

California Dialysis Council

LEGISLATIVE HIGHLIGHTS 2003 LEGISLATIVE YEAR

November 21, 2003
Sacramento

Prepared by:

Michael J. Arnold, Legislative Advocate
Kristian E. Foy, Legal Counsel

These “Legislative Highlights” consist of both a general overview highlighting some of the key issues addressed during the 2003 legislative year and a more comprehensive “Legislative Status Report” generated by our bill tracking system. The status report is attached at the end of the highlights and shows the final status of all the legislation we followed during 2003. As you will note, the status report also includes the following information on all of the bills we followed:

Bill Number and Title
Author
Brief Summary
Final Location or Chapter Number if signed into law
Our Position on the Measure

Importantly, the status report reflects the final position taken on the bill. The final position may be different from the position taken on the bill as originally introduced. Amendments to the bill frequently lead to a new position. This is especially true when the amendments are made at our request. For example, we frequently adopt a position of “Oppose Unless Amended” and move to a “Watch” position after our amendments are adopted.

Two-Year Bills

Since 2003 was the first year of the 2003-2004 biennial session, bills not passed to the Governor’s desk remain alive for consideration during 2004. The rules provide that these measures must pass the house of origin by the end of January 2004 to remain alive for additional consideration. Thus, January will be a busy month. Proponents of two-year bills will be attempting to move them through the house of origin prior to the January deadline.

Effective Dates of New Legislation

The bills that were passed by the Legislature and signed by the Governor will take effect on January 1, 2004, unless they include an urgency clause or contain a provision calling for some other effective date. Urgency measures take effect immediately upon chaptering by the Secretary of State. Bills are normally chaptered on the day following their signature by the Governor.

Special Recall Election

On Tuesday, October 7, almost 10 million people in the State of California went to the polls and decided the fate of Governor Gray Davis and 135 gubernatorial candidates. Immediately upon the closing of the polls, the major networks felt confident enough in their exit polls to announce that Governor Gray Davis had been recalled from the office of Governor, and that Republican Arnold Schwarzenegger was selected to succeed him in office. Both men appeared before reporters and pledged to put the election differences behind them and work together for a smooth transition of the office of the Governor. Secretary of State Kevin Shelley has stated that the certification of the vote would probably not happen until the deadline of 39 days post election as outlined in the Election Code. That day is November 15, 2003. After his inauguration, we expect Governor Schwarzenegger will direct his transition team and staff to work with this economic advisors to review the state budget. The constitutional deadline for the Governor to deliver a balanced budget to the State Legislature is January 10, 2004. This will be a very difficult task given the short timeframe and the large size of the deficit that is already being predicted.

Key Issues of Interest During 2003

1. 2003-2004 State Budget

This year, the State Budget debate was very disorganized. The Governor was extremely distracted by the recall election and the Legislature was overwhelmed by the size of the deficit. In January, the budget deficit was initially estimated to be \$35 billion. The VLF trigger issue and the proposed mid-year cuts dominated the beginning of the year. An agreement on these two issues was finally negotiated in March, however, the slow recovery of the economy caused the deficit to climb to over \$38.2 by the release of the May Revise. Conference committees tried to meet and work through issues, but it quickly became clear that the size of the problem was such that key decisions were going to have to be made at the leadership level. It was also clear that it would have to be a compromise in that no Republican was going to go against leadership and vote for a Democratic plan. Similar to last year, the Senate took the lead and passed a compromise package negotiated by the leadership from both parties. The budget was ultimately signed on Saturday, August 2.

2. Medi-Cal Rates

The Governor proposed a 15 percent cut in reimbursement rates for Medi-Cal providers as part of his 2003-04 budget. After much work over the course of several months, the Legislature and the Governor approved a rate cut of 5 percent. This cut could have been much worse without the efforts of the CDC to convince legislators that we could not absorb a 15 percent cut. The 5 percent rate cut is mitigated by the fact that CDC achieved a 2.4 percent rate increase for dialysis services in 2001. Thus, if we take into account the CDC rate increase, the actual rate occurring from this year's action was not 5 percent, but only 2.6 percent. This is significantly better than the Governor's proposal for a 15 percent rate cut.

3. Medi-Cal Deficiency

A deficiency appropriations bill is needed almost every year due to the fact that Medi-Cal expenditures are normally under-budgeted. This year's deficiency appropriations bill included an appropriation which was much larger than usual. The appropriation in AB 1746 was \$727 million. Without passage of a Medi-Cal deficiency appropriations bill, dialysis clinics would have seen a delay in reimbursement for services provided to Medi-Cal patients during June.

We worked extremely hard to explain this esoteric issue to many of the new members and staff in the Legislature. Ultimately, we were successful in securing the passage of the Medi-Cal deficiency

appropriations bill. This legislation covered the cost of services provided up to June 30. Services rendered to Medi-Cal patients after July 1, 2003 and until the passage of the budget are protected by a provision of law we helped enact years ago which requires continued payment of Medi-Cal providers during a budget deadlock for 60 days or until a special fund is exhausted. The amount of money in this special fund is \$2 billion.

4. Medical Transportation

When Governor Davis released his proposed State Budget for the fiscal year 2003-04, it included the elimination of non-emergency medical transportation. The Governor was proposing the elimination of 10 Medi-Cal optional benefits. Non-emergency medical transportation was included in the list. We worked extremely hard in opposition to this proposal. The item was not included in the mid-year budget cuts adopted by the Legislature and Governor in March. We continued to oppose this proposal being adopted into the new budget. We were happy to report that our efforts paid off, in that the Governor's May Revision restored non-emergency medical transportation services.

5. LVN Scope-of-Practice

Another issue on which we spent a great deal of time is the LVN scope-of-practice. Over the past few years, the California Nurses Association (CNA) and Board of Registered Nursing (BRN) launched a campaign to prohibit LVNs from initiating or terminating dialysis through a central line catheter, from administering dialysis-related medications and from doing patient assessments. We expended considerable effort and energy working with the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), in stopping the effort of the CNA and the BRN to restrict the LVN scope-of-practice. We worked closely with the BVNPT and strongly supported new regulations which clarified the authority for LVNs to conduct these functions. We continued to closely monitor the progress of this situation throughout the year. At the end of February, the CNA filed a lawsuit requesting a stay in the effective date of the new LVN regulations. CNA had requested the stay during the pendency of their lawsuit seeking to overturn the new LVN regulations. In April we were pleased to report that the Sacramento Superior Court reaffirmed its tentative decision to deny the CNA's request for a preliminary injunction to stop the application of the new LVN regulations which became effective on February 28, 2003. Importantly, for those dialysis clinics currently utilizing LVNs, the court has reaffirmed the ability for you to continue to use them in the fashions permitted by the new LVN regulations.

6. SB 370 (Soto) – TAR Removal

SB 370 was sponsored by the California Dialysis Council. This bill will remove the requirement for a Treatment Authorization Request (TAR) to provide dialysis services to Medi-Cal patients who have End Stage Renal Disease (ESRD). SB 370 was a much-needed and money saving proposal. The bill will save thousands of dollars in staff time at the Department of Health Services (DHS). It will also save time and aggravation for the providers of dialysis treatment to patients suffering from ESRD. Under current regulations, DHS requires providers to submit a TAR for selected medical procedures provided to Medi-Cal enrollees. The TAR process is expensive and time consuming for both providers and for DHS staff. We worked very closely with the author's office in pursuing this bill through both houses of the Legislature. Ultimately, we were successful in moving SB 370 through the Legislature and to the Governor's desk. SB 370 was signed by Governor Davis as Chapter 321, Statutes of 2003.

7. ACR 120 (Montanez) – California Chronic Kidney Disease Education Day

This measure designated August 15, 2003 as California Chronic Kidney Disease Education Day and urged all Californians to familiarize themselves with the causes of chronic kidney disease and the importance of intervention to promote sustained health and a better quality of life. The resolution was passed by the Legislature and signed by the Governor as Chapter 123, Statutes of 2003. This resolution will help raise the awareness level of legislators in regard to kidney disease. Next year, we plan on introducing a new resolution to designate this important day for 2004.

8. AB 1739 (Frommer) – Hemodialysis Training

AB 1739 was sponsored by the Department of Health Services (DHS) to change current law concerning hemodialysis technician training. We participated in several meetings with staff at DHS in an attempt to reach an agreement on the language on the bill. Ultimately, we were successful in securing several very important amendments to the language specifically addressing the number of hours of training and other issues. We then supported the bill on behalf of CDC as it moved through the legislative process. In the last policy committee, the Governor's office came in with last-minute amendments to give the state better prices for drugs for various departments. This extremely controversial amendment caused the bill to be defeated in the Senate Health Committee. We anticipate that the hemodialysis technician training language section will be brought up again during the next legislative session. Importantly, all of our work in negotiating language will be beneficial when the subject area is brought up again in 2004.

2003-2004 Biennial Session – Interim Hearings

The 2003 legislative year was the first year of the 2003-2004 biennial legislative session. The State Legislature will return to Sacramento on Monday, January 5, 2004. During the interim between the 2003 and 2004 legislative years, the Legislature will be holding interim hearings on two-year bills and topics for consideration in 2004. We will monitor these hearings and will participate as appropriate.

Conclusion

We must immediately begin planning for the 2004 legislative year. The State Budget for the 2004-2005 fiscal year appears to be in difficult shape and, therefore, will again be the overriding issue of the session. We will carefully monitor the session to ensure that any issue which may impact us is closely analyzed and discussed, and that our position is effectively pursued throughout the process. We have had a good year and wish to thank you for all of the support and assistance you have provided.