



President's Report

by Susan Klarner

▶ On behalf of CADP's Board of Directors, we once again extend our appreciation for your continued support of our organization, and for the ongoing-seemingly increased initiatives we undertake.

At the Annual Conference, the Board elections were a point of transition. We honored two long-term Board members in recognition of their many years of service to this Association — Candee Bolyog with Managed Dental Care, Inc., and Dee FitzGerald, DDS, with WellPoint Dental. We also welcomed new members to the Board this year — Allen West with CIGNA Dental and Jim Buncher with SafeGuard Health Enterprises. Also, Bryan Geremia with Aetna Dental was appointed by the Board to serve the remainder of the term for the position vacated by Dr. Lee Harris. In addition, Karen Feldman, DDS, with Golden West Dental & Vision, and Charles Stewart DMD, with WellPoint Dental, were elected by plan Dental Directors to co-chair the Quality Management Committee. As such, they will share one seat/vote on the Board of Directors. Furthermore, the Board determined, according to the bylaws of the Association, that Ron Inge, DDS, was no longer eligible to serve. The Board extends our appreciation for his years of service and his many contributions, particularly his efforts in co-chairing the Annual Conference for the prior two years. We wish him all the best in his exciting and prominent new role with the American Dental Association.

The new reconstituted Board of Directors held our first meeting of the fiscal year followed by our strategic planning session a week ago. Our objectives have been revised

and further defined to reflect the business interests and needs of our member plans, and the regulatory environment for the period 2004-2005. Our primary objectives continue to focus on CADP's ability to (1) provide a regulatory and legislative presence for member plans, (2) be recognized as a dental benefits authority, and (3) establish guidelines and outcomes that improve quality management.

Through CADP's counsel and legislative lobbyist, we plan to continue and enhance the efforts to track and influence legislative issues. We will update the presentation on the website and include further details regarding current issues dealing with cultural and linguistic services, retro-activity, geo-access, copays and out-of-pocket maximums.

We are also changing our format for seeking input from various levels within the Plan organizations this year. There will be a survey in the near term regarding the format and topics for the Annual Conference. We also plan a CEO breakfast roundtable and envision this as an interactive and more preferred venue to share ideas.

Again, thank you for your continued support...your comments and feedback are always welcome!

Regards.

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The CADP News is published quarterly. Your suggestions and/or comments are encouraged. Please write or call:

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Dots and Dashes

Charles Stewart, DMD, and Karen Feldman, DDS, Co-Chairs, Quality Management Committee

RESPONSE — ACTION — RESULTS

▶ Response *v* – 1. answering or replying; responding. 2. Readily reacting to suggestions, influences, appeals or efforts.

Action *v* – 1. a deed operation; a gesture; the way of working, as of a machine.

Results *n* – 1. an outcome

The above definitions are included in the mantra that emanates from the leadership of the Quality Management Committee (QMC). As newly elected co-chairs of the CADP Quality Management Committee, we operate daily in response mode. If you need information, we gladly research and give it to you. If you need action, we will do that, too! And results are the best possible outcome for a committee working to improve the quality of care provided to our plan enrollees.

Examples of our mantra include: Some members of the committee felt that too much time existed between the March and September QMC meetings. Response: a meeting was scheduled for Tuesday July 20, 2004, hosted by GE Dental & Vision, in Agoura Hills. Another example is the belief that attendees of the auditor training receive a 'diluted' course by attending an interim training session. Response: All interim courses will now be two-day courses, with expanded ability to teach the core curriculum in its en-

tirety, as well as incorporate the two mandated courses for license renewal, as determined by the Dental Board of California. The first two-day interim course will be held October 13-14, 2004, at the Los Angeles Airport Marriott. As a final offering to those non-dentists wishing to take the procedural auditor portion of the course, there will be a one-day course held August 18, 2004. Please remember this is for the non-dentist only.

Some future areas of response include: the continuation of the Utilization Management Committee to explore commonality between plans and to work towards a data warehouse that all plans can benefit from for their utilization management needs. The shared audit concept is taking on a life of its own, as more and more plans appear to be interested in sharing audits. At the July 20th meeting, we also solicited plan input regarding use of the common audit tool in its original version or in a modified format and requested input from plans regarding the quality management segment of CADP's strategic plan for 2004-2005.

All of the abovementioned items demonstrate RESPONSE, ACTION AND RESULTS.

We look forward to responsive, interactive and results-oriented meetings!



PACIFIC
Dental Services

Legislative Update

Jo-Linda Thompson, Nossaman, Guthner, Knox & Elliott, LLP

▶ As of this writing, no vacation's in sight for lobbyists and legislative staff (and presumably legislators themselves), as the terminator Governor and the wannabe terminator legislators become increasingly mired in disagreements over local government finance. A budget resolution that seemed so easy a month ago has now degenerated into the usual budget food fight.

The controversial deal that the Governor had made with local government to take their money this year in exchange for leaving it alone in the future is the current major stumbling block with many legislators. There are several other issues that could also derail the budget should this large one be resolved; however, we are getting close to having a week with daily temperatures over 100 degrees in Sacramento – the traditional requirement for a budget to pass – so there's hope for resolution before the end of summer.

Budget or not, we have been busy working on bills of concern to CADP. The bills taking most of our efforts include: AB 2289 (Chan), SB 1349 (Ortiz), AB 1414 (Levine) and AB 321 (Cogdill). Most of these bills initially included specialized plans in fee assessments or reporting requirements that are of marginal value for consumers of specialized services, yet add additional expenses and costs to specialized plans.

▶ AB 2289 – Chan – This bill requires every health care plan to file a written document with the Department describing their five largest benefit plan designs in each of the small group, individual, and non-customized large group markets. After extensive work with the staff, the author agreed in committee to apply her

requirements to full service plans only. Several months later, she has not amended the bill as promised. The sponsors of the bill have now committed to amend the bill to exclude us on the floor of the Senate in August. The bill passed out of Senate Appropriations and will be ready to be heard the first or second week in August. If the budget impasse continues they could have floor sessions in July, allowing the bill to move this month. I have drafted the amendments and sent them to the sponsor; if they are not taken, we should work toward a veto.

▶ SB 1349 – Ortiz – Initially, this bill would have placed a premium tax on all health care service plans. It was amended in the first hearing to abandon the premium tax and instead place a fee on all health plans to fund a cost containment commission that was created last year by AB 1528 (Cohn). We got the dental plans exempted from this fee, although we tried to get all specialized plans exempted; however, the author and the committee chair would only agree to exclude dental plans. Other specialized plans are now lobbying for the expanded language.

▶ AB 321 Cogdill- This bill, among other things, requires health plans to provide contract termination dates to DMHC for major contracts in the group subscribers area. It has been amended to apply only to full service plans.

▶ AB 1414 Levine – This is the most interesting and to date, the most substantive bill in which we are involved. Assemblyman Lloyd Levine, following in the footsteps of Senators Deidre Alpert and Jackie Speier, is trying to regulate "discount plans". His original discount bill, AB 2354, was killed in Assembly Ap-

propriations several months ago. Both bills are a response to an incident in his district where constituents filed a lawsuit against a Texas-based discount health plan for fraud.

After AB 2354 died, we thought this issue would be moot until next year; however, several labor unions contacted the author because of problems they were having with discount healthcare plans. Several unions investigated their insurance coverage and discovered that the "discount plans had infiltrated their contracts." They are now VERY supportive of this bill and the regulation of discount plans this year. They have also identified other vehicles in the wings should this one be blocked, a perfect scenario for August last minute underhanded tactics.

As of this writing, Insurance Commissioner John Garamendi has agreed to be the regulator (this is negotiable if DMHC wants to do it and that assignment would prevent a veto – DMHC is reportedly now investigating several discount plan abuses). We have been told by Assemblyman Levine's staff that they will be proposing amendments to this bill to require some kind of direct contracting with providers and a discount fee schedule so that consumers understand the extent of their discount, but will not include basic healthcare services (as defined by Knox-Keene). AB 1414 is pending in Senate Insurance with no hearing date yet. We continue to work with the author's office regarding this bill.

Finally, we continue to monitor SB 1492 (Dunn), which would prohibit health care businesses from transmitting individually identifiable health informa-

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In the News...

▶ **WellPoint/Anthem Merger Hits Stumbling Blocks** — Four elected officials are calling for the proposed merger between WellPoint and Anthem to be blocked: Insurance Commissioner John Garamendi, Treasurer Phil Angelides, and Senators Deborah Ortiz and Jackie Speier. Their opposition is aimed at the executive bonuses and buyouts, which they either want eliminated, matched by investments in health programs for the poor, or paid from premium revenues earned outside California. Investors, who support the merger, note that financial details of the proposed merger were publicly available in November, and are unhappy that politicians waited until May to raise major objections. In late July, the Department of Managed Health Care approved the merger, which has been approved by ten other states.

▶ **Dental Board of California to Conduct Hearing re Renewal of Licensure** — The Dental Board of California will hold a hearing on August 20 to hear comments regarding a proposed regulation to clarify continuing education requirements for license renewal. The proposed changes would better define the categories of continuing education and broaden the categories, so that a licensee has more opportunities to take a wider variety of courses to meet the requirements. The Board proposes to establish Category I (relating to direct patient care) and Category II (relating to other areas of interest important to dentistry including office management, legal matters, community health issues, etc.) for these requirements. In addition, the proposed changes would better define the number of units within each category of continuing education, although the total number of required units remains the same. Agency Contact: Linda M. Madden; (916) 263-2300.

▶ **Supreme Court Rejects State Power to Authorize HMO Lawsuits**

In late June, the US Supreme Court unanimously found that the Federal Employee Retirement Income Security Act, or ERISA, preempted a Texas state law that provides that a health plan is liable for harm to an enrollee caused by its failure to exercise ordinary care when making health care treatment decisions.

Both of the Texas plaintiffs, Juan Davila and Ruby Calad, alleged injury as a result of HMO authorization decisions. In both cases, the HMOs (Aetna and CIGNA, respectively) asserted that ERISA preempted the state court lawsuits and had the cases transferred to federal court, which ruled in favor of the HMOs. The Fifth Circuit Court of Appeals, however, reversed the decision and ruled that the suits could be maintained in state court because the decisions at issue involved not solely the administration of plan benefits (which could only be challenged under ERISA), but also medical care, which in most cases is regulated under state law. At issue for the Supreme Court was whether a state law that purports to carve out an area of HMO decisionmaking that it describes as “medical” can withstand ERISA preemption. The Supreme Court’s unanimous decision is that it cannot.

The opinion held that the Plaintiffs’ purported state causes of action fall squarely within ERISA and are therefore completely preempted. In so holding, the Supreme Court called “erroneous” the lower court’s attempt to distinguish between a contract action for benefits (clearly preempted) and a tort action regarding a medical treatment decision, which was more akin to a malpractice action. It also held that congruity of the

two statutes (Texas law and ERISA) was not required where Congress manifested an intent to have ERISA govern the entire area of benefits under employer-sponsored health plans, and Texas’ attempt to enlarge health plans’ liability to their enrollees was consequently unavailing.

The case is of particular interest in California because it is one of ten states, including Texas, that have passed laws that allow patients to file suit against HMOs in state court over decisions related to treatment. That law, known as the Managed Health Care Insurance Accountability Act of 1999, added a new Section 3428 to the Civil Code. Like the Texas statute at issue in the *Davila* and *Calad* cases, Section 3428 provides that health plans have a duty of ordinary care to arrange for the provision of medically necessary health care services to their enrollees and are liable for any and all harm legally caused by their failure to exercise that ordinary care when (i) the failure to exercise ordinary care resulted in the denial, delay or modification of the health care services recommended for, or furnished to, an enrollee and (ii) the enrollee suffered substantial harm as a result. The Supreme Court’s decision in the *Davila* case effectively invalidates that section because any attempt to recover damages from a health plan for failure to exercise ordinary care in a treatment decision will now be preempted by ERISA and redressable only in federal court.

Excerpted with permission from *CAPG Update*, July 2004, article by Carol K. Lucas, Fulbright & Jaworski LLP.

Regulatory Update

Jackie Miller, Executive Director

► **DMHC Update**—The DMHC website has been updated to reflect recently-approved regulations regarding Geographic Accessibility Standards, Interpretive Opinions, and UC Mandate Assessment. It should be noted that the regulations relative to Geographic Accessibility Standards and the UC Mandate Assessment are *not applicable to specialized plans*.

Too, as a result of a recent joint legislative hearing regarding the proposed merger of WellPoint Health Networks, Inc., and Anthem, Inc., the Department of Managed Healthcare conducted a public meeting on July 9 in Sacramento. The meeting focused on whether the WellPoint/Anthem merger will (1) facilitate or impede the ability of Blue Cross of California to maintain appropriate administrative and organizational capacity as required under the Knox-Keene Act; (2) reduce or generate additional administrative expenses for Blue Cross of California in violation of Knox-Keene; (3) facilitate or impede the ability of Blue Cross of California to remain compliant with the financial requirements of Knox-Keene; and (4) result in the expansion or termination of current Blue Cross of California products, programs or markets. The Department subsequently approved the merger.

► **CPR Update**—The recommendations of the team conducting the California Performance Review (CPR), which met for several months to review activities of state government, are completed but will not be released until after the budget has been finalized. You may recall that CADP participated in those CPR initiatives relative to the Department of

Managed Healthcare, which took place in March 2004.

The Governor has also appointed members to the CPR Commission, which will conduct statewide public hearings on the CPR recommendations. They include Joanne Kozberg, co-chair, California Strategies; William Hauck, co-chair, California Business Roundtable; state Senators Jim Brulte (R) and Denise Moreno Ducheny (D); Assembly Members Pat Bates (R) and Leland Yee (D); Dale Bonner, Epstein Becker & Green (former DOC Commissioner in the Wilson Administration); James Canales, James Irvine Foundation; Mike Carona, Orange County Sheriff; Patricia Dando, San Jose Vice Mayor; David Davenport, Pepperdine School of Law; Joel Fox, Small Business Action Committee; Dr. Steve Frates, Claremont-McKenna College; Russ Gould, Gould Group; Irene Ibarra, The California Endowment; J.J. Jelincic, California State Employees' Association; Steven Olsen, UCLA; Beverly O'Neill, Long Beach Mayor; Peter Taylor, Lehman Brothers, Inc.; and Carol Whiteside, Great Valley Center.

Summary of November Ballot Initiatives

Californians will be asked to vote on a number of health-related initiatives on the November ballot. Below are brief summaries of those measures. One, in particular, is of interest to CADP. Proposition 72 would repeal SB 2, the "pay or play" measure enacted in 2003, requiring employers of more than 50 employees to offer coverage to employees or pay into an insurance purchasing pool.

► **PROP. 61: Save the Children's Hospital Bond Act** – The California

Children's Hospital Association (CCHA) has sponsored an initiative to float \$750 million in general obligation bonds to help finance construction, expansion, remodeling, renovation, furnishing, and equipping of children's hospitals. Twenty percent of the revenue would be made available for grants to the five University of California children's hospitals, while the remaining 80 percent would be available to other children's hospitals that qualify under certain criteria specified within the initiative. CCHA cites access to the latest medical technology as a primary need for the initiative, given the treatment advances for chronic illnesses such as leukemia, heart defects, sickle cell anemia, and cystic fibrosis. Legislative analysts estimate a total cost to the state of \$1.5 billion over 30 years at a rate of \$50 million per year.

► **PROP. 63: Mental Health Services Act** – This initiative would impose an additional one percent state income tax on incomes over \$1 million to pay for mental health services. The revenue would go to expand services for mentally ill children, adults, and seniors, and would create a Citizens Oversight and Accountability Commission to review county expenditure plans. It would also provide that current funding levels for mental health programs could not be reduced if the new tax is approved. The tax increase could reach \$700 million by 2006-2007, with comparable increases in expenditures by the state and counties for the expansion of mental health services. Programs will include prevention, early intervention, education and training programs that may potentially reduce costs for state prison and county jail operations,

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tion to a site outside the United States unless they first obtain consent from the individual whose information is to be transmitted and authorization requirements are satisfied. This measure is opposed by a host of business and health care organizations and, if passed, faces a likely veto from the Governor.



medical care, homeless shelters, and social services programs.

▶ PROP. 67: Funding for Emergency Medical Services – The Coalition to Preserve Emergency Care (CPEC), which includes the California Medical Association and the state chapter of the American College of Emergency Physicians, is sponsoring this initiative to provide \$550 million annually for emergency services. The initiative would increase the 9-1-1 surcharge by 3 percent (with a monthly cap of 50 cents on residential customers). It would also appropriate revenue from tobacco taxes and criminal and traffic penalties for emergency care funding. The initiative would create several funds to be administered by state and local governments, two of which are the County Emergency and Trauma Physician Uninsured Account and the State Emergency and Trauma Physician Unpaid Claims Account. These funds are intended to increase access to emergency care for uninsured patients by reimbursing the physicians who treat them. The initiative would also provide funding to expand emergency facilities.

▶ PROP. 69: Collection of DNA Samples – Bruce E. Harrington, a man who lost his brother to a serial killer still at large, has spent over \$1.3 million on this initiative to require the collection of a DNA sample from all felons in the state. The initiative would also require collection of a sample from adults and juveniles arrested for or charged with specific crimes, to be broadened in five years to include every adult arrested for or charged with a felony. The DNA samples would be entered into a statewide database that would be available to law enforcement laboratories. The California Department of Justice would implement the program, which could cost tens of millions of dollars annually to maintain.

▶ PROP. 71: Stem Cell Research – This initiative would establish the "California Institute for Regenerative Medicine" to regulate stem cell research and to provide funding for such research and related facilities. The initiative would establish a constitutional right to conduct

stem cell research within the state, and would prohibit the Institute's funding of human reproductive cloning research. It would authorize a General Fund loan of up to \$3 million for start-up, plus authorize a \$3 billion bond to fund Institute activities. Cost would run an estimated \$6 billion over 30 years.

▶ PROP. 72: Referendum on SB 2 – A coalition of business groups led by the California Chamber of Commerce has launched a referendum to repeal SB 2 (Burton and Speier, 2003), which requires employers with a payroll of more than 50 to offer coverage to employees or pay into an insurance purchasing pool. SB 2, the labor and California Medical Association co-sponsored bill, would extend coverage to up to 1.5 million Californians that are currently uninsured, although business groups argue that SB 2 will stall the state's economic recovery.

**Thanks to our 15th Annual Conference sponsors and exhibitors!
Once again, both the program and social events received kudos.**

Aetna Dental of California, Inc.	Dental Management Decisions	Pacific Dental Services, Inc.
AmeriPlan USA Corporation	GE Dental & Vision	Pacific Union Dental
Blue Shield of California	Gennius, Inc.	PMI Dental Health Plan
Bright Now!/Newport Dental Plan	Grandflow, Inc.	SafeGuard Dental & Vision
CIGNA Dental Health of California, Inc.	Healthation, LLP	SmileCare
CollaGenex Pharmaceuticals	HMOPro Inc.	Stradling Yocca Carlson & Rauth
Dedicated Dental Systems/ InterDent	J.B. Dental Supply Company	United Concordia Dental Plans of California
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Dale S. Miller, Esq., Henry A. Holguin, Esq.
or Michael A. Dowell, Esq.

Save the Dates!

2004:

August 18	Procedural auditor training course, WellPoint Dental Services, Camarillo
September 8	Quality Management Committee meeting, SafeGuard, Aliso Viejo
September 9	Board of Directors' meeting, SafeGuard, Aliso Viejo
October 13-14	Auditor Certification Course, LAX Marriott
November 16	Quality Management Committee meeting, SmileCare, Santa Ana
November 17	Board of Directors' meeting, SmileCare, Santa Ana

2005:

January 24-25	Legislative and Regulatory Conference, Hyatt Regency Sacramento
March 15	Quality Management Committee meeting, CIGNA, Glendale
March 16	Board of Directors' meeting, CIGNA, Glendale
May 10-14	Annual Conference, Quality Management Conference, Marriott Laguna Cliffs Resort, Dana Point



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