

California Orthopaedic Association

Wrap-up – 2009 - 2010 Legislative Session

Of the hundreds of bills introduced in the 2009-10 Legislative Session, COA was actively following 41 measures. Included were:

Scope of Practice:

AB 356 (Fletcher) would allow an appropriately trained physician assistant, working under the supervision of a qualified physician, to obtain a fluoroscopy permit. COA supported this bill. It addresses a problem that has been identified in San Diego regarding children's access to timely fluoroscopy. The bill was signed into law. (This issue is also the subject of a 2-year bill, AB 445 (Salas))

AB 623 (Lieu) – Radiologist Assistant Act This bill would have created a new category of radiology assistants who would have been required to work under the supervision of a radiologist. These individuals would have had a broad scope of practice allowing them to independently evaluate patients under protocol with their supervising radiologist. COA felt that there was also the possibility that ultimately, only these assistants would be allowed to perform the higher end diagnostic tests such as MRIs, CTs, etc. If this happened, the creation of this new radiology assistant would have effectively taken these tests out of the offices of other physicians as no other specialist would be allowed to supervise the radiologist assistant. COA opposed this bill asking only that orthopaedic surgeons also be allowed to supervise these assistants. The radiologists opposed these amendments. Due to this impasse, the bill was dropped by the radiologists.

AB 721 (Nava) was another attempt by the California Physical Therapy Association to allow physical therapists to have direct access to patients, without a physician referral. As was the case in 2008, the sponsor offered last-minute amendments in order to secure passage of the bill, but the bill failed in the Assembly Business and Professions Committee with a vote of 3 Ayes, 1 No and 7 abstaining. In addition to COA's opposition, the bill was also opposed by the CMA and the California Chiropractic Association. The bill was not reintroduced in 2010.

AB 1152 (Anderson) was sponsored by the California Podiatric Association and supported by COA. It would clarify that a podiatric professional association and a medical corporation can employ physical therapists. Even though COA and CMA believe this is already the law, the Physical Therapy Association was vehemently opposed and launched an all-out grassroots effort to kill the bill. It did so successfully, and the bill failed in Senate Business and Professions Committee. Reconsideration was granted.

The podiatrists did not pursue the issue in 2010. AB 1152 was amended and dealt with an unrelated issue.

AB 1647 (Hayashi and Hill) This bill would make it unlawful for any person to hold himself or herself out as a certified athletic trainer unless he or she has been certified by the Board of Certification, Inc., and

has either graduated from a college or university, after completing an accredited athletic training education program, as specified, or completed requirements for certification by the Board of Certification. COA consulted with our members who utilize the services of an athletic trainer. They supported the bill as did COA. The bill was signed into law.

SB 953 (Walters) Podiatrists Liability for Emergency Services This bill would allow podiatrists to work outside their scope of practice in the case of a disaster once the Governor had declared a state of emergency. COA believed that current law already allowed this for podiatrists as well as for all other health care professionals, so we did not oppose the bill. Instead, we sought amendments to make it clear that this bill would not, in any way, expand a podiatrist's scope of practice. The podiatrists agreed to this language. As amended, the bill passed and was signed into law.

Workers Compensation:

AB 933 (Fong) is a reintroduction of a COA-supported bill that the Governor vetoed last year. It would provide that a physician doing utilization review for an employer must have a California license. The bill is supported by labor and opposed by employers. It is in the Senate Labor Committee and is a 2-year bill. The bill made it to the Governor's office, but was vetoed.

AB 361 (Lowenthal) , sponsored by the Chiropractic Association, would preclude an employer from refusing to pay for Workers' Compensation medical treatment services if the employer had approved those services prior to treatment. The bill was signed into law.

SB 145 (DeSaulnier) is the reintroduction of another measure that was vetoed last session. It would provide that no Workers' compensation claim can be denied because the injury or death was related to the employee's race, creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics. The bill was passed by the Legislature, but vetoed by the Governor.

SB 186 (DeSaulnier) would delete the December 31, 2009 repeal date for the law that allows an employee's predesignation of a personal physician. The bill was signed into law.

Other:

AB 366 (Ruskin), as introduced and supported by COA, would require CMAC to negotiate separate reimbursement to hospitals and physicians for the full cost of orthopaedic implants in bone cancer patients. Because of fiscal concerns, the sponsor was forced to take weakening amendments, and the bill ultimately did not pass the Legislature and has died.

AB 542 (Feuer) "Never events"—opposed by COA, this bill would require the state to adopt the list of "hospital acquired conditions" adopted by federal CMS. If these conditions occur—including post-operative complications in certain orthopaedic procedures—the state would develop policies for nonpayment of the facility. The bill was vetoed by the Governor.

AB 583 (Hayashi) – Disclosure of Education As originally introduced, this bill would have required that all licensed and regulated health care provider notify patients of their highest level of education. This bill was co-sponsored by the California Society of Plastic Surgeons and the CMA. COA opposed this bill as we felt it was too broad and would have required orthopaedic surgeons to post in their office the highest level of education of their casting techs, physician assistants, x-ray techs, as well as their physicians. We felt this would make for a very long list that would do nothing to improve the quality of care for their patients. The bill was really focused on providers who may be attempting to mislead the public as to their credentials, cosmetic surgeons performing plastic surgery and nurses working in walk-in clinics who present themselves as physicians. We sought amendments that would limit the bill to providers in these practice settings, but our amendments were rejected by the Plastic Surgeons and CMA. Instead, COA was able to amend the bill so that it only applied to providers who are licensed which will limit the disclosure requirement. The bill ultimately passed the Legislature and was signed into law.

AB 646 (Swanson), AB 648 (Chesbro), SB 726 (Ashburn)—hospital employment of physicians. Each of these measures would allow district hospitals in rural areas to employ physicians. All were strongly opposed by the CMA and all three bills died.

AB 832 (Jones) As introduced, this bill would have re-defined “surgical clinic” to remove the exemption for physician’s offices, thus requiring those offices to get a license. The bill was heavily opposed and was amended down to requiring the Department of Public Health to convene a workgroup to study the issue. The bill did not pass the Legislature and has died.

AB 1503 (Lieu D) – Emergency Room Patients This bill would provide that uninsured patients or patients with high medical costs who are at or below 350% of the federal poverty level are eligible to apply to physicians rendering services in the emergency room for a discount payment. The bill would have required the emergency physician to limit the expected payment to no more than allowed by the Fair Health database. The emergency room physicians and CMA supported the bill. COA adamantly opposed the bill. The Fair Health database is not even in existence. It may appropriately establish reasonable reimbursement rates after comparing physician payments nationwide, but there are no guarantees. COA argued that our members were already extending discounts to patients in financial need, but did not want to be required to offer the discount or accept reimbursement rates that are currently unknown. At COA’s insistence, the bill was clarified to only apply to emergency room physicians who continued to support the bill. As amended, the bill was signed into law.

AB 1826 (Huffman) – Pain Medications This bill would have restricted health insurers and health care service plans from requiring patients to try alternative pain medications before obtaining the drug that had been prescribed for them. COA supported the bill, but the bill did not pass the Legislature and has died.

SB 208 (Steinberg/Alquist) and AB 342 (Perez) – Exempting Medi-Cal Program from Knox-Keene Requirements. COA joined with CMA and several other specialties to oppose these bills as they would have done away with important patient and provider protections. They would have also created an

unfunded mandate on providers operating “medical homes” and would have moved Medi-Cal patients to a managed care system. The authors of the bill agreed to remove the objectional language and COA, CMA and the other medical specialties went neutral on the bill. As amended, the bills passed and were signed into law.

SB 726 (Ashburn) – Hospital Employment of Physicians This bill would have greatly expanded the ability of hospitals to employ physicians. The bill was strongly supported by the California Hospital Association and opposed by COA, CMA and other medical specialties. The bill died in Committee.

SB 1237 (Padilla) – Radiation Control This bill would have required all health facilities and clinics to record the dose of radiation administered to a patient in the patient’s medical record. In addition, the bill would have required physicians furnishing MRIs and CT to be accredited by an organization approved by CMS. This bill was supposedly in response to recent news reports which discussed situations where patients were exposed to excessive radiation. COA opposed the bill as originally introduced. Since the radiation overexposure had happened in an acute care hospital setting and was limited to CT, we felt the bill should also be limited to only those areas. The author accepted amendments to the bill to remove COA opposition and the bill was passed and signed into law.

State Regulations

Workers’ Compensation

COA commented on several proposed regulations in the following areas:

- **Official Medical Fee Schedule – Physician Services – Regulations would adopt the RBRVS system for California’s Workers’ Compensation Fee Schedule and make other ground rule changes. COA has not opposed the transition to an RBRVS system, but has opposed tying reimbursement to Medicare rates or a reduction in surgical fees. The regulations are pending.**
- **Utilization Review – COA made recommendations to the Division which would tighten up the requirements on Workers’ Compensation carriers and their utilization review entities. The regulations are pending.**
- **QME Regulations – limit the number of practice locations that a QME could have to 5 locations with the ability to have five additional locations if they were located in a rural area. The regulations also limit the board certifications that the Division can recognize to those boards for physicians and surgeons. COA supported these changes. The regulations are pending**

Board of Podiatric Medicine

The Board was proposing regulations which would have required podiatrists to post in their offices that podiatrists are licensed and regulated by the Medical Board of California. COA felt that this notice, while technically correct, podiatrists are licensed under the Medical Board of California, all complaints and enforcement activities are handled by the Board of Podiatric Medicine. We felt the notice would be misleading to consumers seeking to file a complaint against a podiatrist. The Medical Board agreed with COA and submitted comments urging the Podiatric Board to clarify this notice. Still pending.

Physical Therapy Examining Committee

The Physical Therapy Examining Committee (PTEC) has long supported national and statewide efforts by the physical therapists to have direct access to patients and to force physical therapists into independent practice. Most recently, the PTEC obtained a Legislative Counsel opinion on the issue of whether a physical therapist can be employed by a medical corporation. If physical therapists cannot be employed by a medical corporation, those who are employees working in a physician's office would have to restructure their arrangement with the group or move out of that environment into an independent practice location. COA has received a copy of the Legislative Counsel opinion which concludes that a physical therapist may be subject to discipline by the PTEC for providing physical therapy services as an employee of a medical corporation. We believe that the PTEC will interpret the "may be disciplined" as "shall be disciplined" and we are expecting them to send out threatening letters to physical therapists working in a physician's office. COA is exploring legal options to address this issue.

In addition, the Physical Therapy Examining Committee proposed regulations which would have required physical therapists to obtain training in patient "examination, evaluation, and diagnosis." Since state law prohibits a physical therapist from making a diagnosis, COA questioned the need for them to receive continuing education in this area. We did not want physical therapists to later claim they were as well-trained as a physician in making a diagnosis because they had this training. Still pending.

Federal Issues:

Federal Health Reform COA worked to promote its principles on health care reform and impact federal health reforms proposed by members of Congress by meeting with the California Congressional Delegation, sending several Legislative Alerts to all COA members and orthopaedic practice managers urging them to contact their Representatives regarding the reforms, and by meeting with Representatives in their district offices.

COA testified before the U.S. House Judiciary Subcommittee on Courts and Competition Policy to urge that anti-trust protections be extended to physicians and that the monopoly formed by group health carriers be broken up.

We also urged the AAOS to change their policy on federal tort reform to support enactment of MICRA on the national level. Previously, the AAOS had supported "uniform" tort reform without a clear policy that the reforms must enact provisions of MICRA.

AAOS Standard of Professionalism COA opposed the AAOS Standard of Professionalism on Emergency Room On-Call Services which sought to declare it the moral responsibility for an Academy Fellow to take call. While COA did not disagree that its members should work to resolve on-call problems in their communities, we opposed a mandate on orthopaedic surgeons which would have effectively shifted the on-call responsibility from the hospital to orthopaedic surgeons. AAOS has not pursued the SOP, but continues to discuss the Academy's role in resolving on-call problems.

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