

California Orthopaedic Association

At the Capitol - Sacramento

California's Legislature concluded business for the 2015-16 Regular Legislative Session and have adjourned until January. During the last week, Legislators debated hundreds of bills, and those that passed the Legislature now go to Governor Brown who has until September 30th to sign or veto the legislation.

This time of year is always hectic, but is even more complicated than normal because Governor Brown called two **Special Sessions of the Legislature** in 2015 to address transportation and health care funding. There were proposals in the Special Session to increase gasoline taxes to fund road maintenance, and a cigarette tax increase to fund smoking prevention and control. There was another measure to tax managed care plans in order to continue to draw down Federal funds for the Medi-Cal program. The fate of these tax measure was always unclear—any tax measure requires a two-thirds vote of the Legislature, which means some Republican votes were necessary. In the end, none of these measures passed before adjournment.

COA was also involved in **Regulatory activity** with the **Radiologic Health Branch** – clarifying that an assistant can move a patient during fluoroscopy when the machine is and is not energized under protocols with the surgeon and the **Division of Workers' Compensation** – on many aspects of the Workers' Compensation system.

Of the hundreds of bills introduced in the 2015-16 Regular Legislative Session, COA actively followed and worked on the following measures. The highest priority bills include:

COA-Sponsored Bill

AB 2503 (Obernolte) a COA-sponsored bill, **clarified that providers shall send Requests for Authorization (RFA) for Medical Treatment to the Workers' Compensation claims adjuster assigned to the claim.** Currently, there is confusion as to where RFAs should be sent. Some claims adjusters accept RFAs, but others demand that the RFA be sent directly to the Utilization Review company. This causes confusion because the provider is never certain where the RFA should be sent. Providers have to call and search out where to send the RFA. This unnecessarily increases the providers' administrative costs and delays treatment. These administrative costs should be reduced as AB 2503 was passed and signed into law.

AB 1124 (Perea) would require the Administrative Director of the Division of Workers Compensation to adopt a **prescription drug formulary** by July 1, 2017. While COA did not have a formal position of support on this measure, it participated in numerous stakeholder meetings that helped shape the final product. The formulary will be developed with the input of physicians and pharmacists. It will include guidance for access to pain medications, the use of off-label drugs, and the use of generics (or brand-name when cost effective). The bill was signed into law.

DWC has solicited comments on a draft drug formulary. COA requested that the formulary include on the "preferred drug list," medications commonly needed for post-surgical patients. We asked that these medications could be dispensed without prior authorization for 30 days following the surgery. This would apply only to patients who underwent surgeries with a 90 day global period. The drug formulary is expected to be finalized in early 2017 and effective July 1, 2017.

SB 1160 (Mendoza) streamlines the **Workers' Compensation Utilization Review** process by:

1. For dates of injury on or after January 1, 2018, services provided by a member of a payer's medical network for an accepted body part or condition will not be subject to prospective utilization review in the first 30 days of an injury. This does not include surgical procedures, hospitalize, psychological treatment, home health care, imaging and radiology, and durable medical equipment costing more than \$250. These services will still be subject to prior authorization.
2. Authorizes an employer to conduct retrospective review of services provided without prior authorization. As a part of the review, the payor cannot deny payment for the service.
3. Payors can remove providers from the list of providers allowed to perform these procedures without authorization if they find that the provider rendered services through an unaccepted "pattern of practice."
4. Prohibits an employer or claims adjuster from providing a UR organization with financial incentives to deny or modify treatment.
5. Requires financial interest disclosure of UR entities be shared with the DWC.
6. Requires UR companies to be accredited by URAC effective July 1, 2018. URAC has an extensive accreditation process. One important provision requires, that on appeal, the UR company must provide for a peer-to-peer review with the requesting physician. This means that the UR physician must at least be an orthopaedic surgeon when reviewing treatment requests from an orthopaedic surgeon.
7. Requires the DWC to develop a mechanism to collect information on all UR requests.
8. The bill requires lien claimants to state that he/she is the workers' treating physician providing care through a MPN, is the AME/QME, provided emergency treatment, determined the employer did not have a MPN, after a diligent search, and has documentation that treatment was neglected or unreasonably denied.
9. Prohibits providers from assigning a lien to a third party.
10. Would stay liens filed by providers accused of fraud.

The bill passed and was signed into law.

AB 533 (Bonta). This bill was strongly opposed by CMA, California Dental Association, and hospital-based physicians. The bill was defeated in the Assembly on the last night of session. AB 533 was intended to prevent "surprise" bills to patients in an in-network facility who were treated, without their knowledge, by out-of-network providers. The bill only applied to elective procedures, not emergency room services. Even though the bill may have more directly affected hospital-based physicians, COA opposed the precedent that would have been set by the bill. The bill was supported by consumer groups and health plans. The bill would limit the amount that an out-of-network provider would be paid for a service to no more than Medicare rates. The provider could institute binding Independent Dispute Resolution if he/she objected to the plan payment. This bill would have given health plans huge leverage in dealing with non-contracting physicians and would likely have driven down the payments even for contracted providers. The bill missed its legislative deadlines and died.

AB 72 (Bonta) was introduced in 2016 as a compromise bill to AB 533. AB 72 contained similar provisions as AB 533, but set reimbursement rates at the greater of the average contracted rate or 125% of the amount Medicare reimburses on a fee-for-service basis for the same or similar services in the geographic region for non-contracted services performed in a contract facility. The California Medical Association and the California Radiologic Society saw this as a compromise bill and went neutral on the bill. COA and other medical specialties remained opposed to the bill. In spite of the opposition, the bill passed the Legislature and the Governor signed the bill into law.

SB 542 (Mendoza). This bill requires every WC Medical Provider Network to post information online regarding providers in the network and how to contact them. The bill was signed into law.

SB 944 (Hill). This bill would have required physicians to establish an antibiotic stewardship program. COA opposed this bill and tried to work with the author to establish a program that followed the guidelines of the National Quality Forum, but was not onerous for orthopaedic surgeons. Even though Senator Hill tried to move several versions of the bill, in the end, the bill was gutted no longer dealing with this issue. As amended, the bill passed and was signed into law.

Workers' Compensation Insurance

AB 2883 (Assembly Insurance Committee bill) – Currently any director or officer of a corporation could ask to be excluded from being covered under the corporation's Workers' Compensation policy. AB 2883 would limit that exemption to directors and officers who own 15% or more of the corporation's stock. This will mean that large professional corporations will have to purchase coverage for physicians who have ownership interests under 15%. The bill passed and was signed into law.

We believe this was an unintended consequence. The Committee bill was intended to address abuses where employers tried to claim that employees were owners of the company and exempt from Workers' Compensation coverage. COA will attempt to clarify this bill in the 2017 Legislative Session.

Other Issues of Interest:

AB 161 (Chau)	Certification of Athletic Trainers	Vetoed.
AB 187 (Bonta)	California Children's Services AB 187 which would extend the Medi-Cal "carve out" for the California Children's Services program until January 1st, 2017, passed through the Legislature unanimously and was signed by the Governor. The Department of Health Care Services (DHCS) introduced a redesign proposal earlier this year which would begin to move CCS beneficiaries into managed care. The proposal has been opposed by a large coalition, including children's hospitals, specialty providers, and children's advocacy groups, while being supported by a number of health plans. The final outcome of negotiations remains unclear and discussions will continue over the interim – the opposition has supported AB 187 and called for a carve-out extension.	Signed in Law.
AB 305 (Gonzalez)	Workers' Compensation: Permanent Disability Apportionment	Vetoed. This bill would have prohibited apportionment of PD from being based on psychiatric disability or impairment caused by sexual harassment, pregnancy or menopause if the condition is contemporaneous with the claimed physical psychiatric injury. Also, requires breast cancer and the after effects of the disease to be comparable in rating for prostate cancer.
AB 1092 (Mullin)	Require Registration of MRI Technologists	Died in Committee.
AB 1244 (Gray)	Providers Convicted of a Felony/No license -Suspended from Worker's Compensation program.	Signed into Law.
AB 1542 (Mathis/Cooley)	Workers' Compensation: Neuropsychologists The bill would have required the DWC to appoint neuropsychologists as QMEs.	Vetoed.

AB 2086 (Cooley)	Workers' Compensation: Neuropsychologists A reintroduction of AB 1542, this bill would have required the DWC to appoint neuropsychologists as QMEs.	Vetoed.
AB 1643 (L. Gonzalez)	Workers' Compensation: Apportionment The bill would prohibit apportioning permanent disability to pregnancy, osteoporosis, menopause, or carpal tunnel syndrome. The bill would have also required breast cancer to be awarded no less than the disability for prostate cancer. The Governor indicated that this bill was poorly drafted in his memo.	Vetoed.
AB 1992 (Jones)	Student Physical Examinations- chiropractors, naturopaths, nurse practitioners	Died in Committee
AB 1977 (Wood/Waldron)	Prescriptions: Abuse-deterrent opioid analgesics Gutted and amended to deal with Indian gaming. As amended, the bill was signed into law.	
AB 2007 (McCarty)	Youth Athletics: Concussion/head injuries	Signed into Law.
AB 2216 (Bonta)	Primary Care Residency Program – New Accreditation Standards COA opposed the bill. The bill could have served as an alternate accreditation model for MD residency programs and been used by allied health professionals as a model for circumventing the ACGME process.	Died in Committee
AB 2272 (Thurmond)	OSHPD – Plume Requires the Board to adopt standards to protect health care personnel and patients from plume.	Signed into Law.
AB 2407 (Chavez)	Workers' Compensation – Back Pain This bill was sponsored by the California Chiropractic Association and would have made it more difficult for injured workers to receive surgical treatment for back pain. Injured workers would have been required to undergo a more extensive and unreasonable conservative course of treatment by chiropractors and other health care professionals before surgery could be approved. The ongoing conservative treatment was not evidence-based and would have delayed care for injured workers. COA opposed the bill.	Died In Committee
SB 137 (Hernandez)	Requires Health Care Coverage: On-Line Provider Directories The bill requires health plans to create and update provider directories. The bill took a series of amendments during the final two weeks of session in an attempt to appease opposition, including the CA Assoc. of Physician Groups (CAPG) and other individual medical groups, who raised concerns that the bill would allow payments to be delayed to providers who do not respond to attempts to update directory information. These arguments did not gain enough traction and the bill passed its final vote in the Senate with only two "no" votes.	Signed into Law.
SB 282 (Hernandez)	Group Health: Prescription Medications	Signed into law.

Effective January 1, 2016, health plans and health insurers are required to respond to prescription drug prior authorization requests for group health plans within 72 hours for non-urgent requests and 24 hours for urgent requests. The bill deems such requests to be granted if the payor fails to respond within these timeframes.

SB 323 (Hernandez)	Nurse Practitioner: Expanded Scope of Practice	Died in Committee.
SB 337 (Pavley)	Physician Assistants: Options for Supervising Physician review of medical records of patients treated by PA	Signed into Law.
SB 482 (Lara)	CURES database: Require physicians to check the CURES database before prescribing a controlled Substance II, III, and IV and then every 4 months thereafter.	Signed into Law.
SB 538 (Block)	Naturopathic doctors: Expanded Scope of Practice	Died in Committee.
SB 563 (Pan)	Workers' Compensation: Utilization Review CMA-sponsored bill to rein-in UR abuses.	Amended into SB 1160.
SB 914 (Mendoza)	Workers' Compensation MPN – ACOEM SB 914 was conforming legislation regarding Workers' Compensation medical provider networks . COA amendments clarified that ACOEM treatment guidelines no longer had the presumption of correctness for care rendered through a Workers' Compensation Medical Provider Network.	Signed into Law.
SB 932 (Hernandez)	Health Care Mergers	Died in Committee.
SB 1177 (Galgiani)	Physician Wellness Program – Medical Board of CA Establishes a new physician wellness program administered by the Medical Board of California.	Signed into Law.

Special Session

ABX2 15 (Eggman)	End-of-Life Option Act	Signed into Law
	ABX2 would legalize physician-assisted death in California, passed out of the Legislature after its final vote on the Senate floor, 23-15. The bill contains the same provisions as SB 128 (Wolk/Monning) , which stalled in the Assembly Health Committee earlier this year. There remains a highly diverse cast of support and opposition to the bill, including religious and secular groups, patient advocates, and healthcare providers on both sides of the debate. This measure will be closely watched-- the Governor's office previously stated that it does not believe this subject should be part of the Special Session agenda.	

Medi-Cal Funding Unresolved

In 2015, Health & Human Services Secretary, Diana Dooley, [released a statement](#) announcing that no deal had been reached with the health plans on a new MCO tax structure after "spending countless hours" and exploring "every conceivable option over the past 14 months to avoid losing \$1.1 billion in federal matching funds." The statement alluded to offers made to cut other taxes for the plans, and also implicated the Republican Party as

refusing to “consider any tax adjustments at all.” The Republican Party has publicly insisted that Medi-Cal funding must be prioritized by the Legislature and done through the regular budget process. As special session is not beholden to the regular legislative calendar, discussions and legislative action are allowed to continue during the fall and winter months. A number of special session bills related to Medi-Cal funding are still active. These include the following:

- **ABX2 19 (Bonta):** The bill currently has the most detailed language of any bill about how a “tiered” tax structure might look, and is likely reflective of where negotiations left off with the plans. The bill would place plans into “tiers” based on enrollment, and bifurcates the tax rate between Medi-Cal and commercial enrollees, with a much lower tax rate on commercial lives. Jennifer Kent indicated this would pass muster with new CMS guidelines. The plans indicated they were still opposed because of the net liability, although the Administration mentioned it was greatly reduced from the initial proposal between additional tax cuts for the plans and the bifurcated rate.
- **SBX2 14 (Hernandez):** The bill contains a \$2 per pack tax increase on cigarettes, an equivalent tax on e-cigarettes, and intent language for an MCO tax. The bill was heard in the Senate special session committee last Thursday with clear opposition from Republicans, who are needed to pass any tax increase. In addition to ABX2 16 (Bonta) and SBX2 13 (Pan), which would also raise the tax on cigarettes and e-cigarettes, a large coalition of providers, hospitals, insurers, labor, and patient groups are funding [a ballot measure for 2016](#).
- **ABX2 4 (Levine),** which would impose a flat tax on all managed care organizations (MCOs) of \$7.88 per enrollee per month. The bill failed to gain much support, and the CA Association of Health Plans and the CA Chamber of Commerce have publicly opposed. CAHP is also opposed to **ABX 2 17 (McCarty)**, which would prevent some insurers from having PPO products regulated under the Dept. of Managed Health Care (DMHC), and instead require them to be regulated by the Dept. of Insurance (DOI). According to the author and sponsors (CA Medical Association and the DOI), DMHC has a more favorable tax structure than the DOI, and shifting the products under the DOI’s jurisdiction would generate an additional \$300 million annually for Medi-Cal.
- **Optional Services Under Medi-Cal.** It’s unclear whether optional services will be restored for Medi-Cal patients during the Medi-Cal Funding Special Session as this will require additional funding. This would affect Medi-Cal patients’ access to services provided by podiatrists.

Tobacco Bills Held

The Senate and Assembly introduced a package of bills focused on increasing regulation and reducing consumption of tobacco products. The bills would increase the minimum legal age to purchase tobacco products, define e-cigarettes as tobacco products, close loopholes in smoke-free workplace laws, require all schools to be tobacco free, and allow local jurisdictions to tax tobacco.

The most controversial of these are two policy proposals, one which would add e-cigarettes to existing tobacco products definition, and another to raise the smoking age from 18 to 21. These have drawn hundreds of individuals in opposition at the hearings, many of them e-cigarette and “e-liquid” business owners. Although the bill package failed to pass during the regular legislative session, they are special session bills and are technically eligible to be acted upon over the interim.

At the Capitol- Washington, DC

H.R. 921/S. 689 – Sports Medicine Licensure Clarity Act.

COA representatives urged members of the California Congressional delegation to support these bills which would clarify that physicians who travel out-of-state with sporting teams are able to treat their team members even though they are not licensed to practice medicine in the state where the team is playing. The physician

who travels with the team is in the best position to know the medical history of the athlete and should not be constrained in treating the athlete should he/she suffer an injury. The AAOS is gathering co-sponsors for the bills. The U.S. House of Representative passed the bill. The bill is headed to the U.S. Senate for their consideration. California has had a state law for many years, allowing out-of-state physicians to treat their athletes when playing in California.

SGR Repeal

In March, 2015, a delegation of COA representatives traveled to Washington DC to urge Members of Congress to repeal the Sustainable Growth Rate (SGR) on which Medicare reimbursement was based. There have been efforts over the past over ten years to repeal the SGR and enact a more appropriate payment system. With the support of Congressman Kevin McCarthy, 2015 became the year when the repeal became possible.

ICD-10 Implementation

COA representatives also urged Members of Congress to contact CMS and urge that ICD-10 not be implemented. Members of the California Congressional Delegation were sympathetic to our concerns and there was some support for staying the implementation of the new diagnostic system. At the same time, hospitals, who had already made huge investment in the implementation of ICD-10, were urging that the implementation stay on schedule. In the end, the American Medical Association struck an agreement with CMS which allowed the implementation of ICD-10 on October 1, 2015, but delayed the strict enforcement of the new system for another year. As long as physicians code within the correct family of codes for the diagnosis, CMS has indicated that payment will not be delayed. This will give physicians time to perfect their ICD-10 coding before suffering payment delays. Full compliance with ICD-10 was implemented by CMS on 10/1/2016.