CDC Report

Friday August 19 , 2005 Los Angeles, California

Legislative Report: Michael Arnold distributed a Legislative Status Report to all attending. He summarized the most important bills as follows:
AB 1707 (Chan) has been enacted and will continue Medi-Cal payments for providers in case of future budget deadlocks. This bill is not limited to a specific number of dollars as has previously been the case for Medi-Cal payment when the legislature has been in a budget deadlock.
ACR 75 (Oropeza) is the CDC sponsored resolution that intends to bring Chronic Kidney Disease and its issues into public awareness.
SB 375 (Speier) is a bill that originally included language that would have prevented Medi-gap insurers from discriminating against persons under age 65 with ESRD. Due to pressure brought by the insurance industry, the language was changed and the dialysis exclusion for ESRD patients under age 65 remains in place. Michael stated that it is possible that in the future, dialysis patients and providers might be able to prevail in having this exclusion removed on the basis of discrimination but it is not likely this year.
November Ballot. Regarding the November ballot, Michael reported that Proposition 76 (nicknamed "Live within Our Means") would give the Governor more authority concerning the development of a budget. Michael stated that this is, in his mind, the most important proposition on the ballot. There are two drug discount propositions on the ballot, Proposition 78 and Proposition 79. One is sponsored by consumer advocates and the other, by the drug industry. The drug industry has raised large amounts of money for the purpose of defeating both propositions. Expect a lot of mail on these propositions.
Hospital Refinancing issue. Safety net hospitals have been restructured in the past three weeks. The Bush administration has developed a new waiver from "freedom of choice." Under the restructuring, every county will be required to tell the State and Federal governments how much they have spent on the poor (Medi-Cal and uninsured). The Federal government will then match those dollars. If more than 43% of the patients are in the poor category, the hospital falls within the definition of a Disproportionate Share Hospital under current State law. Therefore, there are questions regarding whether there will be enough money available under the new Federal waiver. As a condition of this new waiver, the Federal government has mandated increased participation in managed care. The Seniors, Blind and Disabled (SBD), previously Aged, Blind and Disabled, category will be moved into managed care. Thus, fee-for-service Medi-Cal patients on dialysis may now be moved into a managed care plan. Tom Paukert suggested that CDC begin to develop a relationship with the various Medi-Cal managed care providers right away since our current level of influence at Medi-Cal will be diluted by the new waiver. These local county managed care organizations are managed by the individual counties rather than by the larger insurance carriers at the state level. Michael Arnold suggests that he will prepare a summary with background information for the Board and we can discuss the issue further at the meeting in Oakland in September. He also suggested that we invite the Medi-Cal representative responsible for oversight of the managed care division to attend that meeting. John De Palma suggested that the problem be concisely defined using current experience in Medi-Cal managed care by county. Jan Anderson stated that years ago Amgen developed a document for the managed care organizations which identified the needs of ESRD patients. The original document was used for commercial managed care but could probably be adapted and updated for Medi-Cal managed care. Jan has a copy of the document and will forward it to Michael. Kelly Wright stated that any use of the document would have to be reviewed by Amgen legal counsel.

Regulatory Report:
LVN. The lawsuit filed by the California Nurses Association (CNA) against the BVNPT (LVN Board) was successful in overturning the regulations that became effective in February of 2003 regarding LVN duties in the dialysis setting. CDC hired the law firm of Hooper, Lundy and Bookman to evaluate the law suit and its scope affecting dialysis providers. Hooper, Lundy and Bookman determined that the I.V.-certified LVN's ability to initiate and terminate dialysis via catheter is preserved as well as the ability to administer some IV fluids. CDC then sent a letter to the LVN Board stating our understanding of the effects of the change in regulatory language (based upon the Hooper, Lundy and Bookman analysis) and the LVN Board responded to CDC in agreement with the analysis. Michael distributed copies of the memo from the BVNPT to dialysis providers following the overturn of the 2003 regulations and a copy of the letter of agreement from the same Board as described above. Thus, it is the understanding of CDC that LVNs

Cannot administer I.V. medications (beyond the scope of their license)
With I.V. certification and proper supervision, can start and stop dialysis via catheter
Can administer I.V. fluids as defined in the LVN intravenous therapy regulations effective 2002
Can conduct "basic assessment (data collection)."

Licensure/Certification issues. Karen Dyer reported that Michael Arnold and Ann Robar visited with representatives of the State Department of Health Services (DHS) to discuss Medicare certification of home dialysis training facilities (not nursing facility patients). They reported that there seemed to be a fair amount of confusion regarding home dialysis training. Ann agreed to have the legal representative for DHS come to visit one of the WellBound training facilities to expand their understanding of the process. To date, that individual has not contacted Ann. John Moran agreed to discuss the situation with Ann and suggest that she follow up with the DHS representative while the issue is fresh.
Dialysis in Skilled Nursing Facilities (SNF). Jennifer Nazarko, the national director of Acute Services for DaVita again presented her needs to the CDC. DaVita contracts with nursing facilities to dialyze patients who are medically unstable and are not transportable. These services are billed to the nursing facility. According to Jennifer, Scott Vivona of the DHS has determined the practice to be unlawful because it is not regulated. Jennifer stated that Mr. Vivona suggested that she bring the issue to CDC and the State would discuss the issue with CDC. Jennifer requested CDC assistance in this. She agreed to draft a clear and concise definition of who the patients are that are in need of this service as well as the specifics of care to be delivered (i.e. who will be responsible for oversight of the needs of the ESRD patient). It was suggested by the Board that Jennifer be specific regarding the role of the attending nephrologist and the medical director of the nursing facility in her definitions. The Board further suggested that a re-approval time frame be included so that patients would not be able to remain in this type of care indefinitely. CDC will request that DHS develop a letter of clarification around the special needs of this small group of patients.
CMS Physician Fee Schedule. John Moran presented a summary of the effects of the geographic wage index up-date that is included in the 2006 Physician Fee Schedule on counties in California. Wages represent 53.11% of the cost of dialysis in the Composite Rate payment. The revised index would be applied to that 53.11%. Dr. Moran distributed two pages that outlined the wage index changes for California. There is comment period ending September 30. The document that includes the wage index is CMS 1502-P (it is also included in NRAA Report #561 pp 121-232). Some of the other issues covered in the Fee Schedule are:

1. lower drug reimbursement based on ASP+6% for all drugs including EPO.
2. proposing to lift the cap on the Composite Rate, but lower the floor to actual, enabling facilities that have been shorted payment due to the cap to get their full up-dated rate.
3. new exception rates for pediatric facilities
4. elimination of the $.50 administration fee for EPO and vaccines
5. the drug add-on would be 8.9%, but some believe there were calculation errors and the number should be closer to 11%.
6. no changes in the case mix adjustments.

An Ad-Hoc subcommittee (John Moran, Jan Anderson, Judith Filangeri) will review the proposed Fee Schedule for comment and bring their evaluation to the next Board meeting so that CDC can submit comments by September 30. They will be principally looking at those issues of concern for California as there will be comments by other organizations in a more general sense.
Mary Brattich stated that she has heard that in the San Diego area the JCAHO has been placing particular emphasis on dialysis and dietary services in the hospitals they are accrediting. Rumor has it that Joint Commission feels that the poor oversight of ESRD outlined by Senator Grassley (R-IA) could be corrected if they performed recertification visits. No other attendee has had personal information on this issue but it was acknowledged by several that JCAHO has been attempting to break into the dialysis provider area for quite a while.

NRAA Report: Mike Paget delivered a report for the NRAA. He reminded those in attendance that the Chicago meeting is next month and distributed a copy of the Preliminary Program for the 2005 Annual Conference. NRAA continues to work on support for the Kidney Care Quality Improvement Act. Mike reported that the Federal Medicaid Commission has put a measure in place for saving $10 Billion in the next five years in the Medicaid programs. He also told the Board that CMS has proposed rules requiring skilled nursing facilities to vaccinate for influenza. Karen Dyer stated that she has been told that hospitals are also vaccinating (for pneumonia as well) and that she has heard that there may be a new CMS initiative for the dialysis community requiring vaccination for influenza, pneumonia and hepatitis B. It will be problematic determining where and if a patient has already received vaccines.

Medicare/ Medi-Cal Report: Mike Paget reported for Cindy LaMunyon. Members are encouraged to complete an on-line survey that ends August 31. The survey concerns the proposed change from X-codes for MediCal billing to NDC (National Drug Codes). There are a number of potential issues for ESRD providers and these are outlined in a Memo from Cindy LaMunyon to the Board that was distributed to those in attendance. The memo included suggestions for inclusion in the "comment box" on the survey. Mike reported that Washington state tried this switch for its Medicaid program several years ago and it failed. NDC codes are different on each vial from the code on the box of vials. In order to properly bill using the NDC codes, a provider would have to track the code on the individual vial for each patient bill. CDC will

develop a position paper for Stan Rosenstein, Deputy Chief of Medi-Cal, on the subject of the use of NDC codes.
Cindy asked Mike to query the attendees regarding problems with cross-over between Medicare and MediCal (probably due to case mix adjustment). No one in attendance has experienced this.
United Government Services had the wrong files in its drug pricing that included an incorrect decimal point (with an increase payment of one decimal). This resulted in overpayment for some claims for hepatitis B vaccine. Any providers having received this overpayment will be requested to re-pay.

Network Report: Lana Kacherova reported for Doug Marsh as follows.
Fistula First. We are now 2 ½ years into the project and the national goal has been increased from 40% of prevalent patients with A-V fistula access to 66% of prevalent patients by July 1, 2009. Network #18 currently has 43.5% and Network #17 currently has 43.6%. On September 29, there will be a conference for vascular surgeons in Long Beach. Network #18 requests that providers encourage surgeons with whom they work to attend this meeting. There will be cannulation camps at the end of this year and the beginning of next. CMS wants all providers in the United States to have attendance at these camps.

Difficult Patients. CMS and the Networks are distributing the Dialysis Patient Provider Conflict for Providers that provides information regarding dealing with difficult patients. Cecilia Torres at the Network offices is the contact person for this.
A Project for Partnerships and Coalitions is being funded by CMS. Network #18 was the first in the country to get a coalition going. The focus for the Network #18 Coalition is on improving the coordination and effectiveness of activities in Southern California. To date, participant organizations include AAKP, AKF, CDC, CNSW, DaVita, Network #17, FMC, Gambro, Innovative Dialysis Systems, Kaiser, Medic-Alert, NKF, One Legacy, Pacificare, Renal Support Network and San Fernando West Kidney Center. The second face-to-face meeting of the group will be held next week in Glendale.
www.kidney411.com has been reserved for patients and providers to use for reference questions.
CPM forms are being collected from facilities and Lana reports that there will be a validation component so facilities should retain the medical records on site until further notice.
CMS Dialysis Facility Compare reports are out and facilities that have comments regarding their reported outcomes should go to the CMS web site and make them prior to September 12.
There will be a *CMS Immunization Breakthrough* initiative coming soon.
Vision. The Networks are now required to train 50% of eligible facilities in the use of the Vision product by June 2006. The Vision program is used for electronic data submission (2728, etc.) and CMS is committed to its continuing implementation.

Membership Report: Sue Vogel reported for Nancy Ann James. The total facility membership for 2005 is 133. Gambro, which was late in renewing last year has not renewed at all this year and under the circumstances of the purchase by DaVita, will probably not. Sue suggested that CDC check with Renal America regarding the DaVita units they have purchased and the possibility of their becoming CDC members. Jan Anderson has spoken with them and can help with contact information and Michael Arnold will contact them.

CDC Program Committee: Mary Brattich reported that next year's annual meeting will be April 28-29 at the Wyndham Hotel, Palm Springs. The 2006 meeting will be held in conjunction with NRAA whose meeting will be held on the 27th.
The comments from the 2005 meeting included some that were critical regarding the fact that there were no speakers "of color." The Program Committee would like to keep that criticism in mind for the next program and asks the membership to submit names of speakers "of color" that would be recommended for various topics. The objectives for the meeting are to raise money for CDC and to present topics of interest to the membership. Nancy Ann James is responsible for the PAC silent Auction for the 2006 Annual Meeting.
The November CDC educational meeting will be held this year in conjunction with Network #17 at the Park Plaza Hotel, Oakland.

Other Business
Lori Hartwell received the California State Legislature "Women in Business" award. She will be honored at a luncheon on October 19th in Pasadena.

Next Open Board Meeting

September 16, 2005 ~ Oakland

For more information and a registration form, please visit our web site at:

http://www.caldialysis.org/next_meeting.htm