Medical Professional Liability: Effects of the New Healthcare Law

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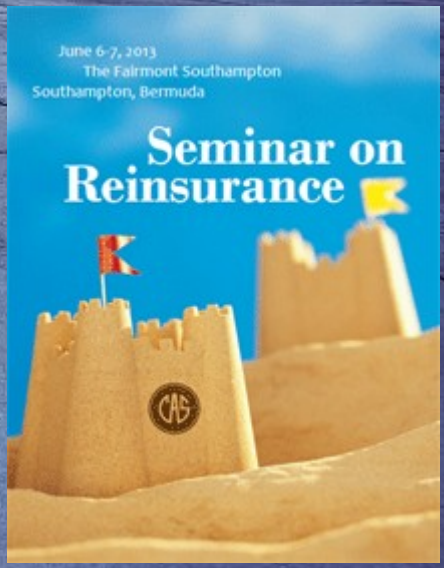
2013 Seminar on Reinsurance
June 6th and 7th, 2013



Audit . Tax . Consulting . Corporate Finance .

Agenda

Advancements in Risk Management and Patient Safety

The Burden of Obesity

The Opioid Abuse Epidemic

Other Considerations

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- Advancements in Risk Management and Patient Safety
- The Burden of Obesity
- The Opioid Abuse Epidemic
- Other Considerations

Advancements in Risk Management and Patient Safety

By Kevin M. Bingham

Personal Take

Getting Better All the Time:

The Decade-long Improvement in Patient Safety

PART ONE IN A FOUR-PART SERIES

In the past decade, tremendous innovation and passion have been focused on improving patient safety. As an actuary, I've been excited to watch the sheer diversity of risk management programs and environmental, health, and safety initiatives. The big news is how well these programs have worked.

As an actuary who specializes in medical professional liability (MPL) coverage, I've observed a significant decline in claims since the turn of the twenty-first century. For some companies, claim frequency has dropped by almost half in the last ten years—an astonishing decline.

But actuaries, senior executives, and risk professionals struggle even today to articulate all the drivers of the decline. That said, it is common knowledge that a plethora of factors has led to the overall decline in claim frequency. In Part One of this article, I describe the fruitful work done by the apology movement and the "saving lives" campaigns.

Starting at a macro level, I believe that national and local media have helped people appreciate just how hard their doctors have had to struggle, just to survive. We've all seen, up close, the passion doctors evince in helping their patients, thereby reminding all of us about their deep concern for our well-being. At the same time, patient safety organizations, medical associations, and hospitals have done a tremendous job in getting the word out about how hard physicians and hospitals have worked to make healthcare a safer experience.

Another key factor, of course, is tort reform. Granted, claims frequency has declined in states that haven't had tort reform, along with those that have. But there is little doubt that tort reform campaigns have helped to shed light on the challenges physicians have been facing all across the country—financial and otherwise.

There is nothing like the sight of doctors marching on your state capital, news stories about how much physician reimbursements have declined, and scary stories of counties across the country where there is zero access to Ob/Gyns, to make people appreciate the daily struggles of physicians.

And the list of endeavors that have had a measurable impact on patient safety goes on: electronic medical records, computerized physician order entry, risk management programs, mandatory check lists, Joint Commission national safety goals, insights gained from data sharing projects, patient safety alerts, enhanced educational training, and so on.

A complete discussion of every item on this list would fill an entire book. In this series, though, I highlight for you a few examples of advancements in patient safety, which have helped shape a sea change in U.S. healthcare.

Continued on page 16

Kevin M. Bingham, ACAS, MAAA, is a Principal with Deloitte Consulting LLP in Hartford. He leads the medical professional liability and claim predictive modeling practices, and is an official Spokesperson for the American Academy of Actuaries in Washington.

PART I
- ❑ Apology movement
- ❑ Institute for Healthcare Improvement's saving lives campaigns

PART II
- ❑ Pennsylvania Patient Safety Authority
- ❑ Joint Commission Sentinel Event Alerts

PART III
- ❑ Salus Global Corporation's MORE OB Program
- ❑ Advancements in anesthesiology

PART IV
- ❑ Chicago's Cook County Hospital effort to improve heart attack triage
- ❑ Johns Hopkins Hospital use of check lists to reduce central line infections
- ❑ The future of patient safety

Sources: SENATE BILL NO. 75–SENATOR SEGERBLOM,PREFILED JANUARY 31, 2013

Deloitte.

Advancements in Risk Management and Patient Safety

- Apology movement
  - COPIC's 3Rs program
  - SorryWorks!
- CPOE/EMR
- Risk management programs
  - Specialty specific
    - MORE ^{OB}
    - CRICO OB Risk Reduction Program
  - On-line education
  - Mandatory training
  - Simulator training

HIROC/SALUS Managing Obstetrical Risk Efficiently (More) OB program

"When the MORE^{OB} program was first conceived, we were convinced of the need for a patient safety program to improve childbirth outcomes for both mothers and newborns. We are delighted to have research that now clearly confirms the significant impact of our program when it is adopted by hospitals and their staff."

—Dr. Ken Milne, President and CEO of Salus

CRICO OB Risk Reduction Program

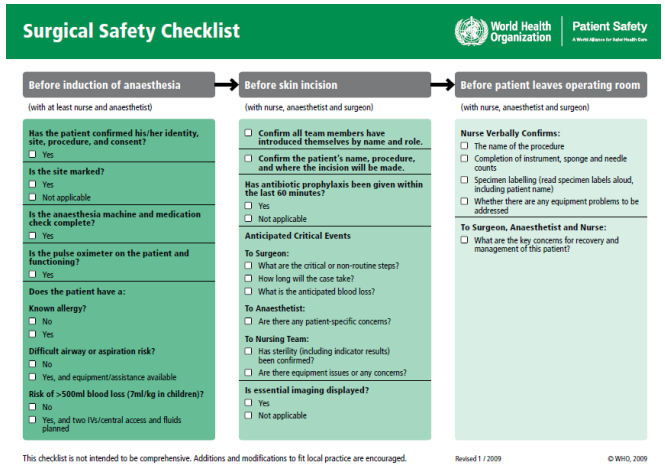
OB Simulator Cuts Harvard Medmal Premium

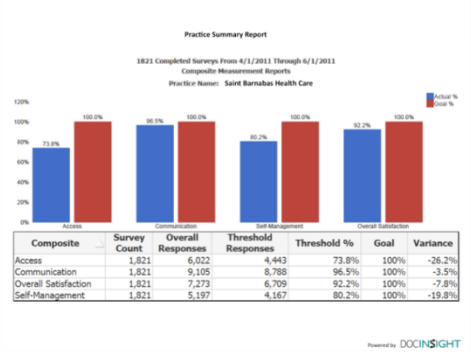
By Tom A. Augello, CRICO

Sources: http://moreob.com/
http://www.rmf.harvard.edu/Clinician-Resources/Article/2012/OB-Risk-Reduction-Program

Advancements in Patient Safety

- IHI saving lives campaign
- PA Patient Safety Authority
- Joint Commission Sentinel Event Alerts
- Anesthesiology Patient Safety Foundation
- Checklists
  - Atul Gawande
  - Johns Hopkins
  - WHO Surgical Checklist
- **Measuring the patient experience**
  - DocInsights Patient Experience Assessment and Reporting Solution (PEARS)
  - Stillwater Medical Group's After Visit Summary (AVS)





Source: http://www.who.int/patientsafety/safesurgery/ss_checklist/en/

Some Challenges on the Horizon

- **Patient safety movement fatigue**

Is the Patient Safety Movement in Danger of Flickering Out?
FEBRUARY 18, 2013
Robert M. Wachter, MD

- **Clinician burnout**
- **Strategic repositioning by delivery systems to deal with the Affordable Care Act**

- **Impact of new insureds** - The US government estimates the Patient Protection and Affordable Care Act will provide coverage for about 32 million uninsured Americans (~ 10 percent of the U.S. population).
  - **Lessons learned from Massachusetts** - 2006 Healthcare Reform
    - Angela Gardner, MD and president of the American College of Emergency Physicians - “Policymakers and the public also should have no illusions that the recently passed healthcare legislation is going to decrease ER use. **Massachusetts, which enacted healthcare reform in 2006, has seen an increase in emergency department visits, with no decrease in patient acuity.** It proves that healthcare coverage is no guarantee of healthcare access."

Sources: Bob Wachter, http://community.the-hospitalist.org/

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The Burden of Obesity on Workforce Wellness

By Todd Whitehorse, Kevin Bingham, and James Guszcza

The Burden of Obesity on Workforce Wellness

As U.S. workers get heavier, so does their impact on employer-based health care and workers' compensation programs.

Tipping the Scales

Source: January/February 2013 Contingencies Magazine

Obesity – The Facts

- Dr. William Klish, Childhood Obesity Expert

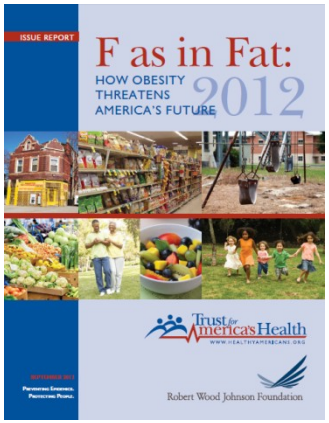
"If a child develops Type II diabetes before the age of 15, they shorten their life span by between 17 and 27 years."

Source: 1st Quarter 2013 Physician Insurer Magazine
http://www.time.com/time/magazine/article/0,9171,1813984,00.html

Obesity – The Facts

- Centers for Disease Control (CDC)
  - 35.7% of Americans age 20 and over obese (2010)
- Robert Wood Johnson Foundation F as in Fat Report
  - Obesity rates for adults could reach or exceed 44 percent in every state and exceed 60 percent in 13 states
  - The number of new cases of type 2 diabetes, coronary heart disease and stroke, hypertension and arthritis could increase 10 times between 2010 and 2020 — and then double again by 2030
- NCCI studies
  - The ratio in the medical costs per claim of obese to non-obese claimants at the end of 5 years is 5.3x's
  - The duration of obese claimants is 5x's non-obese claimants
- Deloitte claims predictive modeling
  - Claims with 3 or more existing medical conditions are 12 times more costly than claims with no existing medical conditions

AZ SENATE CANDIDATE: IMPACT OF OBESITY 'WILL DWARF 9/11'



Nanny Bloomberg's War on Soda

Source: http://www.cdc.gov/
https://www.ncci.com/nccimain/IndustryInformation/ResearchOutlook/Pages/default.aspx
http://www.rwjf.org/en/research-publications/find-rwjf-research/2012/09/f-as-in-fat--how-obesity-threatens-america-s-future-2012.html

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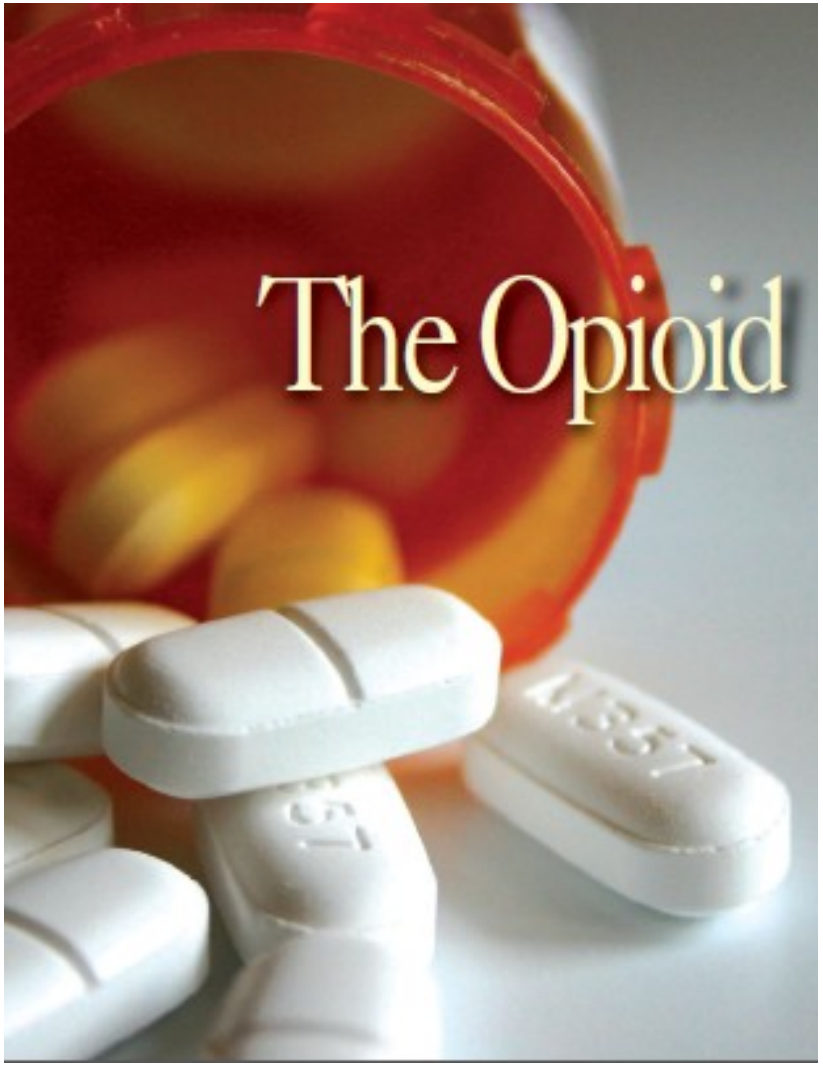


COVER STORY

Abuse Epidemic

Turning the Tide

BY KEVIN M. BINGHAM, ALEX MICHEL, DAVID WARD, AND RANDOLPH GORDON, MD

During the past decade, the United States has witnessed an alarming increase in the use of opioids. Today, Americans, who represent just 4.6% of the world's population, consume 80% of the global opioid supply, 99% of all the hydrocodone, and two-thirds of the world's illegal drugs, overall.[1] According to the U.S. Centers for Disease Control and Prevention, deaths from an overdose of opioid pain relievers now exceed the number of deaths linked to heroin and cocaine, combined.[2] In 2009, drug overdose deaths actually surpassed the number of deaths from motor vehicle accidents, for the first time since the government began tracking drug related fatalities in 1979.

In his November 15, 2012, CNN special "Let's End the Prescription Drug Death Epidemic?" Dr. Sanjay Gupta noted that one American dies every 19 minutes from an accidental overdose. And the most vulnerable members of our society have been particularly affected: the number of newborns with neonatal abstinence syndrome (NAS) has tripled in the last ten years, because more and more pregnant women are abusing opioids.[3]

Here, we investigate why we're seeing a surge in opioid use, and then offer some heartening news: physicians, law enforcement agencies, attorneys general, and organizations are all working to combat this alarming epidemic. However, doctors and the companies that insure them will need to keep a close eye on an emerging phenomenon: an increase in claims wherein a physician is held to be responsible, at least in part, for the drug-related death of an individual.

Prescription drug diversion

Prescription drug "diversion" is best defined as the channeling of licit drugs to illicit purposes. The drugs are diverted from legal and medically necessary uses to applications that are illegal and typically neither medically authorized nor necessary.[4] When taken as directed for legitimate medical purposes, prescription drugs are safe and effective. However, they are just as dangerous and deadly as illegal drugs when they are taken for non-medical reasons.

Here's how prescription drugs are typically "diverted":

1. ***Taking a medication prescribed for another person.*** People contribute, unknowingly, to this form of abuse when they give their unused pain medication to family members or friends. Some simply neglect to monitor the contents of their medicine cabinets.

2. ***Taking a drug in a higher quantity, or in a manner other***

Source: 1st Quarter 2013 Physician Insurer Magazine

Opioid Epidemic – The Facts

May 1, 2013 PBS Video

– In Oklahoma

- More overdose deaths involve prescription pain killers than heroin, cocaine and methamphetamines combined
- Over the past 10 years, “372% increase in the number of deaths from the mis-use of prescriptions drugs.”

– Dr. Thomas Frieden, Director CDC

- “When I went to medical school, the one thing I was told was completely wrong. **The one thing I was told was if you give opioids to a patient who is in pain, they will not get addicted. Completely wrong. Completely wrong.** But a generation of doctors, a generation of us grew up being trained that these drugs aren’t risky.”

Source: http://www.pbs.org/newshour/extra/daily_videos/prescription-drug-abuse-can-have-fatal-consequences/

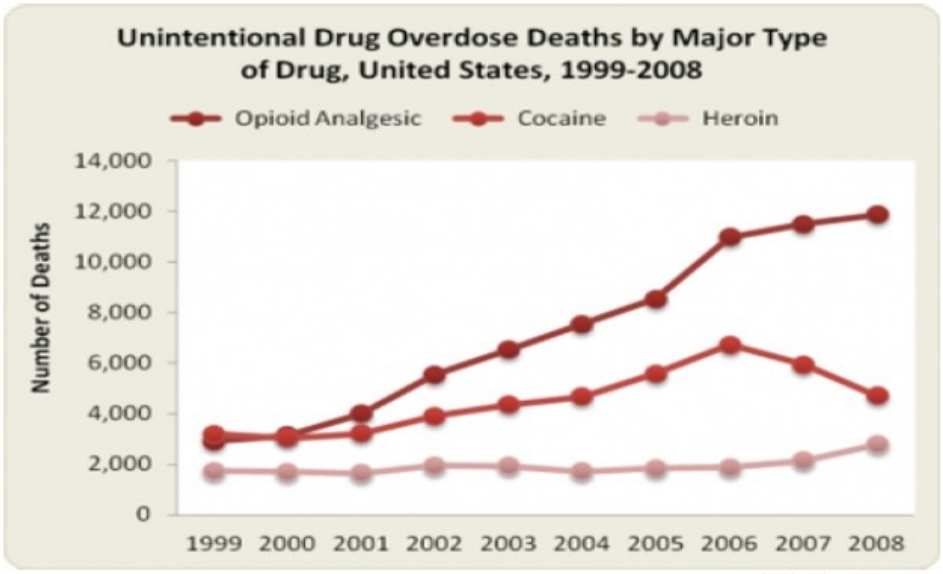
Opioid Epidemic – The Facts

- Increasing awareness that America's deadliest drug problem is prescription pain killers
- Prescription pain killers kill more Americans than cocaine, heroin, etc. **In 2009, drug overdoses overtook vehicle accidents as the leading cause of accidental deaths in America**
- Alarming rise of Neonatal Abstinence Syndrome (NAS)
  - American Medical Association – **Newborns with NAS have tripled in last 10 years** due to the increasing use of opiates among pregnant women
  - 13,539 newborns had NAS in 2010, compared to 4,692 in 2000 (JAMA)
  - Require an average of $53,400 in hospital treatment (JAMA)
- Pharmacies, physicians, news reporters, attorney generals, law enforcement agencies, etc. are much more focused on the issue
- Considerations for insurers and reinsurers
  - Physician liability, hospital liability
  - Commercial general liability and umbrella liability
  - Workers compensation medical costs

Opioid Epidemic – Alarming Stories

Rose Medical Center (TX)
Surgery scrub technician Kristen Parker infected 18 patients at Rose Medical Center with hepatitis C due to her addiction to the painkiller fentanyl. Parker replaced painkiller with saline solution.

David Kwiatkowski, a former technician at Exeter Hospital, was arrested Thursday morning at a Massachusetts hospital where he was receiving treatment. U.S. Attorney John Kacavas, who called Kwiatkowski, 33, a "serial infector" who worked in at least half a dozen states.



Kwiatkowski infected 30 people with hepatitis C.

The United States consumes 99% of world's hydrocodone supply and 80% of the global opioid supply, with only 4.6% of world's population!

Source: http://www.asipp.org/documents/ASIPPFactSheet101111.pdf

Some Challenges on the Horizon

- Opioid epidemic
  - **Haven Drugs** – The judge in the case stated that "a medical provider may owe a duty to protect the public from the actions of a drug addict, and **he may be found to have breached that duty if he creates or maintains the addiction through his own egregious conduct**."

Prescription pain killers kill more Americans than cocaine, heroin, etc. In 2009, drug overdoses overtook vehicle accidents as the leading cause of accidental deaths in America

  - **Nevada Senate Bill No. 75** -This bill provides that a person who suffers injuries as a result of an addiction to a prescription drug may bring a civil action against: (1) the manufacturer of the prescription drug; and (2) the provider of medical care who prescribed the prescription drug, **if the provider of medical care knew or should have known of the person's addiction to the prescription drug**.

Sources: SENATE BILL NO. 75–SENATOR SEGERBLOM,PREFILED JANUARY 31, 2013
1st Quarter 2013 Physician Insurer Magazine

Some Challenges on the Horizon

- Opioid epidemic

portsmouth-dailytimes.com

  - Dr. Robert Ben Mitchell, DO, has sent a Letter of Allegation (LOA) concerning what he refers to as "**the Florida Pill Mill Massacres (FPMM)** which took place in the state of Florida from 2001 through 2011" to the United Nation's Human Rights Council.
  - In the LOA, Mitchell refers to "**their voluntary, inappropriate inaction resulting in the unnecessary deaths of an estimated 40,000 to 60,000 people during the FPMM**."

- Divergent Views

Editorial: Don't undermine Florida prescription drug database
Read more: http://www.tampabay.com/opinion/editorials/editorial-dont-undermine-prescription-drug-database/2113904

Florida Drug law overreach
Read more: http://www.heraldtribune.com/article/20130409/OPINION/304099997/-1/news?Title=Drug-law-overreach

Don't punish people who really need painkillers
Read more: http://www.latimes.com/news/local/la-me-banks-prescription-drugs-20130409,0,7597716.column

Source: http://www.portsmouth-dailytimes.com/view/full_story/21884760/article-Florida-Doctor-takes-pill-mill-allegations-to-UN

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Other PPACA Considerations

- Hospitals acquiring physician practices
  - PPACA driving acquisitions that help forge closer links for referrals and capitalize on shared savings from leveraging ACO models
  - Challenges for hospitals
    - New risk exposure (i.e., inpatient versus outpatient risk)
    - Span of control issues
    - Settlement “delta”
  - Challenges for MPL insurers
    - Declining top line revenue
    - Impact on expense ratio for smaller insurers as large groups depart
    - Innovating in order to stay relevant

Other PPACA Considerations

- Aging population
  - Aging physicians
    - Physician shortages across the country when demand is on the rise
    - Long term shift away from solo and two-physician practices – 78% in 1975 to just over 30% today
    - Shift of younger physicians towards hospitalist type positions and a heavier focus on work life balance
  - Aging healthcare consumers
    - Physician panels are becoming more heavily weighted towards older Americans who have more health problems
    - PPACA messaging has increased the expectations of healthcare consumers (i.e., patients have unrealistic expectations)

Sources: Center for Studying Health System Change's *2008 Health Tracking Physician Survey*

Other PPACA Considerations

- Emergency Department Challenges
  - Patient boarding (i.e., time from disposition to transfer for admitted patients)
  - Ambulance diversion
  - Excessive wait times
  - Patients walking out of ER before receiving treatment
  - Shortage of inpatient beds
  - Shortages of on call physicians

AND THIS WAS BEFORE THE PPACA AND THE ADDITION OF 32 MILLION INSUREDS

Sources:

Other PPACA Considerations

- Rising role of NPs and PAs in the delivery of care driven by PPACA and physician shortages
  - Over a dozen states are pushing legislation to permit nurse practitioners to order and interpret tests, prescribe medications, administer tests, etc.
  - Actuarial considerations
    - The shift from shared limits to separate limits… digging deep on real claims history
    - With increased responsibilities comes increased exposure (and premiums)
    - Review of rates relative to other industry leaders

Sources:

Other PPACA Considerations

- Changing treatment options
  - "Group treatment" by physicians for diabetic and heart patients
  - Rising use of in store clinics
  - Rising use of telemedicine
  - Innovative companies providing new options for taking care of patients

ATA
American Telemedicine Association

Best Doctors®
THE REINVENTION OF RIGHT

minute clinic®
the medical clinic in CVS/pharmacy®

νRad®

What Services Can Be Provided By Telemedicine?

Sometimes telemedicine is best understood in terms of the services provided and the mechanisms used to provide those services. Here are some examples:

- **Primary care and specialist referral services** may involve a primary care or allied health professional providing a consultation with a patient or a specialist assisting the primary care physician in rendering a diagnosis. This may involve the use of live interactive video or the use of store and forward transmission of diagnostic images, vital signs and/or video clips along with patient data for later review.
- **Remote patient monitoring**, including home telehealth, uses devices to remotely collect and send data to a home health agency or a remote diagnostic testing facility (RDTF) for interpretation. Such applications might include a specific vital sign, such as blood glucose or heart ECG or a variety of indicators for homebound patients. Such services can be used to supplement the use of visiting nurses.
- **Consumer medical and health information** includes the use of the Internet and wireless devices for consumers to obtain specialized health information and on-line discussion groups to provide peer-to-peer support.
- **Medical education** provides continuing medical education credits for health professionals and special medical education seminars for targeted groups in remote locations.

www.americantelemed.org

Speaker Bio

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- Leader of Deloitte Consulting's MPL practice and claim predictive modeling practice
- Past chairperson, Casualty Practice Council Medical Professional Liability (MPL) Subcommittee
- Official spokesperson for the American Academy of Actuaries in Washington
- Advisory board member and chairman of the annual MPL ExecuSummit
- Expert witness support, rate hearing assistance and testimony for insurance departments and MPL insurers
- Speaker, trainer and regular contributor to Contingencies Magazine, Physician Insurer Magazine and other publications on MPL and other industry issues
  - To date, Mr. Bingham has published over 50 articles/papers and has spoken at more than 80 conferences/seminars