AMERICA’S BROKEN HEALTH CARE SYSTEM:

Professor Fran Miller
Boston University School of Law
Visiting Professor, University of Hawaii School of Law
WHAT KIND OF RESPONSIBLE STEWARDSHIP WOULD “MAKE THINGS BETTER?”

THREE (of four) SUGGESTIONS
3 (of 4) SUGGESTIONS TO “MAKE THINGS BETTER,” WITHOUT INCURRING NEW COSTS

• Reduce unnecessary use of expensive technology & drugs

• Re-educate “demanding” patients about true costs of care

• Cut back on defensive medicine

Well, Bob, it looks like a paper cut, but just to be sure let’s do lots of tests.
LARGE % OF CURRENT CARE = UNNECESSARY

LEVEL OF CARE

INSURED

"NECESSARY" CARE

UNNECESSARY CARE (>20%)

12.2% of pop gets hit or miss

87.8%

100%
ELIMINATE UNNECESSARY CARE, EXPAND “NECESSARY” COVERAGE WITH SAVINGS

LEVEL OF CARE

% OF POPULATION

ELIMINATE UNNECESSARY CARE

USE SAVINGS TO COVER UNINSURED

NECESSARY CARE

100%
1: REDUCE UNNECESSARY USE OF EXPENSIVE TECHNOLOGY

Physicians control approximately 70% of all health care expenditures, & “big (health care) business” seeks to influence those choices.
Physician Incentives = High Profile Issue

• Technological imperative
  Example:

  1 in 3
  imaging studies may be unnecessary

  Equaling about
  $55 billion of
  the more than
  $170 billion spent on imaging annually.

• Conflicts of Interest?
  • Example: FDA advisory committee membership
2. EDUCATE “DEMANDING” PATIENTS RE TRUE COSTS OF CARE

• US = land of the “worried well”
  • Health insurance insulates patients from costs of health care “demands”
    • (80% of patient-initiated Doctor visits are for self-limiting conditions)

• Impact of direct-to-consumer Rx drug advertising
EDUCATING PATIENTS RE TRUE COSTS OF CARE (cont.)

• Impact of media hype re “medical breakthroughs”

• Today’s medical breakthrough often = tomorrow’s discarded technology
  • Example: autologous bone marrow transplantation for Stage IV breast CA
EDUCATING PATIENTS RE TRUE COSTS OF CARE (cont.)

• Patients must learn to connect the dots between “demands” . . .

• & impact on their:
  • Health,
  • Health insurance premiums,
  • Health insurance availability,
  • & Taxes
3. CUT BACK ON DEFENSIVE MEDICINE

• 93% of high-risk specialists engage in defensive medicine practices

• Particularly re ordering clinically unnecessary & costly imaging

DEFENSIVE MEDICINE IS REAL

Doctors widely believe they’re at risk for malpractice litigation

• What are the facts?
  - Fewer than 1 in every 8 – 10 instances of chart-demonstrated medical negligence ever results in a claim

- Harvard Medical Practice Study to the State of New York (1990)
MALPRACTICE LITIGATION FACTS (cont.)

- Of claims that are filed, some compensation is paid in fewer than half

- Fewer than 5% of claims go to trial

- Of claims that do go to trial, doctors win 4 out of 5

4/5 of defendant-doctors win at malpractice trials
REGARDLESS OF LITIGATION FACTS:

• Doctors perceive themselves under siege

  • Perception becomes its own reality

• Result: defensive medicine practices increase
Standard of Care Rises Artificially with Defensive Medicine
GOOD MEDICINE = GOOD LAW

• **Doctors** (not lawyers) set Std of Care by what they actually do

• Ex: Package Insert Does *not* Establish Std. of Medical Care

• The more doctors practice defensive medicine, the higher they push the std of care (artificially), & the higher costs become.