive when you began the autopsy?

A: No

Q: How can you be so sure, doctor?

A: Because his brain was sitting on my desk in a jar

Q: But could the patient have been alive nevertheless

A: Yes, it is possible that he could have been alive and practicing law somewhere

If you can keep your head about you while others are losing theirs...then you'll think they were tipping while you were Kipling with waves of legislation rippling through the system. Social policy disorted as constituencies were courted only to land in various courts of last resort to sort through the meaning of it all. If not judicially, then artificially as bureaucracies act especially Solomon like in interpreting what Congress intended. Fortunately the law lends itself easily to type, topic and trend, whether it amends what is ever changing or portended some managing of how business is conducted – just give P's a chance.

Pure Tort-ure: Liberties, civil and otherwise

Forbes magazine said "if the momentum of litigation costs cannot be slowed, it could easily, in the space of a few years, crush important parts of the economy." Tillinghast predicted tort costs may increase twice as fast as the economy. The average jury award has tripled since 1994 to \$1.2 million.

Asbestos

- 1) Litigation has bankrupted 52 companies
- 2) Three major actuarial firms show an impact of \$55-70 billion on insurance claims
- 3) Despite predictions, insurance companies are seriously underreserved
- 4) Total overall cost of judgments to the U.S. economy is \$200 to \$275 billion

Mold

Or "gold" for lawyers, who exploit uncertainty about its science (of which little exists), its coverage (of which little evidentiary support exists) and its potential (suits spread as fast as the mold). "Large jury awards, adverse judicial and regulatory decisions and fear of litigation have led to uncertainty. One of the concerns is not that claims are increasing in numbers, but they're increasing in costs...the result is that insurance has become more expensive and more restrictive, with insurers being forced to pull back from markets in many states" (notably California, Arizona, Texas and Nevada) – Gordon Stewart, President of III

- 1) Health claims are being brought against Homeowners policies instead
- 2) Claims in Texas rose 1,306% from first quarter 2001 to first quarter 2002
- 3) National increase in Homeowner insurance will be at least 10%, more in problem states

Malpractice

Washington fiddles while doctors get burned
But in California they can't get the law overturned
MICRA is the state's stab at reform
But elsewhere they can't pay enough to perform

The average jury award in medical malpractice cases has tripled since 1994 to \$3.5 million. As a result, hospitals can't recruit new doctors, communities go without specialists, the second largest malpractice carrier has left the market – and a legislative solution is available only in some states. Even there, however, the frequency of claims climbs, making insurance available only at a premium.

Managed Care Liability

The repercussions of Pegram v. Hedrich (it was even featured on a Law and Order episode) are being felt in some court decisions, allowing patients to sue HMOs for “vicarious liability” under state law without ERISA preemption.

The RICO approach has been nullified in the largest class action of its kind in Florida, but Judge Moreno allowed doctors to file claims against 8 carrier “co conspirators” for interfering with the doctor patient relationship and fair compensation. Named are Aetna, Anthem, CIGNA, Coventry, Humana, PacifiCare, United and Wellpoint (Blue Cross California)

Similar actions are pending in Connecticut, Louisiana, New York, South Carolina, New Jersey and Tennessee, where the Medical Society filed separate actions against the largest state Managed Care Organizations (Aetna, Amerihealth, CIGNA, Health Net and Oxford):

- 1) Illegal policies and practices deliberately delay, deny or impede payment to physician
- 2) Forcing physicians into “take it or leave it” contracts
- 3) Arbitrarily overriding medical necessity determinations without proper analysis/review
- 4) Failing to provide proper explanation for denied claims
- 5) Failing to properly staff clerical and utilization management programs
- 6) Using computer programs to reduce, delay and deny payments
- 7) Being mean (OK, that’s mine)

Rush v. Moran: This season’s highlight was a hit with “The Supremes” who reaffirmed 5-4 states’ rights to regulate insurance (for fully insured plans) and set external review laws. Rush Health Plan argued that as an HMO they were not an insurance plan and so exempt (the court said “Rush cannot checkmate common sense by trying to submerge HMOs insurance features beneath an exclusive characterization of HMOs as providers of health care”) This was affirmed when the Supreme Court let stand a ruling (PacifiCare Behavioral Health of California v. Smith) making a similar claim to preemption.

Pure Rapture: Gives one pause, pregnant and related

Accidental Death – Padfield vs. AIG

Death by auto asphyxiation not excluded under a policy stating Accidental Death would not be covered if due to suicide or self inflicted injury. The situation presented a hazard, but does not meet either test as claimant reasonably expected to survive the experience.

Beneficiary – Araiza v. Klier

California court cited Supreme Court decision (Egelhoff v. Egelhoff) stating that former spouse could lay claim to life insurance policy when the policyholder failed to update the beneficiary designation to their new spouse

Birth Control

A federal judge has allowed a class action lawsuit against Wal-Mart for unpaid birth control prescription drugs

Dependents – Jeter v. Commissioner

Father tried to claim children as dependents on taxes because he had some physical custody and joint legal custody. Court rejected because the rule of law says the divorced parent with the majority of legal custody is entitled to the dependent claim.

Domestic Partner

Circuit Court dismissed a class action suit filed against the Chicago Board of Education, which allowed same sex partners only as dependents, stating that opposite sex couples could choose to get married and so have legal dependents, thus no basis for argument.

Infertility – Alexander v. American Airlines

Claim filed under the 1978 Pregnancy Discrimination Act because the policy did not cover infertility expenses. Court rejected, since infertility and inability to conceive are not “pregnancy related” under the Pregnancy Discrimination Act.

Plan Capture – What’s In

Let Them Know – Stoltz v. Fenn Manufacturing

Employee terminated after going on disability leave. The employer stopped premium payments and the employee sued, citing an absence of plan provisions stating benefits cease on termination of employment. Court found for the plaintiff.

Let Them Go – tomorrow – Lauder v. First UNUM Life

Employee hurt herself on the day she was terminated from employment. The carrier disputed the claim, saying she was not an “active employee” The Court said “we don’t think it twists logic to conceive that coverage continued through the whole of her last day of active employment, rather than when she walked out of (her employer’s) door”

CAN’T LET GO – WORKER’S COMPENSATION – Navarro v. A&A Farming

Navarro said employer unlawfully discriminated against him under Labor Code Section 132(a) by discontinuing his coverage when he was off due to an industrial injury. The discrimination claim was dismissed, because the Workers Compensation Appeals Board found that ERISA was not preempted.

For employers with self funded Workers’ Compensation, this provides some relief, and is supported by court decisions (notably Scott v. Los Robles Regional Center 117 F Supp 2d 982). For fully insured (the vast majority) of plans, however, Labor Code Section 132(a) is still deemed to apply (four cases: Maraviov v. Tenet Health Systems; Schick Moving Systems v. WCAB; Braden v. WCAB and Beverly Hospital v. WCAB) One attorney says the only time benefits may be terminated is when it is “mandated by the realities of doing business” It is also possible to terminate if it is unlikely they will return to work and have been unable to do so for a protracted period of time (citing Jordan v. WCAB and Simmons v. WCAB)

Plan Departure – What's Out

Carrier Responsibility – California Medical Association v. Aetna

The California Supreme Court declined to hear a lawsuit that would force health plans to pay claims when an IPA fails (or fails to pay)

Prescription Drugs – Blue Shield of California v. Zingale

The Department of Managed Health Care cannot compel a health plan to provide a drug that is not part of the plan's contract with the enrollee

Americans with Disabilities Act – Toyota Motor Manufacturing v. Elia Williams

The Supreme Court clarified that impairment should be for those tasks “that are of central importance to most people's daily lives” (prompting the National Association of Manufacturers to comment “the ruling makes it clear that the ADA is still the Americans with Disabilities Act and not the Americans with Injuries Act”)

Political Creature

HIPAA! Hooray! There remains some delay!

And in the meantime, carriers and providers are getting their HIPAA house in order in order to comply and we will supply a supplemental syllabus soon

Cafeteria Plans – adding more trays

Major Change

IRS Notice 2002-24 suspended the filing of Schedule F (plan information) then informally confirmed the waiver of form 5500 for organizations with less than 100 “participants”

Major Pain

Revenue Ruling 2002-27 states an employee may waive participation in a health and Cafeteria plan only if they certify they have other coverage. Otherwise they will be forced to enroll in a health plan as a single employee with forced contributions

NOW COVERED: (note -- #3 – 6 are informal comments from IRS)

- 1) Cayenne Pepper to treat Raynaud's disease
- 2) Weight loss programs for obesity (“medically accepted to be a disease”)
- 3) Vitamins and Nutritional Supplements but only if medical condition involved
- 4) Massage therapy but only with physician prescription and certified condition
- 5) Body scans because they are diagnostic procedures
- 6) Teeth whitening only if discoloration is caused by disease, birth defect or injury

Clarification

- 1) No mid year change to the medical expense contribution portion of a Cafeteria Plan if the reason is simply change of mind or change of rules (e.g. Claritin FDA decision)
- 2) Terminated employees may continue on Flexible Spending Account after an asset sale, whether a new owner lets them continue the current or rolls over to their own

COBRA

Notice – Chenoweth v. Wal-Mart Stores

Court affirmed Department of Labor rule allowing 30 days for the employer to notify administrator and then the administrator 14 days to notify the beneficiary

Late Notice and Retroactive Enrollment – Gigliotti v. Sprint Spectrum

Employee received notice 86 days after termination but was reinstated. Sued for damages but Court ruled for the employer, since there was no lapse in coverage.

Who is Responsible – Hall v. CWR Construction; Scott v. Suncoast Beverage Sales

The employer, not the administrator contracted, is liable for failure to provide notice

Ability to Pay – Butler v. Trustmark Insurance Company

An employee who terminated employment due to serious illness claimed “he should be excused on equitable grounds from paying COBRA premiums and that his right to benefits ‘vested’ as of the time of his diagnosis” – the court disagreed

COBRA Notice and Mailing – Gibbs v. A. Finkl & Sons; Brown v. Neely Truck Line; Smith v. AT&T Broadband Network Solutions

Court verified that COBRA only requires that “notice is sent in a good faith manner reasonably calculated (here, first class mail to the last known address) to reach the former employee”

Termination and Reinstatement – Reuther v. Smith

Employer is not required to keep coverage in force when employee is in the COBRA election period – reinstatement only occurs when valid enrollment is received

Dependent Children – McDermott v. Case Windham

No separate notice to dependent children required when they live with the former employee.

Other Notes

The FDA decision to make Claritin available as an over the counter medication makes it impermissible for deduction or claim under a Flexible Spending, Medical Savings, Medical Expense or Cafeteria Plan account. One court ruled that removal from the covered “prescribed” drug list did not allow a mid year change in an FSA election

ECONOMICS

The point is that greed is good. Greed is right. Greed works. (Gordon Gecko)

He is the only case I know of a bull who carries his china shop with him (Churchill)

This time it's different (famous last words)

Be good to yourself ya could have owned Adelphia
Where'd the dough go in Conseco – where Gary Wendt
Fastow was last out he lacked Skilling and clout
And Arthur's audits can't show how the money's spent

Imclone implodes at a quick clip so much for Martha's Stewartship
Tyco toys with tax evasion as an art form
Worldcomm's cash flow is overstated, Ebber's Qwest Philled then abated
Corporate lions were all lyin' to perform

Analysts cannot applaud exchanging stocks or trading fraud
Spitzer Merrilly Lynched one but is after bigger money
With utilities currently waning and telecom connections straining
Law suits investors fine when something's funny

But with all the bad guys busted what of those who simply trusted
That their savings would be there when they retired
The government arrived too late to arrest their pension's fate
Such convictions dashed the dreams we all desired

The curse of course gets worse, economic reverse
Starts to cause us all financial fits
Medical inflation rises higher and business will cut back or fire
Personnel or health care benefits

The market meltdown is not confined to stock answers as they are defined
By those who get more anal with their lyst
While profits rise with prices health plans perceive new crises
It's a question of which will still exist

Success' sweet smell wasn't looking like it came from just book cooking and the champagne was flowing with a bubble market growing. We were besotted with what was dotted but most of it was rotted as scandal emerged and shares submerged.

These sodden thoughts of fraud made resultant Schadenfraude something to puzzle Freud as we secretly enjoyed watching CEOs destroyed – but they brought us down with them. There's little prayer for redemption since Catholics caught no exemption with hysterics over clerics' flat denials sounding like the trials of Ken Lay. Bring back NASDAQ price fixing which left us in less of a fix, or Mike Milliken, who was a smaller cancer then. With \$4 trillion lost we see the cost of "sound and fury signifying nothing" which is what seemingly remains, and Macbeth looks less tragic as investors look for magic to return, as we return to one more bit of Wall Street wisdom: "A fool and his money are lucky enough to get together in the first place" (Gordon Gecko)

So the sky fell. Now what? We take action – of various forms

Distraction

It's hard to move when you have to prove that you can still do a little too late. What works will soon need mending and new laws will soon be bending to the will of those now ending their way back with the moxie that will subvert Sarbanes-Oxley

- 1) Haste makes waste: good companies will spend more time and money fixing what isn't broken than will be saved by such a token of "good policy"
- 2) Let he who is without sin:
 - a) Harvey Pitt was not invisible and the new nominee rabbit punched his bosses
 - b) George and Dick couldn't pick a worse time to have reviewed their losses
- 3) I'm here to help: I'm with the government
 - a) What's missing is what's needed, what's in it won't be heeded as assets head offshore and lawyers make a score because there's more to know and less who'll know it (or they'll blow it)
 - b) Insurance carriers are already effectively creating enforcement policy by refusing to renew liability exposure without complete disclosure or else there will be closure of their coverage. CEOs may thumb their nose at obscure legislative prose but become more reliable when they're financially liable

This appears to appease those who think the disease is our greed but we're not sure that the cure will make us secure (this is my bridge to mention Tom Ridge and his new sinecure in the Cabinet). The events of 9/11 caused considerable collateral damage:

- 1) The true financial impact cannot be measured, but will exceed \$75 billion
- 2) Insurance losses over \$40 billion, more than all other 2001 disasters combined
- 3) Federal proposals were ultimately reduced, rejected or relegated to the future
- 4) The cost of war, and preparedness, is a financial drain, especially with tax cuts
- 5) We may restrain liberty's reign in the name of homeland protection, once we question the fairness of an office of Total Information Awareness

Still it seems fairer to make an error when taming terror than to be poorly prepared. The biological origins are harder to trace, which may be why Congress defaced the President's pledge to pay for what we needed. More time, more money, more distractions. While necessary, it turns our attention from the other issues of homeland and financial security that have occupied us for so long – Medicare still needs repair, a drug price remedy is not there, and patients must beware as their rights are left off the table.

Chain Reaction

Employers Weigh In

“Employers are looking for anything to contain costs” – U.S. Chamber of Commerce

“Regulations are taking away the power of managed care to manage care. Employers...are going to move to something else” – National Center for Policy Analysis

“The most progressive (large) companies understand that their very survival is at stake if they don't get a handle on health care costs. By applying the same business discipline they have used in other core functions, they are more likely to succeed” – Watson Wyatt research report

- 1) More employee cost sharing is or will be required
 - a) Less comprehensive plan designs
 - b) More complicated plan designs that target niche expenses
 - c) Higher premium payment for dependents or employees
- 2) Changes to prescription drug benefit
 - a) Improved or different formulary management
 - b) Movement to multi-tier reimbursement systems
 - c) Raising co payments across the board or for higher cost categories

(We are preparing a prescription “white paper” as a wholesale approach to detail retail problems and the manufacture of solutions)

- 3) Companies are no longer shy about requiring retiring employees to pay more or all of their share of health premiums. Some care cutting such coverage for new hires only, others are imposing minimum service requirements or linking premium payment to length of service
- 4) Radical: Outback Steakhouse is espousing egalitarianism by charging higher paid employees the highest premium and lower paid employees the lowest
- 5) Shifting the burden puts a good word in for Consumer Directed Care. Redefined distribution or defined contribution puts employees in a place where they will have tools to implement their own personal strategy and the money to manage it. Supporters say this is OK while detractors point to the 401k as a model where information did not see the creation of wisdom in financial planning. We covered the emergence of this trend last year but not much progress has been made. Highlights:

- a) The industry has evolved, carriers are more involved and some technical problems have been solved to make consumer plans a more viable solution
- b) Main features are a catastrophic health plan (for which the employer pays) and a “Health Reimbursement Account” (employer sets the funding amount) managed by the employee
- c) The IRS released a Revenue Ruling allowing the rollover of the unused HRA portion each year (unlike a Flexible Spending Account) but the employer keeps the money at the time of employee termination (unlike a Medical Savings Account)
- d) Criticism of Consumerism

When they need it will they know it?
 More efficient spending doesn't slow it
 A small percentage will still blow it
 (1% of the population accounts for 20% of all health expenses, 10% for 58%)

- e) We can make it legal, but beware the “law of unintended consequences” – the consumer movement may have adverse long term effects on pricing, utilization, quality of care, health status, risk selection and efforts to expand coverage
- 6) An even more drastic move to “office Darwinism” is the advent of “human capital management” where larger companies may customize benefits, creating fits where the smallest fits lose bargaining power – then the fittest may not survive the test

Carriers Play to Win (so many will lose)

Good News: Risk Attraction

It was time to take stock in not of of health care carriers, which saw earnings up 38% -- and property/casualty companies saw billions in profit:

- 1) Dumping unprofitable markets, by geographic area, segment (e.g. Medicare), size, or plan type (e.g. HMO)
- 2) Taking market share from weaker or new non-existent competitors, particularly regionals
- 3) Drugs going off patent (\$10 billion) or over the counter (10%?) of all drug expenditures) will save substantial sums in the next 5 years
- 4) Y2K was a blessing in a way, as administrative and technical systems were improved and now generate increased efficiencies
- 5) Progress is finally being made with turnarounds and acquisitions
- 6) Demutualizations give carriers greater capital access to capitalize on trends and give them the means to justify their ends

Bad News: Impending Impaction

J.P. Morgan's instruction to investors: "The market will fluctuate" – or Newton ("what goes up..")

- 1) Terrorist attacks cost \$40-45 billion
- 2) Mold is gold for attorneys, but losses may exceed \$56 billion
- 3) Asbestos claims will burn carriers for over \$65 billion
- 4) Natural disasters will occur, naturally
- 5) Carriers have woefully inadequate reserves to pay out such claims
- 6) Investment losses hit carriers hard (where do you think they keep their reserves?)
- 7) Medical inflation predictably continues but unpredictably
- 8) Legal Cases:
 - a) Direct: Malpractice and class action suits are being filed against carriers, not just providers and manufacturers
 - b) Indirect: When others pay they pass on losses with higher prices, which are absorbed by the health plans
 - c) Correct: Compliance costs, particularly HIPAA, will affect carriers directly – and indirectly again, along with staffing and seismic retrofitting
 - d) Perfect: The need to eliminate medical inefficiency will fall to carriers, whether for administration, utilization management or the diseases caused by the cure (liberal use of antibiotics creates resistant strains) or sources impure (the 4th leading cause of death in the U.S. is hospital infection, which numbered 90,000 in 2000) or from where we're not sure (hospital errors contribute an additional 50-100,000 deaths)
 - e) Prefect: Over 1,500 benefit mandates exist at the state and federal level with more being planned (mandates increased 25 fold from 1970 to 1996)
 - f) Enron will be \$3 billion and Worldcomm \$5.4 billion – due to bonds being issued and investments made. They are the two largest bankruptcies in history, both occurring in 2002. The third largest is an Indiana insurer, Conseco.
 - g) U.S. Department of Justice is stepping up oversight on mergers and acquisitions, while states are blocking non profit conversions (which mostly has Cross singing the Blues)

Other Views: One man's ceiling is another man's floor (Paul Simon)

Escalating Conflict

A Health Affairs study shows that when people are given a choice of health plans, cost considerations rather than health status played a major role, and thus 2/3 took an HMO (which, in itself, may be contrary to a pricing perspective given recent trends)

A Hewitt study says the exact opposite, and consumers want more choice and control. This will cause more interest and enrollment in Consumer Directed Health Plans.

A Journal of Health Politics, Policy and Law survey found 25% of respondents misidentified their type of coverage. Those that didn't realize they were in an HMO had a relatively better perception and those that thought they were in an HMO and really weren't had an overall worse perception of HMO/managed care

Elevating Pressure

A Business Week article posited that rising health costs are not all bad:

- 1) Because fueled by technological advances which prolong life and improve health
- 2) The most expensive treatments more than pay for themselves
- 3) The economic gain outweighs the cost, since health care is one of the few financial bright spots in an otherwise gloomy forecast

The first point may be considered conjecture, since the health care sector is immune from prescriptive cost remedies and greater quantity of life does not necessarily equate to greater quality. Nor does it absolve the inequality of costs that devolve to that older population.

Bad Reviews: Coming Attractions

Overcompensation

Tenet Health Care didn't care if it billed Medicare too much when it was actually allowed, as the SEC will soon see if it violated business tenets it avowed. The largest hospital operator in California, Tenet has been charged with overbilling, overcharging and overprescribing over a fairly short period. The FBI has raided, the SEC upbraided and the S&P downgraded as the CEO may soon be paraded from Wall Street to a walled cell if he failed to tell anyone he either knew or didn't know what he was doing.

Workers' Compensation

Nationally, costs were affected by 9/11, which caused many insurers to absorb what their reinsurers wouldn't. Higher claims in medical, which has higher costs, are also contributing to a shrinking California market, which has expanded both benefits and overall exposure:

- 1) New California law (AB 749) increases the maximum weekly payment
- 2) The permanent disability rating system is subjective
- 3) Carrier removal, departure or reluctance to be competitively priced
- 4) State Fund has had its financial rating downgraded, which will have an adverse impact on its cost of doing business (which will be passed on to those with which it does business)

Let Doomsday Begin

The clock is ticking so we started picking some possible scenarios we will see (or a combination of all three):

Employer Empowered

- 1) If the average premium increase for the last three years is 16%
- 2) And the average wage increase for the same period is 4%
- 3) You have a cumulative disparity of 1,600% (the math is wrong but the conclusion counts)
- 4) Forcing companies to wake up and cut coverage or contributions
- 5) Adding to the uninsured population
(if 1 in 7 employees drop, the uninsured number rises by 50%, from 41 to 62 million)
- 6) Causing additional uncompensated care; causing
 - a) Disruption in the health care sector, which employs 1 in 11
 - b) And accounts for \$1 in every \$7 spent in the economy
- 7) Removing funding, which makes the employment climate worse, which results in reduced health care access and thus spending

And so on...

Carriers are Cowards

Unable to muster enough mustard to catchup enrollment numbers to meet their goals, health plans relish the chance to get out of their pickle. With all the ingredients they'll be on a roll:

- 1) The rising ranks of the uninsured compound the problem of uncompensated care
- 2) Health care providers must increase their prices to offset their losses
- 3) These are passed on to carriers
- 4) Which pass them on to consumers, directly or through their employers
- 5) Which connects to the employer scenario above

So why not force companies to provide and pay for health care increases for their employees, and require independents to buy their own? Called "universal access" it has been universally rejected for one reason – the money must come from somewhere, meaning the consumer:

- 1) Who has to pay higher prices for goods and services produced by those employers;
- 2) Who pays the premium through reduced wages; or
- 3) Who pays higher taxes to support subsidies for those who can't support the payments

The carriers cower behind the inherent "rightness" of this position, and for good measure can enlist legislative support, even though neither side can decide who should pay how much to whom and how they'll do it to avoid their doom.

Politically Powered

Don't stop at universal access when you can do so many things to give people what they want at a price they can afford (translation: having someone else pay for it):

- 1) Expand Healthy Families – (though California has no budget for it)
- 2) Expand Medicaid (Medi-Cal here, and again without adequate funding)
- 3) Create new bureaucracies to manage what is under the purview of other departments
(and what will they do now?)
- 4) Lower the Medicare minimum age (adding more to a system already unsustainable)

5) Have the government run it:

- a) State: Even the November election in Oregon saw this defeated 10-1
- b) Federal: where they still don't know how much to charge for a stamp, have stamped out meaningful discussion on patient rights and Medicare and left their stamp on a number of systems that lack accountability structure – and cash

Dr. Howard, Dr. Fine, Dr. Howard

Doctors talk trash and now they want cash before they run out of patients. They'll see you for free if you pay a set fee for the remainder who will pay a retainer. They're dropping off Medicare, they're saying "no" to managed care, in some areas they're not even there – we think the health care system's been doctored.

Counter Action

The continuation of Federal debate has caused many an independent state to state that Big Pharma must form a weigh to pay the freight so that patients must no longer wait to get the drugs they need. A number of plans have been mandated and more are anticipated to help those who are medicated:

- 1) CMS (which runs Medicare) proposed a drug discount card which was opposed by those who discount such attempts to reduce reliance on free markets. Back and forth it went and too much time was spent to reach the same conclusion. A "senior card" should appear by the end of 2003
- 2) Several states, notably Northeastern, have used their Medicaid purchasing power to aid low income residents to get discounted drugs.
- 3) Not to be outdone, major manufacturers have started the "Together Rx" card on 130 widely prescribed brands, and separate programs created in conjunction with some larger retail chains to help cut costs
- 4) The chains also linked resources to launch the Pharmacy Care One Card to allow seniors to directly access manufacturers' discounts
- 5) The FDA has approved a petition to have Claritin sold over the counter, which will reduce its cost (though insurance will no longer cover it)

Satisfaction

Now's the time to divest! No, invest! No, I don't know, but those with a vested interest in the potential to take part in a market rally will take heart as they sally forth with a new tally for their pension contributions:

- 1) 401k: Raised maximum deferral allowance from \$11,000 to \$12,000
- 2) College Savings 529 plans allow unlimited contributions
- 3) Coverdell Education maximum contribution raised from \$500 to \$2,000
- 4) Spousal IRA maximum contribution raised from \$3,000 to \$3,500

The self employed may also deduct 100% of their health insurance premium in 2003, and those less annoyed with relations may exclude a relatively higher amount from gift tax (up \$1,000)

ARITHMETIC'S STATISTICS

Why should this year be any different? A review of the cost to you –

Why will costs increase?:

- 1) The effect of scandal and an economic downturn on carrier investments
- 2) Medical advances – drugs, devices, treatment and testing
- 3) Advanced age – the population gets older and needs more care
- 4) Litigation
- 5) Mandates and compliance
- 6) Inflation – general and in health care pricing
- 7) Increased demand – for more, more often and better
- 8) Fraud and abuse
- 9) Uncompensated care
- 10) Government funding cutbacks and resultant cost shifting
- 11) Consolidation in the health care market
- 12) Component pricing – with hospital costs increasing and representing an increasing share of the health care dollar

What increase?:

We have compiled the results of 16 national surveys

- 1) Comment: highest increase since 1990 (Kaiser Foundation) or 1989 (Towers Perrin)
- 2) Range from 12.7% to 17%
- 3) Average is 15.3%

A survey conducted by the Managed Care Online Report looked at the different states:

Arizona	20% HMO	25% PPO
California	17.3	20.5
Colorado	22	13.9
Illinois	15.9	22.8
Nevada	12.3	0
New York	14	13
Oregon	10.4	

For the future:

- 1) Hewitt Associates says health insurance premiums will double if current trends continue
- 2) CMS (Federal Government) says overall health care spending will grow 7.3% annually from 2001 to 2011 (doubling) and will represent 17% of the Gross Domestic Product (now 13.2%)

SHORT FEATURES

Great Moments in Statistical Analysis

There are 700,000 doctors in the United States
They cause 120,000 accidental deaths a year (0.171 per physician)
There are 80 million gun owners in the United States
Guns cause 1,500 accidental deaths a year (.0000188 per gun owner)
Therefore, doctors are approximately 9,000 times more dangerous than gun owners

Try to fail and succeed and what have you done in deed
Then deny that's what you really tried to do
That's how we deliver health care, a tangled system to ensnare
Hopes, dreams and dollars of inno-cents like you

But what's dreamt in our philosophy is to guarantee health quality
While being free to choose and damn the cost
Despite our inability to take responsibility
If someone else won't pay we will be lost

Now that there's a way to play with DNA
New cures for old disease is in our thoughts
Ethicists would stem cell cloning and keep tailored drugs from honing
In implanted or with new nanobots

Thus medical charges charge still higher further alienating the buyer
From the truth of the financial consequences
The have nots will join the haves the pain inflicted has no salves
We need medicine for coming to our senses

We applaud new and wondrous things, but it's still a wonder that some things never change. We give voice to deep beliefs but will hallow what is shallow when it provides relief. History may not be destiny but the more that we invest in we cannot see a way of turning back. With health care that's not systemic we cannot stop an epidemic, medical error or terrorist attack. The problem is fundamental, yet we search for incremental rescues as our cues. For every challenge that is replaced we're faced with a new body of legal, financial and political obstacles. We want it all, we can have it all, but only if we all agree on the best way to make it pay. We've seen what's gone before and we're seeing what's in store but are we more willing to learn our lesson?

History – That's the way it went

In recent history (OK, last year) I outlined the cycle we have witnessed in health insurance. It's the spin we're in and we've almost come full circle. The example hasn't changed. Then again, neither has history, so it bears repeating:

- 1) Health plans were originally designed to protect patients from catastrophic loss
- 2) Policies became more comprehensive to meet consumer and business demand
- 3) PPO discounts and third party cost controls impose greater provider burdens
- 4) PPO discounts morph to greater reductions using HMOs
- 5) HMOs (now "managed care") capitate (pay a flat rate) to doctors
- 6) Capitation becomes the rage, adopted by hospitals and then assuming drug risk
- 7) National IPAs are formed and "for profit rollups" rolled out

At the apogee of this chronology, something cries STOP – then we see

- 6) Hospital chains and Pharmacy Benefit Managers reassert "cost control"
- 5) Local IPAs expire, conspire or are inspired to negotiate new contracts
- 4) Capitation is targeted for abandonment in favor of discounts
- 3) Third party and HMO gatekeepers are questioned and the answer is abandonment
- 2) Policies are dis-integrated into component parts, becoming less comprehensive
- 1) State mandate exceptions, Medical Savings Accounts, defined contribution plans, and partial self funding encourage personal responsibility and catastrophic coverage

The trend back to basics continues this year, with more managed care plans going out of business and falling into disfavor, stock market pressures on carrier performance and the advent of better and newer "consumer directed health plans" combined with employers deciding to put more of the financial onus for medical care back on employees.

In political circles, we'll need to circle the wagons, as Commissioner John Garamendi is back with his old new agenda for reform. Since nothing has happened between his terms he is determined to terminate the reliance on the private market system, and have us more dependent on his office – or one higher to which he aspires.

Philosophy – That's the way it goes

Sir, when the facts change, I change my mind. What do you do? (J.M. Keynes)

Oh, but the angst and anxiety bred by uncertainty! What if all we know is wrong? What if all we've done is wrong? What if we can't tell right from wrong? These and other questions existential have the potential to undermine our excuse to whine and line up behind real change

Why?

Because we don't have a true health care "system"

- 1) Different data sets in different environments
- 2) Lack of uniform medical protocols
- 3) Business principles often clash with medical principals
- 4) Political mandates make medical care more region specific
- 5) Lack of efficient electronic communication and data collection
- 6) No system accountability (where else can you pay for a second surgery performed because the first one didn't go right, even if the same doctor does it the second time?)
- 7) No cost accountability (the answer to that is that insurance, which is usually free, will pay both times and, if you're lucky, have another insurance plan pay for damages)
- 8) No patient accountability: makers of Krispy Kreme doughnuts gotta eat, too (don't they?) and tobacco companies can't snuff out their employees' wages – so enjoy!
- 9) No accounting: how do you measure quality, and who does the measuring, and how do you allocate revenues in a community among competing providers
- 10) No discounting: if it is newer it must be better, and twice as much is nice – and it is our right to have it, no matter what the price
- 11) Not for counting: rationing of resources or care is always logical, except when catastrophe strikes you or your family, in which case no expense should be spared
- 12) Who's counting? In a time of economic gain it wasn't prudent to cause pain to employees. Interest groups specify the service they want included, but not the cost, and passively acquiesce to similar niche measures favored by others, lest they antagonize and then be forced to agonize over being out of favor themselves.

Why Not?

No system means there's nothing to destroy – so why not

- 1) Offer minimal coverages stripped of mandates
- 2) Replace the employer tax deduction of health insurance premiums with individual ones
- 3) Eliminate the tax subsidy altogether
- 4) (and make a minimal outline of coverage a mandatory purchase)
- 5) Vary plan reimbursement based on objective cost or subjective quality measures
- 6) Allow consumers to design their own health plan and limit future changes
- 7) Change the tax subsidy scale to follow individual income
- 8) Change plan payment features to follow individual income
- 9) Foster more individual responsibility by promoting MSA and HRA
- 10) Improve information and promote "centers of excellence"
- 11) Change reimbursement from "fee for service" to "episodes of illness" basis
- 12) Compel employers to cap what they pay on behalf of employees for premiums

Simpler, with smaller scope, forcing consumers to cope with those costs of services they may – or may not – require, promises some hope without calling on the Pope to divine a solution most of us can admire.

Medicine

Never make predictions about the future – Sam Goldwyn

Except that change will be constant (please have exact change when the bill comes due)

- 1) No more endoscopy: patient swallows a capsule camera and saves money over surgery
- 2) New gene machine: can do DNA mapping in 30 minutes, down from the 9 months it took Celera to do the first one, thanks for Haplotype blocks, which sequence SNPs within the DNA (oh, never mind)
- 3) Heart disease is not about plumbing (cholesterol) but electrical engineering (inflammation, now tested with a C-Reactive protein) – though the cost of the new tests may give you a heart attack
- 4) Pharmacogenomics can do DNA type testing to show someone's reaction to a drug in advance (so you won't have to kill them to find out it was the wrong drug or dosage)
- 5) Sensors and implants – even sensor beds – to allow automatic response to body changes when being treated
- 6) Targeted drugs and vaccines
- 7) Surgery is less invasive: with advances in high definition imaging (like the TV, only without the commercials), robotics, miniaturized sensors, high intensity sound waves and tissue engineering
- 8) Tissue regeneration: we can build a body in a petri dish
- 9) New body parts: or use mechanical replacements until we can generate the tissue it takes to replace it organically

We are on the threshold of curing cancer, arresting or blocking disease, replacing parts that are injured, predicting who should get what drug to treat specific problems even before they occur. It is an age of miracles – and it will be a miracle if we come up with the funds to pay for it, or simply agree that anything worth having is worth the cost.

CONCLUSION

And that's the world in a nutshell – an appropriate receptacle (Stan Dunn)

We've seen chaos in practice, and soon we may perfect it. But in theory chaos does not describe disorder but a unified, holistic system. If we understand that the thinking needed for a new and successful health care delivery system must be "out of the box" then the seeming paradox of chaos theory may form the base for reform discussion. Consider the forces we see:

- 1) The politicization of the process makes the possibility of change very real
- 2) The democraticization of employment means more will be given more choice
- 3) The computerization of society makes possible targeted and customized benefits
- 4) Studies show the money goes to affect only 10% of the cost puzzle – access to care, on which we focus, is surpassed by environmental causes (20%), genetics (20%) and health (or risk) behavior (a whopping 50% that we have the potential to control ourselves)

Then consider what "fractals," which are the design modules of chaos theory, make us see:

- 1) Nature's chaos is profound: because the only way we can gain enough information to understand it will be to increase the influence of our attempts to gather the information itself
- 2) Dynamical systems have their simplicity and complexity each within the other, thus the aesthetics of chaos are holistic – being open to both outside influence and their own subtle internal fluctuations
- 3) Practical proof of this dynamism is contained in the politics of health care itself; where new laws of consequence must later be amended to correct the unintended consequences that they breed
- 4) Even in something more exact like math we find a similar principle in Goedel's Theorem of Fundamental Uncertainty ("incompleteness")

Lack of certainty, which is why I remain a skeptic.
Maybe health insurance is rocket science after all.
Or maybe the hokey pokey IS what it's all about.

AGENCY UPDATE

But seriously...

I start dreaming in rhymes for no reason and then reason that word play is a reasonable way to convey items not normally given to levity. By doing this I might share or gain insight but I think that I've lost sight of my preference to read not write and that wit's soul is lost in length instead of brevity. Not to mention no one wants to read it anyway. So changes are required at the same time I was inspired to restructure our agency come what may.

The People

We've always tried to operate on the principle of horizontal integration. We manage best by managing least and access the resources of many quality professionals to serve you well:

- 1) This will be expanded and our full list of affiliations is available on request (it is large enough so we can tailor it to meet specific client needs)
- 2) We have also formalized our relationships with a pension/financial planning firm and a property/casualty agency to better coordinate assistance in those areas where we do tend to overlap
- 3) Internally we are realigning how we work with you – more by function than form (doesn't form always follow function?). You will have access to more of our staff on a regular basis, but they will be more specialized in certain areas (e.g. renewal, Flex Plans, COBRA)
- 4) Future clients will also work more through outside agents with which we are now allied.

The Products and Services

We work with all carriers across a diverse range of employee benefit plans and arrangements. Where possible, we offer these without fees. Major offerings can now be grouped as:

- 1) Core Plans: medical, dental, life, vision and disability
- 2) Voluntary/Worksite Plans: including legal, life and critical illness
- 3) Plan Funding Alternatives: MSA, HRA, TPA, Stop Loss, Executive Reimbursement
- 4) Administration: COBRA, Flex, FMLA and general policy/procedure assistance
- 5) Web Based: we are creating client benefit web sites
- 6) Web Interfaced: We can introduce a series of educational and transactional platforms
- 7) Affiliations: A group of dedicated professionals for pension, financial planning, ERISA, tax and Human Resource management and procedures

Information

This annual report should be delivered all year, not all at once. Some of the ideas only touched on here should also be given greater breadth of exploration. They may not fit for everyone, but it is fitting they be discussed fully, and discussed directly when appropriate. So I'll replace "Jordan's Journal" with "Jordan's Jottings" which will be of two types:

- 1) Quarterly review of political, legal and market movement
- 2) "White Papers" on specific issues: compliance, components or proponents of change and what they're changing

This means the web site will be changed as well, which is just as well, because it hasn't been used very well. Very well – we'll keep what works, dump what doesn't and alter access to some degree, so that you can see for free what we happily agree you deserve and should expect.

Location

We've run out of room so we're running down the street. A second notice will be sent to remind you where we went, but the phone, FAX and e-mail are the same. Effective February 1, 2003 we will be located at 285-L Bel Marin Keys Blvd., Novato, CA 94949.

CARRIER COVERAGE

General Movement

1) Blue Cross/Blue Shield Association

- a) Consolidation: number of plans should shrink by half in the next few years
- b) Expansion: Wellpoint (Blue Cross of California) is the most aggressive in buying out of state, but not out of favor, "Blues" and Anthem now serves over 10 million subscribers
- c) Conversion: Some have gone "for profit" already, some have applied but meet state resistance, others are in the planning stages.

Notable movement this year is New York's Empire Plan (largest ever)

In an interesting side note, Anthem's demutualization will give current planholders in Indiana cash – this will be enough to disqualify many of those eligible for Medicaid, who will now show too much income

2) Lawsuits

Several class actions are filed against a number of carriers combined for inappropriate provider negotiations. Individual actions include:

- a) State suits for failure to pay claims promptly; and
- b) To recoup funds for vicarious liability from HMOs where malpractice by participating physicians or the plan itself (through their review process)

3) Provider Contracts

- a) In California, Blue Shield, Health Net and PacifiCare will all offer different payment schedules based on "quality" measures or discounts negotiated with providers
- b) California threw out a suit which would have compelled carriers to pay health care expenses when an IPA filed for bankruptcy
- c) MedUnite was formed to standardize carrier contracts, medical management, and compliance but it is taking writedowns and waiving signup fees to get more members
- d) Provider credentialing, which should be standardized but it not. Now in California, the 6 major carriers (all but Kaiser) will work through the Integrated Healthcare Association with 3 state oversight agencies, 6 medical groups and the NCQA to set up a single system. The carriers will also put up \$100 million per year for doctors to improve health care quality and patient satisfaction

4) Purchasing Pools

Act as a bellwether for regional market inflation index, or give lie to the Federal movement to "Association Health Plans" Bigger is not always better, it's just different, and the challenges faced by carriers are mirrored in more private markets

CAL-PERS: over 1 million Californians enrolled

- a) Lost over \$100 million on their direct plans in 2001. As a result, they have cut benefits (but not their entire loss) and have even suggested the possibility of dropping all HMO plans (though this comprises 80% of their membership)
- b) Received HMO rate increase in 2002 as high as 41%. They voted to drop PacifiCare and Health Net, keeping Blue Shield, Kaiser and 3 regional plans. One of those has since gone out of business and the other two dropped out
- c) The overall rate increase is 25% and HMO benefits have been cut
- d) Contemplated in 2004 are fewer plan designs and direct provider contracting

FEHBP: over 9 million current and former federal employees

- a) Average premium increase for 188 national plan choices is 11%
- b) Will offer Health Reimbursement Accounts through Definity Health

OTHERS

- a) 3 of 4 original members of Colorado's Cooperative for Health Insurance Purchasing withdrew, leaving only Kaiser (and thus no more pool)
- b) The Rochester (New York) group, once hailed as a model, has been hit with large cost increases, and they lost Xerox and Eastman Kodak, which will both now set up their own plans

5) Bankruptcy in 2002

Health Plan of the Redwoods	78,000 members
Lifeguard	200,000 members
Maxicare	254,000 members
Tower Health	141,000 members
San Jose/Good Samaritan Medical Group	

Specific Plans

AETNA – turnaround but becoming positive

Major overhaul to stem significant losses and now actually beginning to show a profit
Brought in a new president (from Blue Cross of California) to shake things up (he did)
Dropping enrollment in unprofitable product and geographic segments (notably POS)
Consolidating service centers (notice has been sent out for Northern California)
Launched a Consumer Directed Health Plan (HRA) for groups of 50+

BLUE CROSS (See Wellpoint)

BLUE SHIELD -- positive

CEO Bruce Bodaken publicly pressed for universal access (and got a lot of press) which would mandate group coverage purchase (50+ employees) and appoint a study group to review other key issues

Kept CAL-PERS contract, which was initially expected to raise membership by 300,000. With the withdrawal of the regional plans, that figure is now 400,000

The BAJA plan expanded to include dependents of Mexican nationals who work in California

Set up Lifepath Advisors to expand on wellness site (www.mylifepath.com) and include health content from Mayo Clinic and Reuters Health, on line nursing advice, and information on work, educational, legal and financial concerns

Was to purchase Lifeguard but then withdrew (Lifeguard later filed for bankruptcy protection)

Set up “tiering program” to differentiate payment between listed providers per negotiated discount. This will be revamped to include qualitative measures from Pep-C and the Leapfrog Group (yes, their real names)

Still operating with substantial reserves, but, with Kaiser, is the only remaining large California health care non profit

CIGNA -- negative

When it cut its profit forecast due to anticipated health care cost increases, CIGNA was hurt:

- 1) Lost \$3.5 billion in market value – a 38% drop, prompting an SEC investigation
- 2) Predicts \$1 billion technology upgrade; \$1.1 billion charge against 3rd and 4th Q earnings
- 3) S&P cut rating from A to A- and then again to BBB+ in a space of 90 days

CIGNA is cutting jobs and restructuring, but can't cut its losses even in an attempt to settle a major suit brought by physicians

HEALTH PLAN OF THE REDWOODS – bankrupt

HEALTH NET – positive

Continues to gain market share and has increased California enrollment by 16%
Has cut unprofitable markets and is turning around its balance sheet
Continues to show profit and a rising share price
Reorganizing along segment lines and introducing many new products
Will set up “tiering” based on negotiated discounts with listed providers
Expanding vision, dental and individual medical insurance units

KAISER – positive but watch changes

“Kaiser at the Crossroads” (Los Angeles Times, September 2002) – “the company is facing a challenge that threatens the survival of the managed care model that it pioneered...due to aging membership”

Despite future challenges, Kaiser is posting significant profits, which it turns to expansion

- 1) Did clinical hiring in 2001 with Alameda Physicians and in 2002 with San Rafael Medical
- 2) Hired 500 physicians in Northern California – 24 in San Rafael alone
- 3) Adding to Petaluma clinic, setting up a primary care facility in Rohnert Park and adding a new building to its Santa Rosa campus, all in 2003

Kaiser is clearly poised to take advantage of its competitors’ travails, as it adds doctors dropping plans and attracting new doctors to the area much more rapidly than local communities directly
Still, expansion has its potential drawbacks, particularly in a rapidly changing marketplace

LIFEGUARD – bankrupt

PACIFICARE – turnaround but becoming positive

- 1) 15% workforce reduction
- 2) Cutting unprofitable market segments with membership reduction of 13% (to 3.2 million)
- 3) Trying to decrease reliance on Medicare, which now generates over 50% of revenues
- 4) Restructuring debt – though some doubt about the quality of the issuer and the deal itself

Their ability to restructure debt and show a profit was responsible for a considerable gain in their stock price since May, just after market downgrades from Goldman and rating cut from Fitch

PacifiCare’s POS was hit hard, Trying to reenter the PPO market and is introducing new plans, including a Consumer Directed Health plan for groups of 250 or more employees

WELLPOINT (Blue Cross of California) – positive

Net income is up, the stock is hot and making acquisitions including Washington, DC (Carefirst, which may fail), Maryland (cash only) and two others done in 2001

No network tiering, but has joined in the physician incentive and credentialing program (above)

Still offers the widest array of plan designs under one master program and competitive pricing, but their ability to “shadow price” the small group market may be circumscribed by the passage of new state legislation requiring consistency in renewal dates.