

## **Health insurance reform a MAG priority for 2009**

By Donald J. Palmisano Jr., MAG General Counsel

Health insurance in Georgia is rapidly changing, often at the expense of patients and physicians. What's more, few people understand how health insurance works in today's environment.

When a patient or an employer purchased a health insurance policy 20 years ago, health plans were responsible for paying the claims – and the health plans were responsible for the financial risk associated with making that payment. This is important because health plans are subject to the jurisdiction of the Commissioner of Insurance and state insurance laws when they assume that financial risk.

But by the late 1980s, the health plans began to take advantage of a federal law called the Employee Retirement Income Security Act of 1974 (ERISA). The health plans maintained their role as third-party administrators, but they transferred the financial risk for making the payments for health care costs to the employer. The health plans argued that they weren't subject to state insurance laws when they acted as a third-party administrator for self-insured plans. MAG and others, however, maintained that ERISA was never intended to regulate insurance. And so the debate was on: did a health plan acting as a third-party administrator for a self-insured plan have to comply with state insurance laws?

Seventy percent of Georgia's health plan market is in the third-party administration of self-insured plans, while full-indemnity insurance accounts for the other 30 percent. The only real difference between a health plan acting as a third-party administrator and a health plan offering full-indemnity insurance is the assumption of that financial risk (i.e., health plan employees otherwise do the same work for self and fully-insured businesses). With that in mind, it's not clear why a health plan would comply with state insurance laws when administering claims for a fully-insured business but not the self-insured business.

MAG supported bills that were sponsored by Sen. Ralph Hudgens (R-Hull) during the 2007 and 2008 state legislative sessions that required third-party administrators to comply with the Georgia Prompt Pay statute as a way to get the health plans to pay their self insured business claims on time. (It's worth noting that health plans pay their claims for fully-insured businesses on time nearly 100 percent of the time.) The bill passed the Senate overwhelmingly in 2007. And in 2008, the House of Representatives passed this bill in a slightly-modified form. MAG hopes to reconcile any differences between the two chambers in 2009.

MAG is also preparing for legislation in 2009 that will prohibit prior authorizations for prescription drugs, require disclosure of "rental networks," and regulate pharmacy benefit managers. And MAG believes that the health plans will be promoting legislation that decreases the out-of-network payments to physicians accepting patients with Preferred Provider Arrangements in 2009.