

CDC Report

Friday September 16 , 2005

Oakland, California

Legislative Report: Michael Arnold delivered the following legislative report.

Michael reported that everyone in Sacramento is gearing up for the November election. The opponents of the Governor's ballot issues are trying to discredit the Governor's issues then tie him to the failure of those issues. The three ballot issues sponsored by the Governor are:

1. increase tenure for teachers to five years from the current 2 years
2. a "live within our means" tax
3. reapportionment

2005 was a "lost" legislative session due to the impact of the special election called by the Governor. A \$6 billion budget deficit is anticipated for the 2005-2006 budget year.

A review of legislation follows.

AB 1676 This bill has passed the Legislature and is on the governor's desk for signature. It is anticipated that he will sign this bill which deals with advance healthcare directives in terminal illness. The bill will require the Secretary of State to work with the State Department of Health Services and the office of the Attorney General to develop information about end of life care, advance healthcare directives, and registration of those directives. It would also require that links to this information be available on the internet sites for various agencies. Individuals can go to www.sos.ca.gov (Office of the Secretary of State) to register their advance healthcare directive.

AB 1735 A Medi-Cal rate cut (5%) was adopted by the Legislature two years ago. CDC worked with a coalition led by California Medical Association (CMA) and filed a lawsuit against the State placing a stop on the application of the 5% cut. The State appealed the results of the lawsuit and prevailed so that the stay was reversed. It does not appear that the cut will be effective at this time. We will need to be vigilant in the next year. The Governor's office agreed to amend AB 1735 and the reduction in reimbursement will not apply to Medi-Cal services from January 1, 2004 through December 31, 2005. This revision is on the Governor's desk, but has not yet been signed.

ACR 75 California Chronic Kidney Disease Education Week, sponsored by CDC, was passed by the Legislature and has been chaptered by the Secretary of State.

SB 689 This bill would require the Department of Motor Vehicles to collect organ donor designation information on all applications for original or renewed driver's license or identification cards.

Sue Vogel, who was unable to attend the meeting, sent a written report regarding **Kidney Care Partners (KCP)** as follows. The American Society of Nephrology (ASN) has joined KCP as a member. KCP is looking like it will be a permanent organization. They will be hiring a full-time director. Kent Thiry's plan is to make KCP the go to organization for quality, research and new technology issues. Pay for Performance was discussed. This issue will be spearheaded by Brady Augustine at CMS. Apparently Dr. Barry Straube is now Brady's boss. The plan is to roll out pay for performance for nephrologists first. Breakout sessions focused on the physician fee schedule proposed rule changes. Groups focused on ASP (average selling price) versus AAP (average acquisition price) and the geographic wage index. Sue stated that she was in the geographic wage index group and the discussion was heated. The group proposed to keep the floor and remove the ceiling. It was mentioned that hospital-based units are paid anywhere between 108-384% more than free-standing units for drugs. KCP would like to equalize the payments. Sue and Lori Hartwell spent Wednesday of the KCP meeting lobbying California Congressmen. They saw eight on Wednesday and Lori was to see fourteen more on Thursday and Friday. So far 100 representatives have signed on to support the bill.

Regulatory Report: The regulatory report was delivered jointly by Karen Dyer and Michael Arnold.

LVN issues. Sheila Doss reported that two years ago the BVNPT and the BRN came together at the request of the California Hospital Association and developed a list of job duties appropriate for the RN and for the LVN. When the CHA saw the list, they put a halt to the publication of the document. Sheila reported that December 1 and 2 there will be a meeting in Glendale to determine whether this list should now be released as a result of the perceived confusion as to the appropriate job duties of these two licenses. Karen Dyer will contact Sue Vogel to request that she and Debbie Punch (and any other available RNs) attend the Glendale meeting to represent the dialysis community. Karen will also contact Mary Brattich and request that she speak with Ann Shuman with the BVNPT to get her perspective on this meeting and also to see if Ann can provide an advance copy of the document.

Michael Arnold also discussed issues around LVNs obtaining certification as patient care technicians. He stated that a revision of the Business and Professions code 1247 would probably not be possible in today's environment. *Licensure/ certification of facilities.* Due to continued issues around licensure and certification of new dialysis facilities in California, Michael Arnold stated that the following might be approaches for CDC.

1. Michael Arnold will testify in budget meetings next year regarding the inadequate staffing at the Department of Health Services (DHS) with regard to opening new dialysis facilities in California.
2. Any CDC member who is planning to open a new facility should contact Michael's office and he will try to apply pressure for timely DHS visits.
3. CDC will write a letter to CMS and California DHS regarding delays, and
4. Michael requests that any provider who has information regarding patients who are being held in a hospital setting and unable to be discharged as a result of no available outpatient dialysis stations, send that information along to him. Sean Graham will provide that data for his area of DaVita.

Michael also requested that all CDC members who have opened new facilities provide him with information regarding date of application, date of initial licensure visit, date of Medicare certification visit.

CDC currently believes that the facilities waiting for home dialysis training certification have received visits from the DHS.

"Acute" Dialysis in the Skilled Nursing Facility (SNF) setting: Jennifer Nazarko, National Director for Acute Services for DaVita, presented the Board with a written memo outlining her request for support. In summary, Jennifer's group is seeking licensure only because they establish agreements wherein the SNF pays them for services and they do not bill Medicare. The patient group to be served was defined and is a medically compromised group with specific medical criteria. The Board felt that the group of patients as defined by Jennifer are those with significant needs that tax the resources of outpatient dialysis providers and result in decreased service for the remainder of the patients. It was decided that it is in the best interest of the CDC to pursue this and Michael Arnold will work with Jennifer to this end. Michael will prepare draft legislation that would allow licensure for this specific cause for discussion at the next Board meeting. Peter Crooks suggested that we try to tie SNF dialysis in with this and Michael stated that this should be a 2-step process.

1. draft Jennifer Nazarko's bill
2. work on the SNF dialysis issue.

Peter also recommended that CDC consult the Kaiser legal department and lobbyist. Michael stated that we will attempt to remove the old Home Intensive Care regulations (that have never been implemented) at the same time. It would be a large re-write.

Tom Paukert moved that the Board authorize Michael Arnold to draft legislation regarding the concept of the memo presented by Jennifer Nazarko for review at the September Board meeting. The motion was seconded and adopted. *ESRD Composite Rate Wage Index.* Judith Filangeri and her committee developed a draft response from CDC regarding the proposed rules change as outlined in CMS-3818-P. The statements as developed were well prepared and Judith was commended. With regard to ESRD drugs, the Board suggested that the language be changed to "CDC agrees that the correction to the calculation of the drug add-on using the ASP+11% is more appropriate and reflects actual data." The Board also suggested that the language regarding development of market-basket calculations be amended to include a recommendation that a market-basket for dialysis be based upon current annual data and that CMS should consider using the hospital annual index for ESRD as we compete for goods and labor with hospitals. Jan Anderson and Mike Paget will work to re-write the comments for timely submission as Judith will be out of town. It was moved that the Board give Mike Paget the instruction to make the changes discussed and submit the comments. The motion was seconded and approved.

NRAA Report: Cindy LaMunyon reported that NRAA is working on their comments for the 2006 physician fee schedule. NRAA has also established a hurricane relief program for patients and staff to receive funds. Staff from the Large Dialysis Organizations (LDO) are exempted from the program as they have their own relief plans established. NRAA is requesting donations. The seed money for the relief effort was donated by an anonymous company. There are two types of grants, the patient funds (even if the patient dialyzes in an LDO facility), and facility funds. Cindy also reminded those in attendance that the NRAA meeting is at the end of next week in Chicago and the Renal Support Network will be holding their second annual meeting in conjunction with NRAA.

ESRD Network Up-Date: Arlene Sukolsky and her staff were attending CMS meetings in Baltimore and unable to attend the Board meeting.

Medicare/ Medi-Cal Report: Cindy LaMunyon reported that UGS overpaid some providers as a result of their software having been mis-loaded and being one decimal point off. Providers who received the overpayments will be expected to re-pay those amounts.

Some providers have reported that they are being paid inappropriately for EPO for their Medi-Cal patients. Cindy reported that the errors in payment are a result of poor communication between Medi-Cal and EDS who makes the payment. Providers should challenge denials.

Regarding the October change in the ICD-9-CM from 585 to 585.6, Cindy states that Medi-Cal will not be ready for the code change on October 1. Dr. Farber told Cindy that he is aware of the code change but has not had time to do anything about it. There is a possibility that the use of the new code, 585.6, might result in claims denial. Cindy will keep Mike Paget up-dated as she gets new information.

Cindy and Ursula Kramer will work together to draft a letter regarding the NDC survey.

Membership Report: Mike Paget reported for Nancy Ann James that the membership status is unchanged from the August meeting. Jan Anderson reported that the new company which purchased the DaVita/ Gambro facilities, Renal Advantage, will have approximately 33 facilities in California effective September 30. Jan has encouraged Renal Advantage to join CDC and suggests sending a joint letter to Michael Klein and the company's regulatory person showing the value of CDC membership.

CDC Program Committee: The November 18, 2005 Educational Meeting in northern California will be held in conjunction with Network #17 at the Park Plaza Hotel in Oakland. The CDC Board will meet in the morning and the Network #17 speakers will continue from 12 noon until 3:30. Lunch will be included.

Next Open Board Meeting

October 21, 2005 Los Angeles

For more information and a registration form, please visit our web site at:

http://www.caldialysis.org/next_meeting.htm