



President's Report

by Troy Becker

Another legislative session is over and, with the exception of a number of "medical" bills that may inadvertently impact the dental industry, the issues were straightforward and murky at the same time.

For those of you who don't pay close attention to the legislative process, it's worth noting that there are at least two events that pose real problems for those of us throwing our "net" out to catch anything meaningful: 1) the Governor's Budget; and 2) the 23rd hour of the legislative session.

The problem with the Governor's Budget is that it is now being used to essentially create new policy. For example, the definition of enrollee for purposes of assessment was changed to allow the Department's "double-dipping" of HMOs to continue. Of course, this issue may be moot for dental plan staff models, as some may chose to split off their Knox-Keene license in light of the rescinding of the so-called "two-office" rule.

The end of the legislative session becomes a problem because in the frenzy of

rewriting bills at the last minute, a number of changes in language are often made, with little review or policy hearing. Now, despite the fact that we're all looking out for dental, items can be slipped into bills that CADP may otherwise not like to see. This is often the case in legislation intended to address medical issues but forgot that all important mantra, "Dental is Different."

Last, and more important, these events have in common the very lack of input from any people who are really affected. And so the only meaningful way to combat these issues is to wait until they happen and try to readdress them in the ensuing legislative session, which is like asking a cat to become a dog.

In any case, the good news is that CADP and our lobbyist successfully dealt with many of the dental-specific legislative issues. The bad news is someone left a cat at our door. Needless to say, CADP is already working on our cat's barking problem (or lack thereof).

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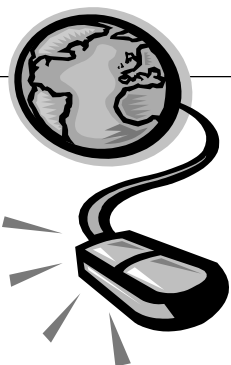
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Legislative Report

by John F. Foran, Esq., Nossaman, Guthner, Knox & Elliott, LLP

The 1999-2000 legislative session ended sine die on August 31, 2000. The Governor has now taken action on all measures which were delivered to him during the final weeks of the recently-concluded session. The Governor had until midnight on September 30 to sign or veto those bills. Final actions are noted in ().

▶ **Arbitration** - As noted in our last report, all of the bills which would have banned arbitration clauses in HMO contracts failed passage in the Legislature. As a defensive mechanism against the passage of such bills, CADP had supported an alternative bill, SB 1934 (Polanco). This bill would have provided that where health care service plans include terms requiring binding arbitration for a dispute settlement, the plan would be prohibited from imposing limits on the damages that may be awarded in arbitration that differ from the damages that could otherwise be awarded in a similar suit decided by a court or jury.

The bill passed the Senate and was referred to the Assembly Judiciary Committee, where it failed passage. The bill was opposed by the Consumer Attorneys of California (trial lawyers). The new chair of the Assembly Judiciary Committee, Darrell Steinberg, as well as a majority of committee members, are closely aligned with that organization. The new chair of the Senate Judiciary Committee will be Senator Martha Escutia, who has a pro-trial lawyer bias, as well.

The issue of banning arbitration clauses will arise again in the next legislative session. There will be little change in the make-up of the Judiciary Committees and therefore, it is likely the bills banning the arbitration clauses will probably have success in the policy committees but may face stronger opposition in the respective fiscal committees.

▶ **Two-Office Rule** - As previously reported, AB 497 (Gallegos), repealing the 50 percent rule prohibiting a dentist from having more than two offices, was signed by the Governor on August 22 (Chapter 224). A dentist maintaining more than one office must assume legal responsibility and liability for the dental services rendered in each office, ensure

that each office is in compliance with supervision requirements, and post a sign in an area visible to patients with the dentist's name, mailing address, telephone number, and dental license number. The measure is effective January 1, 2001.

▶ **Collusion or Physician Antitrust Exemption** - Also as previously reported, SB 2007 (Speier), which would have granted physicians immunity from state antitrust laws, was gutted and language which provided broad powers to the Director of the Department of Managed Health Care to establish and maintain a system of reviewing and acting on provider complaints was amended into the bill. SB 2007 passed the Senate Insurance Committee but failed passage in the Senate Appropriations Committee. CADP continued its opposition to the measure.

▶ **Health Care Service Discounts** - Two major bills during the session dealt with the issue of health care service discounts. SB 173 (Alpert) authorized non-health-plan sponsored discount health programs. These programs would not be subject to the Knox-Keene Act. CADP adopted an opposed position to SB 173.

SB 1181 (Polanco) authorized health care service plans to offer health care discount programs subject to regulation by the Department of Managed Health Care (DMHC). CADP supported SB 1181.

Efforts to separate the two bills in the various policy committee hearings were unsuccessful and the bills moved through the Legislature in tandem. Both bills passed the Assembly Health and Judiciary Committees and were assigned to the Assembly Appropriations Committee. The Assembly Appropriations Committee heard the bills and then placed them both on the Suspense File.

The Governor's office, through the Department of Managed Health Care, proposed several significant amendments which would have placed onerous requirements upon the participants of the discount programs. A last minute flurry of emails and meetings occurred between the stake holders, in which Mary Antoine and Jackie Miller participated, in an

effort to draft amendments acceptable to the interested parties. The efforts of compromise in the final days of the session were unsuccessful and both bills died on the Assembly Appropriations Suspense File. In the final day of the session, the Senate Judiciary Committee invoked a rule whereby both bills would be required to be returned to that committee if they, in fact, passed out of the Assembly Appropriations Committee. Since the bills did not pass out of the Assembly Judiciary Committee, this referral did not occur. However, it succeeded in terminating efforts to put together a combined piece of legislation in the final hours of the session because there would not have been time to hold a hearing in the Senate Judiciary Committee.

The issue of regulation of discount programs is far from dead despite the defeat of these two bills. We anticipate that the DMHC may proceed with developing regulations to govern the operation of such programs by licensed health plans. A coalition of interested health plans met earlier to strategize about the issues and to discuss possible options.

▶ **Privacy** - As I indicated in my last report, the major controversial privacy bills restricting Internet access to information on individuals failed passage. The one remaining bill was SB 129 (Peace), which was the subject of numerous Conference Committee hearings. In early discussions, the Conference Committee members seriously considered creating a new privacy tort which might have created problems for dental plans. In the final hearings, it was agreed that the Conference Report simply create an office of privacy protection within the Department of Consumer Affairs, to protect the privacy of individuals' personal information by identifying consumer problems and facilitating development of fair information practices. The bill is specifically directed to restrict abuse of privacy by state and local agencies. Commencing in January 2003, the Director of the Department of Consumer Affairs is to make a report to the Legislature on the issue of privacy.

continued on next page

In the final analysis, SB 129 is not a controversial piece of legislation. In fact, the business community withdrew their opposition to the Conference Report before it went to the Floor of the Senate and Assembly. The Conference Report was adopted by both houses of the Legislature and sent to the Governor. (Update - signed; Chapter 984)

The issue of privacy, particularly on the Internet, will certainly be reintroduced in the next session of the Legislature. With many new members next session, it will be difficult to determine the outcome of such proposals.

▶ **Second Opinions** - SB 292 (Figuroa) of the 1999 session was a concern to CADP until it was determined that the policies of the plans were basically in conformity with the proposed provisions of the bill. CADP became neutral on the matter as it then proceeded through the legislative process. Although the bill was placed on the Inactive File in the final day of the legislative session and therefore did not pass, its provisions were included in AB 2903 (Assembly Health Committee), the omnibus clean-up bill which was signed by the Governor (Chapter 857).

▶ **Full Service Versus Specialized Service** - As indicated in the last report, AB 607 (Scott) of the 1998 session provided for standardized health benefit information to health plan members in an easy to understand "matrix" format. Assembly Member Scott indicated that it was not his intention that the "matrix" be designed to apply to specialized health plans, such as dental or vision plans. Consequently, I conferred with Assembly Member Scott's office in an attempt to have him add a provision in pending legislation indicating his intent. However, due to staff changes, the process had to begin again with individuals who were unfamiliar with the issue. Once again efforts were made to have Assembly Member Scott place the correction of his 1998 law in another bill, specifically, AB 1455 of which he was the author.

He ultimately decided it would not be wise to place this amendment in AB 1455 because that bill became extremely controversial. In the final analysis, compromise amendments were made to AB 1455 and the bill, in fact, passed both houses and proceeded to the Governor's desk. In the meantime, it was too late to obtain the amendments we sought in AB 1455.

We then made an effort to amend the

so-called "omnibus" bill to include the provisions of Assembly Member Scott's intent. Unfortunately, the Chair of the Assembly Health Committee, the author of AB 2903, declined to have this matter added without appropriate hearings.

It is now incumbent upon CADP to pursue this issue early in the next legislative session and adopt corrective language. Assembly Member Scott has been virtually elected to the Senate and efforts will continue to pursue his original intent of the 1998 session.

▶ **Social Security Identification** - SB 1767 (Bowen) would have prohibited health care service plans from utilizing plan members' Social Security number as an identification for services provided. The bill went through several permutations and finally was less onerous to CADP. Nevertheless, the bill failed passage in the Assembly Banking and Finance Committee.

▶ **Selected Bills** - Of the selected bills referred to in previous legislative updates, only the following passed the Legislature and were sent to the Governor for signature or veto:

AB 1735 (Thomson) requires school districts to provide parents with information on the Healthy Families program. (Update - vetoed)

AB 1974 (Migden) requires employers to notify the Employment Development Department regarding the Healthy Families program. (Update - vetoed)

AB 2547 (Hertzberg) authorizes the Department of Health Services to publicize specific information on licensing and certification on the Internet. (Update - signed; Chapter 842)

SB 1471 (Schiff) provides that no lien for recovery of money paid to an enrollee for medical services under a health care service plan may exceed the amount paid pursuant to the contract to the treating medical provider. (Update - signed; Chapter 848)

SB 1746 (Figuroa) requires a notice to provide instructions to health plan enrollees to choose a new "gate keeper" and permits an enrollee to self-refer under specified conditions. (Update - signed; Chapter 849)

SB 1780 (Chesbro) establishes a Medicare Payment Area Commission which would be required to develop recommendations on Medicare payment areas. (Update - vetoed)

SB 1903 (Speier) establishes provisions

prohibiting sharing, selling, or using medical information for purposes other than provision of health care services applicable to corporations and their subsidiaries and affiliates. Requires a valid authorization for the release of medical information to a person or entity not otherwise authorized to obtain such information. (Update - signed; Chapter 1066)

SB 2136 (Dunn) establishes a Quality Advisory Group in the Department of Managed Health Care to assist in providing a uniform quality audit process for the health delivery system of each health care plan. (Update - signed; Chapter 856)

▶ **2001-2002 Legislative Session** - The Legislature concluded its deliberations on or about midnight, August 31, 2000. It will reconvene for the 2001-2002 session on December 4, 2000. At this time, bills will be introduced and then held for the thirty-day waiting period and presumably heard in the early months of January. While the rules provide for such a happening, it rarely occurs in that form. Usually, most bills are introduced or submitted during the last week before the deadline for Legislative Counsel and then introduced in the last week before the deadline for introduction.

We will monitor bills as they are introduced and advise you of those that have particular significance to CADP.

CADP Website Up and Running

CADP's website is now up and running - www.caldentalplans.org. It has various links, including About CADP, Dental is Different, Current Events, Publications, Membership, Member Access, and Resources and Links. Please take the time to browse through the site, as it contains much useful information. The website was partially underwritten by a grant from dentalxchange.com, which is also hosting the site. CADP appreciates their support of this undertaking.

In the News

▶ **CADP's Lee Harris Honored by NADP** — CADP Board Member Lee Harris, DDS, of PacifiCare Dental, was honored recently at NADP's Annual Conference, held in Las Vegas, Nevada. Dr. Harris, who also sits on NADP's Board, was a recipient of the Star award for his member outreach efforts on behalf of the national organization. The Star award is presented to individuals who have made a contribution to a specific project or endeavor. Congratulations, Lee!

▶ **Trial Lawyers Losing Clout in Sacramento?** — A recent *Wall Street Journal* article indicates that the trial lawyers are losing their clout in Sacramento. The October 4 article by staff reporter Mitchel Benson notes that trial lawyers are "suddenly doing something they've never done before: losing with regularity. Over the past year, the trial lawyers and their political arm, Consumer Attorneys of California, have suffered an unprecedented run of defeats. Whether the issue has been to boost medical malpractice awards, eliminate binding arbitration clauses, allow for the filing of 'bad faith' lawsuits, or loosen constraints on what's admissible as evidence in court, the trial lawyers have been stopped cold at the ballot box, the Legislature and in the governor's office."

The article further reports that only two of the nine bills sponsored by Consumer Attorneys of California were signed into law, and those two were passed in 1999.

The organization employs three full-time lobbyists and also retains a contract firm, and spent nearly \$1.2 million on lobbying in 1999, the tenth largest expenditure of any interest group.

▶ **Appointments, Advisory Committee on Managed Health Care** — Senate President Pro Tempore John Burton (D-San Francisco) has made his appointments to the Advisory Committee on Managed Health Care. They are Paul Kumar, political director for SEIU (service employees union); Thomas Porter, state director for AARP; and Steve Thompson, vice president for government relations, California Medical Association. Assembly Speaker Robert Hertzberg (D-Van Nuys) has three appointments, as well.

▶ **Proposed Regulations re Independent Medical Review and Grievance Procedures** — The Department of Managed Health Care has released, for discussion purposes only, the proposed text of regulations for independent medical review and grievance procedures. They are available on the Department's web site, www.dmhc.ca.gov. The comment period ended October 10, 2000.

▶ **PBGH Report Cards Positive for California HMOs** — Two report cards recently released by the Pacific Business Group on Health (PBGH) found that two out of three California HMO enrollees were satisfied with the overall state of their health care. The first report card, which evaluated ten HMOs, relied on surveys from 4,700 members in 16 health plans. According to the survey results, United HealthCare received the highest approval rating while Cigna HealthCare had the lowest rating. A similar report card rated medical groups, with Brown and Toland and Palo Alto Medical Foundation receiving the highest ratings.

▶ **Court Says Texas Board Cannot Discipline Medical Director for Coverage Decision** — A federal judge in Dallas, Texas, has ruled that the Texas State Board of Medical Examiners' attempt to discipline a health plan's medical director for a coverage decision was preempted by the Employee Retirement Income Security Act, or ERISA (see *United HealthCare Insurance Co. v. Levy*). In her 14-page decision, US District Judge Barbara M.G. Lynn wrote, "This Court certainly recognizes and understands the important role the State plays in regulating the health care industry, which historically has been, and remains, a matter of local concern. . . However, such regulation and local concern does not extend to the regulation of pure coverage determinations of the type which occurred here."

▶ **Nation's First Oral Health Report Card Not Good for US** — In the nation's first Oral Health Report Card, released on October 10 by Oral Health America, the US earned a "lackluster" C-minus grade. California's rankings in nine categories are:

C- (Prevention), F (Fluoridation), D (State Oral Health Program), D (Sealants), C (Visit to Dentist - Adults), B (Visit to Dentist - Older Persons), B (Use of Smokeless Tobacco), C- (Access to Care), and C (Prevalence of Dentists). North Dakota scored highest overall, with a "B-minus." Several other states, including Hawaii, Illinois, Indiana, Iowa, New Mexico, New York and North Carolina, earned high marks in various categories.

As a whole, the US earned its lowest ranking in the Access to Care category, with about 108 million Americans, including 85 percent of the elderly, lacking dental insurance. The report also pointed to several other areas where the nation needs to improve, including:

- Reducing the incidence of oral cancer - according to the study, one American dies every hour from oral cancer
- Reducing tooth decay - by the age of 45, more than 99 percent of American have experienced tooth decay
- Decreasing the prevalence of cavities in children - tooth decay is the single most common chronic childhood disease, five times more common than asthma

The report was funded by the W.K. Kellogg Foundation.

▶ **HHS Issues Final Rule Adopting Standards for Electronic Transactions Under HIPAA** — The Department of Health and Human Services (HHS) has released its final rule adopting standards for eight electronic health care transactions and code sets used in those transactions. The standards are intended to improve the Medicare and Medicaid programs and other federal and private health programs by simplifying the administration of the system and enabling efficient electronic transmission of certain health information. The final rule, which was published in the August 17 Federal Register, becomes effective October 16. For the final rule, link to:

http://www.access.gpo.gov/su_docs/fedreg/a000817c.html

CADP/DMHC Meeting Productive

The meeting between CADP and the Department of Managed Health Care, which took place in late August to discuss issues regarding plan filings relative to implementing 1999 legislation, was both well attended and productive. Nearly 20 dental plans were represented, as well as a scattering of other specialized plans. Joy Higa, Assistant Director, Plan and Provider Relations, and Brian Bartow, Chief, Licensing Division, led the meeting. In addition, there were many other DMHC staff present, including plan counsel and analysts.

At the outset, Mr. Bartow indicated that the Department did not desire adversarial relationships, that Department officials were available to meet with plans, and that in-person meetings were encouraged. He also indicated that plans contact him with questions and concerns, at bbartow@dmhc.ca.gov, noting that other Department staff would be readily available via e-mail, as well.

He also noted that a new amendment process was in place, the information for which is on the Department's website, www.dmhc.ca.gov, and that its intent is to streamline the process. He also indicated that the Department would respond to plans within 30 days; thus, there was no "deemed approved" process. He also recommended that plans have a pre-filing conference for major policy or other issues prior to filing an amendment, again encouraging in-person meetings.

He then answered specific questions regarding legislation which were raised both prior to the meeting and during the meeting itself.

At that time, he also announced that the new due date for plan responses would be extended by thirty (30) days from the date of the meeting and that plans which had not yet received their letters would have thirty (30) days from the date of their letter from the Department to respond.

The meeting was positive, with those attending reporting that it was informative and worthwhile.

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Dots and Dashes

by D.E. FitzGerald, DDS, Chair, Quality Assurance Committee

I was able to attend the annual conference of the National Association of Dental Plans on your behalf this month. The Las Vegas event was well attended and provided interesting insights of the national commonality of many issues that interest us here in California. Focus seems to have shifted from the Dental Plan Accreditation System to the very real problems of consumer legislative restrictions and provider availability.

We at CADP have been effectively addressing our legislative issues since the organization's inception. The issue of increasing the pool of available dentists presents some interesting opportunities. NADP is exploring presentation to Illinois dental students on how to increase efficiency. In California we already have access to some schools and could easily present a unified plan to dental school deans that would have interest and potential mutual value. We will be discussing this and other possibilities at the November Dental Directors' meeting.

We will also be addressing lessons learned from the recent wave of medical surveys by the Department of Managed Health Care. Those of you on schedule for a survey will find many time- and dollar-saving tips from the experience of your fellow directors.

Finally, we will try to get our shared site-audit program back on track.

If you have not made it a regular habit to visit the CADP website (www.caldentalplans.org), please do so before our next meeting. Many opportunities exist for mutual value and we want to begin to make the site as effective as you want it to be. With our organization and current technology it is easy to see why the CADP Dental Directors' Quality Assurance Committee has value well beyond the "sum of its parts."

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Save the Dates!

<p>Legislative Conference January 30-31, 2001 Hyatt Regency at Capitol Park, Sacramento</p> 	<p>12th Annual Conference May 16-19, 2001 San Diego Paradise Point Resort</p> 
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M E M B E R S U R V E Y

Annual Conference Program

CADP is in the planning stages for its 12th Annual Conference, which takes place May 16-19, 2001, in San Diego. While the Board of Directors has determined that the general conference theme will be focused on the new consumerism and consumers' increasing influence on health benefits, we'd like your input, as well. Please give some thought to what you'd like to hear during conference sessions, and then take a moment to complete and return this survey.

What are you looking for in program content? _____

What specific topics would you like to see presented? _____

Do you have suggestions for specific speakers? _____

If you have speaker suggestions, how can he/she/they be contacted? _____

Have previous Annual Conferences met your needs? Yes No

If yes, how? If no, what was lacking? _____

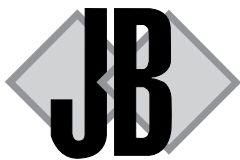
Are you satisfied with the social events which take place -
i.e., networking reception (Weds.), welcome reception (Thurs.), fun night (Fri.), and their fit within the meeting? Yes No

COMMENTS: _____

Name _____

Company _____
(optional)

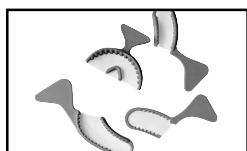
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