

*California Association of
Dental Plans*

LEGISLATIVE REPORT

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of

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LLP**

LEGISLATIVE REPORT

I. INTRODUCTION

This report represents an update of the legislative report of May 11, 2000, relating to legislation in Sacramento during the second half of the current biennial session. The legislative session ended *sine die* on August 31, 2000, and this report is the final report of action taken up prior to the conclusion of the session. The action on all bills referred to is final except where the bills have passed and the Governor has yet to determine whether to sign or veto the bills sent to him.

II. ISSUES IN LEGISLATION

A. Arbitration

As noted in our last report, all of the bills which would have banned arbitration clauses in HMO contracts had all failed passage in the Legislature. As a defensive mechanism against the passage of such bills, CADP 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 is 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 Appropriation Committee and the Floor of the Senate. It was referred to the Assembly Judiciary Committee where it failed passage. The bill was opposed by the Consumer Attorneys of California (trial lawyers). The Chair and a majority of the members of the Committee are closely aligned with that organization. Assemblymember Kuehl, the Chair of the Assembly Judiciary Committee, is the successful nominee for State Senate and the next Chair of that Committee will be Darrell Steinberg, who is also considered a pro-trial attorney member. The new Chair of the Senate Judiciary Committee will be Senator 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 Committee 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.

B. Collusion or Physician Antitrust Exemption

As indicated in the last report, **SB 2007 (Speier)** which would have granted physicians immunity from state antitrust laws was totally amended out and language which provided broad powers in the Director of the Department of Managed 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.

C. 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. In the July recess of the Legislature, 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 maintained a neutral position on **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 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, 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 the Senate Judiciary 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 will be meeting this month to strategize about the issues and to discuss possible options. Mary Antoine will be attending this meeting and will keep Jackie Miller informed if anything significant develops.

D. 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. The office would 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. 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.

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

E. Second Opinion

SB 292 (Figueroa) 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. Nevertheless, the bill was placed on the Inactive File by the author on the Senate Floor in the final day of the legislative session and therefore did not pass.

F. 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. Assemblymember 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.

I conferred extensively with Assemblymember Scott's office in an attempt to have the Assemblymember add a provision indicating his intent in legislation pending during the 2000 year of the session. This effort was proceeding when unfortunately the consultant with whom I was working left legislative service and the process had to begin again with individuals who were unfamiliar with the issue. Once again efforts were made to have Assemblymember Scott place the correction of his 1998 law in another bill, specifically, **AB 1455** of which he was the author.

Subsequently, the issue of Insurance Commissioner Quackenbush and the hearings on his activity totally dominated the focus of Assemblymember Scott. He 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 Assemblymember Scott's intent. An "omnibus" bill is one that combines numerous noncontroversial bills in one to avoid repetitive legislation. Unfortunately, the Chair of the Assembly Health Committee, who is in effect 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. Assemblymember Scott has been virtually elected to the Senate and hopefully, we will be able to persuade him to pursue his original intent of the 1998 session.

G. Social Security Identification

SB 1767 (Bowen) would have prohibited health 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.

III. SELECTED BILLS

Of the selected bills referred to in the May 11, 2000, report to CADP, only the following have passed the Legislature and have been sent to the Governor for signature or veto:

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

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

AB 2547 (Hertzberg) authorizing the Department of Health Services to publicize specific information on licensing and certification on the Internet.

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.

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.

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

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.

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.

IV. 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 on the last week before the deadline for Legislative Counsel and then introduced in the last week before the deadline for introduction.

Many of the issues that were unsuccessful in the recently concluded session will be reintroduced in the same or slightly different versions. CADP should be prepared to take positions on these bills at the earliest possible opportunity. In addition, if CADP wishes to proactively pursue legislation, then it should be done as early as possible so that we would have an opportunity to obtain an author willing to introduce the bill. Legislators are now subject to a limitation on the number of bills they may introduce and therefore, the question of "shopping" for an author becomes very important. Often members who are favorably inclined toward our policies simply state they would be willing to introduce the bill but they have reached their limit. Therefore, it is important to make early decisions on what legislation should be pursued. Certainly an effort should be made to deal with the intent of Assemblymember, soon to be Senator, Scott on the issue referred to above.

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