

Finally, the Program is mindful that it must not lose sight of the need to recognize their most important resource and responsibility, the community which the graduates serve. Currently, sixty-two percent of the *Imi Ho'ola* graduates are practicing in rural areas of Oahu and the Neighbor Islands. To ensure the relationship with the community, a community advisory committee has functioned since the inception of the Program in 1973 to guide the Program. Committee members include lawyers, psychologists, bankers, teachers and graduates of the program.

*Imi Ho'ola* is fulfilling the mission of the John A. Burns School of Medicine by teaching and training high quality physicians for Hawaii and the Pacific, thereby promoting diversity in the medical profession.

#### Reference

1. Cohen, Jordan J. *Finishing the Bridge to Diversity*. Washington, DC: Association of American Medical Colleges, 1996:4.

## Public Service Announcements

**American Cancer Society Seeking Volunteers.**— Volunteers with medical knowledge needed to staff and man the library and a call-in telephone information line. These people will be trained by the American Cancer Society, and will be responsible for giving out cancer information to walk-ins and callers. For further information call Susan Jacobs at the American Cancer Society, 595-7500 ext. 202.

Volunteers needed for Angels on Wheels, drivers to take cancer patients to and from their doctor/cancer therapy appointments. To volunteer, contact the American Cancer Society office in your area.

Volunteers needed at all American Cancer Society offices to assist in clerical duties. Call to volunteer: Windward 262-5124, Leeward 486-8404, and Honolulu 595-7544.

**Seeking Helpline Volunteers.**—The Honolulu Chapter of the Alzheimer's Assn. is seeking caring individuals to provide information and referrals and emotional support to callers needing assistance in coping with Alzheimer's disease. Volunteers will answer the telephone Helpline a minimum of 3-4 hours a week at our friendly Honolulu chapter office, Monday-Friday, between the hours of 9 and 4 p.m. Orientation and training will be provided. For further information or to receive a volunteer application, please contact the Honolulu Chapter at 591-2771.

**Hospice Hawaii Volunteer Training.**— 20-hr course at Hospice Hawaii office. Wednesday, Sept. 9, 6-9 p.m.; Saturday, Sept. 12, 8-5 p.m.; Saturday, Sept. 19, 8-5 pm. Call 924-9255, ext. 219 for more information.

**Music Therapy Lectures Aug. 22.**—Open to the public, held at Hospice Hawaii office, call Barb Shirland, 924-9255 ext. 209. Featuring: Dr. Deforia Lane and Daniel Kobialka. The Music Therapy Program involves both listening and participation and provides benefits in many areas including: physical, psychological, social and spiritual. Founded in 1979, Hospice Hawaii is a non-profit organization that offers medical, social, emotional, and spiritual support for patients and families facing a terminal illness.



## President's Message

### Managed Care Concerns

**Leonard Howard MD**  
**President, Hawaii Medical Association**

There are many advantages for the physician to participate in the various managed care entities in our state. However, there are also some problems at the root of all managed care participation. The problems present themselves in subtle ways, that are sometimes not recognized as problems by physicians. These problems are the result of various Sections and Provisions of the Participating Provider Agreement that is signed in order to participate in a managed care organization (MCO).

Time and time again in reviewing MCO contracts the same land mines are found present in the contracts. It is necessary that all physicians carefully read the contracts received from an MCO, and understand what commitment is being made by your signature on the contract. There are several common clauses that might be found in a proposed agreement which are likely to cause trouble in various ways. When these clauses are identified in managed care agreements, consider asking whether the subject matter contained in these clauses is really necessary to address in the managed care relationship. If not, they need not be in the agreement and should be removed before the agreement is signed. Seven areas of concern that are often found in many contracts which can be problematic include:

1. **General Offsets and Adjustments.** Provider agrees to authorize Company to deduct moneys that may otherwise be due and payable to Provider from any outstanding moneys that Provider may, for any reason, owe to Company. Provider agrees that Company may make retroactive adjustments to the payment schedule outlined in the agreement. *This provision gives the MCO a free hand to do whatever accounting it desires and deduct moneys from a physician or physician group in its sole discretion without a requirement to account to the physician or physician group and explain such deductions.*
2. **Litigation.** In the event of any litigation between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and cost of litigation, including, without limitation, any expert witness fees. *This clause seems designed to appeal to the unsophisticated physician who abhors litigation and has not stopped to consider that he or she is already greatly disadvantaged in any potential controversy with the company, since the MCO has far more to spend in legal fees. This clause would simply up the ante by potentially doubling (at least) a physician's cost and further chill any prospect for the physician to obtain relief in a court of law.*
3. **Noninterference with Members.** During the term of this Agreement, Provider and its Qualified Physician shall not advise or counsel an Enrollee to dis-enroll from Company's Plan and will not directly or indirectly solicit any Enrollee to enroll in any other MCO or similar Health care service plan or insurance program. *No matter how it is dressed up, provisions*

that prohibit physicians from speaking freely with their patients chill the physician-patient relationship and are considered by many reasonable physicians to be a form of "gag clause". While a managed care company may believe that such terms are commercially reasonable because they have spent time and money marketing to obtain the business of the employer who is covering health care costs for the patient, they fail to realize that because of the increasingly complex medical delivery system created by managed care, the physician is often the first and most valued person a patient turns to for discussion of health care coverage options. This communication is becoming one of the most common in the physician-patient relationship, given today's evolving health care climate. Any such discussion could be deemed as advice or counseling that could cause the patient to dis-enroll from the plan or prompt the patient to enroll in any other plan.

4. **Indemnification and Hold Harmless.** Provider and MCO shall indemnify the other and hold the other harmless against any and all loss, damage, liability and expense, including court cost, with respect to this agreement directly resulting from or arising out of the dishonest fraudulent, negligent, or criminal acts or omission of the respective party's employee, or contractors excluding each other, agents, shareholders, officers, and directors acting alone or in inclusion with others. Most physicians do not realize that when they agree to this provision they are agreeing to pay for any such lawsuits, including both the lawyer's fees and any settlements or judgments, out of their own personal pocket, since liability insurance policies virtually never cover this type of voluntary obligation. MIEC and HAPI have both made this clear in Hawaii. Further, the likelihood that managed care companies will, in fact, be named in such suits is increasingly common. With this agreement, the managed care company has the leverage to force a physician into settling a case that many be frivolous, and suffer the associated report to the National Practitioners Data Bank, because of the potentially bankrupting implications of the indemnity clause.

5. **Termination Without Cause.** This agreement may be terminated without cause by either party by written notice given to the other party at least one hundred twenty (120) days in advance of such termination. In such cases termination will occur on the last day of the month in which the one hundred and twentieth day following such notice occurs. Upon said termination by Provider, the rights of each party hereunder will terminate with respect to subscriber groups enrolled by the Company after the Company receives Provider's notice of termination. However, this Agreement will continue in effect with respect to Enrollees existing prior to the Company's receipt of such notice until the anniversary date of the Company's contract with the subscriber group or for one (1) year, whichever is earlier, unless

otherwise agreed to by the Company. If termination is by the Company, the rights of each party will terminate on the effective date of termination. Although virtually every managed care agreement contains a termination without clause provision, many, such as this one, effectively allow the MCO to terminate on 120 days notice but, on close inspection, requires the physician group to continue providing services for one year or more after the group has given its notice. Businesslike physicians and physician groups generally insist that any termination without cause provision be mutual.

6. **Liability.** Notwithstanding anything herein to the contrary, Company's liability, if any, for damages to Provider for any cause whatsoever arising out of or related to this Agreement, regardless of the form of the action, shall be limited to Provider's actual damages, which shall not exceed the amount actually paid to Provider by Company under this Agreement during the twelve (12) months immediately prior to the date the cause of action arose. The Company shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach of agreement or any action, inaction, alleged tortious conduct, or delay by Company. This provision simply strips the physician or physician group of any legitimate legal rights it may have in a litigation with the MCO by taking away all remedies that may be available except actual damages that are equal to or less than the total amount of compensation a physician or physician group has received from the company in the previous year. There can be no rational basis in the managed care relationship for a provision such as this. No attempt is made to make such limitation on remedies mutual, and, therefore, many reasonably prudent and businesslike physicians would conclude that it should have no place in the managed care agreement.

7. **Limitation on Action.** Notwithstanding anything herein to the contrary, no action, regardless of form, arising out of or relating to this agreement may be brought by Provider more than twelve (12) months after such cause of action has arisen. The statute of limitations for actions on contracts such as this vary from state to state but generally extend for five (5) years. There is no rational reason why a MCO should seek special treatment not available to others by limiting such actions to a twelve (12) month period.

Keep your eyes open when reading contracts in the future. If you have questions about an agreement, call the HMA and ask about it. We have a committee specifically set up to deal with questions about Managed Care Organizations. We are also able to get information and opinions from the Division of Representation of the AMA. Just another reason for supporting organized medicine with your membership dues.