



CDC ~ REPORT

Board Meeting ~ Sacramento

March 2009

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Below is a report from the California Dialysis Council's Board Meeting & Legislative Day held March 17, 2009 in Sacramento, California.

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• LEGISLATIVE REPORT

Mike Arnold & Kristi Foy delivered the legislative report. Last week we learned that we already have an \$8B budget deficit for the 2009/2010 fiscal year. The legislature will now have to deal with this issue, the details of which will become clearer as soon as the Governor issues the May revision of his budget proposal. This proposal will take into consideration the tax receipts that will be received by April 15th, so that will provide a better picture of what will have to be dealt with during the course of the year. The other factor will be the outcome of the election on May 19th on the various ballot initiatives affecting the fiscal package.

Medi-Cal Reimbursement Cuts: The U.S. District Court issued a preliminary Temporary Restraining Order (TRO) on August 18, 2008 to halt the 10% payment reduction for some providers, including dialysis clinics, under the Medi-Cal program. There are four lawsuits currently still in play. Dialysis providers are currently exempt from the cuts because some physicians included dialysis patients as a population who would suffer "immediate harm" as a result of the cuts. However, there will be a 1% cut in reimbursement for Medi-Cal providers for services rendered on or after March 1, 2009.

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The current Legislative Status Report dated March 16, 2009 was reviewed and discussed. Mike Arnold drew the Board's attention to AB998 introduced by a new legislator, John A. Perez. This bill would provide that Medi-Cal beneficiaries shall remain eligible to receive



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Medi-Cal coverage for anti-rejection medication for up to three (3) years following an organ transplant, unless during that period the beneficiary becomes eligible for Medicare or private health insurance that would cover the medication. A motion was made and duly seconded that the CDC move to a position of support on this bill and to recommend that the term of coverage be extended from three (3) years to five (5) years.

Mike also drew the Board's attention to SB26, a measure to do with "home-generated pharmaceutical waste" recommending that the Board and members should review this bill with respect to their home dialysis programs to see if it might have an adverse impact on these programs. If so, please advise him as soon as possible.

Anyone with an interest in specific pieces of legislation can go to the CDC website at:

www.caldialysis.org/status_report.htm to view the current Legislative Status Report. A click on the bill number will bring up a copy of the bill.

Mike and Kristi reviewed the procedures for the afternoon session at the State Capital including the various talking points. Our two bills SB 112 and SB 221 were reviewed in detail.

As a follow up to the Board Meeting we are happy to report that SB 112 (Oropeza) passed out of the Senate Business, Professions & Economic Development Committee on Monday, March 23, 2009. All members present voted "aye". Minor technical amendments were added.

Importantly, visits which took place during CDC Legislative Day after this Board Meeting resulted in agreement from Senator Mark Wyland (R, Escondido) to co-author our bill. His name was added to the bill with the technical amendment adopted yesterday. This is important to note because SB 112 is now a bi-partisan bill. We will continue to work with the California Department of Public Health (CDPH) to be sure our bill is acceptable to CDPH.

We will keep you updated on this CDC sponsored bill throughout the session. Next stop: Senate Appropriations Committee.

• REGULATORY REPORT

Patient Care Technician Certification: Karen Dyer gave an overview of the background of the PCT certification requirements. Preliminary arrangements have been made with the School of Public Health at UCLA to standardize the CDC prepared PCT exams. A committee

of some 10 experts in the field has been convened to develop the necessary tests. It is anticipated that we should have our tests standardized at about the same time as our legislation SB112 is signed into law hopefully some time in the early fall, still giving us six months before the April 10th deadline.

Karen Dyer then discussed the current procedure for the licensing and certification of new hemodialysis facilities and the status of the "Access to Care" letter. While in California these letters do not appear to have been to problematical, in other states such as Texas providers have been required to submit as many as three letters before the letter was accepted. Karen and Mike Arnold explained the Centers for Medicare and Medicaid Services (CMS) tiered survey process ([Click here](#) for a copy of the CMS Tiered System) that now requires an "Access to Care" letter establishing the need to open a new dialysis facility. Karen, Mike and Marc Chow met with Captain Steven Chickering, Regional Administrator of CMS Region IX and his staff in San Francisco on March 4, 2009 with the goal of obtaining some relief in the requirement for the "Access to Care" letter. While there are not specific CMS guidelines for the content of the letter, CMS still believes that it is required to assist the state agencies in prioritizing the initial surveys. It is apparently also useful to the department for justifying the need to perform Tier 3 surveys while there still maybe a need to complete surveys in Tiers 1 & 2. All parties at the meeting agreed to keep the lines of communications open. Mike Arnold reiterated to the attendees that the concern of the current "Access to Care" letter is that it may turn into a more serious situation similar to the certificate of need process that existed back in the 1980's.

Marc Chow mentioned that there is a proposal at the federal level to seek some legislative relief for the dialysis facility survey issue, particularly as it relates to initial surveys.

• **FEDERAL ISSUES ~ REPORT**

Mike Paget reported that both he and Marc Chow (representing Satellite Healthcare) were in Washington, D.C. last week for the Kidney Care Partners (KCP) Board Meeting. Mike explained the structure of the two Washington, D.C. legislative groups, i.e., KCP and Kidney Care Council (KCC). Mike reported that the recent primary focus of both groups has been the implementation of the Medicare Improvement for Patients & Providers ACT (MIPPA). KCP is virtually at a consensus with their position and will be presenting their recommendations for consideration by CMS in the development of the bundled payment system. Key KCP representatives will be meeting with CMS in Baltimore to

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work closely with their key implementation staff.

While it was initially believed that 2009 might be a quiet year from a Medicare legislative perspective, it is now clear that healthcare reform and subsequently Medicare is clearly on the new administration's mind. KCP has therefore set about the process of developing a legislative agenda for 2009 while being mindful not to open any of the MIPPA legislation thereby putting our gains at risk. Mike reviewed some of the highlights of some of the items that might be considered as part of a 2009 legislative bill.

- **GRASSROOTS ~ REPORT**

Sean Graham thanked all of the members present for taking the time to visit with their legislators and expressed how important it is for these legislators, particularly the new ones, to be made aware of the special services that we provide to our patients. Marc Chow reiterated the past success of these efforts and encouraged the members to invite their legislators to their facilities so that they may see first hand the work we do.

- **MEDICARE REPORT**

Misha Palecek reported that a meeting is being scheduled with Palmetto to discuss the slow reaction on their part to facility change of owners issues. Carol DiRaimondo, M.D. reported that she and Dr. Paukert will be attending the Palmetto Contractors Advisory Committee (CAC) meeting in Oakland on March 18. On the agenda is a draft of the coverage decision for Erythropoietin (ESAs) for End Stage Renal Disease and CKD. At first glance the draft appears to be favorable for ESRD patients with an anemia program that would maintain hemoglobin levels at 10-12 g/dL and a hematocrit of 30-36 %. Carol and Tom will report back to the Board.

- **MEDI-CAL REPORT**

Tom Paukert, M.D. reported on the Medi-Cal reimbursement payment withholds that will hold payment for a period of four weeks effective March 26 (the fourth warrant release date of March) and released four weeks later beginning April 23, 2009. The hold is necessary to address the State's cash flow issues. A total of one check-write in March will be held as a result of the March Payment Hold.

Beginning the week of March 23, 2009 providers whose held amount is \$5,000 or more will receive a Value of Claims (VOC) Letter from the Department of Health Care Services. The letter will specify the amount of their claims payments \$5,000 and above that are being

suppressed as a result of the March hold. The purpose of these letters is to assist providers in working with their fiduciary institutions during this payment hold. If the State's cash flow does not improve, there is a possibility that claim payments in the first three weeks of April could be held under an April hold, for up to four weeks and paid in the following month, payment coming one week at a time. If the April hold is implemented, the same criteria (types of providers held) applied to the March hold will be applied to the April hold. If an April hold is implemented, the Department will continue to provide weekly VOC letters to providers meeting the \$5,000 dollars held threshold. More information and updates can be found on the Medi-Cal web site at: www.medi-cal.ca.gov.

Mike Paget followed up on the issues raised at last month's Board meeting regarding undocumented patients having their emergency Medi-Cal status revoked. So far we have been unable to obtain any documentation from the facilities involved that would give details of the revocation of the Medi-Cal coverage. In a similar instance, but on the hospital side, we have been advised of an emergency Medi-Cal patient being denied fistula placement either by the hospital or surgeon stating that it was not an emergency. Those members present indicated that this has been an issue for some time although a number of "work arounds" have been found. Karen Dyer reiterated that the Federal Deficit Reduction Act of 2005 states that no Federal matching dollars would be paid into state Medicaid program for anyone who is undocumented and assumed to be in the county illegally. Some states like Arizona and Georgia immediately implement nonpayment policies for these patients. So far California has not publically adopted such a policy, but these recent actions maybe a move in that direction.

- **PROGRAM REPORT**

Peter Crooks, M.D. gave an overview of the Annual Meeting program to be held April 16 - 18 in Palm Springs. The meeting brochure can be obtained from our web site by [clicking here](#). Mike Paget reminded those present that March 20th was the deadline for making hotel reservations at the CDC room block rate of \$189 per night. After that time rooms will be on an as available basis. Also the deadline for early registration of April 6th is fast approaching and Mike reminded those present not to miss the deadline.

- **NEXT BOARD MEETING**

May 15, 2009 ~ Oakland

For more information and registration forms, please visit

our web site at: www.caldialysis.org/next_meeting.htm

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