14

SENATOR Charles K. Scott
WYOMING SENATE

PRESENTATION SLIDES

Charles Scott
Wyoming State Senate
Legislative Chairman, Health Committee, National Conference of State Legislatures

Questions, comments 307-473-2512 (home & work)

COMMITTEES:
Health and Social Services, Chairman
Corporations, Elections and Political Subdivisions

SENATE DISTRICT 30 • 5805 BATES CREEK ROUTE • CASPER, WY 82604 • 307.473.2512 • WEBSITE: HTTP://LEGISWEB.STATE.WY.US

THE PROBLEM

8 to 10 % **MEDICAL INFLATION**

12 to 20 % **LARGE GROUP PREMIUM INC.**

27 % **SMALL GROUP PREMIUM INCREASE**

8

MEDICAL INFLATION *the Usual Suspects*

Rx Drugs

Hospital Costs

Professional Wages

New technology

3 New Construction

Decline of Managed Care

Physician Reimbursement

Government Regulation

Medical Errors

Medical Malpractice

Direct Costs

2. Defensive Medicine

HIGHER INSURANCE COSTS

COST SHIFTING **30 %**

- **MEDICARE** **15 %**
- **MEDICAID** **5 %**
- **BAD DEBT / CHARITY** **10 %**

OTHER CAUSES

- **GOVERNMENT REGULATIONS AND MANDATES**
- **INSURANCE COMPANY LOSS OF INVESTMENT EARNINGS**
- **INSURANCE CYCLE**
- **ADVERSE SELECTION**

SOLUTIONS

INSURANCE

- **REPEAL MANDATES**
- **BARE BONES POLICY**
- **A H P**
- **SUBSIDIES**

MEDICAL MALPRACTICE: PRESENTATION SUMMARY
Charles Scott, Wyoming State Senate, 307-473-2512

"The positions of both sides of the Medical Malpractice debate are well known and virtually calcified." Health Affairs, July/August 2003, editor's prologue to malpractice articles.

SKYROCKETING MALPRACTICE INSURANCE RATES
-- 1% to 2% of total health care costs
-- 7% to 8% of increase in health care costs
-- Concentrated in certain medical specialties
-- Hospitals and nursing homes also affected
-- Can cause key health care to become unavailable

PEOPLE RUNNING THE SYSTEM GET MOST OF THE BENEFIT
-- 25% to insurance companies
-- 25% to defense lawyers
-- 25% to plaintiff's lawyers

75% subtotal, cost of running system

25% to injured victims

TORT SYSTEM DOES A POOR JOB OF IDENTIFYING VALID CLAIMS
-- Only 2% of valid potential claims are brought
-- Many of the paid claims are not valid
see attached chart

SYSTEM IS INEFFECTIVE AT QUALITY CONTROL
-- IOM study "To Err is Human"
  -- Between 44,000 and 98,000 deaths/year in U.S. from medical error
-- 5th leading cause of death (high estimate)
-- 9th leading cause of death (low estimate)

SYSTEM CAUSES DEFENSIVE MEDICINE
-- Difficult to quantify
-- Best estimate is between 10% and 20% of total health care cost
-- Additional risk to patients
-- Defensive Medicine, administrative costs, reimbursement levels & prescription drugs can explain most of the difference in costs between U.S. and other developed countries



SOLUTIONS

-- Traditional tort reform
  --Caps
  --Collateral source rule
  --Periodic payments
  --Contingency fee limits

Idea is to limit premiums by limiting payouts. Does that if limits are low enough.

-- Enterprise liability
-- Administrative Compensation
  --No Fault
  --Worker's Comp style system

WORKER'S COMP STYLE SYSTEM

-- Create a Medical Errors Commission
-- Primary focus is on prevention of medical error
-- Commission composed of professionals
-- Not a pure no fault system, some determination of negligence or avoidable error
-- Compensation on a schedule like worker's comp
-- Must be an exclusive remedy
-- Funded by premiums on health care

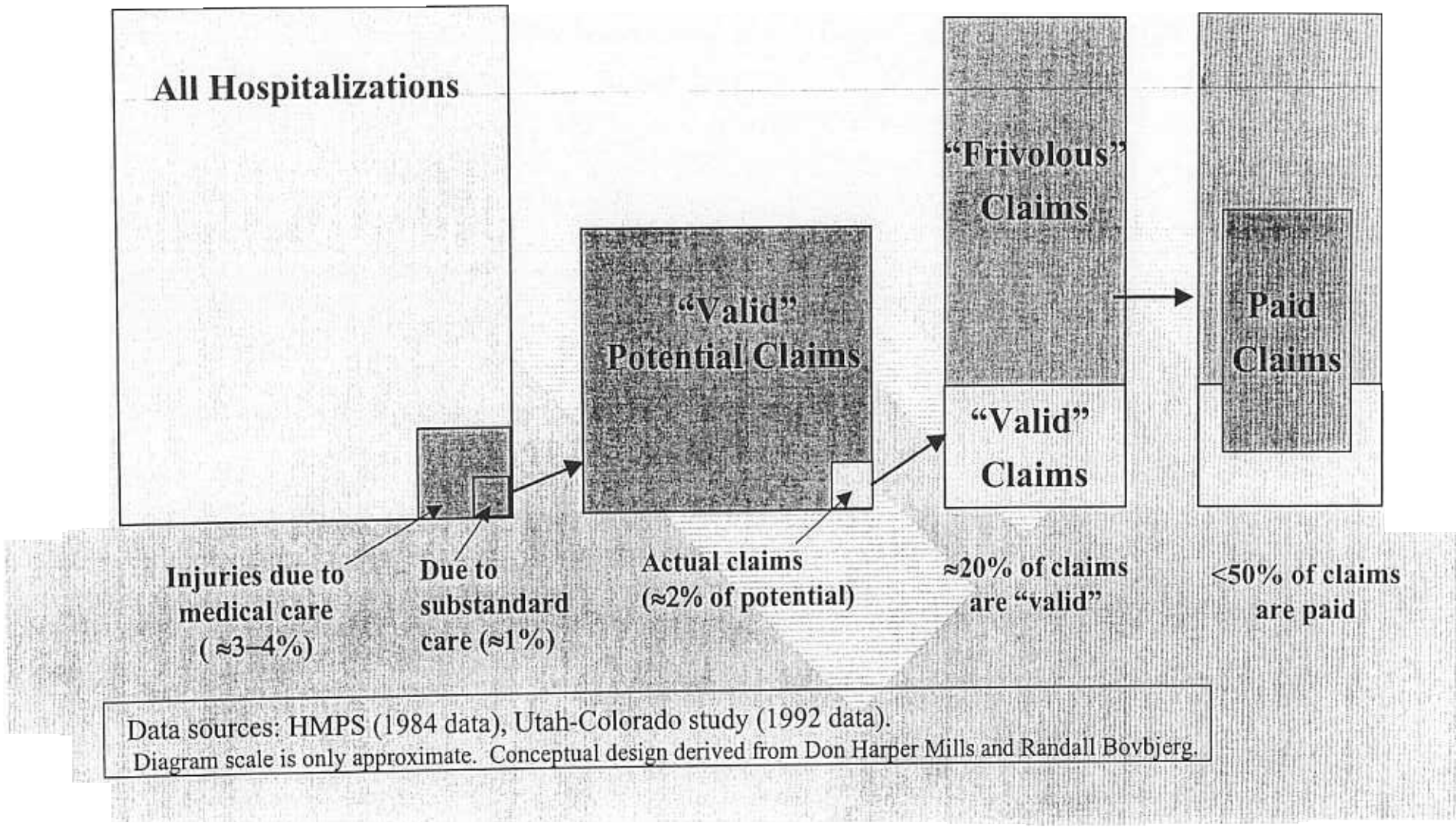
ADVANTAGES OF WORKER'S COMP STYLE SYSTEM

-- Increased patient safety
-- expect 80% of money spend to go to injured victims
-- More effective compensation for long lasting injuries
-- Improved doctor/patient relationship
-- Make practice of medicine more attractive
-- Abolishes role of lawyers & malpractice insurers
-- Eliminates need for defensive medicine

POTENTIAL PROBLEMS WITH WORKER'S COMP STYLE

-- May cost more
-- Who Guards the Guardians ?
-- Difficulty of keeping tort system from creeping back in
-- Depends on skill and dedication of Commission
-- Defensive medicine may persist

Relationship between injuries & claims



TEXT OF PROPOSED WORKER'S COMP STYLE CONSTITUTIONAL AMENDMENT
SJR-2, Wyoming State Senate, 2003 Session

The legislature shall provide by law for a commission on health care errors. The primary purpose of the commission shall be to improve the quality of health care through the identification of health care errors, the identification of the causes of the errors and the prevention of future errors and improvement in the system of health care delivery. The commission shall have the right on its own motion, independent of any claim for benefits, to make any inquiries its deems appropriate into health care errors and quality improvement needs of the health care system. The legislature shall by law provide the commission those powers the legislature deems appropriate to achieve these purposes. Any person who, in good faith, reports a medical error or suspected error to the commission shall be immune from civil liability for having made the report. When a person suffers death or injury from health care due to a degree of negligence specified by law, the commission shall determine if health care negligence has occurred and shall determine the compensation for the death or injury according to a schedule or formula provided by law and the commission may also require the health care provider not receive compensation for the services that included the error. The legislature shall by law provide a system for any person injured as a result of a medical error to file a claim for benefits with the commission and have his claim heard and decided, including specifying the nature of any procedural rules to be followed and the degree to which proceedings shall be kept confidential to protect the privacy of the injured individual. The legislature shall provide by law for a fund or funds out of which shall be paid only the expenses of the commission, the administration and management of the commission and the fund, and the compensation authorized by this section for individuals and families suffering death or injury from health care. The legislature shall provide for the payment of premiums to the fund by all health care providers, both persons and institutions, and the amount of premiums paid may be varied by type of provider and institution, by volume of business, by claims experience, and any other factor provided by law. The right to compensation from the fund shall be in lieu of and shall take the place of any and all rights of action against any health care provider contributing as required by law to the fund. Any party aggrieved by a final action of the commission may appeal to the courts as provided by law. The appeal shall be that the action of the commission was contrary to law or constituted an abuse of discretion and shall be on the record of the final action of the commission and any other record as is provided by law. Attorneys for an appeal from an action of the commission shall be paid by the fund according to a fee schedule set by law. The legislature may by law provide for any subordinate commissions and administrative agencies as may be useful in implementing this section. Any subordinate commissions shall be deemed part of the commission as appropriate.