



President's Report

by Susan Klarner

► Hard to believe that 2004 is quickly coming to a close, although not sure if Sacramento is ready! In 2004 we anticipated the change, and we now feel it more than ever before. As leaders of the company that you serve and represent, I'm sure that you worry about how we can effectively manage our business with the added costs and demands of future legislation in this highly regulated state. As a leader and member of your board, I would like you to know that we've made marked progress as an association this year. Moreover, we've made inroads in Sacramento to ensure that our positions are known and considered in the process of regulatory change. We believe that CADP and our representatives are positively viewed and serve as an important resource for legislators, our members, and regulators on the many issues facing our industry today. We appreciate your continued support and feedback for our efforts as we lobby on your behalf.

The CADP Board of Directors continues its activities and efforts toward building and sustaining the appropriate relationships. CADP has been actively involved in efforts to influence legislators regarding issues that differentiate specialty plans from full service, and to highlight the costs that we must bear to

administer and implement when not exempted from legislation. Over the past year, CADP has taken an increasingly active approach utilizing the association's lobbyist to respond to many potential and critical issues that affect our member plans. As we move into 2005, our focus (as determined by our member plans) will continue to be legislative and regulatory in nature.

Our newly elected board members, Jim Buncher and Allen West, have enthusiastically volunteered to chair the program for our annual conference in Dana Point, scheduled in May 2005. The initial program is already outlined. Similarly, Drs. Karen Feldman and Charles Stewart, Co-Chairs for the Dental Directors/QMC, have assumed their new roles with suitable fervor and passion, and they have established their goals and objectives for the coming year.

On behalf of the Board of Directors of CADP, I would like to extend our appreciation of your ongoing commitment and support of our association. As always, we welcome your comments and feedback on any of the efforts we undertake. Feel free to contact me by phone at (714) 708-5360 or by e-mail at sklarner@smilecare.com.

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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

▶ The last few months have been very busy for most of us associated with the quality aspects of the dental benefits industry.

There have been letters requesting filings to deal with, as well as items that have been on the front page of many newspapers and television news programs.

The recent news from the Department of Managed Healthcare regarding the issuance of cease and desist orders for two out-of-state companies, indicates a bold move by the Department into the arena of discount plans. As an association, the debate about the regulation of such companies has been an open issue for several years, and the Department's move shows resolution.

Another recent news item is the arrest of 20 dentists for fraud. This action stems from an investigation into abuses of the State's Medi-Cal fee-for-service program, with allegations of \$4.5 million in losses. Some of the accused were working in offices as associates, while others were owners of practices. Many of our member plans have active anti-fraud programs in place. The industry as a whole has built in protections against fraud, since there is little incentive for over diagnosis and over treatment, as the co-payment structures common in plan design are not conducive to this type of activity.

At the September Quality Management Committee meeting, hosted by SafeGuard, there was wide participation in the meeting by the majority of member plans. Continuing Education credits were given for the discussion held

regarding bone grafting in conjunction with extractions. Open dialog was established between three representatives of the DMHC and member plans. We hope to continue this dialog in future QMC meetings, allowing for face-to-face communication in a routine manner. As a direct result of this dialog, there was an extension granted for the requirement of filing the methodology for compliance with AB1455. The final outcome of required compliance has not yet been established.

The shared chart and facility audit concept continues to grow with a number of member plans participating. This is an excellent program that permits member plans to utilize the data collected in the quality assurance audit, analyze it, and develop an autonomous corrective action plan. Hand in hand with the shared audit program is the Auditor Certification Program. The course has been amended to accommodate the desires of member plans, and is now a two day course regardless of whether it is taken at the annual meeting or as an interim course. In addition to the October course, additional courses are tentatively planned for February and May.

We look forward to seeing you at the next QMC meeting in November, hosted by SmileCare.

Legislative Update

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

▶ The 2003 -2004 session ended with both a bang and a whimper, in the early hours of August 27th. Retiring Senator Pro Tem John Burton, bored by a lengthy off the floor meeting of the Labor and Employment Committee, banged the gavel for the last time at about 2 AM and said "It's over, I'm outta here".

The Assembly continued to meet until 4 AM sending about 1,000 bills to the Governor's desk. The legislature will reconvene in December and the new members will be sworn in, and it is rumored will actually get right to work. Traditionally the swearing in is held and the new members go home until the first week in January, but the Governor may have assignments for them to begin as soon as they take office.

One of those chores might be the introduction of numerous bills to implement the California Performance Review (CPR). The CPR was the subject of five public hearings to consider the more than 1,200 suggestions it contains for streamlining state government.

Following the public hearings, the Little Hoover Commission will take a look at the entire CPR and the materials provided throughout the public process, then issue a report to the Governor and the Legislature, likely in early January. The Governor has already issued an executive order to implement the suggestions made in the CPR dealing with the purchase and application of technology in state government. He will need legislation to achieve the bulk of the suggestions in this report, but it is widely known that he will address whatever he can with Executive Orders.

In the larger picture, most observers believe the CPR is a good effort. It contains some suggestions that can be implemented to achieve cost savings and more efficient delivery of services; however, it does not appear to be the magic wand that can be waved to provide the extra billions of dollars California needs to cure the budget's structural deficit and balance the next budget. No one else has found that wand either, but if it is found, it will probably have the phrase "new taxes" in large letters imprinted somewhere on the handle.

The following are those measures most closely watched on behalf of CADP, with an update of final action:

▶ **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. The bill passed out of the legislature and went to the Governor's desk. Update: Vetoed by the Governor.

▶ **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 healthcare service plans to fund a cost containment commission that was created by a Rebecca Cohn bill last year. We got the dental plans exempted from this fee although we tried to get all specialized plans ex-

empted (the author and the committee chair would only agree to exclude dental plans). The bill died in Appropriations Committee in the last week of session. This author will be back again to fund the Commission and to suggest premium taxes; I take some comfort that we held it off this year and that she did remove the dental plans from the final version of the bill.

▶ **AB 321 (Cogdill)** This bill, among other things, requires health care service plans to provide contract termination dates to DMHC for major contracts in the group subscribers area. It was amended to apply only to full service plans. The bill passed out of the legislature and went to the Governor's desk. Update: Signed by the Governor.

▶ **AB 1414 (Levine)** This is the most interesting and to date, the most substantive bill we were involved with. Assembly Member Levine, following in the footsteps of Senators Deidre Alpert and Jackie Speier, is trying to regulate "discount plans". His original bill, AB 2354, was killed in Assembly Appropriations 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. AB 1414 also died in August but will be revived in the new session (see the discussion below).

During the session, several labor unions contacted the author because of problems they were having with discount healthcare plans. Apparently, several unions investigated their insur-

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Regulatory Update

Marq Antoine, Nossaman, Gunther, Knox & Elliott LLP

▶ The following is a chart describing the latest information on current, draft and proposed regulations promulgated by the Department of Managed Health Care that are applicable to dental plans.

CURRENTLY PENDING REGULATIONS

Regulation

AB 2179 –Access to Needed Health Care Services (T28, section 1300.67.2)

Status

Comment period has been extended to November 1, 2004

Remarks

CADP testified at the public hearing on these regulations regarding concerns about the enrollee satisfaction survey obligations contained in the draft regulations. Additionally, CADP is working with CAHP on developing a coordinated set of amendments to offer to the DMHC.

Administrative Penalties revised (T28, section 1300.86)

Second comment period ended August 23, 2004

These regulations were significantly revised from the first draft. All of the provisions about which CADP raised concerns in its comment letter on the first draft have been removed from this latest draft. CADP did not submit a comment letter to the second draft.

Amending Execution Pages (T28, section 1300.51)

Comment period ended Sept. 20, 2004

The changes are not significant and CADP did not submit any comments.

Block Transfer Filings (T28, 1300.67.1.3)

Comment period ended Sept. 13, 2004

The regulations define block transfer as the section transfer of 2,000 enrollees from a terminated group. CADP provided comments to the DMHC on these regulations.

SELECTED REGULATIONS CURRENTLY IN EFFECT

Regulation

AB 1455 – Claims Settlement Practices/ Dispute Resolution Mechanism

Status

In effect

Remarks

The DMHC sent a memo to all plans on Sept. 1, 2004, directing them to submit a Supplemental Verification of Compliance Statement regarding their implementation of the AB 1455 regulations. In the memo, the Dept. stated that nearly every Compliance Statement that had been filed previously had failed to adequately disclose that an appropriate methodology was being used to adjudicate and determine the reasonable and customary value of services rendered by non-

Geographic Accessibility Standards	In effect	<p>contracted providers. CADP is participating in conference calls set up by CAHP to discuss responding to this demand. As a result of discussions between the Department, CADP and other specialized plans, the deadline has been extended to December 1, 2004.</p> <p>DMHC representatives indicated in a CAHP meeting that these regulations were not intended to apply to specialized plans given the language of the underlying statute on which they were based.</p>
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POTENTIAL FUTURE REGULATIONS

Regulation	Status	Remarks
Retroactive Terminations	Currently being drafted	<p>The Department has been permitting plans to file material modifications requesting an order of exemption to permit retroactive termination in certain circumstances. The order permits plans to implement retroactive termination of coverage for nonpayment of premiums provided the plan meets a number of requirements, including that (1) the retroactive termination period does not exceed 60 days; (2) the notice of cancellation is sent out at least 15 days in advance of cancellation and discloses a number of items; (3) the plan must mail a notice to the terminated enrollees that meets certain requirements, including disclosing the availability of interim coverage, conversion coverage and HIPAA coverage; (4) the interim coverage offered to group enrollees must meet specific criteria; (5) the plan must comply with specific requirements relating to HIPAA coverage; and (6) the plan must comply with specific quarterly reporting obligations. CADP brought to the DMHC's attention a number of differences between full service and dental plans that would make the application of the above criteria to dental plans difficult. We are currently awaiting a meeting with the DMHC to discuss these issues.</p>
SB 260 – Financial Solvency Regulations	In development	<p>The Department has indicated that it intends to issue revised regulations shortly. (They will apply to risk bearing organizations only.)</p>

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ance coverage and discovered that "discount plans had infiltrated their contracts." They are now VERY supportive of regulation of discount plans. Insurance Commissioner John Garamendi remains open to designation as the regulator (this is negotiable if DMHC wants to do it).

In August, President Susan Klarner, Executive Director Jackie Miller and I met with Assembly Member Levine and his staff for an extensive discussion on this issue and the practical impact of such regulation on specialized plans.

After about two hours of cordial and open dialogue about how these plans function and the practical difficulties inherent in legislation and regulation, we all agreed to continue the discussion next session. We have volunteered to provide feedback and suggestions as the new bill is drafted and moves through the process.

▶ **SB 1492 (Dunn)** This bill is one of several outsourcing and offshoring measures which developed steam during this legislative sessions. SB 1492 would require health plans and insur-

ers, including dental plans, to notify patients if they, or any business they contract with, transmit identifiable health information off shore. Vigorously opposed by health care organizations and business, the bill has been sent to the Governor's office for final action. CADP sent a veto request letter to the Governor. Update: Vetoes by the Governor.

A complete listing of bills watched on behalf of CADP was previously forwarded to member plans.

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SB 853 – Cultural and Linguistic Services	In development	These regulations are expected to be out shortly.
AB 2907 – Implementation Regulations	Status unknown	The Department was considering regulations designed to implement the Health Care Providers' Bill of Rights that was enacted by AB 2907.
Allowable Co-Payments	On hold	Drafting of these regulations is on hold pending the outcome of the SB 842 (pharmacy benefits regulations) process.
DMHC Prevention Initiative	On hold	Early draft was circulated by Joy Higa in January 2003 for informal review.
TNE Regulations	On hold	These regulations were discussed in December 2002 at the Financial Solvency Standards Board meeting. Discussions were held between the full-service plans and the DMHC in Winter 2003. Nothing further has been heard from the DMHC.
Administrative Capacity Requirements	On hold	
Definition of "Full Financial Risk"	On hold	
Disclosures in Health Plan Advertising	On hold	
Dental Regulations – Scope of Services	On hold	
Prohibition on Fee-For-Service Activities	On hold	
Out-Of-Network Benefits	On hold	
Waiting Room Notices	On hold	

In the News...

▶ **DMHC Takes Action Against Discount Programs**—On September 24, the Department of Managed Health Care took action against two out-of-state discount plans, Platinum Health Plus of Florida and Family Health Plan of Texas, ordering the two companies to stop selling what it called “fraudulent and deceptive” health discount cards. The two companies have been ordered to cease and desist from marketing to California consumers as “a result of an extensive investigation by state regulators.” The press release announcing the action (from which the above quotes are extracted) contained the following statement by DMHC Director Cindy Ehnes, “These deceptive advertisements and arrangement of health care services without a license are in violation of California law.”

The language in the cease and desist orders issued by the Department stated unequivocally that such plans must be licensed under Knox-Keene and are acting illegally. The following language is extracted from the cease and desist orders issued to both companies:

“California Health and Safety Code section 1349 requires certain entities arranging for health-care services to first obtain a license from the California Department of Managed Health Care.

Respondent is acting as a health care service plan, arranging for the provision of health care services, and accepting periodic payments. Accordingly, it is operating as a health care service plan as defined in Health and Safety Code section 1345(f)(1), and required to obtain a license under the Knox-Keene Health Care Service Plan Act of 1975 (‘Knox-Keene Act’). Respondent’s failure to obtain a license subjects it to the enforcement powers of the Department of Managed Health Care.”

▶ **AG Charges Dentists in Medi-Cal Fraud Scheme**—On September 22, California Attorney General Bill Lockyer filed criminal complaints against 20 dentists throughout the state, charging them with defrauding the state Medi-Cal system of \$4.5 million, health benefits and workers’ compensation fraud. They were also charged with other numerous offenses. Filed in Stanislaus County Superior Court, the complaint charges Modesto dentist Kyon Maung Teo, who owns Hatch Dental clinics in Ceres, Stockton and Modesto, with being the mastermind of a scheme involving dentists throughout the state.

According to the complaint, as part of a conspiracy to defraud Medi-Cal, the dentists committed acts injurious to

public health, placing patients at risk of pain, infection, loss of teeth and great bodily injury, including: reusing dental instruments without sterilizing them, developing treatment plans that called for unnecessary dental surgeries such as root canals and fillings, performing dental surgeries without considering the patient’s medical history, providing numerous shallow fillings in lieu of comprehensive treatment to patients in need of such treatment, issuing prescriptions for Schedule II drugs without documenting the source and type of pain, forcibly restraining children during dental operations, performing extensive dental treatment on minors without fully disclosing the extent of the treatment to the minor’s parent or guardian and performing dental surgeries without adequate anesthesia.

▶ **Dental Board Approves Regulations**—The Dental Board of California recently adopted a regulation requiring applicants for licensure as registered dental hygienists to pass an examination in California law and ethics as they pertain to the practice of dental hygiene. It also sets forth the content of the exam and establishes a passing score of 75 percent. Agency contact: Linda M. Madden; (916) 263-2300.



PACIFIC
Dental Services



Save the Dates!

2004:

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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