

California Association of

Dental Plans

LEGISLATIVE REPORT

May 11, 2000

John F. Foran

of

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

LEGISLATIVE REPORT

I. INTRODUCTION

This report represents an update of the legislative report of March 15, 2000, relating to pending legislation in Sacramento during the second half of the current biannual session. A number of bills referred to in the March 15, 2000, report were spot bills and have been deleted from this report since no substantive amendments were made. Also bills that were never set or abandoned by the author were removed from this report.

II. ISSUES IN LEGISLATION

A. Arbitration

In our last report, we identified two bills by Assembly Member Kuehl that would ban arbitration clauses in HMO contracts. These bills were **AB 858** and **AB 1751**. At the time it was unknown as to which specific bill would be pursued. Since that time, **AB 1751** was heard and passed out of the Assembly Judiciary Committee. Since it did not have fiscal implications, it was not heard in the Committee on Appropriations and went directly to the Floor where it is currently awaiting action on the Assembly Third Reading file. Because the bill has not yet been taken up, our lobbying efforts against the bill appear to be successful to date.

As a defensive mechanism against the passage of **AB 1751 (Kuehl)**, CADP is supporting an alternative bill, **SB 1934 (Polanco)**. **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. **SB 1934** was defeated in the Senate Judiciary Committee on April 25, 2000, however, reconsideration was granted. The bill was again heard on May 9, 2000, in the Senate Judiciary Committee and it passed out of that Committee and will next be heard in the Senate Appropriations Committee. The staff of the Senate Judiciary Committee raised questions with respect to certain pending cases as they would be impacted by the application of **SB 1934**. Amendments were adopted to ensure that the legislation, if enacted, would not impact any pending cases and it further provided for corrections to any defect with respect to those issues raised in the cases. In that form, the bill passed the Senate Judiciary Committee and will be heard by the Senate Appropriations Committee.

B. Collusion or Physician Antitrust Exemption

As reported in the March 15, 2000, report, **SB 2007 (Speier)** would have granted physicians immunity from state antitrust laws that prohibit collective negotiation by independent competitors over fees and other contract terms. **SB 2007** was amended to totally remove the provisions of the bill as it was introduced on February 25, 2000. The bill as amended poses several problems for CADP. It would require the Director of the Department of Managed Care to establish and maintain a system of reviewing and acting on provider complaints. The Director could then either

approve the contract or make findings regarding the need for modification of the contract terms. If the terms of the contract were deemed to compromise patient care, the contract would be unenforceable. Further amendments were offered in the Senate Insurance Committee which have not yet been put in print. In the amended form, the bill passed the Insurance Committee and is currently awaiting hearing in the Senate Appropriations Committee. Copies of the new amendments will be attached to this report if they are available. If not, they will be forwarded after they are in print. CADP should continue to oppose **SB 2007** in its currently amended form.

C. Dental Management Service Organizations

AB 2332 (Mazzoni) would have required 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. This bill was discussed at the Board of Director's meeting of CADP on March 15, 2000. There was no consensus on a position on the bill. However, the author has decided to drop the bill and, therefore, it no longer needs to be monitored.

D. Health Care Service Discounts

SB 173 (Alpert) as amended permits an entity to provide or arrange for services offered to the public under a discount program. The Department of Consumer Services is given exclusive authority to adopt regulations. The bill exempts these entities from coverage as a health care service plan or as an insurance company.

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.

The author plans to make substantial amendments to this bill. 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 provide or arrange for the products or services offered under the discount program.

E. Dental Benefits Eligibility

AB 2299 (Gallegos) increases the number of persons eligible for dental benefits under the Healthy Families program. This bill passed the Assembly Health Committee and, after being heard in the Assembly Appropriations Committee, was placed on the Suspense calendar as a result of the costs involved.

AB 2415 (Migden) deletes the requirement that eligibility for qualified aliens is dependent upon federal participation. This bill passed the Assembly Health Committee and it is awaiting hearing in the Assembly Appropriations Committee.

F. External Review

SB 292 (Figueroa) of the 1999 session remains in the Assembly Health Committee and has not been scheduled for hearing. The legislative report of March 15, 2000 still pertains to this bill; that is the California Dental Association, the sponsors, have not decided what course of action they will take during the second half of the current legislative session. We will continue to monitor the bill and analyze any amendment that may be forthcoming.

G. Privacy

SB 129 (Peace) continues to be the subject of Conference Committee hearings but no action has been taken on the bill. Numerous hearings have been held so far and they continue to be held on a regular basis.

The other principal bills dealing with the privacy issue, **AB 1707 (Kuehl)**, **SB 1337 (Speier)**, and **SB 1372 (Leslie)** have all been defeated.

H. Small Employer Health Coverage – Medical Savings Accounts

AB 1388 (Aanestad) which would set-up medical savings accounts in connection with high deductible health plans or insurance coverage was introduced in 1999. The bill failed in the Senate Insurance Committee and has not been reset for hearing.

I. Provider Reimbursement

SB 1449 (Brulte) would have dealt with reimbursement of contracting providers to health plans. This bill has never been put in its final form and it remains in the Senate Rules Committee pending substantive amendments being placed in it. However, based upon public statements by Senator Brulte who is now the Minority Leader of the Senate, the question of provider reimbursement will be an issue in the year 2000 Budget Bill.

J. Full Service Versus Specialized Service

At the March 15, 2000 meeting of the CADP Board, the question of **AB 607 (Scott)** of the 1998 session. This bill provided for standardized health benefit information to health plan members in an easy to understand "matrix" format. It was not the intention of the author that the matrix be designed to apply to specialized health plans, such as dental or vision plans.

The Department of Corporations however interpreted this 1998 bill to apply to all plans including specialized plans and therefore held certain specialized plans to be not in compliance with the legislation. Richard Spohn had initiated conversations with Assembly Member Scott relative to a clarification of this issue. Following the March 15 meeting I met several times with Paul Donahue, Consultant to the Assembly Insurance Committee, seeking to have the matter corrected. After a period of time, Paul Donahue left the Assembly Insurance Committee to pursue a private business and I was required to once again initiate the discussion with Paul Donahue's successor. I have done so and left the material with respect to the proposed changes in the law with Assembly Member Scott's office. I was assured that Assembly Member Scott would pursue an amendment to one of his bill that had passed the Assembly. It was suggested this bill may be **AB 1485** which is currently in the Senate Health Committee, however, another bill may be chosen to do this. Since the Senate has not yet been setting Assembly bills for hearing in their committees, the matter remains in abeyance for the present time. I will continue to pursue an amendment to correct the matter.

III. SELECTED BILLS FOLLOWED BY HMOS

AB 1734 (Thomson) as amended May 1, 2000 authorizes tax credits to employers who provide health care to employees. Passed the Assembly Health Committee and is currently awaiting hearing in Assembly Appropriations.

AB 1735 (Thomson) requires school districts to provide parents with information on Healthy Families program. Passed the Assembly Health Committee and heard by Assembly Appropriations then placed on the Suspense calendar.

AB 1887 (Cedillo) creating a California Health Insurance Purchasing Pool to assist employers who cannot afford to provide health insurance coverage for their employees. Passed the Assembly Health Committee, heard by the Assembly Appropriations Committee on May 10, 2000 and placed on the Suspense calendar. This bill has a general fund cost of \$499 million per year. It is unlikely that such a measure will be adopted.

AB 1915 (Corbett) as amended May 2, 2000 requires the Department to biannually review MediCal reimbursements. The results are to be reported to the Legislature as a basis for its rate setting responsibilities. Passed the Assembly Health Committee and is currently awaiting action in the Assembly Appropriations Committee.

AB 1974 (Migden) requires employers to notify the Employment Development Department regarding the Healthy Families program. Passed the Assembly Health Committee; pending action in the Assembly Appropriations Committee.

AB 2039 (Kuehl) represents a commitment made by the author of SB 21 of the 1999 session establishing the HMO liability law. The bill provides that a person who has established significant financial loss must exhaust the applicable independent review system prior to filing a lawsuit

unless a judge, as a matter of law, finds that exhaustion of the review would be futile. AB 2039 was heard in Assembly Judiciary Committee and failed passage.

AB 2225 (Kuehl) requiring the Department of Health Services to revise forms for predetermination of eligibility benefits under the MediCal program. Assigned to the Assembly Health Committee and was not set for hearing.

AB 2500 (Ashburn) established an income reduction of 150 percent of the United States Department of Health and Human Services Poverty Guidelines for MediCal eligibility. Heard in the Assembly Health Committee and failed passage.

AB 2547 (Hertzberg) authorizing the Department of Health Services to publicize specific information on licensing and certification on the Internet. Passed the Assembly Health Committee and is pending in Assembly Appropriations Committee.

SB 1471 (Schiff) as amended April 27, 2000 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. Passed the Senate Judiciary Committee and is currently awaiting action on the Senate Floor.

SB 1738 (Hayden) creates the Insurance Policyholder and Patient Protection Association as a nonprofit consumer-based to protect and advocate the interests of policyholders and patients with respect to insurance and health care issues. Passed the Senate Insurance Committee. Currently awaiting action in the Senate Appropriations Committee.

SB 1746 (Figueroa) 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. This bill passed the Senate Insurance Committee and is currently awaiting action on the Senate Floor.

SB 1780 (Chesbro) establishes a Medicare Payment Area Commission which would be required to develop recommendations on Medicare payment areas. Passed the Senate Health Committee. Currently awaiting action in the Senate Appropriations Committee.

SB 1821 (Sher) applies to dental services and would deem children who are eligible for certain social services programs to be eligible for the purposes of the MediCal program and the Healthy Families program. Passed the Senate Health Committee and is currently awaiting action in the Senate Appropriations Committee.

SB 1903 (Speier) prohibits health care providers from sharing or selling medical information of patients without providing a written notice of their request to the patient. Passed the Senate Judiciary Committee. Currently awaiting action in the Senate Appropriations Committee.

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. Passed the Senate Insurance Committee. Currently pending in the Senate Appropriations Committee.

SB 2020 (Speier) requires both public and private schools to assist parents of public school pupils if they wish information on MediCal and the Healthy Families programs. The bill has been re-referred to the Senate Committee on Insurance and no date for hearing is set.

SB 2069 (Perata) permits health care service plans that require utilization review to communicate such by fax. Assigned to the Senate Insurance Committee and has not had a hearing.

SB 2136 (Dunn) establishes a Quality Advisory Group in the Department of Managed Care to assist in providing a uniform quality audit process for the health delivery system of each health care plan. Passed the Senate Insurance Committee and is currently awaiting action in the Senate Appropriations Committee.