

California Orthopaedic Association

2011- 2012 Legislative Session

Of the hundreds of bills introduced in the 2011 Legislative Session, COA is actively following 46 measures. The highest priority bills include:

Scope of Practice:

AB 352 (Eng) would establish a “super” new category of radiology assistants who would be required to complete a higher level of training and could provide evaluation and management services. The radiologists have introduced similar bills in the past. COA has traditionally sought an amendment to the bill to clarify that any physician and surgeon would be able to supervise these “super” radiology assistants as we felt there was a possibility that at some point, only these super radiology techs would be able to perform the high-end diagnostic tests – CT scan, MRI, etc. If this bill had passed without our amendment, this would have effectively taken these tests out of a physician’s office unless they also employed a radiologist.

The radiologists are now open to accepting the COA amendment which will allow all physicians and surgeons who have a fluoroscopy supervisor’s certificate to supervise these new radiology assistants. With these amendments, COA will go neutral on the bill. The bill missed its legislative deadlines and has become a two-year bill.

AB 374 (Hayashi) would license athletic trainers and define their scope of practice under the jurisdiction of the Medical Board of California. COA is neutral on the bill. The bill missed its legislative deadlines and has become a two-year bill.

AB 783 (Hayashi) would clarify that a medical/podiatric corporation may employ physical and occupational therapists. COA supports and is a co-sponsor of this bill along with the California Podiatric Medical Association, California Medical Association, and Kaiser Permanente. The bill became necessary after the California Physical Therapy Association obtained a Legislative Counsel’s opinion which called into question whether a medical/podiatric corporation could legally employ licensed health professionals who were not specifically noted in statute. The CPTA sent threatening letters to employed physical therapists which prompted them to call and raise the issue with COA. The bill was defeated in the Senate Business & Professions Committee. A bill to address this issue will be reintroduced in 2012.

In the meantime, **SB 543 (Steinberg)** was passed and signed into law. The bill would, for one year, prohibit the California Physical Therapy Board from taking disciplinary action against the employed physical therapist because of their employment status.

SB 233 (Pavley) would clarify that physician assistants may treat patients in the emergency room working under protocols with their supervising physician. A problem arose in a San Diego hospital where they would not let the orthopaedic PA render services in the OR. COA is working with the author of the bill to ensure that this gray area is clarified, but that the scope of practice of the PA remains the same. Also, the emergency room physicians see this as an opportunity to write portions of the EMTALA federal law into state law, particularly the part about the ER physician being able to demand that the on-call specialist physically appear in the OR even though their PA may be handling the case. While the EMTALA law does state that the physician onsite can require the on-call specialist to come to the ER when they are on-call, there are other provisions of EMTALA that put this requirement into reasonable

perspective, particularly if the on-call physician is already treating an emergency patient at a different hospital. Rather than write the entire EMTALA law into state law, COA urged the sponsor of the bill to limit the scope to clarifying that the PA can work in the OR and not expand the bill to get into other on-call issues. With the COA amendments, the bill passed and was signed into law.

SB 628 (Yee) would allow acupuncturists to be licensed as a traumatologist. Traumatology would include the treatment of musculoskeletal problems which would include manipulation or fixation and functional exercise, treating fractures, dislocations, injuries of muscles and tendons, and internal traumatic syndrome. COA met with the author to express our concern with the bill. The bill failed passage.

SB 924 (Walters) would expand the scope of practice of physical therapists to allow them to initiate and treat a patient for thirty days without a physician and surgeon first diagnosing the medical problem. COA has long opposed granting physical therapists direct access as physical therapists, that COA has consulted believe the most optimal care is rendered in collaboration with the physician and surgeon, not in independent practice. They also believe that there needs to be a medical diagnosis made before treatment is started. The bill missed its deadlines and has become a two-year bill.

Workers' Compensation:

AB 378 (Solorio) would limit the reimbursement for compounded medications to 300% of documented paid costs, but in no case more than \$20 above documented paid costs. Originally, the bill contained a broad definition of "pharmacy goods" which included "any dangerous drug or dangerous device as defined by Section 4022 of the Business and Professions Code." COA felt this definition was too broad and could have prohibited in-office dispensing of any medication. We have since received clarification that the bill would not prohibit in-office dispensing. After many amendments, the bill ended up prohibiting reimbursement for over the counter medications and establishing a formula for reimbursement for compounded medications when they are dispensed in a physicians office. The bill passed in this form and was signed into law.

AB 584 (Fong) would require that the physician utilization reviewers for the California Workers' Compensation be licensed physicians in California. COA supported this bill. The bill was vetoed by the Governor.

AB 1155 (Alejo) would prohibit a physician from considering race/religion/color/age/gender/genetic characteristics when determining disability levels. COA has concerns with this bill as some of these issues; particularly genetic characteristics may legitimately affect someone's levels of disability. COA is opposed to the bill. The Governor vetoed this bill.

SB 127 (Emmerson) This COA-sponsored bill would require the Division of Workers' Compensation to annually update the CPT codes contained in the Official Medical Fee Schedule (OMFS) for physician services. Currently the fee schedule uses the 1997 CPT codes. The bill was unfortunately vetoed by the Governor. In his veto message, the Governor called for a more comprehensive update to the fee schedule.

SB 863 (Lieu) would put limitations on individuals filing liens before the Workers' Compensation Appeals Board. This bill would prohibit a lien claim from being filed after 3 years from the date of service or more than 18 months after the date of service if the service was provided on or after July 1, 2012. COA is neutral on this bill. The bill missed its legislative deadlines and is a two-year bill.

SB 923 (De Leon) would require the Division of Workers' Compensation to transition the Official Medical Fee Schedule – physician services – to an RBRVS system, and originally included conversion factors for surgery, radiology, and other physician services. The bill is silent on which Ground Rules would be implemented. The bill is sponsored by US Healthworks. COA has concerns with the bill as we believe the proposed conversion factors would result in a reduction in reimbursement particularly for arthroscopic and spine procedures.

Ultimately, the bill was amended to remove entirely the conversion factors. Late in session the bill was further amended to require that the transition to RBRVS be done in a budget neutral manner. This would mean that any increases to primary care procedures would likely be taken from the reimbursement for surgical procedures. In this form, COA was adamantly opposed to the bill. The bill did not pass and is pending on the Assembly Floor.

Mandated Continuing Education Credits:

SB 380 (Wright) would require physicians to complete by December 31, 2016, a mandatory education course in the subject of nutrition and lifestyle behavior for the treatment of chronic diseases. COA is opposed to this bill as we oppose additional educational mandates on physicians. Due to this opposition, the bill was amended to encourage the Medical Board of California to establish standards for any educational activity concerning a chronic disease that includes appropriate information on prevention of the chronic disease and on treatment of patients with the chronic disease, by the application of changes in nutrition and lifestyle behavior. The board shall require each licensed physician and surgeon to demonstrate satisfaction of the continuing education requirements at intervals of not less than four nor more than six years. In this form, the bill passed and was signed into law.

SB 747 (Kehoe) would require physicians and surgeons and other health professionals to take a 2-5 hour course on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. COA proposed amendments to the author that were not accepted. We believe that this education would be more meaningful if offered during their medical school training. The Governor vetoed this bill.

Ban on the Corporate Practice of Medicine

AB 1360 (Swanson) would authorize hospitals to employ physicians. COA is opposed to the bill as the bill creates a real danger of “divided loyalties” – putting the physician in the position of conflict when the needs and wishes of the employer are different than the needs of the patient. The bill missed its legislative deadlines and is a two-year bill.

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