

*Engañar**

An Investigative Report on HCA's Discount Program for the Uninsured
and Deceptive Corporate Conduct

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Consejo de Latinos Unidos
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*Spanish for to trick or to deceive.

Executive Summary

Key Findings

Our work investigating HCA has produced the following key findings about the treatment of the uninsured and HCA's corporate conduct:

- Although HCA implemented its “new and improved” discount plan for the uninsured on October 1, 2003, not a single patient of the 143 patients who contacted us and visited an HCA facility on or after October 1, 2003 was ever told about or given information about HCA's discount plan for the uninsured while at the hospital.
- Of the 143 patients who visited an HCA facility on or after October 1, 2003, we discovered after personally meeting with them and reviewing their billing documents that only 4 had received written information on the discount plan for the uninsured via mail. Three of the 4 patients did not understand the information mailed or what it meant for them.
- The only patient of the 143 patients who visited an HCA facility on or after October 1, 2003 and who understood a letter about financial help called a 1-800 number and was told an application for charity care would be mailed. He never received anything.
- After meeting with HCA financial counselors on June 21, 2004, undercover Consejo volunteers confirmed that HCA facilities are not providing information on the discount plan for the uninsured and that financial counselors appear not to have even a basic understanding of the program.
- HCA has altered its methodology in its Form 10-K SEC filings for 2003 for what appears to be an attempt to obscure data on the overcharging of the uninsured. Last year, the Consejo was able to estimate that HCA had overcharged the uninsured by \$2.1 billion in 2002 based on HCA's Form 10-K SEC filing for 2002. (SEE APPENDIX A.)
- HCA attorneys have attempted to squash the legal rights of price gouged uninsured patients by incorrectly, if not deceptively, saying the uninsured were included as part of the class of a class-action settlement in 2003, *In re Columbia/HCA Healthcare Corporation Billing Practices Litigation*, Case No. 03-98-MDL-1227, (M.D. Tenn. 2003).
- Although in recent months HCA has attempted to blame its bad debt load and bleak earnings on the uninsured, HCA's outrageously high prices and inflexible payment terms for the uninsured appear to be the causes of these financial trends. In 2003, after reviewing Medicare data, HCA's prices increased again by an approximate 20 percent, creating this self-inflicted financial situation. The average cost increase for hospitals nationally in 2003 was in the range of 5 percent.

- According to the December 31, 2002 Medicare data, HCA's national average cost to charge ratio is .293, which means the uninsured are charged 340 percent times cost, while in Florida, a major market for HCA, the cost to charge ratio in 2003 is now .208, which means the uninsured are charged almost 500 percent times cost.
- HCA appears to be litigating more aggressively against the uninsured. Court records in Miami-Dade County, Florida show a steady decline in lawsuits against patients by most hospitals between 2000 and 2003. HCA, which owns three hospitals in the market, saw a *five-fold increase* in aggressive lawsuit action between 2000 and 2003.
- HCA recently announced a "Deposit or Dump" program that appears to conflict with the hospital giant's *Code of Conduct*. Under this new policy, uninsured patients may be forced to make a deposit before services are rendered or be refused service and "dumped" onto another health system.
- HCA appears to intentionally deny the uninsured access to a UB-92 copy of their bill, a direct violation of HIPAA, the "Health Insurance Portability and Accountability Act of 1996." A UB-92 is a federal form that includes diagnosis codes from which consumers can do an analysis to see if they have been price gouged. HCA hospitals have repeatedly refused to give uninsured patients copies of this bill, claiming it is for government programs and insurance companies. That is false. As part of a patient's permanent set of records, the uninsured patient is entitled to a copy of this bill.

Introduction

“We act with absolute honesty, integrity and fairness in the way we conduct our business and the way we live our lives” is what one of the value statements of the Hospital Corporation of America (HCA) declares.

Since hospital price gouging and aggressive collection activities first exploded on the national scene in February of 2002 to the eve of the most in-depth hearings on hospital billing practices to be held by the powerful Subcommittee on Oversight and Investigations of the Energy and Commerce Committee of the United States House of Representatives, we believe HCA appears to have engaged in an insidious public relations campaign.

HCA, the nation’s largest for-profit hospital system, appears to want to deflect attention away from their actual day-to-day behavior and construct a false façade to obscure their greedy and ruinous conduct against the uninsured.

Regardless of their words, HCA appears to regularly “engañar” the uninsured, investors, government investigators, and the public about their behavior and practices regarding the uninsured. “Engañar” is Spanish for the verb to deceive or to trick.

In March of 2003, HCA announced with great publicity that they were offering the uninsured an improved sliding scale discount program with new policies and provisions.

Unlike our previous investigative reports that documented horrific cases of price gouging and collection activity, this report will document two things: (1) how HCA has not lived up to its so-called discount plan for the uninsured that the company supposedly implemented on October 1, 2003 and (2) how HCA has become more aggressive with the uninsured.

HCA appears to have tossed its value statement over the side of the bridge. Dishonesty, lack of integrity, and absolute unfairness come to mind after looking at the empirical evidence against HCA as documented in this report.

The Uninsured

When we talk about the uninsured, we are talking about families that are not poor enough to qualify for Medicaid or charity care, but not wealthy enough (or healthy enough) to purchase health insurance. They are in the middle, stuck paying the full bill.

HCA and others appear to be intentionally trying to confuse people and the media by throwing out numbers about the millions hospitals give away for charity care, for uncompensated care, or in write-offs. A hospital association spokesperson was recently quoted as saying, “No other industry, organization, corporation or foundation gives away their services the way hospitals do.”¹

¹ Schneider, Michael, “Legal program to aid state’s uninsured challenge hospital bills,” *Associated Press*, April 29, 2004.

We are *not* talking about charity care cases or giveaways. We are talking about uninsured families who are stuck paying the bill and are aggressively sought after by hospital collectors.

Price Gouging of the Uninsured

Around the nation, many hospitals, like HCA, have discovered that they can charge much higher prices to uninsured patients who are not represented by a powerful insurance company.

Typically, a hospital will charge uninsured patients three, four, or even five times as much as what an insured patient pays for the same procedures or services. We have repeatedly analyzed medical bills to the uninsured and documented data that supports this notion, and a study by Gannet News Service confirmed our numbers.²

Price gouging by hospitals truly leads to financial ruin. Research done by Harvard University shows that one-half of all bankruptcies are caused by medical debt.³ A medical bankruptcy is not caused by a visit to the doctor for a running nose. It is caused by a visit to the hospital, which will pursue an uninsured patient with heartless bill collectors and aggressive attorneys to take whatever the patient has to pay the outrageously high hospital bill.

In 2003, Consejo released *Infierno* and reported:

“Hospitals have quietly cultivated a lucrative self-pay market and are collecting significant sums of money from uninsured patients, including low-income families who may own a home. By pressuring uninsureds to make high monthly payments, offering superficial lump-payment ‘discounts,’ encouraging credit card debt, and suing those with assets, hospitals are reaping in huge profits off the backs of families who lack medical insurance coverage.”⁴

Although we help all uninsured families regardless of race, ethnicity or income, our goal is to end the deceptive and harmful practices of hospital price gouging. And we are succeeding.

On January 28, 2003, *The Wall Street Journal* reported “a big win” for the Consejo when Tenet Healthcare, the nation’s second largest hospital chain announced that it would end the practice of price gouging uninsured patients and adopt a “Compact With the Uninsured” (see Appendix B).

Tenet’s Compact incorporates four important policies that correct the abuses we have seen in the marketplace. These pillars of excellence include charging the uninsured discounted managed care rates, offering reasonable payment plans to the uninsured over a reasonable period of time, verifying that uninsured families do not qualify for charity care or government aid, and ending lawsuits against uninsured families whose only asset is the family home.

² *Florida Today*, Gannett News Service, November 5, 2003.

³ From *AMS News*, February 3, 2003. Elizabeth Warren, Professor, Harvard Law School.

⁴ Forbes, K.B., *Infierno*, Consejo de Latinos Unidos, July 16, 2003, page 4.

All uninsured families, regardless of race, ethnicity, or income, will be offered the managed care rates: a flat rate that treats the uninsured equally and fairly.

The Consejo was the first organization to outline Tenet's "aggressive pricing strategies" against uninsured patients in February of 2002, which caused a flurry of national stories across the country.

Last summer, the U.S. House Energy and Commerce Committee announced it would conduct hearings on the subject. On July 16, 2003, *Bloomberg* reported:

"The House Energy and Commerce Committee is examining whether uninsured patients pay more than managed-care patients who get discounts for medical services. 'The uninsured seem caught in the middle of the sophisticated and complicated forces driving health-care financing,' the committee's letter to hospitals said. 'Medical providers may be generating a disproportionate share of profit from this relatively small group of patients.'"⁵

Those hearings will be held tomorrow.

This investigative report contains two more sections:

1. ***Deceptive Corporate Behavior***: A review of empirical evidence that shows that HCA appears to engage in deceptive corporate behavior regarding the uninsured and testimonials that strongly suggest that HCA's new discount plan appears to be a scam.
2. ***Conclusion***: Some closing points.

⁵ Snider, Keith, "HCA, Tenet, Rival Hospitals Face Congressional Probe," *Bloomberg*, July 16, 2003.

Deceptive Corporate Behavior

HCA announced a “new and improved” discount plan for the uninsured in March of 2003. The *Associated Press* reported:

HCA, the nation's largest for-profit hospital chain, plans to create discounts for low-income uninsured patients and to provide more financial relief for charity care patients. Under HCA's proposal, there would be a sliding scale of discounts for uninsured patients with incomes between 200 percent and 400 percent of the federal poverty level. Patients at or below 200 percent of the federal poverty level would receive free care. The company said 70 percent of its hospitals already have been using that standard.⁶

At the time, the Consejo called the proposal “worthless fluff,” saying in a media statement, “Every so-called revision has a weasel-worded qualifier. Under this worthless fluff, uninsured patients will have to prove their treatment is ‘non-elective,’ prove their home is worth less than \$300,000, prove they have the inability to pay before having their wages garnished, or wait until the Lords of the House of HCA find it ‘appropriate’ to offer a payment plan. If not, HCA will simply price gouge them. That is immoral.”

In March of 2003, the evidence we had collected from uninsured patients in Oklahoma, Florida, and Colorado pointed to the fact that what HCA wrote on paper as “policy” appeared not to be practiced in the marketplace.

We believed that HCA would not successfully implement its “new and improved” discount plan for the uninsured and patients would continue to be price gouged and harassed. To us, HCA’s actions were nothing more than a façade.

Our notions were right on target.

Eight months after quietly implementing their “new and improved” sliding scale discount plan for the uninsured on October 1, 2003, we simply conclude that HCA is not living up to its policies. Consejo has gathered irrefutable evidence that HCA appears to have deceived the American public, corporate investors, and government investigators in an attempt to protect their outrageously high prices and deflect attention away from their day-to-day behavior.

Between January 1, 2004 and June 15, 2004, more than 650 uninsured families have contacted the Consejo. We have interviewed 462 of these price-gouged victims fully. 143 patients who contacted us visited an HCA facility on or after October 1, 2003. Most of these victims called us from Colorado and Florida.

Not a single patient of the 143 who contacted us and visited an HCA facility on or after October 1, 2003 was ever told or given information about HCA’s discount plan for the uninsured while at the hospital. This is not an issue of “glitches” with implementation. Some of our HCA patients who contacted us obtained services in April and May of 2004.

⁶ Miller, Karin, “HCA to Offer Discounts to Uninsured,” *Associated Press*, March 16, 2003

Of the 143 patients who visited an HCA facility on or after October 1, 2003, we uncovered, after reviewing their billing documents, that only 4 received written information in the mail on the discount plan for the uninsured. Three of the 4 did not understand the information mailed or what it meant for them.

The only patient of the 143 patients who visited an HCA facility on or after October 1, 2003 and who understood a letter about financial help called the 1-800 number and was told an application for charity care would be mailed. He never received anything.

Some of these patients we met with were so low-income, they should have qualified for charity care. We encouraged them to go back to the hospital and demand applications for charity care.

On June 21, 2004, undercover Consejo volunteers visited HCA facilities in Colorado and Florida, met with HCA financial counselors, and confirmed that HCA's "discount plan for the uninsured" was not practiced in the marketplace.

Strongest Evidence: Patient Testimonials

We specifically met with and interviewed uninsured patients who went to an HCA hospital on or after October 1, 2003 and specifically asked them about their billing and financial counseling experience. We were stunned when no one acknowledged knowing about HCA's sliding scale discount plan for the uninsured. Below is a sampling of patients we interviewed.

Humberto P., who works at a temporary employment agency, went to an HCA facility in Colorado and had an appendectomy. He was charged \$26,800, about five times more than what an insurance company would pay for the exact same care. "I was sleeping and this occurred on December 18, 2003 and I felt stomach pain. I went to the hospital on the morning of December 19, 2003 and stayed until Sunday, December 21, 2003."⁷ Did the hospital ever offer him government aid, offer a discount or mail him information on HCA's sliding scale discount plan? Humberto replies, "No, never. They have called me twice and they have sent me these bills." In May, HCA collectors were continuing to harass and intimidate him. Humberto, a married man, earned \$16,000 last year and should have qualified for charity care.

In February, more than four months after HCA supposedly implemented their new discount program, **Mario P.** went to the billing office of an HCA hospital in Orlando, Florida seeking aid for services rendered. "I went to the administration offices of the hospital and a person there helped me. They first told me to pay it all up front. Then they told me I had to pay [monthly installments] within six months or it would be reported on my credit record." Did they ever offer a discount plan or charity care? "Absolutely not."⁸

Isela D. says, "I have been calling the hospital to make payment arrangements, but I cannot reach anyone."⁹ She went to an HCA facility in Denver after suffering from an allergy attack in

⁷ Case C003.

⁸ Case R036.

⁹ Case C029.

May, seven months after the new policy became effective. She earns \$800 a month and should have qualified for free care.

Ramon S. went to an HCA hospital on January 15, 2004 after falling and breaking both wrists. His wife Olga recalls, “They said we did not qualify [for Medicaid] because we own a home, and we own our cars.” The couple’s home is worth \$130,000. Ramon’s daughter recalls, “We applied...but they said that there was a possibility he would not qualify because they own a home and they have more than two cars. [HCA] said that maybe the hospital would give us a payment plan of \$2,000 per month so that we could pay these bills...[and] said that if they were to give us a discount we would have to pay cash right away.”¹⁰ Ramon earns about \$22,000 a year. The Consejo encouraged the family to return back to the hospital and apply for charity care or Medicaid. Ramon eventually received Medicaid assistance.

In May, seven months after HCA new policy was in place, **Lourdes O.** visited a local HCA hospital twice. On both occasions, she was never told about charity care or the discount plan. “The last call I received the hospital told me to take this opportunity and pay by phone using check or credit card,” she says.¹¹ Lourdes’ husband is a driver and earns \$20,000 a year. They have two children. Having earned less than 200% of the federal poverty level, HCA should have provided the family with free charity care.

On January 26, 2004, **Rocio H.**, an unemployed housekeeper, went to the hospital for a miscarriage. She was charged \$2,794. Did the hospital help her apply for Medicaid or give her information on their new program for the uninsured? “No, nothing. I have only received these three bills.”¹² Under Consejo’s encouragement, she went back to the hospital and she attempted to get aid. The hospital told her they could not help her and to call a toll-free number. She did and the collector demanded she pay \$200 a month.

Nereida L.’s brother went to the hospital for pain in January of this year. “He had pain on his side. He does not have insurance,” she said. “They gave me a number to call. I called to try to make payment arrangements. They told me that if I did not pay them [in full], my brother would be sent to collections.”¹³ HCA never mentioned their discount plan.

“They specifically called me and gave me two options: pay the whole amount or be sent to collections,” said **Santos G.** who visited an HCA hospital on April 2, 2004 six months after the program had been made available.¹⁴ He had gone to the hospital for extreme kidney pain, spent six hour there, and was charged almost \$10,000. With two children, he and his wife have a household income of \$41,000 which means they should have qualified for a discount.

Mauricia C.’s daughter Maria went to an HCA hospital for stomach pain in January and was charged \$6,600 for a four-hour visit. “I work at Taco Bell and my husband works in

¹⁰ Case M008.

¹¹ Case R031.

¹² Case C010.

¹³ Case M006.

¹⁴ Case R013.

construction,”¹⁵ she told us. She was never contacted or told about HCA’s discount plan for the uninsured.

Oreste G. received a \$6,720 bill from an HCA facility, equal to half his annual salary as a gas station cashier. He has Bells Palsy, which is a muscle ailment that causes facial muscles to droop. He visited the hospital on January 14, 2004. “I think a social worker spoke to me. A woman asked me some personal information and I believe she was a social worker. I am not sure. She did not identify herself.”¹⁶ Consejo encouraged Oreste to go back and ask for charity care. He eventually received a free care.

“I called the hospital a week after being there, and they told me I would get a \$1,000 discount if I paid in 30 days,”¹⁷ says **Josefina C.**, a housekeeper who earns \$800 a month. She went to the Colorado hospital on May 11, 2004 for stomach pain and was charged almost \$2,000. Under HCA’s policies, she should have qualified for free care. She was never informed, never contacted.

Nieves Maria G. had low blood pressure and went to an HCA Medical Center in December 2003. “Rescue took me to the hospital. I was at work and I started feeling badly. I was in the hospital for about an hour. [A social worker at the hospital] came to speak to me,” Nieves states. Asked if they had her fill out an application, she replied, “No, they just asked me some questions.”

On October 28, 2003, **Julia G.** went to an HCA Medical Center in Denver. Originally from Peru, Julia works at Burger King. “They found gallstones. They said I would need surgery but they never operated on me. At midnight they asked me if I had insurance and they never came back. The next morning they came back. I am not an idiot; so I concluded that they were never going to operate on me. I told my husband that I knew they were not going to give me surgery. I left ... I know they discriminated against me because I was uninsured. All they ever did was send me all these bills.” She was charged \$8,000. Asked if HCA ever sent her any information in English or Spanish that talked about their discount plan, Julia states, “They sent [me information] later on. It gave me information about other hospitals and not about help with my bills.”¹⁸ She and her husband earned \$24,000 last year and should have qualified for a discount. In May, HCA sued her.

Monica C. took her son to an HCA hospital on November 29, 2003. He was suffering from a very bad cough. Asked if they contacted her or told her about their discount program for the uninsured, Monica simply states, “They did not call to help me. They called to collect their money.”¹⁹

¹⁵ Case C023.

¹⁶ Case M007.

¹⁷ Case C030.

¹⁸ Case C004.

¹⁹ Case C007.

Dora V. was kept overnight for a bad stomach virus on October 23, 2003. She, too, was never told about the new discount plan or offered Medicaid. “They don’t ever talk about that. They are only interested in collecting their money,”²⁰ Dora, a mother of two, states.

Nelba M. ended up paying big bucks after cutting her finger. She may have qualified for charity care, but she was never informed. Nelba went to the hospital on November 18, 2003. “I cut my finger with a glass vase. Kendall Hospital is the closest to my home and I thought they would help me. They charged me \$2,289 [for seven stitches]. And we had to give a \$300 deposit...because I was uninsured they would not be able to see me unless I gave a \$300 deposit. My son used his credit card.”²¹ Her son Pablo states, “It was pretty clear that if she did not pay she would have to take her finger somewhere else.” The hospital accepted a \$1,000 lump-sum payment to settle the \$1,889 balance due, never offering her aid or reasonable monthly installments.

Edith M. was one of the three patients who received written materials on HCA’s discount program. She did not understand what the letter was about. The Consejo asked her to apply. Edith went to an HCA hospital in Miami on November 17, 2003. “I had a virus. I felt very badly. My back was really hurting. An ambulance took me to the hospital. I was in the hospital for less than four hours and they are charging me as if I had been there 2 or 3 days [\$10,500]....I am diabetic.”²² The hospital allegedly ended up asking her to leave. “I was asleep. I wasn’t even able to walk. They said they had to release me because I was uninsured.” Edith claims no one ever mentioned the discount plan or told her to expect materials in the mail.

Norma P. went to an HCA facility in December of 2003 for a broken ankle. She was charged \$55,000. “No, they did not tell me I could apply for anything. My brother told me to apply [for Medicaid]. I was told I did not qualify.”²³ Consejo insisted that she apply for charity care. She did and eventually obtained free care. “This is all because of the Consejo helping me,” she said.

Juan J. went to an HCA hospital in November of 2003 for head pain and was charged \$5,000 for the three-hour visit. Juan was never told about the HCA discount plan. “They just sent me these bills and they said I would have to pay \$500 monthly,” he explained. “I asked them if they had a discount program and they said they did but that I would have to make at least three payments [before I could get a discount.]”²⁴

HCA’s “New and Improved” Deception?

The bottom line is HCA has not informed people about the discount program for the uninsured or sincerely worked as patient advocates. This is not an issue of “glitches” or implementation problems; it appears to be nothing more than deceptive corporate behavior. Although HCA may be able to demonstrate that some uninsured patients did receive free care or discounted care, two questions remain: Of all the uninsured patients that visited an HCA hospital on or after October

²⁰ Case C008.

²¹ Case M019.

²² Case M017.

²³ Case C016.

²⁴ Case C018.

1, 2003, what percentage actually received free charity care? And what percentage received discounted care?

The evidence we have gathered shows that HCA appears to continue to send uninsured patients who should have qualified for aid to collections. HCA continues to attempt to collect four or five times more than what an insurance company would pay for the same services. HCA continues to aggressively litigate against the uninsured. And HCA continues to offer inflexible payment terms to uninsured families.

We believe the reasoning could be financial motives. While charity care cases are not reported, “the revenues associated with uninsured patients that do not meet [HCA’s] current guidelines to qualify as charity care are generally reported in revenues at gross charges.”²⁵

Consejo Volunteers Confirm HCA’s Non-Existent Discount Plan

The Consejo, wanting to verify the repeated claim that HCA facilities were not assisting the uninsured with discounted or free care, sent volunteers to facilities in Florida and Colorado on June 21, 2004 asking for information about the discount plan for the uninsured.

After meeting with HCA financial counselors, the undercover Consejo volunteers confirmed that HCA facilities are not providing information on the discount plan for the uninsured and that financial counselors do not even have a basic understanding of the program

In Colorado, our volunteer claimed to be assisting someone who needed gallbladder surgery but was uninsured. When he went to the emergency room at the Medical Center of Aurora, a supervisor referred him to a financial counselor. He asked the financial counselor for a brochure on the “discount plan for the uninsured.” The financial counselor had no literature to give and responded, “It’s nothing we go around saying anything about.” Persisting that the uninsured patient urgently needed the gallbladder surgery and was told the hospital had a discount policy, our volunteer eventually persuaded the financial counselor to “look into” the matter. When she returned, she told our volunteer that the hospital would give a 50 percent discount if the balance were paid in full within 30 to 60 days. Our volunteer then asked if the uninsured patient had to qualify for the discount. “No,” said the financial counselor who then advised that the uninsured patient would have to make a \$200 deposit before services were rendered.

In Orlando, a Consejo undercover volunteer went to Osceola Regional Medical Center alleging she was uninsured and needed medical treatment. “When I went there, they sent me to the business office. I went to the business office, and they told me they didn’t have any kind of a discount plan or payment plans or anything for the uninsured,” our female volunteer reports. “If I needed any kind of medical attention, I would have to go to Osceola County Women and Children [facility] and they would qualify me according to my income. The [HCA] hospital itself does not have any way of helping me. I told them I was uninsured.”

On the county’s website, the Consejo did find a Center for Women and Family Health and a “primary care” program where “eligibility of service is based on financial screening.”

²⁵ HCA’s Form 10-K filing for the U.S. Securities and Exchange Commission, 2002, page 66.

Changing Categories with the SEC

The Consejo has uncovered that HCA has altered its methodology in its Form 10-K SEC filings for 2003 for what appears to be an attempt to obscure data on the overcharging of the uninsured. We believe no analyst has picked up on this change.

Last year, the Consejo was able to estimate that HCA had overcharged the uninsured by \$2.1 billion in 2002 based on HCA’s Form 10-K SEC filing for 2002. (SEE APPENDIX A.)

In the chart below are the old categories and data from Form 10-K filings before 2003. Note there are four categories and the uninsured, self-pay category can be easily identified as “other.”

All numbers are percentages %	2002	2001	2000	1999
Admissions				
Medicare	38	38	37	38
Medicaid	11	11	11	11
Managed Care and Other Discounted	41	41	42	41
Other	10	10	10	10

The new categories from the Form 10-K filing of 2003 have been condensed to three categories. Please note that Medicare is the only category that has stayed the same. Although one word has been added, the “Managed Care and Other Discounted Plans” category appears to be different from the old “Managed Care and Other Discounted” category.

All numbers are percentages %	2003	2002	2001
Admissions			
Medicare	39	38	38
Managed Care and Other Discounted Plans	45	47	48
Medicaid and Self Pay	16	15	14

We could not find the reasoning for these changes.

Squashing the Rights of the Uninsured

The uninsured are being educated and empowered by the Consejo. In April, the Consejo launched its first legal aid program in Florida. As reported by the *Bonita News*:

An advocacy group said Wednesday that it would offer free legal representation to uninsured people in the state who get care at hospitals but are then charged high prices they cannot pay. The move could result in a flood of lawsuits against local hospitals and the bill collection agencies many of them employ to get reimbursement from those they treat. The attorneys who will do the work said at a press conference in Fort Myers that

they hoped to put pressure on hospitals [that] required people without health insurance to pay “unreasonable” prices.²⁶

Now it appears that HCA attorneys are attempting to squash the legal rights of price gouged uninsured patients by incorrectly, if not deceptively, saying the uninsured were included as part of the class of a class-action settlement in 2003.

Under Consejo’s legal aid program for the uninsured, two uninsured patients recently sued HCA for unfair and deceptive business practices. While filing a Motion for Sanctions instead of the usual Motion for Dismissal, an HCA attorney wrote:

[Such] claims are still barred under *res judicata* principles. As shown below, each of these plaintiffs claims against HCA and its subsidiaries...were the subject of a class action lawsuit, *In re Columbia/HCA Healthcare Corporation Billing Practices Litigation*, Case No. 03-98-MDL-1227, (M.D. Tenn. 2003) that was subject of settlement agreement and judgment of the United States District Court for the Middle District of Tennessee.

In that lawsuit, the District Court certified the following class of individuals “all private individuals who paid any amount whatsoever for healthcare-related goods, services and/or treatment, including without limitation medical services, pharmaceuticals, laboratory tests, and medical supplies provided by HCA” (the “Class”).²⁷

Matthew Dietz, Consejo’s outside counsel and a well-known and respected civil rights attorney, replied on behalf of two uninsured patients, who he represents:

After reviewing the settlement document and court order, I am surprised and insulted that you are threatening me with sanctions regarding this document when it obviously does not apply, and you further skirt the obvious inapplicability both in your letter and your motion.

As an attorney who has worked on over six class actions, I am very familiar with the applicability and operation of same, and let me direct you to the release of this agreement on page 22, paragraph A, which states:

each releasing person ...entitled to bring suit under Employee Retirement Income Security Act of 1974, as amended (ERISA) on behalf thereof, hereby fully release and forever discharge the Released Parties from the Released Claims.

Further this intent to apply to persons eligible under ERISA is evident in the definition of Releasing Persons or in the Court’s Order as follows:

²⁶ Raghunathan, Abhi, “Advocacy Group Offers to Represent Poor Facing Large Medical Bills,” *Bonita News*, April 29, 2004.

²⁷ Letter from Walter J. Tache of Zuckerman Spaeder LLP to Matthew Dietz, Esq., May 26, 2004, page 1.

All private individuals who paid any amount whatsoever for healthcare-related goods, services or treatment, **including without limitation**, medical services, pharmaceuticals, laboratory tests, and medical supplies, provided by any Released Party, **including** individuals who paid such amounts as a co-payment or deductible amount.

As the drafters of the agreement necessarily knew how to use language of inclusion and language of exclusion, it is evident that this subsection of the Releasing Persons language applies to persons under ERISA plans that are underinsured or have high deductibles. Under the doctrine of interpretation *expressio unius est exclusio alterius*, the express inclusion of one category means the exclusion of another. As such, and as you know, the uninsured victims of HCA's price gouging were not parties to this agreement...

If you do not withdraw your motion for sanctions, and immediately refrain from making such threats, I will ask the court for sanctions for your attempt to dismiss this complaint.²⁸

Using legal tricks and threats of sanctions, HCA lawyers appear to want a one-way street: the ability to harass and sue the uninsured while suppressing the ability of the uninsured to defend themselves from HCA's reckless price gouging behavior.

A Constant Pattern of Corporate Deception

Saying one thing and doing another appears to be an institutional trait at HCA.

On October 21, 2002, Consejo de Latinos Unidos met with two top executives at HCA, Sam Hazen, President of the Western Group of HCA, and Beverly Wallace, Senior Vice President of Revenue Cycle Operations Management at HCA's headquarters in Nashville, Tennessee.

Consejo's goal was to build a cooperative relationship to help the uninsured attain reasonable pricing with the nation's largest for-profit hospital system and let HCA be the shining example of excellence. Operating mostly in California, the Consejo had no complaints about HCA at the time because HCA was not a major player in the Golden State. The Consejo was hoping HCA would change its practices, and charge the uninsured reasonable rates like Medicare plus a percentage or managed care rates.

The meeting with Hazen and Wallace was cordial and went well. The Consejo was told a review of the entire billing and collection operation from "top to bottom" would take place and that we would be contacted.

²⁸ Letter to Walter J. Tache of Zuckerman Spaeder LLP from Matthew Dietz, Esq., June 1, 2004, page 1-2.

On December 5, 2003, the Consejo contacted Sam Hazen of HCA. Seven weeks had passed since our initial meeting. In an email, we wrote, “[We are] sure you read that Tenet is going to offer managed care prices to the uninsured. Tenet’s Vice-Chairman has been in touch with us. What is happening on your front? Has the review been completed?”

On December 10, 2002, Sam Hazen replied via email, “The process is still on-going. I am hopeful it will be concluded shortly. Once concluded, we will share it with you.”

The Consejo never heard from HCA again.

We believe that HCA deceived us and never intended to truly help the uninsured or work with advocates for the uninsured.

But we are not surprised.

As we reported in our *Infierno* report: “HCA has a spotted history when it comes to honesty and integrity. [In 2003], the hospital giant agreed to pay almost \$900 million to settle claims of Medicare and Medicaid fraud. Since 1999, HCA has paid a combined ...\$1.7 billion to settle claims of fraud...[and] HCA appears to be engaged in the most deplorable, immoral, and egregious behavior we have ever seen against the uninsured.”²⁹

Bogus Blame

Although in recent months HCA has attempted to blame its bad debt load and bleak earnings on the uninsured, HCA’s outrageously high prices and inflexible payment terms for the uninsured appear to be the causes of these financial trends.

Over 4,000 uninsured families have contacted the Consejo. Not a single patient we have contacted or interviewed, including the 143 who went to an HCA facility on or after October 1, 2003, has refused to pay for services rendered; on the contrary, they want to pay what is “reasonable and just.”

In 2003, after reviewing Medicare data, HCA’s prices increased again by an approximate 20 percent, creating this self-inflicted financial situation.³⁰ The average cost increase for hospitals nationally in 2003 was in the range of 5 percent.

“Charges have gone up quickly in recent years and often bear little relationship to the actual cost of services. ‘It’s not unusual for a hospital’s billed charges in a market to increase 25% to 30% in one year,’ says John Bauerlein, senior partner Milliman USA, a firm that tracks health care spending.”³¹

²⁹ Forbes, K.B., *Infierno*, Consejo de Latinos Unidos, July 16, 2003, page 8.

³⁰ Some of the Medicare data ending 12/31/03 on individual hospital cost to charge reports are from previous years and have not been updated. The situation could be worse in some markets where data are two or three years old.

³¹ Appleby, Julie, “Hospital Bills Spin Out of Control,” *USA Today*, April 13, 2004.

According to the December 31, 2002 Medicare data, HCA's national average cost to charge ratio is .293, which means the uninsured are charged 340 percent times cost, while in Florida, a major market for HCA, the average cost to charge ratio in 2003 is .208, which means the uninsured are charged almost 500 percent times cost.

No UB-92 for U

Like their counterattack to our legal aid program, HCA appears to want to suppress the uninsured from obtaining information about hospital price gouging. One tool we educate the public about is the UB-92 medical bill. A UB-92 is a federal form that includes diagnosis codes in which consumers can do an analysis to see if they have been price gouged.

After a patient requests a copy, HCA hospitals appear to intentionally deny the uninsured access to a UB-92 copy of their bill, a direct violation of HIPAA, the "Health Insurance Portability and Accountability Act of 1996." HCA hospitals across the country have repeatedly refused to give uninsured patients copies of this bill, claiming it is for government programs and insurance companies. That is false and deceptive. As part of a patient's permanent set of medical and financial records, the uninsured patient is entitled to a copy of this bill.

The Consejo met with officials of the Office of Civil Rights of the U.S. Department of Health and Human Services on March 31, 2004, who affirmed that patients have a right to this form.

We will soon have HCA patients file complaints with the Office of Civil Rights for this gross misconduct. We should note that a handful of HCA uninsured patients finally obtained a copy of their UB-92 after our legal team sent letters demanding a copy.

The Newest Deceptive Practice? HCA's Deposit or Dump Program

We feel that HCA is in the process of deceiving the public again. HCA's official *Code of Conduct* is about to be ignored. Last month, HCA announced its new "Deposit or Dump" program. Read the comments by HCA's spokesperson carefully.

"HCA... announced that it was requiring patients with insurance to pay a deposit up front when they receive medical care at its hospitals. HCA's program of providing free or discounted care to the uninsured is not affected by the policy, spokesman Jeff Prescott said. HCA operates 190 hospitals. HCA also is offering discounts for fast payment of bills. When patients seek nonemergency care in its emergency rooms, HCA also may begin asking for a deposit. Patients who do not make that payment could be referred by medical case managers to other facilities, the company announced."³²

What does that mean? Uninsured and insured patients will be required to pay a deposit before services are rendered or be dumped on another hospital system.

Even though HCA implies that the uninsured will not be asked for deposits, that notion appears to be a lie. In April, Santos G. was forced to make a deposit of \$200 while receiving emergency

³² Lewis, Bill, *The Tennessean*, May 20, 2004.

room care for extreme kidney pain.³³ Nelba M. went to the hospital as a cut finger bled and her son was required to charge \$300 on his credit card as a deposit *last November*.³⁴

HCA specifically says the uninsured that qualify for free or discounted care are not affected. The reality is that patients who are provided with free or discounted care find out if they are eligible after services are rendered. Deposits are required before services are rendered.

We have yet to find a “pre-qualified” HCA patient.

We recently interviewed an underinsured woman³⁵ in Orlando who was forced to “deposit” \$1,000 for a colonoscopy, a procedure that typically costs less than half of the deposit. She believes she will be billed another \$4,000. Will HCA reimburse her or any of the depositors if costs are genuinely less?

This new “Deposit or Dump” policy also appears to conflict with HCA’s *Code of Conduct*:

Provided we have the capacity and capability, anyone with an emergency medical condition is treated. In an emergency situation or if the patient is in labor, we will not delay the medical screening and necessary stabilizing treatment in order to seek financial and demographic information. We do not admit, discharge, or transfer patients with emergency medical conditions **simply based on their ability or inability to pay or any other discriminatory factor.**

Patients with emergency medical conditions are only transferred to another facility at the patient’s request or if the patient’s medical needs cannot be met at the HCA facility (*e.g.*, we do not have the capacity or capability) and appropriate care is knowingly available at another facility. Patients are only transferred in strict compliance with state and federal EMTALA regulatory and statutory requirements.³⁶

The real ugliness of HCA’s “deposit or dump” policy is that the uninsured who are low income and sick may simply be “stabilized” and then dumped onto other hospitals systems instead of being treated.

And who will determine what is “nonemergency care?” HCA, of course. Remember Julia G. who works at Burger King and needed her gallbladder removed last October?

“They found gallstones. They said I would need surgery but they never operated on me. At midnight they asked me if I had insurance and they never came back. The next morning they came back. I am not an idiot; so I concluded that they were never going to operate on me. I told my husband that I knew they were not going to give me surgery. I left ... I know they discriminated against me because I was uninsured. All they ever did was send me all these bills.” She was charged \$8,000. Asked if HCA ever sent her any

³³ Case R013.

³⁴ Case M019.

³⁵ She has a hospital-only insurance policy with a \$1,000 deductible.

³⁶ *Code of Conduct*, hcahealthcare.com, April 15, 2003 edition, page 13. Emphasis added.

information in English or Spanish that talked about their discount plan, Julia states, “They sent [me information] later on. It gave me information about other hospitals and not about help with my bills.”³⁷

HCA allegedly sent her an official “dump” hospital list.

Sharp Increase of Lawsuits by HCA

HCA appears to be litigating more aggressively against the uninsured. HCA as a practice does not pursue collection of amounts determined to qualify as charity care. What does that mean? Give discounts to the low-income people from whom you cannot collect anyhow, but get everything from the middle-class.

We were able to review hundreds of lawsuits filed at the Miami-Dade County courthouse. Between 2000 and 2003, most major hospitals have seen a significant decline in lawsuits against patients.³⁸ The allegation that HCA partakes in aggressive collection efforts is supported by a review of court filings. In that four-year period, filings have increase a staggering 629 percent at Kendall Regional. In addition, Aventura and Cedars, the other two HCA hospitals in Miami, have also shown a dramatic increase in filings. All three hospitals saw a *five-fold increase* between 2000 and 2003, going from 100 to 511 cases filed.

Hospital	2000 Filings	2003 Filings ³⁹	Change
Aventura	50	157	Increase of 214%
Baptist	220	73	Decline of 67%
Cedars	16	106	Increase of 563%
Jackson Memorial	482	77	Decline of 84%
Kendall Regional	34	248	Increase of 629%
Mercy	198	198	No change

HCA Takes Entire Savings of Poor Patient Who Should Have Qualified for Free Care

“I am tired [of] this run-around that has been going on for almost a year [that] has caused me great mental damage, anger and disbelief that you can treat your ‘patients’ in this fashion,” writes Horacio A., who visited an HCA facility in Miami. “I am sorry to say that now I have no other choice but to **again** file complaints against Aventura Hospital to the pertinent [consumer and state] agencies....”⁴⁰

Horacio wrote the email on May 24, 2004 to Michael Houston, Chief Financial Officer and Senior Vice President of Aventura Hospital. Horacio had obtained Mr. Houston’s attention after

³⁷ Case C004.

³⁸ Not all patients who are sued are necessarily uninsured. We have found that about ten percent of lawsuits filed by hospitals are against insured patients who owe a deductible.

³⁹ The filing numbers for 2000 and some of the filing numbers for 2003 were attained by doing an electronic search. These civil cases are usually filed under contract and indebtedness.

⁴⁰ Email from Horacio A. to Michael Houston, May 24, 2004. Emphasis added.

filing complaints with the Better Business Bureau and the Florida State Agency for Health Care Administration.

Although Horacio visited the HCA hospital before HCA allegedly implemented their “new and improved” discount plan, this case demonstrates how HCA will take advantage of the poor even though HCA charity care policies would qualify these patients for free care.

Horacio had visited the hospital on July 6, 2003 for an abdominal pain. The next day, worried about costs, he went to the hospital and enquired about his bill. He was told amount due was \$3,757 and encouraged to pay it right away to avoid damaging his credit. Worried about destroying his credit worthiness, Horacio practically pulled out his entire savings to pay the amount due on that same day, July 7, 2003.

Why did Horacio file complaints with state and consumer agencies? He was not disputing the \$3,757 he had paid. He was upset after receiving several hundred dollars in additional charges including doctor, laboratory and radiology fees.

When Horacio met with the Consejo in May, we were astonished to read that Horacio and his wife had a combined adjusted gross income of \$20,401 according to their joint income tax return for 2002. This means their income was well below the 200% federal poverty threshold in 2003 and that HCA should have offered them free care.

The Consejo suggested Horacio now ask for a full refund, which he has now done via certified mail.

Worried about Horacio filing more complaints, HCA’s hospital executive, Michael Houston replied to Horacio’s email, writing, “It is not necessary to file another complaint.”⁴¹No word though if Horacio will get his money back.

⁴¹ Email to Horacio A. from Michael Houston, May 24, 2004.

Conclusion

Last summer, *Bloomberg* reported the following:

In a separate report today, the Latino group accused HCA of overcharging the uninsured \$2.1 billion last year. . . .“None of [Consejo’s] allegations sound new,” HCA spokesman Prescott said. “We’re focused on implementing our plan. We think that’s the thing we should be spending our energy on.”⁴²

It appears HCA has been spending its energy on deceiving the public as hospital price gouging has garnered the national spotlight. HCA’s rhetoric does not match the reality. While preaching they were working hard to assist the uninsured, in reality, HCA appears to have:

- Intentionally failed to implement their discount plan for the uninsured
- Attempted to crush the legal protections the uninsured have
- Increased their outrageously high prices
- Increased their lawsuit activities
- Implemented a scandalous “Deposit or Dump” program
- Modified its Form 10-K reports to hide HCA’s price gouging
- Defended a flawed pricing scheme by blaming the uninsured
- Violated HIPAA by refusing to provide UB-92 bills to patients

It is time HCA end what looks like an insatiable desire to “engañar” the public. HCA simply cannot be trusted. HCA shareholders and healthcare opinion leaders should encourage HCA to adopt and implement Tenet’s Compact With the Uninsured (SEE APPENDIX B).

Our goal is to help the uninsured, obtained reasonable pricing tied to either Medicare or managed care rates. (About 9 out of 10 hospital patients are either on a managed care plan or government program). “Sliding scale” discounts do nothing to curb a hospital’s price gouging appetite and are nothing more than a price gouging protection act as demonstrated in this report.

Wall Street investors and others would agree that a flat discounted rate for all the uninsured regardless of race, ethnicity or income is ideal because

- A hospital does not have to go through a subjective and bureaucratic paper mill to decide whether a patient “qualifies” or not; (efficient)
- Uninsured patients are more likely to pay with reasonable rates and payment plans; and (effective)
- Customer is happy that they were treated fairly and hospital collects more revenue. (economic good sense)

⁴² Snider, Keith, “HCA, Tenet, Rival Hospitals Face Congressional Probe,” *Bloomberg*, July 16, 2003.

About the Author

K.B. Forbes is the Executive Director of the Consejo de Latinos Unidos. Forbes is the author of five other Consejo reports: *Cinco*, an investigative report on hospital price gouging in Southern California (2001); *Ahora*, an investigative report on allegations of police brutality in Southern California (2002); *Infierno*, an investigative report on hospital price gouging in Chicago, Denver, Oklahoma City, and Orlando (2003); *Unconscionable*, an investigative report on hospital price gouging and unfair trade practices in Fort Myers, Florida (2003); and *Esperanza*, an investigative report on aggressive court activity and hospital price gouging in Miami, Florida (2004). A former journalist and English as a Second Language teacher near Watts, Los Angeles, he is the son of a Latino immigrant.

About the Consejo

The Consejo de Latinos Unidos, a national nonprofit organization which educates and assists Latinos and others in the areas of health care, immigration, education, and police protection, is supported almost exclusively by non-profit organizations. We receive no funding from insurance companies, political parties, or labor unions. A year ago, Consejo was credited by *The Wall Street Journal* with “a big win” after forcing the nation’s second largest hospital chain, Tenet Healthcare, to change its aggressive billing practices against the uninsured by charging the uninsured the same prices insurance companies pay for the exact same care.

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APPENDIX A

Based on 2002 Medicare financial data, and HCA's own filings with the SEC for 2002, we estimate that in 2002, HCA overcharged the uninsured \$2.1 billion dollars more than the uninsured would have had to pay if they had been charged the same prices that managed care pays. These are overcharges of 202% times what managed care would have paid—more than double.

	Cost	Charges
HCA, 153 hospitals, in the 12-31-2002 Medicare (HCRIS) data base	\$9,247,249,788	\$31,586,574,289
HCA admissions other than Medicare, Medicaid, Managed care or other discounted plans i.e., uninsured (page 52, 2002 10K filed with SEC)	10%	10%
Costs and Charges applicable to the Uninsured in 2002	\$924,724,979 A	\$3,158,657,429
Average mark-up above costs paid by managed care (Medpac Commission data)	<u>x 1.13</u> B	
Charges to the uninsured if managed care rates had been charged		\$1,044,939,226 (A x B)
Amount uninsured have been overcharged by HCA, nationally, in one year		\$2,113,718,203

APPENDIX B

Tenet's Compact with the Uninsured
(a) Patients without insurance at Tenet hospitals will be treated fairly and with respect during and after their treatment, and regardless of their ability to pay for the services they receive.
(b) Tenet hospitals will provide financial counseling to all uninsured patients. This will include help in understanding and applying for local, state and federal health care programs such as Medicaid.
(c) After uninsured patients receive treatment at Tenet hospitals and are provided with financial counseling, they will be offered discounted pricing for the services provided at rates that are within the range of discounts provided to managed care patients.
(d) All patients without insurance at Tenet hospitals will be offered reasonable payments and payment schedules and, subject to their acceptance, self-pay patients will be billed at discounted rates. Whenever possible, this will occur before the patients leave the hospital, as part of the financial counseling process.
(e) Tenet hospitals will not pursue legal action for non-payment of bills against any patient who is not gainfully employed at the time services are rendered. Before taking legal action, hospitals will assure that the patient is not eligible for any assistance program and does not qualify under the hospitals' charity care policy. Nor will they pursue legal action if the only recovery available would be to place a lien on the patient's home.