

MAHP'S 10th Annual Policy Conference – 11/18/2011

AG Coakley Remarks

(As prepared for delivery)

I am pleased to be back this year once again to discuss the challenges we all face in reining in health costs.

I know that controlling costs is a goal shared by everyone in this room – and I've personally worked with many of you on it.

This morning I was at Faneuil Hall watching one of my employees being sworn in after passing the bar.

I was reminded that the first floor of Faneuil Hall has always been reserved as a marketplace of business. And the second floor has been reserved as the marketplace for ideas.

All of you in this room are part of that business marketplace, but equally as important for the future of health care in Massachusetts is that we are all also part of that marketplace of ideas.

It is because of this shared commitment that I believe Massachusetts *can* lead the rest of the country in demonstrating that universal coverage can be achieved, that quality can remain high, and that costs do not need to escalate out of control.

Our office has been engaged on a number of fronts as we work to control costs.

I want to mention one such issue quickly that I know has not been particularly popular with some here today, and that is our view that non-profit board members should not be compensated.

We believe it is a critical issue that goes to the heart of the historical difference between for profit companies and charitable institutions.

It ensures that board members do not have either real or appearances of conflicts of interest and that they solely serve their charities' missions.

Since we issued our findings, two plans have suspended pay while two have not. I'm hopeful we'll continue to have a dialogue about why volunteer service is so important.

We also have filed legislation that we are committed to passing and in the meantime will require further disclosure by all compensated boards.

“SHORING UP THE FOUNDATION”

One of the most significant ways our office has been engaged in cost containment is through the two examinations we have done on the cost drivers of health care.

You heard from our Health Care team this morning about the results of those examinations, including the data we analyzed and the cost drivers we identified.

If you remember, last year I discussed many of those findings with you as well.

We explained that a shift to global payments is certainly not a panacea because it ignores the “flawed foundation” of the dysfunctional health care market.

That dysfunction is a market where costs are not based on value or quality, but on the market leverage of providers.

Today I’d like to offer some specific solutions to address that dysfunction – three “pillars” to shore up that foundation and reduce costs.

Those solutions include providing greater transparency and what I call “consumer health care literacy,” ensuring a competitive marketplace, and fixing unwarranted price variation.

GREATER TRANSPARENCY FOR CONSUMERS

The first fundamental pillar is providing more transparency and health care literacy for consumers.

Consumers are feeling the impact of rising health care prices without necessarily having more choices or control over those costs.

Patients are responsible for co-insurance and deductibles, and as health care costs rise, more and more of that cost is being borne by patients.

Consumers who find themselves in medical debt face adverse credit ratings, home foreclosures, and even bankruptcy - and incredible stress.

For example, our office receives complaints from consumers who asked how much a medical service would cost, and were told “not to worry about it.” But then when their insurance companies didn’t cover those costs - they are stuck with a huge bill, they are unprepared for it and I can tell you they are angry.

We had one consumer contact us because she had completed a non-emergency medical procedure and needed transportation home. The hospital staff informed her that they could arrange for an ambulance to transport home, which she agreed to do. Only two weeks later she received a bill for more than \$2000.

When consumers go to buy a car, for instance, they can shop for the lowest price at the quality they want. When they go to repair a car, they can even get estimates from mechanics before they authorize the repair.

In the same way, consumers need information about their health costs so they can make decisions about the most cost-effective choices.

So, how do we improve that health care literacy?

We are considering requirements that providers disclose the full amount that consumers could be liable to pay, so that patients know in advance what they are agreeing to.

For example, patients are often required to sign a form indicating that they are liable for any amount not paid for by their insurance, but they don't get any information, or even an estimate, of the cost of that care. That should change.

Obviously, there are many complicated issues that must be addressed. Not all services can be scheduled or quoted in advance.

But starting to provide consumers with this information is a critical component of cost containment, and we look forward to your input on the best way to do this.

ENSURING A MORE EFFECTIVE, COMPETITIVE MARKETPLACE

The second pillar to shoring up this foundation is ensuring a more effective and competitive marketplace.

In addition to giving consumers better information, we need to make sure they have competitive options for care delivery.

Providers in the market are consolidating, merging, and affiliating at an increased rate. With increased focus on payment and delivery system reform, we should anticipate even more consolidation in the future.

But how big is too big? The Governor's Bill and other proposals look to our Office to monitor market consolidation. But this is insufficient in a number of ways.

First, the current legal standards impose limits for involvement by our anti-trust or public charities divisions.

Action that may not be in the interest of an effective marketplace may not rise to the level of a law enforcement violation.

Second, our law enforcement tools to address these situations are often insufficient.

To use a health care reference, there are many circumstances when a scalpel may be most effective but our office usually only has blunt instruments at our disposal.

To put it another way, if all you have is a hammer, every problem looks like a nail.

We believe a better mechanism should be in place. One that better tracks data about market consolidation to identify problems early and then is able to act on that data short of involvement by law enforcement. Right now, there is no reporting mechanism in place to effectively monitor provider market size or clout.

There should be an administrative review process in place in which updated information is provided to a regulatory agency – DPH is a possible example or maybe something new.

When a provider does reach a certain level of market clout, it should trigger a market impact review to determine whether the provider's size is having a negative impact on consumer choice, access, or healthy market function.

The agency must then have authority to restrict certain types of provider activity to protect consumers and the market. We will continue to play our traditional role of the consumer advocate in this administrative review process.

Now, I may be one of the first public officials who is *not* asking for more authority for my office! But I believe it is much more effective for all parties to have an agency that monitors these market forces and can act short of a lawsuit. I believe that agency must also be transparent with its goals and actions.

Of course we are and will be ready to intervene and bring independent enforcement actions when appropriate. We're not going away!

A BALANCED APPROACH TO ADDRESSING PRICE DISPARITIES

These improvements are crucial, but they are unlikely to fully address the market dysfunction. We still need to address this entrenched dysfunction in order to create a level playing field for competition.

There are some who say the market can correct on its own. There are others – including many of you in this room – who say it can't.

We believe that the market should be given a chance to correct itself. But it will be trust but verify.

If those market efforts fail, then we need to set the stage for limited and temporary government intervention to bring the market into alignment and reduce costs. Here's how.

First, we already have rules in place prohibiting excessive or unreasonable health plan premiums. We need to have similar rules for health care providers.

The administration should have specific authority to ensure that provider contract rates are not unreasonable – neither excessive nor inadequate.

We then should give the market a chance to correct the unwarranted price variations, but set reasonable and firm markers to guide market corrections over the next few years.

Starting in 2015, if the market has not corrected unwarranted price variation, the administration should be able to reject health plan contracts with excessive or inadequate provider price variations.

Health plans should be prohibited from paying provider rates that differ beyond a certain band. One example would be 20% above or 20% below the plan's average price for the previous year.

Any savings would then be directed to consumers in the form of lower premiums.

Finally, I believe we should make this market intervention temporary.

We should include a "sunset provision" to re-evaluate this system and determine whether this regulatory mechanism should be continued in 2018 or 2019.

Moving Forward on Cost Containment: Working Together

We believe these ideas are necessary, but today they are just ideas. Ultimately, they need to become tangible solutions.

We also recognize that other ideas should be on the table – such as solvency review for at-risk providers, additional consumer protections, and maintaining momentum on transparency and standardization.

We want to work with the administration, legislature, health plans and providers – all of you – to discuss these ideas and put the best solutions forward.

And if people don't like these ideas, then I'd love to hear their alternatives.

But the one thing we can't accept is to do nothing.

MAHP and its members have been engaged in this conversation and you have brought important principles to guide the discussion.

We're lucky that we have a lot of people in the "marketplace of ideas" working on these issues.

That's why I'm confident that we can get this right – and then everyone in the Commonwealth, and the Commonwealth itself, is going to benefit.

Thank you.