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Capitol Update

MINNESOTA AMBULANCE ASSOCIATION

'Do not undertake great departures on slender majorities'.

-Thomas Jefferson

Preface

There is a political theory called the 'tragedy of the commons'. It is loosely tied to the so-called 'game theory'. The 'tragedy of the commons' is an illustration of how the rational pursuit of individual advantage appears to lead to solutions which are in the best interests of neither the individuals nor the community as a whole.

Some in the health care community might argue that this theorem has manifested at the Minnesota Capitol this session, at least for the time being. The House and Senate health and human services appropriations

bills, which emerged from their respective finance committees last week, will be considered by the House Ways & Means and Senate Finance Committees, early this coming week, then sent to the floor. There will be few if any substantive amendments adopted in either one of these committees.

Both bills are really tough on provider's reimbursement. In addition entire programs are eliminated. Minnesota's world-renowned CALS program is eliminated in the Senate bill and retained but at a reduced rate (\$377,000) in the House. The other provisions of interest are extensive and too

numerous to list in this UPDATE. As always, the bills and even the spread sheets are available online.

Neither side will agree to adopt the other body's package, so the final decision will be made by a conference committee. Once the conference committee adopts a final proposal, it will be voted on by each legislative body. Under the rules, legislators will have only the option of voting the conference committee report up or down. Conference committee reports may not be amended.

Based on comments made by various DFL members, if the

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final product which emerges contains the severe cuts to various programs as the current proposals, it will be quickly vetoed. Then, we start all over again.

It isn't very much fun this year.

Blue Cross/Blue Shield

Periodically, over my 30 years of lobbying for EMS, providers have encountered problems with third party payers. The challenges have run the spectrum from delayed or denied reimbursements to unacceptable rates. We have managed to address every one of the problems through either negotiations or legislation. This inability to get paid resulted in various bills that we successfully lobbied through the legislative process. Mandates that all emergency ambulance calls must be paid – regardless of the patient's ultimate diagnosis; the requirement that health insurers must have a physician, nurse or PA immediately available 24/7 to approve or disapprove scheduled/non-emergency calls – or they must be paid; and, a requirement that interest be paid on 'clean claims' not paid within 30 days. These, and other requirements, have pretty much taken care of all of the problems – with the exception of one: Direct payment for services to the ambulance provider.

Virtually all third-party payers send reimbursement directly to the ambulance provider with the exception of Blue Cross/Blue Shield of Minnesota. Unless an ambulance service is a "preferred provider", that is, has a contract with BC/BS, the check is sent to the patient. To become a preferred provider, some providers may feel that they are forced to accept a reimbursement rate that may not even cover their costs. With the patient receiving the payment for services, there are a significant number of wide-screen television sets and flashy tattoos that have been purchased with our ambulance service's dollars. BC/BS has had a policy of 'play or we don't pay' – at least not to the provider. Providers in Pennsylvania were so fed up that they filed a class action suit in federal court. The numbers of providers participating in the lawsuit is growing. The suit was filed under RICO, the Hobbs Act and a number of other federal laws. The essence of the lawsuit is that providers are being coerced to accept inadequate payments in return for direct payment.

For some reason, last spring, this issue with BC/BS hit critical mass in Minnesota. I started hearing from providers and local units of government throughout Minnesota regarding BC/BS's reimbursement policies. Since these concerns arose, starting 30 years ago, I

have set up meetings with BC/BS staff and senior management and we have somehow addressed the concerns and the phone calls to me stopped.

In 2011, the direct pay – without a contract – issue exploded. In response, I set up a meeting with the Blue's lobbyist on July 13th to discuss the problem. Over the ensuing months, we had numerous meetings, e-mails and phone calls which only seemed to result in additional delays. Finally, the issue came to a head when MAA member St. Paul Fire contacted Buck and me with concerns over the Blue's reimbursement policies.

On January 31st a number of us met with the representatives of the large insurer, expecting to have a response to our request for some solutions to the ongoing problems. MAA Legislative Chair, Buck McAlpin, ran the meeting and issued an ultimatum, with a response required within a relatively tight timeline.

I will spare readers with any more of the intrigue and let you know that BC/BS has agreed to work with the MAA to establish a direct pay system for all ambulance providers – regardless of whether or not you have a contract. Further, a record of approved reimbursement, co-pays, etc will be shared with providers.

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The implementation date of this policy change is tentatively set for May 1, 2011. We will have additional details as they become available for MAA members.

This is a huge victory for the MAA that has taken almost three decades to come about. As a gesture of good faith, I agreed to pull back our legislation that would have required direct payment. In addition, they will establish a work group of ambulance providers to advise them on ambulance issues. Despite having very strong authors and tight language, we are willing to take Blue Cross/Blue Shield at their word. Our legislation would have been embarrassing to them. Thanks to Phil Stahlboerger, Garrett Black and others at BC/BS who finally agreed to work with us. The bottom line is that this agreement will result in hundreds of thousands of dollars that have been diverted to go into the coffers of Minnesota's ambulance services.

Thanks to Buck, Aaron Reinert, Nancy (Trans-Medic); and, Matt Simpson (SPFD EMS Chief).

No Fault

This coming week, there are a number of meetings and possibly a committee hearing

on repealing or amending the No Fault Auto Law. However the matter emerges from the fog of this legislative session, it could have serious implications for hospital EDs and ambulance services throughout the state. We have made our case from the perspective of the EMS delivery system, and had a positive response. However, other healthcare providers have a big stake in this matter, too. This issue makes us nervous because of the unpredictable nature of the legislature this session. Consequently, we will be spending a great deal of time waiting and watching as potential 'vehicles' for change come up on the House or Senate floor.

Trauma Fund

Over the interim and early in the session, we discussed a pot of money that we identified which was dedicated to the Department of Public Safety, but was destined to expire in 2012. We discussed pursuing legislation that would have eliminated the sunset date and dedicated the money raised to support the Statewide Trauma System. Conversations over the bill continued and continued and.... There was broad support for the concept, but we lacked a consensus on how to proceed. Consequently, the opportunity has been lost. The dollars have been redirected in Public Safety funding bills.

Bills

Over the next couple of months (or perhaps longer) we will be closely watching a number of pieces of legislation. The omnibus health, public safety and tax bills all have the ability to affect EMS. In addition, the state government appropriations bill may also have implications for EMS generally, and more specifically, the EMS Regulatory Board. The Gov Op bill proposes serious fundamental restructuring of state government with anticipated consolidation of numerous services, including a reduction in the state's workforce. There will be a heavy emphasis on having the state contract out various services to non-governmental entities. Regional EMS Systems may have some real opportunities to finally reach some funding stability with these opportunities, rather than having all of us fight for the base appropriations every 2 years. Once there is a final bill, we will share the details.

Neither the House nor Senate Omnibus Tax Bills (as passed out of committee) affect any of the numerous and expensive tax exemptions enjoyed by the EMS community. There is a provision that clarifies the tax exemption for ambulance-owned Quick Response Vehicles (QRVs) that are leased. The exemption language that we succeeded in getting passed several years ago

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is not clear, according to the Department of Revenue. Thanks to committee chairs Davids and Ortman for helping us out with this.

The bad news is that all of our hard-won tax exemptions are probably going to be on the table for possible elimination.

Assuming that the Governor vetoes the initial tax bill, we will have our work cut out for us.

The search for additional dollars to make the Republican budget bills balance will be relentless and may enter into all our areas of interest.

Revenue Recapture

It started out as a simple proposal to eliminate superfluous language in the law as it pertains to non-government-based ambulance services. The measure passed the full House unanimously and was sent to the Senate, where it sits on the general orders calendar. We couldn't understand what the hold up was. Well, it seems that the language was included in the Senate's Omnibus Tax Bill, but our specific bill may be held up to serve as a vehicle for other tax-related legislation.

Community Paramedic

Everybody seems to like our bill, with the exception of the MNA and Respiratory Therapists. But

it has been a waiting game to see when the bill (SF 119) comes up on the House floor. I was told by the Speaker's staff that it would be this coming week. We are pretty certain that we have all of our votes lined up, but we don't want some other state (like Nebraska!!!!) to beat us to the punch. It appears that Minnesota will be the first state in the country to establish CPs in permanent law – assuming we get it passed.

Closing Notes

- ◆ Some of you may feel that I have failed to provide a more comprehensive synopsis of what is contained in the House and Senate health and human services funding bills. And you would be right. There are numerous important provisions in both. However, the final product will be very different than what is being considered. If, indeed, the Governor vetoes the bill, negotiations on the basic package will begin anew. Everything is in a state of flux. Also, as I referenced in the first item, any of you with insomnia, may access all the details on line at the legislative website.
- ◆ Our MRCC funding still appears to be on track.

- ◆ We wrote last week that implementation of MN CARE health insurance coverage for volunteer ambulance and fire personnel has been delayed until the fall. If some of the proposed changes to MN CARE end up being signed into law, our new program may not be implemented at all. We are working on it.
- ◆ Both the House and Senate health bills propose to cut ambulance and special trans reimbursement by 4.5%.
- ◆ One of the best ways to stay current on what is going on at the Capitol is to join our weekly Monday morning MAA conference calls. It also allows you the opportunity to ask questions.