California Dialysis Council

LEGISLATIVE HIGHLIGHTS
2010 LEGISLATIVE YEAR

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These “Legislative Highlights” consist of an overview highlighting some of the key issues addressed during this legislative year and the final “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 Bill; Final Location or Chapter Number; and 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.

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 Regular Session

The 2010 legislative year was the final year of the 2009-2010 regular legislative session. The State Legislature will return to Sacramento on Monday, December 6, 2010 to begin the 2011-2012 regular legislative session. At that time, all new members who were successful in the November election will be sworn into office. Most of December will be spent organizing the Legislature and introducing legislation which will be considered in January.

Key Issues of Interest

1. 2010-2011 State Budget

At long last, the Legislature and the Governor finally reached agreement on a budget for the 2010-2011 fiscal year. The Governor signed the budget on October 8, 100 days into the new fiscal year. This is the longest budget delay in the history of the State of California. The record long budget stalemate ended with an all-night legislative session followed by nearly $1 billion in line item vetoes by the Governor.
having to close a $24.3 billion budget gap in 2008 and a gap of $60 billion in 2009, the 2010 Budget Act closes a budget gap of $19.3 billion which brought the three year period in the state’s fiscal history totaling budget solutions of $103.6 billion. The Budget Act closes an estimated budget gap of $19.3 billion by a combination of expenditure reductions, federal funds, and other solutions. Beyond the necessity of closing this year’s budget gap, the Governor made it clear that he wanted long term reforms to the state’s budgeting and pension systems. In response, the Legislature approved a measure to place a budget reform constitutional amendment before the people at the March 2012 election. In addition, the Legislature approved a measure to roll back pension benefits for newly hired state employees.

The 2010-11 budget agreement, including the Governor’s vetoes, is aimed at generating $19.3 billion in “solutions” to close an estimated $17.9 billion General Fund shortfall and includes approximately $8.5 billion in spending reductions; $5.3 billion in assumed new federal funds; $5.2 billion from additional revenues and fund shifts, including revenues related to the sale of state buildings authorized by the 2009-10 budget agreement; and $0.5 billion in “alternative funding.” These solutions would be offset by approximately $0.2 billion in higher-than-anticipated state expenditures, leaving a reserve of $1.3 billion. General Fund spending would total $86.6 billion in 2010-11, essentially unchanged from the 2009-10 spending level of $86.3 billion.

2. **AB 52 (Portantino) Umbilical Cord Blood collection Program**

This bill requests the University of California (UC) to develop a plan to establish and administer the Umbilical Cord Blood Collection Program (UCBCP) on or before July 1, 2011, and imposes a temporary $1 fee on specified birth certificates to fund the program. AB 52 shifts administration of the UCBCP from the Department of Public Health (DPH) to UC, if UC elects to administer the program. During consideration of the bill, the author stated that the National Cord Blood Inventory currently lacks ethnic and multiracial cord blood and the UCBCP is intended to collect cord blood for public use and increase the volume of cord blood that can be added to the national inventory. The author also argued that this bill was needed to shift administration of the program to UC, given that many relationships already exist between the University and birthing hospitals throughout the state, UC has cord blood experts within its system, and it operated an umbilical cord blood bank at UCLA in the late 1990s. We watched this bill as it moved through the legislative process. The bill was signed by the Governor as Chapter 529, Statutes of 2010.

3. **AB 542 (Feuer) – Hospital Acquired Conditions**

This bill requires the Department of Health Care Services (DHCS) to convene a technical working group to evaluate options for implementing non-payment policies and procedures for hospital conditions (HACs) for the fee-for-service Medi-Cal program consistent with federal laws and regulations. Requires to implement non-payment policies and procedures for HACs for the fee-for-service Medi-Cal program by July 1, 2011 that are consistent with the Patient Protection and Affordable Care Act (PPACA) and to consider the recommendations of the technical working group. According to the author, this bill will improve the quality of health care in California hospitals by ensuring that the most effective systems and safeguards are in place to protect patients from preventable errors and other HACs. The author states that this bill ensures that there are incentives for improving patient safety, and patients who are the victims of such tragic events are not also subjected to the added indignity of having to pay for them as well. We closely watched this bill as it moved through the legislative process to the Governor’s desk. The Governor vetoed AB 542.

4. **AB 1863 (Gaines) – Diesel Generators: Health Facilities**

This bill extends, until January 1, 2016, provisions of law related to resting diesel back-up generators in hospitals, and extends provisions according to national testing standards. AB 1683 was sponsored by the California Hospital Association. Health facilities are required to maintain backup generators to provide emergency lighting and power supplies in case of a power failure. Health facilities subject to the requirements include acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, intermediate care facilities, and special hospitals, intermediate care facilities for the developmentally disabled and nursing
facilities. The bill’s intent was to clearly state the current requirements under industry accreditation guidelines and to reduce diesel particulate matter in the environment and provide a clear testing path for facilities. We carefully watched this bill to check for impact on dialysis facilities and any possible amendments. The bill was passed by the Legislature and sent to the Governor’s desk. AB 1863 was signed by the Governor as Chapter 164, Statutes of 2010.

5. AB 2352 (John Perez) Medi-Cal: Organ Transplants: Anti Rejection Medicine
AB 2300 requires Medi-Cal beneficiaries to remain eligible to receive Medi-Cal coverage for anti-rejection medication for up to two years following an organ transplant, unless during that time the beneficiary becomes eligible for Medicare or private health insurance that would cover the medication. This bill addresses the situation of a Medi-Cal beneficiary who has received an organ transplant. The beneficiary may have gained Medi-Cal eligibility through the special treatment eligibility option for persons with end stage renal disease, or by meeting other Medi-Cal eligibility criteria. The renal disease eligibility is not full scope and covers only dialysis and related services. As the renal disease advances, the beneficiary is likely to become disabled and then become eligible for full scope Medi-Cal. Medi-Cal covers the cost of the major organ transplant procedure and the anti-rejection medication. However, as the beneficiary improves, they may lose their Medi-Cal eligibility if they no longer meet the criteria for disability, as determined by a review team. If the beneficiary no longer is considered disabled, they will lose their Medi-Cal eligibility, unless they retain eligibility by meeting other criteria. Once they have lost their eligibility, they will not have their antirejection medicines covered by Medi-Cal. While the beneficiary is enrolled in Medi-Cal, the federal government is paying its share, generally 50 percent, of the medical costs. This bill’s eligibility expansion is not a mandatory or optional coverage under federal law. Because there is no federal match, the bill creates a program for which the state pays the entire costs, also known as a "state only" program. Federal matching funds would only be available if the state were to pursue what is known as a waiver. We strongly supported AB 2352 as it moved though the legislative process. The bill was passed by the Legislature to the Governor’s desk. The Governor signed AB 2352 as Chapter Number 676, Statutes of 2010.

6. HR 31 (Eng) – Legislative Task Force on Chronic Kidney Disease
HR 31 was sponsored by the National Kidney foundation. The resolution recommends the establishment of the Legislative Task Force on Chronic Kidney Disease (CKD) to study the social, medical, and fiscal issues surrounding CKD and report back to the Legislature on recommendations for policy changes. Other states, such as Texas, have found a legislative task force on CKD to be a catalyst for public and private involvement with long-term results. For all of these reasons, we strongly supported this resolution as it moved through the legislative process. HR 31 was read and adopted by the California State Assembly.

7. SB 227 (Alquist) – Health Care Coverage: Temporary High Risk Pool
This bill requires the Managed Risk Medical Insurance Board (MRMIB) to enter into an agreement with the federal Department of Health and Human Services to administer a qualified high-risk pool to provide health coverage, until January 1, 2014, to individuals who have pre-existing conditions, consistent with Patient Protection and Affordable Care Act, establishes the authority and requirements for MRMIB in administering the federal pool, consistent with federal law, appropriates $761 million from the Federal Trust Fund to MRMIB, makes this bill operative contingent upon enactment of AB 1887 (Villines), and sunsets both on January 1, 2020. SB 227 was sponsored by the Governor’s office. Specifically, this bill establishes the Federal Temporary High Risk Pool in the Health and Human Services Agency, and requires the program to be managed by MRMIB. It authorizes MRMIB to take the specified actions, consistent with the provisions of PPACA establishing a federal pool. Although most Californians obtain health insurance through their employer, many Californians do not have access to employer-sponsored health coverage and cannot buy private health insurance because they have a pre-existing medical condition. Since 1991, California has operated a high-risk pool known as MRMIP to provide the medically uninsurable with health coverage. In March 2010, President Obama signed into law PPACA (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) to provide coverage for
over 90 percent of the presently uninsured population. Until the implementation of the health insurance exchanges in 2014, individuals with pre-existing conditions, who have not had coverage for the prior six months and who meet certain citizen or residency requirements will be eligible for the temporary high-risk pool program created by PPACA. The companion measure was AB1887 (Villines) which establishes the Federal Temporary High Risk Health Insurance Fund, and requires money in the Fund to be continuously appropriated to the Managed Risk Medical Insurance Board for the purpose of establishing a federal temporary high-risk pool (federal pool) established under this bill. We watched this bill as it moved through the legislative process. SB 227 was signed by the Governor as Chapter 31, Statutes of 2010.

8. SB 890 (Alquist) – Health Care Coverage
This bill requires health plans and health insurers to categorize all individual market products into tiers based on actuarial level, as specified, requires health plans and health insurers to allow an individual to transfer without medical underwriting to any other individual plan contract offered by that same health plan or health insurer that provides equal or lesser benefits upon the annual renewal date of the contract or policy, and requires health plans and health insurers to meet federal annual and lifetime limits and the medical loss ratio requirements in specified provisions of the federal health care reform law, and any federal rules or regulations issued under those provisions. We watched this bill as it was passed by the Legislature and sent to the Governor’s desk. The Governor vetoed SB 890.

9. SB 900 (Alquist) – California Health Benefit Exchange
This bill establishes the California Health Benefits Exchange, and states that it is the intent of the Legislature to implement the provision of the federal Patient and Protection and Affordable Care Act that requires the establishment of an American Health Benefit Exchange. According to the author's office, one of the critical pieces of the federal health reform legislation is the establishment of an American Health Benefit Exchange. Each state is required to establish such an Exchange by January 1, 2014, or the federal government will establish and operate the Exchange. This bill requires the establishment of the Exchange as an independent public entity that would be governed by a five member board that holds public meetings to ensure accountability and transparent decision-making. The appointed board members are required to have demonstrated expertise in two of six health-related areas, and would be charged with serving the interest of individuals and small businesses seeking coverage in the Exchange and ensuring the operational well-being and fiscal solvency of the Exchange. To ensure conflict-free decision making in the interest of individuals receiving coverage in the Exchange, Exchange board members and staff are prohibited from being employed by, or a consultant to, a health plan, health insurer, health care provider or health care facility during their term of service on the Exchange (with an exception for a health care provider who receives no compensation from rendering services as a health care provider). This bill is a companion bill and joined to AB 1602 (Perez), which places specific requirements on the Exchange, such as offering products in the five benefit levels and selectively contracting with health plans. We watched this bill as it moved through the legislative process. The bill was signed by the Governor as Chapter 659, Statutes of 2010.

10. SB 1395 (Alquist) – Organ Donation
SB 1395 authorizes establishment of an Altruistic Living Donor Registry to promote and assist live kidney donations and requires, by July 1, 2011, an applicant for an initial or renewal driver's license or identification card to designate whether or not he or she wishes to become an organ and tissue donor. This bill seeks to create the first altruistic living donor registry in the country that would be composed of individuals who are willing to donate a kidney to help others. The registry established in this bill will expedite the match between organ donors and recipients. Currently, only 27% of DMV customers check yes to designate themselves as organ donors and while that level is an improvement from 20% four years ago, the state
needs to do better at recruiting donors. Adding a "no" box to the existing application for an original or renewal driver's license or identification card will improve the donor designation rate by allowing DMV to ask customers to answer the donation question. This bill will make California a leader in organ donation by requiring driver's license applicants to either affirmatively register to be an organ donor or allow the choice to be made at another time and creating the first in the nation live donor registry aimed at increasing kidney donations. For all of these reasons, we strongly supported SB 1395. The bill was sent to the Governor’s desk. We are very happy to report that the Governor signed the measure as Chapter 217, Statutes of 2010.

11. **SCR 111 (Wright) – California Chronic Kidney Disease Education Week**
SCR 111 proclaims November 7 through November 13, 2010, as California Chronic Kidney Disease Education Week, and urges 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. We strongly supported SCR 111 as it moved through the legislative process to the Governor’s desk. The Governor signed SCR 111 as Chapter 96, Statutes of 2010.

12. **SJR 13 (Oropeza) – New Dialysis Clinic Licensure and Certification**
This is an issue we have been working on since last year. This Senate Joint Resolution, sponsored by the CDC, urges the Federal Centers for Medicare and Medicaid Services to adopt regulations, and the Congress and President to enact legislation, to improve and speed up the process for timely licensure and certification surveys of new dialysis clinics to provide patients with access to these services as soon as possible and to eliminate the chilling impact on new clinic construction in California. The current process for licensing a dialysis clinic in order to receive Medicare certification, and thus Medicare funding, is onerous, cumbersome, and unnecessarily slow, resulting in delays that impact patient care. Current federal requirements for a new clinic to undergo both a state licensure survey and a separate federal survey, which do not occur at the same time, mean that patients may wait up to a year for a new facility to open. This delay has the dual effect of reducing the incentive for a dialysis provider to open new facilities while causing patients to often travel much farther than necessary to access dialysis services. This resolution is intended to urge CMS to simply allow state and federal licensure surveys to occur simultaneously in order to speed up the licensing process and allow more clinics to open in the state. For all of these reasons, we strongly pushed for adoption of this resolution. We were happy to report that the resolution was passed and sent to the Governor. The Governor signed it as Chapter 45, Statutes of 2010.