

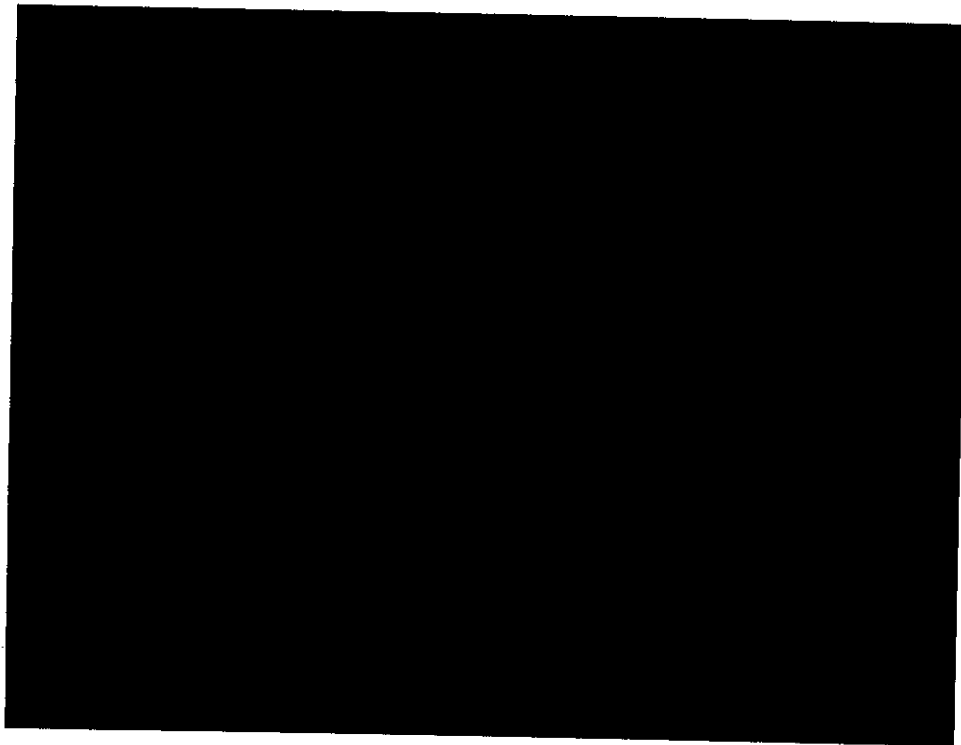
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ASSEMBLY JUDICIARY  
DATE: 4/2/03 ROOM: 3138 EXHIBIT D  
SUBMITTED BY: Matt Sharp

## What Is The Role of Insurance?

- In exchange for premium, the insurance company provides:
  - Financial security and
  - Peace of mind.
- The insurance company has a confidential relationship with its insured customer.
- The insurance industry is heavily regulated because it is important to the public trust.

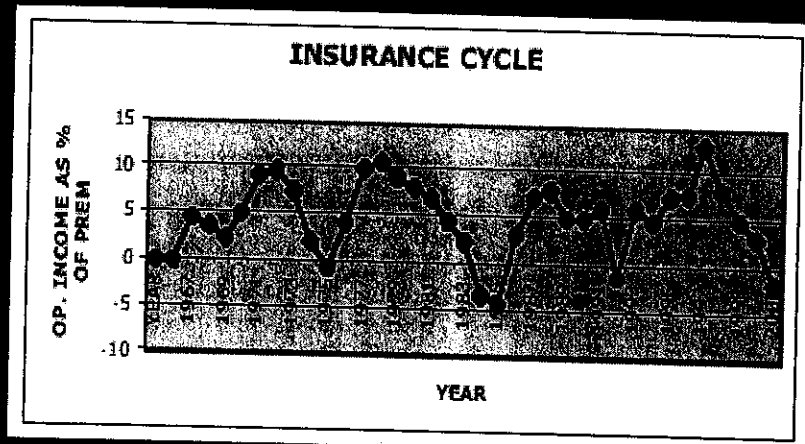
## How Does Insurance Work?

- Actuaries establish adequate rates.
- Underwriters establish eligibility guidelines.
- Claims department pays claims fairly and in good faith.

## What Are the Rules of the Road for An Insurance Company?

- It cannot mislead or deceive the insured customer in any manner.
- It must conduct a full, fair and objective investigation.
- Upon consent of the doctor, it must effectuate a prompt, fair and equitable settlement where liability is reasonably clear.

## Cyclical Nature of Insurance



Interest rates have dropped.

Stock market has dropped.

Losses have kept pace with medical inflation.

## How Did The Problem Begin?

- St. Paul garners market share.
- Inadequate rates
  - Losses average 196% from 1997-2002.
- No underwriting
  - NSMA agreement.
  - Guarantees insurance for repeat offenders.
- Misleads doctors.
  - Promises tail coverage.
- Misleads the Insurance Commissioner.
  - Says it will not withdraw.

Documents are: (1) insurance commissioner print out for rate losses; (2) complaint at paragraph 3 for tail coverage, paragraph 2 for NSMA, Complaint at paragraph 3.

## What Is St. Paul Doing?

- 1992-97, releases \$1.1 billion from reserves. (Wall Street Journal, 6/24/02)
- Investment income drops.
- 9/1/01, requests 70% rate increase.
  - 41.8 % approved in two stages.
  - 50 % for Clark County
  - Zero for the rest of the state.



## What Is St. Paul Doing?

- Threatens to withdraw from the market.
  - Receives rate increase.
- Withdraws from the market.
  - Does not provide notice to the Commissioner.
- Higher premiums for tail coverage.

Commissioner's complaint at paragraph 8 as to withdrawal and higher premiums; paragraph 5 as to notice,

## What Are Other Insurance Companies Doing?

- Doctor's Company 2000 2.2 % decrease.
- Doctor's Company January 2001 3.8 % increase overall.
  - 2 % decrease outside Clark County.
  - 12.2 % increase in Clark County.
- Doctor's Company August 2001 1.2% increase.
- After September 11<sup>th</sup>, June 2002 26 % increase.

## What Happens Without Sound Practices?

- Two Nevada doctors account for \$14 of \$22 million of claims paid in one year. (Business Week, March 3, 2003.)
- "And insurers should really underwrite the risk, charging higher premiums or even denying coverage to repeat offenders just as they do to drivers with poor driving records. According to the NPDB, just 5 % of all U.S. doctors are responsible for 54% of all malpractice claims. If a doctor can no longer buy insurance because he has been sued for malpractice numerous times, he or she shouldn't be treating patients." ("Med mal reform is bad medicine," Business Insurance, February 24, 2003.)

## What Happens Without Sound Practices?

- Legitimate claims are not settled.
- Consent from the doctor is ignored.
- Judgment is in excess of the doctor's policy limits.
  - Doctor becomes personally responsible.
  - Doctor must sue the insurance company.
  - If the doctor proves bad faith, the insurance company is responsible for entire judgment.

## Clark County Verdicts 95-02

<i>Ross v. Sparkhul</i>	Penis erroneously injected with acid rather than Lidocaine; required reconstructive surgery	\$545,000
<i>Schmitz v. Ebert</i>		\$500,000
<i>Burney v. Kramer</i>	Permanent injury to baby at birth	\$5,350,000
<i>Cleveland v. Capanna</i>	Spine surgery at wrong level	\$450,000
<i>Schrader v. Swain</i>	Failure to recognize internal bleeding leading to death of 61 year old woman	\$3,406,355

## Clark County Verdicts 95-02

<i>Pucket v. Valley Hosp</i>	Death of 70 year old man when negligently inserted breathing tube	\$983,000
<i>Marquez v. Southwest Medical</i>	Failure to timely diagnose facial fractures resulting in permanent nerve damage and complex surgical repair	\$1,200,000
<i>Gainey v. Valley Hosp</i>		\$55,000
<i>Ruppert v. Buzzard</i>	Total blindness in one eye with significant medical consequences.	\$2,000,000
<i>Makuch v. Fremont Medical Center</i>	Lost biopsy with potential diagnosis for malignancy in foot	\$130,000

## Clark County Verdicts 95-01

<i>Rice v. Torres</i>	Botched C-Section on 32 year old woman, first child, with postop bleeding resulting in hysterectomy	\$205,000
<i>Fowler v. Egtedar</i>	Failure to timely diagnose femur fracture resulting in ischemia to lower leg with resulting nerve damage	\$1,237,220
<i>Suprien v. Poon</i>	Adult circumcision with removal of 1" from center of penis	\$515,000
<i>Watts v. Reliable Medical Care</i>	Baby injured at birth with permanent brain damage leaving boy 9 months old mentally with need for lifelong care	\$6,000,000

## Clark County Verdicts 95-02

<i>Spradlin v. Hito</i>	Failure to rule out cauda equina syndrome resulting in decompression of disc and permanent nerve damage	\$1,500,000 (49% cont. negligence reduced verdict to \$765,000)
<i>Irving v. Sunrise</i>	Retained sponge requiring 4 follow-up needle aspirations	\$78,000
<i>Banks v. Sunrise</i>	51 year old now in persistent vegetative state; \$14,000/per month life care	\$5,412,031
<i>Conn v. Schiff</i>	Failure to diagnose myocardial infraction; sent home and died of cardiac rupture	\$2,000,000



## Clark County Verdicts 95-02

<i>Kay v. Eftaha</i>	Sphincter damaged resulting in permanent incontinence; now wears diapers	\$1,520,000
<i>Debourg v. Southwest Medical</i>	Failure of nurse practitioner to diagnose cervical cord compression causing permanent damage to nerves in upper and lower extremities	\$4,564,128
<i>Jane Doe v. Gold</i>	Injury to sexual function	\$4,200,000

## What Happens When Insurer Fails to Act in Good Faith?

- Doctor is not protected.
- Costs of legitimate cases increase.
  - Failure to accept policy limit demands.
  - Judgments exceed policy limits.
- Costs increase for everyone.

## How Can AB 320 Help?

- Section 20 requires insurance company to disclose reasons for not issuing the policy.
- Section 22 governs withdrawal from the market.
  - 120 day prior notice of intent to withdraw.
  - Written plan for withdrawal.
  - Approved by the Commissioner.

## How Can AB 320 Help?

- Section 5 allows intervention rate filing by an interested party.
- Section 8 requires disapproval of inadequate rates.
- Section 8 precludes:
  - Rate increase due to bad investments.
  - Rate increase due to the failure to settle.
  - Rate increase due to repeat offenders.

## How Can AB 320 Help?

- Section 36 requires independent counsel paid for by the insurance company.
- Section 37 makes the insurer responsible to the plaintiff if:
  - Settlement offer within the policy limit.
  - Liability of the doctor is reasonably clear, and
  - Insurance company unreasonably rejected the settlement offer.

## What Is the Nevada Insurance Unfair Claims Practices Act?

- All insurance companies must treat their insured customers fairly.
- Cannot misrepresent pertinent facts or policy provisions. NRS 686A.310(1)(a).
- Must effectuate a prompt fair and equitable settlement where liability is reasonably clear. NRS 686A.310(1)(e).
- Must have practices and procedures to fairly process claims. NRS 686A.310(1)(c).

## What Are the Managed Care Laws?

- Governs pre-certification/pre-authorization.
- Specific to deny treatment based upon medical necessity.
- Specific appeal procedure to help the insured customer.

## How Does AB 320 Help?

- Section 4 holds managed care companies accountable.
- Any violation of NRS Chapter 695G is an unfair claims practice.



## What Is Chapter 686A, Unfair Trade Practices?

- Prevents unfair claims practices.
- Prevents false advertising.
- Prevents unfair business practices.

## What Industry Is Exempt From the Unfair Trade Practices?

- Health maintenance organizations.

## How Does AB 320 Help?

- Section 29 holds HMO accountable for bad business practices.
- HMOs will be subject to Chapter 686A, the Unfair Trade Practices.