

Michael J. Arnold and Associates, Inc.

Legislative Advocates and Consultants

Phone: (916) 446-2646 ◊ Fax: (916) 446-6095 ◊ 1127 11th Street, Suite 820, Sacramento, CA 95814

California Dialysis Council

LEGISLATIVE HIGHLIGHTS 2011 LEGISLATIVE YEAR

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**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 this 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 the year. As you will note, the status report includes the following information on all of the bills we followed:

Bill Number, Author, and Title
Our Final Position on the Measure
Final Location or Chapter Number
Brief Summary

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 a 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 this was the first year of the biennial session, bills not passed to the Governor’s desk remain alive for consideration during next year. The rules provide that these measures must pass the house of origin by the end of January 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, 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.

2011-2012 Biennial Session

The 2011 legislative year was the first year of the 2011-2012 biennial legislative session. The State Legislature will return to Sacramento on Wednesday, January 4, 2012. During the interim between the 2011 and 2012 legislative years, the Legislature will be holding interim hearings on two-year bill topics for consideration in 2012. We will monitor these hearings and participate as appropriate.

We must immediately begin planning for the 2012 legislative year. The proposed State Budget for the 2011-2012 fiscal year will be released in January. Next year's budget is predicted to be in even worse shape than this past year. Mix into that the fact that it is an election year and it is impossible to predict how things will unfold. The Legislature will be very distracted with the Presidential primary election in addition to the California state Legislative races. In addition, the new district lines and open primary will be used for the first time. The primary and general elections, together with the budget, will dominate and influence every issue next year. We will carefully monitor the session as it unfolds. We have had a good year and wish to thank you for the support and assistance provided.

Key Issues of Interest During 2011

2011-2012 State Budget

Last year, the voters passed Proposition 25 to reduce the budget vote requirement from two-thirds to a simple majority. The measure's drafters included a provision to punish lawmakers for late budgets by taking away their salaries and per diem payments if a budget is not passed by the Constitutional deadline of June 15th. Thus, this year's budget was the first under the new majority vote requirement.

Medi-Cal: 10% payment cut; patient visit caps; patient co-pays.

In March, the Legislature attempted to pass an early budget. There were discussions between the Governor and a group of moderate Republicans "the GOP Five" in the Senate. The GOP Five demanded public employee pension reform, a spending cap, and other items in exchange for their vote to put the tax increase extension question on a June special election ballot. At the same time, a number of trailer bills were being considered in both houses to implement budget cuts. Ultimately, no deal was reached between the Governor and the GOP Five, but the Legislature approved 8 of 20 budget trailer bills, including AB 97. CDC strongly opposed the provisions of AB 97 which imposed a 10% cut in Medi-Cal provider payments, caps on patient visits, and patient co-pays. The Legislature did not pass the actual budget bill itself or the trailer bill calling for the special election on taxes. Both houses would have needed 2 Republican votes to pass the urgency special election trailer bill or any other tax increases.

CDC worked very hard to exclude dialysis from the Medi-Cal cuts. However, like virtually all other provider groups, we will see a 10% provider payment reduction unless we convince CMS or the courts to reject the cuts. (See update below.)

In early June, Democrats tested Proposition 25 by passing a gimmick-ridden budget just before the June 15th deadline. Governor Jerry Brown promptly vetoed it as being unbalanced. Controller John Chiang supported the Governor's position and invoked the intertwined provisions of two measures, 2004's Proposition 58 and last year's Proposition 25, to cut off salaries and per diem payments to state legislators because they failed to pass a "balanced budget" by the June 15th constitutional deadline. Chiang decreed that legislators would not be paid because they failed to comply with Proposition 58, which requires that spending not exceed estimated revenues.

The Legislature then passed a revised version of the 2011-2012 state budget which closed a \$26.6 billion budget gap on June 29. With very little debate on the floors, both Houses of the State Legislature adopted the budget bill and seven additional budget trailer bills. These proposals were passed by majority vote with only Democrats supporting. The "budget deal" was cobbled together by the Governor and the Democratic leadership in the Legislature. The deal came together after the Governor acknowledged he was not going to obtain the two Republican votes he needed in each House to extend tax rates scheduled to expire, and the announcement that an extra \$4 billion in revenues was anticipated to come in during the final months of the fiscal year. Automatic cuts in the form of a "trigger" were put into place in case the anticipated new revenues do not materialize. At this point, revenues have been less than anticipated and many are predicted that the triggers will be implemented.

The "Democratic Budget" relies on a series of three tiers of possible new spending cuts that may be triggered. The "trigger" component depends on Department of Finance Director verifying how much of the \$4 billion in higher than anticipated revenues has been received. The Director could have as long as December 15 to determine how much of the funds has been received. The state will need at least \$2 billion in additional revenue to prevent further "trigger cuts," which would affect education (including school year reductions), public safety, Corrections, library grants, and other programs.

Medi-Cal Update

We have been working for many years to help protect Medi-Cal providers from devastating cuts to payment rates. Past state budgets have included various proposals for cuts to provider rates. Many lawsuits have been filed at both the state and federal levels. Recently, there have been three significant developments in the efforts to protect the Medi-Cal program from devastating cuts:

- a) The Centers for Medicare & Medicaid Services (CMS) restarted the clock on the 90 day deadline to rule on proposed state plan amendments submitted by California this summer. As we have noted in the past, the CA Department of Health Care Services (DHCS) cannot implement the 10% cut in provider payments or the co-pays or visit caps until approval from CMS is obtained. All of these reforms were passed as a part of the March budget debate. **Importantly, even though the reforms are on hold for now, DHCS has the authority to make those cuts retroactive to June 1, 2011, if CMS grants approval.** CMS is required to respond to the State's request within a 90 day timeline. On the deadline, September 28, 2011, CMS submitted an official request to the State of California for additional information. The CMS request for additional information starts the 90 day clock over again! We think our efforts to convince CMS to reject the rate cuts may be having some impact. We joined other

members of the Alliance for Patient Care (APC) Coalition in a meeting with CMS Administrator, Dr. Donald Berwick, in Washington D.C., in August. Dr. Berwick singled out Dr. Paukert as one of the speakers who made the most compelling arguments.

b) Recently, CMA and the California Pharmacists Association filed a suit, demanding that DHCS make public any studies regarding access to care in Medi-Cal. CMA and CPhA believe these documents may not exist, in light of the fact that DHCS has not made these documents available in response to Public Records Act requests. Producing such documents to justify the payment reductions is vital to the state's effort to convince CMS to approve the cuts.

c) In early October, The United States Supreme Court heard oral arguments in the *Douglas v. Independent Living Center of Southern California* ("Independent Living Center") case. This is the case regarding the 2008 rate cuts. The issue addressed in this case is whether Medicaid recipients and providers have standing to sue a state for failing to pay the rates required by the federal Medicaid Act, which requires that government insured and privately insured patients have equal access to medical care. We hope the Supreme Court is expected to rule on this important case sometime in the first greater of 2012.

SB 272 (De Saulnier) Leave of Absence: Organ Donation

SB 272 clarifies existing law to assist employer compliance with a leave of absence for an organ or bone marrow donation. Last year, the Legislature passed, and Governor Schwarzenegger signed, SB 1304 (DeSaulnier), Chapter 646, Statutes of 2010, also known as the Michelle Maykin Memorial Donation Protection Act (Act). This Act provides protected leave for employees who donate bone marrow or organ tissue, and was named after the daughter of one of Senator DeSaulnier's constituents who died of Leukemia in 2009. Since the passage of SB 1304, the California Chamber of Commerce, the sponsor of this measure and other stakeholders have noted areas where, while the law's intent may be clear, additional clarification would provide certainty for businesses seeking to comply with the law. This bill is the product of those discussions and seeks to clarify the Legislature's original intent of SB 1304 and existing law. We strongly supported this bill as it moved through the legislative process. We are happy to report that the bill was signed by the Governor as Chapter 147, Statutes of 2011.

AB 151 (Monning) Medicare Supplement Coverage

This bill allows an individual to drop Medicare Advantage (MA) coverage and enroll in Medicare supplement coverage of the same issuer, or the issuer's parent company, if the MA issuer increases premiums. If Medicare supplement coverage is not available from the same issuer, or parent company, allows an individual under limited circumstances to enroll in Medicare supplement coverage of an unaffiliated issuer. Deletes obsolete references in law and recognizes two new Medicare supplement plans (M and N). Proponents support this bill because it ensures Medicare enrollees have the option to switch to plans that are the most affordable and meet their needs. We watched this bill as it moved through the legislative process to the Governor's desk. The Governor signed the bill as Chapter 270, Statutes of 2011.

AB 678 (Pan) Medi-Cal Supplemental Provider Reimbursement

This bill allows ground emergency medical transportation service providers owned by public entities (public ground emergency medical transportation providers) to receive supplemental Medi-Cal reimbursement, in addition to the rate of payment that these providers would otherwise receive for Medi-Cal ground emergency medical transportation services, up to actual costs. The nonfederal share of the supplemental

reimbursement would be paid with funds from specified governmental entities through certified public expenditures. AB 678 establishes a supplemental payment program for governmental entity providers of Medi-Cal emergency medical transportation services using certified public expenditures (CPEs) to match federal funds. According to the author, local fire departments, as a first responder, are transporting Medi-Cal patients at an ever increasing rate as the health system continues to deteriorate. The author states that Medi-Cal reimbursement rates for ambulance services, as in many other categories, have not kept pace with the cost of providing the services. The author further points out fire departments are an essential part of the health care safety net and are unique because of the mandate to respond, treat and transport all emergency patients without exception and without regard to a patient's ability to pay. The purpose of this bill is to enact a mechanism to provide supplemental payments for unreimbursed expenses incurred by these local agencies without cost to the General Fund. CPEs are one of several mechanisms that a state may employ to obtain federal financial participation and make supplemental payments to Medi-Cal providers without cost to the state General Fund. Under a CPE arrangement, government providers certify their Medicaid expenditures to the state, and the state then obtains federal reimbursement on the basis of these CPEs. Medicaid law allows states to finance the nonfederal share of payments with CPEs as long as the funds are derived from state or local tax revenue and certified by units of local or state government as eligible for federal reimbursement. States are responsible for ensuring that expenditures are eligible for federal reimbursement by reviewing standard cost reports filed annually by each government provider. In no event may the reimbursement rate exceed the equivalent Medicare rate. We watched this bill as it moved through the Legislative process. The bill was signed as Chapter 397, Statutes of 2011.

AB 762 (Smyth) Public Health: Medical Waste

AB 762 deletes a provision in existing law that requires a specified extremely high heat technology (plasma arc technology) to be used on medical waste, biohazardous waste, and sharps waste in order for it to be consolidated into a common container, in effect permitting that waste to be incinerated in a common container. Permits that common container to be reusable. From a scientific and operational standpoint, the consolidation of sharps and certain pharmaceutical wastes into a single reusable container for treatment in a medical waste incinerator provides several advantages. According to the author of the bill, treating sharps waste by incineration is better for the environment and worker safety at the treatment plant than allowing the unused residual pharmaceuticals in the sharps to be aerosolized by autoclave treatment. The author states that additionally, waste water treatment authorities no longer want pharmaceutical wastes to go into their sewers either through direct discharge or via leachate from landfills or waste condensation from autoclaves and that landfill operations do not want pharmaceutical leachate from autoclave treated sharps. The author contends that this bill will also reduce plastics going into the waste streams by requiring that reusable containers be used. We watched as it was passed by the Legislature and sent to the Governor. The Governor signed the measure as Chapter 222, Statutes of 2011.

AB 1267 (Halderman) Physicians and Surgeons: Certificate

This bill requires a physician and surgeon's certificate to be automatically placed on inactive status during any period of time that the certificate holder is incarcerated after conviction of a misdemeanor, and requires the reason for this inactive status to be disclosed on the internet Web site of the Medical Board of California (MBC). Also requires a certificate placed on inactive status pursuant to this bill to be returned by the MBC to its prior or appropriate status within five business days of receiving notice, as specified by the MBC via regulations, that the physician and surgeon is no longer incarcerated. AB 1267 was sponsored by the Medical Board of California. The Medical Practice Act provides for the automatic suspension of a physician and surgeon's certificate during any time that a physician and surgeon is incarcerated after the conviction of

a felony, regardless of whether the conviction has been appealed. This felony conviction is disclosed on MBC's Internet Web site. Although misdemeanor convictions that result in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed are posted on MBC's Internet Web site, the MBC indicates it has become concerned with the ability of physicians to continue practicing while incarcerated for a misdemeanor. According to the Medical Board of California (MBC), the bill's sponsor, there is nothing that currently prohibits physicians and surgeons who are incarcerated for misdemeanors from practicing medicine while incarcerated. MBC believes that physicians should not be practicing medicine while incarcerated, and that consumers have a right to know if their physician is incarcerated. We watched this bill as it moved through the legislative process. AB 1267 was signed by the Governor as Chapter 169, Statutes of 2011.

SB 41 (Yee) Hypodermic Needles and Syringes

This bill suspends certain provisions of the Disease Prevention Demonstration Project, including the ability for a city or county to authorize pharmacists to provide up to 10 hypodermic needles and syringes without a prescription, until January 1, 2015, and until then permits pharmacists and physicians to furnish up to 30 hypodermic needles and syringes for human use, without a prescription or city/county authorization, to a person 18 years or older, as specified. The Drug Policy Alliance and the San Francisco AIDS Foundation are sponsoring this bill because they believe legal access to sterile syringes for adults is a proven method for reducing the transmission of HIV, hepatitis C and other costly, deadly bloodborne diseases. They claim that preventing disease transmission is sound fiscal policy and believe expanding access to sterile syringes statewide will reduce costs to California taxpayers. Rite Aid supports creating a statewide policy on pharmacy sale of syringes, in contrast to the current patchwork of county programs, because it will decrease confusion for pharmacies which are located in multiple jurisdictions. We watched this bill as it was passed by the Legislature and sent to the Governor's desk. The Governor signed the bill as Chapter 738, Statutes of 2011.

SB 442 (Calderon) Hospitals: Interpreters

This bill requires general acute care hospital policies for the provision of language assistance to patients with language or communication barriers to include procedures for discussing with the patient any cultural, religious, or spiritual beliefs or practices that may influence care, and to increase the ability of hospital staff to understand and respond to the cultural needs of patients. According to the author, professionally trained medical interpreters and policies to increase the ability of hospital staff to respond to unique cultural needs will help to ensure that patients who require on-site medical interpreters are provided the appropriate care. The author argues that hospitals are increasingly turning to the provision of telephone interpreting services for reasons of convenience and/or cost to meet the requirements in existing law to provide medical interpreters to patients. The author also asserts that professionally trained medical interpreters on-site at the hospital provide the most protection, for both the patient and the provider, against compromised services and poor health outcomes for ethnic and underserved persons in a multi-ethnic population. We watched this bill as it was sent to the Governor's desk. The Governor vetoed the measure with the following veto message: "Inquiring into a patient's cultural, religious, or spiritual beliefs is good hospital practice, but not one that needs to be mandated by the state, nor applied only to non-English or limited English-speaking patients. With basic requirements for language assistance already set in law, I believe specific improvements to hospital policies should be done at the local level where people deal with real problems based on direct experience."

SB 850 (Leno) Medical Records: Confidential Information

This bill requires electronic health record systems or electronic medical record systems to automatically record and preserve any change or deletion of any electronically stored medical information and would enact related requirements. This bill clarifies that existing law relating to the destruction of medical records applies to medical information, thus including information kept in both physical and electronic form. This bill requires electronic health record systems or electronic medical record systems to do the following: protect and preserve the integrity of electronic medical information; automatically record and preserve any change or deletion of any electronically stored medical information. The record of any change or deletion shall include the identity of the person who accessed and changed the medical information, the date and time the medical information was accessed, and the change that was made to the medical information. This bill was sponsored by the Consumer Attorneys of California. We watched the bill as it moved through the legislative process to the Governor's desk. The Governor signed the bill as Chapter 714, Statutes of 2011.

SB 945 (Committee on Health) Medi-Cal: Electronic Records

SB 945 bill requires the Department of Health Care Services (DHCS) to establish and administer the Medi-Cal Electronic Health Records Incentive Program (Program) to provide federally funded incentive payments to Medi-Cal providers to implement and use electronic health records (EHR) systems. SB 945 contains an urgency clause to ensure that the provisions of this bill go into effect immediately upon enactment. The bill provides statutory authority for the Medi-Cal EHR Program that is currently ongoing. SB 945 requires DHCS to establish and administer the Program in accordance with the State Medicaid Health Information Technology (HIT) Plan as developed by DHCS and approved by the federal Centers for Medicare and Medicaid Services. This bill is needed to ensure DHCS may distribute federal incentive payments to Medi-Cal providers in an expedited manner and help many California health care providers change their practices and utilize electronic tools. According to DHCS, sponsor of SB 945, the largest single obstacle to adoption of EHRs by providers is the high upfront and ongoing costs. DHCS states that the incentive payments made available by this bill offer an unparalleled opportunity to build the HIT infrastructure of both outpatient providers as well as acute-care inpatient hospitals. According to DHCS, this bill is urgently needed in order to meet federal deadlines. We carefully watched SB 945 as it moved through the legislative process. The bill was signed by the Governor as Chapter 433, Statutes of 2011.