

California Association of

Dental Plans

LEGISLATIVE REPORT

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John F. Foran

of

**NOSSAMAN, GUTHNER, KNOX & ELLIOTT,
LLP**

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I. INTRODUCTION

The three most pressing issues for HMOs, including specialty dental plans, during the second half of the current legislative session are the ban on arbitration in HMO contracts, the proposed physician antitrust exemption, sometimes referred to as collusion, and dental services discounts. The specific bills will be discussed further in this report.

The legislative effort to ban arbitration clauses in HMO contracts is the No. 1 priority of the California Association of Health Plans (CAHP). The principal legislative proponent of this effort is Assembly Member Sheila Kuehl who is currently the Chair of the Assembly Judiciary Committee. Assembly Member Kuehl is a dedicated and effective legislator who is quite popular with her colleagues and has a number of legislative successes in her short career in office. She has just successfully won a bitterly contested primary election over Assembly Member Wally Knox and is virtually guaranteed to be elected to the California State Senate in November. This means she will continue to pursue the ban on arbitration clauses, not only for the remainder of the current session, but also when she becomes a Member of the Senate. The fact that she won the Senate primary means that she will not be a "lame duck" during the balance of the current session but will actually have a strengthened position among her colleagues, not only in the Assembly but also in the Senate where she will be looked upon as a future colleague.

A second important issue is the so-called collusion bill which will be referred to in later paragraphs. This legislation is sponsored by Senator Jackie Speier from San Francisco and San Mateo Counties. She is the Chair of the Senate Insurance Committee and is heavily involved in health care legislation. She is a strong legislator and enjoys a good liaison with Senator Burton, the President Pro Tempore of the Senate.

The third issue on our priority list addresses the matter of dental services discounts. There are two separate proposals to address this, neither of which has actually been introduced yet (although spot bills have been identified and the authors have been lined up). The concept is to permit health care service plans, including specialty plans such as dental HMOs, to contract with providers who agree to provide services under a discounted fee-for-service program offered by the plan. Similarly, a group of non-plans is planning to introduce legislation to permit non-licensed entities to provide similar discount programs to the public without being licensed as an HMO.

There have been a number of discussions with members of the staff of Governor Gray Davis indicating that he does not wish to expand upon the HMO bills that were enacted in 1999. The extent of this alleged Gubernatorial commitment has yet to be tested in the current session. The Governor will have an interest in the legislative passage of a budget bill on time and is likely to make concession to certain legislators in order to gain their support for such an objective. This could mean that he could retreat from his statements not to expand HMO legislation during the second half of the legislative session in return for support for his budget.

II. ISSUES IN LEGISLATION

A. Arbitration

The principal bills banning arbitration clauses in HMO contracts are contained in **AB 858 (Kuehl)** and **AB 1751 (Kuehl)**. There is no essential difference in the language of either bill. The question seems to revolve upon whether or not AB 858, which has already passed the Assembly and is capable of being heard at any time in the Senate, will be the vehicle or whether it will be the newly introduced AB 1751 which would have to proceed through the entire process of Assembly Policy and Fiscal Committees and then through the same process in the Senate. The current thinking is that AB 1751 will, in fact, be the bill dealing with the issue and therefore it would have to be heard in the respective committees of both houses.

Last year Governor Davis signed **SB 21** which made health care service plans or managed care entities liable for any and all harm legally caused by failure to provide necessary care. Proponents of SB 21 hailed this legislation as major managed care reform. The proponents of SB 21 are now asserting that there was a major loop hole in the legislation that must be closed by banning health plans and employers from signing contracts invoking mandatory, binding arbitration agreements.

The arguments proposed against AB 1751 are: arbitration affords consumers the same damages as court litigation, it is faster and less expensive than court litigation and it is more accessible to consumers. Arbitration also helps to control health care costs and is widely used in the private and public sectors. Employees fare better in arbitration and the Joint Commission on Health Care Dispute Resolution supports arbitration.

CAHP has mounted a major lobbying and grassroots operation to defeat AB 1751. As a result of this activity, a coalition of organizations opposed to the bill has been formed. Among the major organizations are the California Chamber of Commerce, the Civil Justice Association of California, Californians Allied for Patient Protection, and a variety of other organizations that are in the process of being contacted. In addition, a lobbying effort has been undertaken to contact key Democratic legislators to oppose AB 1751. Some of the Democratic legislative members have already indicated that they will oppose the bill and others are leaning in that direction. It would be necessary to combine the entire Republican Caucus of 37 members with seven or eight Democratic members in order to defeat the Kuehl legislation if it reaches the Floor, which it probably will.

In addition, grassroots organizations are being created to oppose AB 1751. Focus groups are being formed to determine the best arguments in opposition to the ban on arbitration by HMOs. Research is also being done in conjunction with Procter & Gamble, which opposes AB 1751 and has offered financial support in this endeavor to strengthen the arguments in opposition.

These grassroots efforts have already paid off in the editorial that appeared in the Los Angeles Times on Saturday, March 11, 2000. A copy of the editorial is attached. The article specifically attacks AB 1751 and suggests that a more moderate reform bill by Senator Richard Polanco would be the best solution to the problem. **SB 1934 (Polanco)** is an alternative bill on the issue of arbitration sponsored by Kaiser Permanente. SB 1934 provides that where a health care service plan includes terms in its plan contracts requiring binding arbitration for dispute settlement, the plan is prohibited from imposing limits on the damages that may be awarded in an arbitration that differ from the damages that could otherwise be awarded in a similar dispute decided by a court or jury trial. The editorial in the Los Angeles Times specifically supports SB 1934 as applying to arbitration the procedural safeguards that patients would obtain in court.

Finally, it should be noted that Assembly Member Kuehl is actively seeking coauthors to AB 1751. In some of her statements about the proposed legislation, there a number of inaccuracies. CAHP has prepared a letter to other coauthors suggesting that they not coauthor the bill and that they consider the arguments set forth. A copy of the letter is also attached to this report.

B. Collusion or Physician Antitrust Exemption

SB 2007 (Speier) enacts the "Quality in Health Care Contracts Act." The bill would grant physicians immunity from state antitrust laws that prohibit collective negotiation by independent competitors over fees and other contract terms.

CAHP considers SB 2007 the second most important bill to oppose during the current session. Again, CAHP has organized a lobbying and grassroots program to defeat the legislation. SB 2007 is mentioned in the Los Angeles Times editorial in a negative manner.

The Health Insurance Association of America commissioned a report by Charles River Associates, Inc. dated March 3, 2000. This report updates the national projections for the cost of physician antitrust waivers. It states that the total annual personal health care spending would rise between 3.1 and 7.1 percent or by \$34.5 billion to \$80 billion annually. In addition, private health insurance premiums would increase annually by up to 11 percent. An additional report by Charles River Associates, Inc. indicates the cost of such legislation in the State of California. It indicates that the impact on health care expenditures would be substantial given the high proportion of privately or publicly insured California residents enrolled in a managed care plan. Copies of both of these reports are attached to this report.

This issue is shaping up to be a huge battle between CAHP and CMA. We are following it closely for CADP because it is the proverbial "camel's nose in the tent:" if the physicians succeed in gaining authority to collectively bargain against HMOs, it would be a much simpler matter for the dentists to eventually follow in their footsteps.

C. Dental Management Service Organizations

AB 2332 (Mazzoni) requires a person engaged in business as a dental management service organization to be licensed by the Department as a health care service plan or a specialized health care service plan. The bill is sponsored by Western Dental Services, Inc. There are dental management service organizations who are members of the California Association of Dental Plans (CADP). The position of CADP should be determined by Board action upon review of the proposed legislation.

D. Health Care Service Discounts

SB 173 (Alpert) in its current form addresses access to contracted dental services. In that form it is serving as a "spot bill." In place of this language, we anticipate the substitution of language that permits an entity to provide or arrange for services offered to members of the public under a discount program. The bill exempts these entities from coverage as a health care service plan or as an insurance company. Instead, the entity would have to register with a yet-to-be determined state agency.

SB 1181 (Polanco) provides certain restrictions for health care service plans to withdraw from a service area. This bill was completely changed in the Assembly on September 9, 1999 whereby the original author, Senator Knight, was stricken from the bill and Senator Polanco's name was inserted as author. The bill has passed the Senate and therefore all action on the bill will take place in the Assembly Policy and Fiscal Committees. It would then be required to return to the Senate for concurrence of the Assembly amendments.

It is anticipated that the author will make substantial amendments to this bill later this month. The amended bill would authorize health plans to have a written agreement with a provider, or organization that contracts with providers, to provide services under a discount program. The bill would also permit a full service plan to subcontract with another plan, such as a specialized health care service plan, or another organization to provider or arrange for the products or services offered under the discount program.

E. Dental Benefits Eligibility

AB 2261 (Zettle) authorizes health care service plans to directly enroll eligible applicants in the Healthy Families program.

AB 2299 (Gallegos) increases the number of person eligible for dental benefits under the Healthy Families Program.

AB 2415 (Migden) deletes the requirement that eligibility for qualified aliens is not dependent upon federal participation.

SB ____ (Escutia) Senator Escutia intends to amend an existing bill or introduce a new bill dealing with when Cal WORKS terminates. Managed care plans will be required to notify families of their continued eligibility under MediCal and also communicate how to provide information for quarterly status forms (QSR) to file redetermination forms.

SB 1814 (Speier) expands the time for eligibility for enrollees in MediCare, Part B.

F. External Review

SB 292 (Figueroa) of the 1999 session would have required dental plans to establish an external review process under terms similar to those of other HMOs. This bill was subsequently amended several times and ultimately assigned to the Assembly Health Committee where it was not heard. Contacts with the staff of the Assembly Insurance Committee have indicated that the California Dental Association, sponsors of SB 292, have not decided what course of action they will take for the current second half of the legislative session. The Governor has not indicated a willingness to support such an expansion of the HMO program. We will continue to monitor the bill and analyze all amendments that may be forthcoming.

G. Privacy

A number of bills have been introduced in the Legislature relative to privacy. These bills generally restrict the marketing transfer or dissemination of personal information without the written consent or agreement of the person providing the information. The definition of some of the material that is subject to privacy laws is broad and includes insurance institutions.

SB 129 (Peace) is a bill that was introduced in 1999 and passed through both Houses of the Legislature without significant provisions being placed in the bill. The author indicated that he wished to move the bill into Conference so that extensive hearings could be held to determine exactly what role the state should play in privacy legislation. Since the bill has passed both Houses of the Legislature and is in Conference Committee, it is capable of being placed on the Floor of both Houses with the concurrence of four of the Members of the Conference Committee. Therefore, there will be no Policy hearings on this particular bill. In its current form, SB 129 creates an office of privacy ombudsman under the Secretary of State's office which can issue non-binding administrative decisions on unlawful release of personal information. The bill also authorizes the subject of the personal information to bring a cause of action for the unlawful release of such information without permission.

Senator Peace has set up hearings of the Conference Committee for virtually every Tuesday morning during February and March to determine the provisions of the bill that he wishes to seek Conference report approval. The hearings so far have been wide-ranging with particular opposition to a new regulatory agency. The only course of action is to continuously monitor the Conference Committee hearings on SB 129 to determine if there is any damaging proposals forthcoming. Other bills dealing with the privacy issue are AB 1707 (Kuehl), AB 1793 (Wayne), SB 1337 (Speier), SB 1371 (Sher), and SB 1409 (Murray).

H. Small Employer Health Coverage – Medical Savings Accounts

AB 1388 (Aanestad) requires the Managed Risk Medical Insurance Board or its successor to provide small employer health coverage under the Health Insurance Plan of California through medical savings accounts in connection with high deductible health plans or insurance coverage.

This bill was heard in the Senate Insurance Committee in 1999 and failed passage. Reconsideration was granted and it is now set for hearing in the Senate Insurance Committee for March 15, 2000.

I. Provider Reimbursement

SB 1449 (Brulte) deals with contracting providers reimbursement. At the present time, this bill only makes technical corrections to the law and is a spot bill. However, the Republican Senate Caucus has indicated that they will propose an increase of 20 percent for reimbursement of MediCal providers. This will be a major proposal in the struggle to allocate funds from the anticipated surplus during the current budget year.

III. SELECTED BILLS FOLLOWED BY HMOS

A. New Bills

The following are a series of bills that CAHP has identified for the purpose of either taking positions or placing on a watch list.

AB 1722 (Gallegos) prohibits health care service plan contracts from increasing the amount of co-payment or deductible for covered drug benefits.

AB 1734 (Thomson) authorizes tax credits to employers who provide health care benefits to their employees. Provides for a small employee tax credit for providing health care services to employees.

AB 1735 (Thomson) requires school districts to provide information to parents concerning the MediCal program and the Healthy Families program. Requires schools to notify parents involved in the school lunch program of their probable eligibility for the Healthy Families program.

AB 1824 (Strom-Martin) provides for MediCal payment of MediCare reimbursement rates to small and rural hospitals.

AB 1870 (Davis) expands Healthy Families to include substance abuse coverage.

AB 1887 (Cedillo) expresses legislative intent to create the California Health Insurance Purchasing Pool to assist employers who cannot afford to provide health insurance to their employees and funding health insurance for those employees.

AB 1915 (Corbett) requires the Department to biannually review MediCal rates and use these reviews as a basis for rate setting responsibilities.

AB 1974 (Migden) requires employers to notify the Employment Development Department about the Healthy Families program.

AB 1981 (Cedillo) provides the utilization controls applicable to out-patient services shall not prohibit a provider who is rendering care to a MediCal beneficiary from seeking to provide additional services through a prior authorization process that requires the demonstration of medical justification.

AB 2039 (Kuehl) recasts the provisions that result in liability of a health care service plan to refer to a covered benefit rather than a benefit provided under the plan. This appears to be a spot bill.

AB 2152 (Aroner) requires that the utilization controls allow authorization of durable medical equipment needed to assist a parent or other care taker with disabilities to care for a child.

AB 2193 (Baldwin) establishes the "Biometric and Personal Information Act" regulating the creation of data bases with respect to certain personal identification information.

AB 2225 (Kuehl) requires the State Department of Health Services to revise the forms used for the predetermination of eligibility for benefits under the MediCal program.

AB 2245 (Corbett) limit of services may not be less than 24 visits in one calendar year and may not be limited by time frames within that calendar year.

AB 2334 (Floyd) technical changes to the Medical Practice Act. A spot bill.

AB 2500 (Ashburn) establishes an income reduction of 150 percent of the United States Department of Health and Human Services Poverty Guidelines for MediCal eligibility.

AB 2547 (Hertzberg) authorizes the Department of Health Services to publicize specified information on licensing and certification information on an Internet site with respect to health facilities.

AB 2617 (Aanestad) provides that to the extent permitted by federal law, small and rural hospitals shall be reimbursed for all reasonable costs incurred in providing in-patient and out-patient services covered under the MediCal program.

AB 2689 (Corbett) establishes a pilot program to offer direct contracting for health care coverage for selected school districts.

AB 2781 (Oller) deals with health care service plans and the Department of Managed Care and makes technical nonsubstantive changes. This is a spot bill.

AB 2804 (Papan) specifically provides that pharmacists are recognized as health care providers.

AB 2809 (Robert Pacheco) authorizes a pregnant woman to refuse HIV testing if she has been determined to be chronically affected with HIV or if a medical professional explains the purpose of testing and the currently approved treatments.

SB 1401 (Schiff) makes corrections and deletions of obsolete provisions regarding health care service plans. A spot bill.

SB 1419 (Haynes) establishes the "Biometric and Personal Information Act" and the creation of data bases regarding certain personal identifying information and requires informed consent for the retention of such data.

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.

SB 1576 (Murray) establishes the Assumption Program of Loans for medical care for graduates who become physicians and agree to serve in low income areas of the state.

SB 1600 (Burton) deletes the sunset on the law authorizing performance of tissue penetration by physical therapists.

SB 1738 (Hayden) expresses legislative intent to establish a mechanism for greater consumer representation in managed care.

SB 1746 (Figueroa) would require 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. The bill also requires the waiver by the plan of enrollee co-payments for emergency treatments.

SB 1764 (Chesbro) requires coverage for the treatment of alcohol and other drug abuse dependencies by health care service plans.

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

SB 1786 (Dunn) would implement the recommendations of a specified report by the Senate Office of Research relating to actions necessary to preserve and enhance the California Children's Services program.

SB 1821 (Sher) applies to dental services and would deem children who are eligible for certain social services programs to be income eligible for the purposes of the MediCal program and Healthy Families program.

SB 1837 (Figueroa) prohibits health care service plans from entering into an "exclusive product" contract as part of any prescription drug benefit.

SB 1839 (Speier) requires health care service plans to provide coverage for life-threatening prostate cancer clinical trial meeting.

SB 1852 (Alpert) deals with podiatry and makes nonsubstantive technical changes in the law. This is a spot bill.

SB 1858 (Escutia) would impose certain requirements with respect to after-care for patients who are about to be discharged.

SB 1875 (Speier) would require the Department of Health Services to create a central reporting data base for information relating to the occurrence of medication-related errors.

SB 1876 (Johnston) relates to protection care and assistance of needy people. This bill makes nonsubstantive changes in the law. This bill is a spot bill.

SB 1903 (Speier) prohibits health care providers from requesting medical information from patients without providing a written notice of their request to the patient.

SB 1922 (Speier) requires health care service plans to uniformly impose on all pharmacies any limitation on the co-payment of a prescription drug that may be provided to an enrollee.

SB 1940 (Bowen) makes it unlawful to disclose nonpublic personal information including transactions through mail order or the Internet with respect to drugs.

SB 1993 (Johnston) provides under the Healthy Families program, which includes dental plans, to permit more than one health plan in a geographic area to be a community provider plan. Further, requires in those geographic areas in which no health plan meets the threshold standard, that the Managed Risk Medical Insurance Board designate a health plan as the community provider plan.

SB 2020 (Speier) requires both public and private schools to exclude a pupil who does not health insurance coverage unless the County Department of Health Services waives this requirement for the pupil.

SB 2022 (Speier) prohibits health care service plans from imposing a preexisting condition exclusion relating to pregnancy or maternity care.

SB 2069 (Perata) would permit health care service plans that requirement utilization review or utilization management to communicate such by facsimile.

SB 2083 (Speier) makes corrections and cross-references to the Financial Solvency Standards Board. This is a spot bill.

SB 2094 (Insurance Committee) makes technical changes to the Department of Managed Care. This is a spot bill.

SB 2136 (Dunn) declares that it is the intent of the Legislature to enact legislation that would reduce fraud perpetrated by MediCal providers and suppliers.

SB 2158 (Dunn) makes technical changes to the MediCal program as it pertains to public assistance recipients and certain other low income persons. This is a spot bill.

The above list of bills being following by the HMOs is selected and does not include every single bill that they are monitoring. The so-called "spot bills" and could become major pieces of legislation as the session progresses and must be watched carefully for amendments.

A discussion was held among the California Association of Health Plans regarding whether or not the organization should support bills beyond their immediate interest, such as, those dealing with tobacco use and gun control. It was felt by some that this would gain popularity and positions similar to that enjoyed by the California Medical Association on such issues. The counter argument was that in some of these instances, the HMOs would offend key legislators who support the contrary positions and also might alienate the Governor on some issues. The debate is still continuing and remains unresolved.

B. Bills Introduced in 1999 Capable of Being Acted Upon

AB 726 (Gallegos) requires converting health care service plans set aside for charitable purposes to be transferred to the Major-Risk Medical Insurance Fund for the purposes of the Major-Risk Medical Insurance program.

AB 869 (Keeley) extends the sunset date until December 31, 2000 that provides that a dentist administering oral-conscious sedation on an out-patient basis to a patient 13 years of age must meet specified licensing and permit requirements. This bill dealt with a totally different subject and was

amended and past the Assembly in this form. It is currently awaiting a hearing date in the Senate Business and Professions Committee.

AB 918 (Keeley) requires health care service plans to annually update their actuarial reports and requires a qualified actuary to render an opinion as to whether the capitation-based payment arrangements are computed appropriately.

AB 1032 (Thomson) changes the definition of "small employer" to include any federally-recognized California Indian Tribal Government that purchases health coverage for eligible members of the tribe.

AB 1621 (Thomson) requires health care service plans to provide certain types of coverage. This bill was never set for hearing in the Senate Appropriates Committee.