

*California Association of*

*Dental Plans*

***LEGISLATIVE REPORT***

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**of**

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LLP**

# LEGISLATIVE REPORT

## I. INTRODUCTION

This is an update of the May 11, 2000 legislative report on activity during the second half of the current bi-annual session. The Legislature is currently in recess and will return to Sacramento on August 7, 2000. When they return there will be three weeks of session remaining until the adjournment sine die on August 31, 2000.

## II. ISSUES IN LEGISLATION

### A. Arbitration

Two bills by Assembly Member Kuehl that would bar arbitration clauses in HMO contracts are effectively dead for the balance of the session. **AB 858** and **AB 1751**.

CADP continues to support an alternative bill, **SB 1934 (Polanco)**. **SB 1934**, in its original form provided 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 damage that could otherwise be awarded in a similar dispute decided by a court or jury trial. In our last report, we indicated that amendments had been adopted to ensure that the legislation would not impact any pending cases and it would further correct any defect with respect to issues raised in those cases.

**SB 1934** is currently awaiting hearing in the Assembly Judiciary Committee and is set for August 9, 2000. Since the last report, **SB 1934** has been further amended to do the following:

1. The plan may not prohibit an enrollee from having representation by counsel or from filing a written brief or making a closing argument before the arbitrator.
2. The bill further provides that the same statute of limitations that governs civil actions shall also govern the demand for arbitration.
3. The amendments also provide that any arbitration agreement in a health care service plan contract that includes terms that are inconsistent with the provisions of **SB 1934** shall be void and unenforceable.

With the foregoing amendments it would appear that the bill should receive little opposition. Nevertheless, the consumer attorneys of California, i.e., the trial lawyers continue to oppose the bill. The bill is currently in the Assembly Judiciary Committee which is composed of members extremely favorable to the trial attorneys and therefore, the prospect is not necessarily optimistic for passage of **SB 1934**.

## **B. Collusion or Physician Antitrust Exemption**

As indicated in the last legislative report, **SB 2007 (Speier)** was amended to totally remove the provisions of the bill as it was introduced. The original version of **SB 2007** would have granted physicians immunity from state anti-trust laws that prohibit collective negotiations by independent competitors for fees and other contract terms.

As amended, **SB 2007** requires the Director of the Department of Managed Care to establish and maintain a system of reviewing and acting on provider complaints. The Director of Managed Care would be empowered to declare a contract unenforceable if it was deemed in the commissioner's opinion to compromise patient care. A further amendment was placed in the bill which would permit the plan or the provider to request a *de novo* judicial review of the director's determination.

**SB 2007** is currently pending action in the Senate Appropriations Committee. The bill was scheduled for hearing in the latter part of June but the author for some reason decided not to present the bill. CADP continues to oppose **SB 2007**.

## **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. As indicated in the last report, the author dropped the bill so that this particular proposal is effectively dead for the current session of the Legislature.

## **D. Health Care Service Discounts**

**SB 173 (Alpert)** and **SB 1181 (Polanco)** deal with the issue of health care service discounts. Both bills have passed the Assembly Health Committee and are currently double-referred to the Assembly Judiciary Committee with a hearing date of August 9, 2000.

**SB 173** provides that discount plans be registered with the Department of Managed Care. It also requires certain disclosures to members of the plan.

**SB 1181** permits health care service plans including specialized health care service plans to offer discount programs providing the plan has filed an amendment regarding the discount program. The bill further requires the Department to collect data on discount programs and access the impact of those programs on health care coverage and report the findings to the Legislature on or before December 31, 2004.

The Assembly Health Committee amended both bills to make them consistent with each other.

#### **E. Dental Benefits Eligibility**

**AB 2299 (Gallegos)** increases the number of persons eligible for dental benefits under the Healthy Families program. This bill is currently awaiting hearing the Senate Appropriations Committee on August 7, 2000.

**AB 2415 (Migden)** deletes the requirement that eligibility for qualified aliens is dependent upon federal participation. This bill passed the Senate and is waiting on the Assembly Floor for concurrence in the Senate amendments.

#### **F. Practice of Dentistry**

**AB 497 (Gallegos)** which allows dentists to maintain more than one office has passed the Senate and is waiting on the Floor of the Assembly for concurrence in the Senate amendments.

#### **G. Second Opinion**

As indicated in the May 11, 2000 legislative report, **SB 292 (Figueroa)** clarifies the law that members of dental plans can request a second opinion. CADP acting upon recommendations based upon **AB 12** of the 1999 session implemented a policy of making second opinions applicable to its members. As a result CADP took a neutral position on **SB 292**. **SB 292** is now unopposed and is set for hearing in the Assembly Appropriations Committee on August 23, 2000.

#### **H. Privacy**

**SB 129 (Peace)** remains in the Conference Committee where there have been extensive hearings since the beginning of the session. In the last hearing of the Conference Committee amendments were drafted that would create a "privacy tort." By way of remedies, nominal damages of \$1,000 could be recovered without proving that the consumer suffered actual damages. The amount of actual damages beyond \$1,000 suffered by a consumer could be awarded under the terms of the draft amendments. In addition, the court is required to award reasonable attorney fees and costs to the plaintiff if he or she prevails in the action. These amendments while presented in the Conference Committee were never actually placed into the bill. The Conference Committee hearings on **SB 129** will continue in August when the Legislature reconvenes.

#### **I. Full Service Versus Specialized Service**

At the March 15, 2000 meeting of the CADP Board, a question arose about **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.

After further discussions with Assembly Member Scott, he is prepared to place a clarifying amendment in one of his bills pending in the Senate. It will probably be **AB 1455** which will be heard in the Senate Judiciary Committee on August 8, 2000. Unfortunately, this bill has some opposition and may have difficulty in the Committee, whereas the clarifying CADP amendment is non-controversial. We will work with Assembly Member Scott and attempt to facilitate the correction.

#### **J. Multiple Audits**

**SB 2136 (Dunn)** requires the Director of Managed Care to adopt regulations on a uniform medical quality audit system by January 1, 2002. CADP has been pursuing a uniform audit procedure and **SB 2136** will further that objective. A number of concerns have been raised by various health organizations about the bill as written and certain amendatory language needs to be placed in it before it will pass the Assembly Judiciary Committee where it is scheduled to be heard on August 23, 2000.

#### **K. Confidentiality and Identity Theft**

**SB 1767 (Bowen)** establishes certain requirements that will allow people to control access to their credit reports. The bill prohibits the assigning of a person's social security number as identification criteria. It further provides that as to health care service plans, the prohibition against the use of social security numbers would become inoperative on or after the date a federal law takes affect requiring the U.S. Department of Health & Human Services to establish a national unique patient health identifier program.

### **III. SELECTED BILLS FOLLOWED BY HMOS**

The status of selected bills followed by the HMOs has remained virtually unchanged since the May 11 legislative report. Their status is reiterated as follows:

**AB 1734 (Thomson)** under submission in Assembly Appropriations Committee.  
**AB 1735 (Thomson)** Senate Appropriations Committee.  
**AB 1887 (Cedillo)** Senate Appropriations Committee.  
**AB 1915 (Corbett)** Assembly Appropriations Committee. Since the deadline has passed, this bill is effectively dead.  
**AB 1974 (Migden)** Senate Appropriations Committee.  
**AB 2039 (Kuehl)** failed passage, dead for the session.  
**AB 2225 (Kuehl)** Assembly Health Committee never set for hearing.  
**AB 2500 (Ashburn)** failed passage in Assembly Health Committee.  
**AB 2547 (Hertzberg)** Senate Appropriations Committee.  
**SB 1471 (Schiff)** awaiting action on Assembly Floor.  
**SB 1738 (Hayden)** Senate Appropriations Committee which is effectively dead for this session.  
**SB 1746 (Figueroa)** Assembly Appropriations Committee.  
**SB 1780 (Chesbro)** Assembly Appropriations Committee.  
**SB 1821 (Sher)** Assembly Appropriations Committee.  
**SB 1903 (Speier)** Assembly Appropriations Committee.  
**SB 1993 (Johnston)** Senate Inactive File which in effect means the bill is dead.  
**SB 2020 (Speier)** Assembly Appropriations Committee.  
**SB 2069 (Perata)** Senate Insurance Committee never set for hearing which means the bills is dead.  
**SB 2136 (Dunn)** Assembly Appropriations Committee.