

CALIFORNIA DIALYSIS COUNCIL

LEGISLATIVE HIGHLIGHTS 2001 LEGISLATIVE YEAR

**October 19, 2001
Sacramento**

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These “Legislative Highlights” consist of both a general overview highlighting some of the key issues addressed during the 2001 legislative year and a more comprehensive “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 2001. As you will note, the status report also includes the following information on all of the bills we followed:

Bill Number and Title
Author
Brief Summary
Final Location or Chapter Number if signed into law
Our Position on the Measure

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.

Two-Year Bills

Since 2001 is the first year of the 2001-2002 biennial session, bills not enacted remain alive for consideration during 2002. The rules provide that these measures must pass the house of origin by the end of January 2002 to remain alive for additional consideration. Thus, January will be a busy month. Proponents of two-year bills will be attempting to move them through the house of origin prior to the January deadline.

Effective Dates of New Legislation

The bills that were passed by the Legislature and signed by the Governor will take effect on January 1, 2002, 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.

Key Issues of Interest During 2001

1. 2001-2002 State Budget

This year the state budget debate was very protracted. Governor Gray Davis did not sign the 2001-02 budget into law until July 26, 2001 – six weeks after the constitutional deadline. The biggest fights during the budget debates concerned how to deal with the dwindling surplus. The \$103.3 billion budget contains an overall year-to-year general fund expenditure decrease of 1.7 percent. The budget contains a reserve of \$2.6 billion.

The state budget for the 2002-03 fiscal year now appears to be in very difficult shape. Next year’s budget is expected to pit many powerful interest groups against one another as everyone attempts to preserve funding for their programs.

2. Medi-Cal Rate Increase

CDC held various meetings with representatives from the Department of Health Services last fall in preparation for the publication of the Governor’s initial 2001-02 State Budget. Even though there was no specific language in the Governor’s budget calling for Medi-Cal increases for dialysis services, CDC was advised by representatives from DHS that dialysis services will be increased this year. As a result of our efforts, internal policy changes were built into the Medi-Cal fiscal estimates which called for increases in reimbursement rates for dialysis services provided to Medi-Cal enrollees. The rate increases of approximately 2.4 percent will be announced in an upcoming Medi-Cal Bulletin and will apply to services rendered on or after August 1, 2001.

3. Energy Crisis

When the Legislature returned to Sacramento in January, the Governor immediately called for an extraordinary session to deal with the energy crisis. This first extraordinary session ran concurrently with the regular session. By February, it became apparent that the energy

crisis was quickly deteriorating the state financial picture. The original \$8 billion state surplus was being spent at a very rapid rate. A number of bills were passed in the first extraordinary session and signed by the Governor including two bills providing for energy conservation programs in California (SB 5X and AB 29X). In the middle of May, the Legislature closed the first extraordinary session and the Governor immediately proclaimed the new second extraordinary session of 2001. The subject of a new extraordinary session was also the energy crisis.

It became necessary to close the first extraordinary session when the Assembly Republicans refused to support a bond authorization bill, SB 31X (Burton), authorizing the issuance of \$13.4 billion in bonds. Without a two-thirds majority vote for an urgency bill, the only way to make the measure take effect soon was to adjourn the first extraordinary session, since bills adopted in special session which are not urgency bills take effect on the 91st day following adjournment of the special session.

By the end of the summer, it became apparent that the concerns of extended blackouts were not going to be realized. The urgency behind the crisis was starting to dwindle. Ultimately, the Legislature adjourned without approving a rescue plan for Southern California Edison. SB 78XX (Polanco) stalled in the Senate where a vote on concurrence in the Assembly amendments was pending. On September 27, Governor Gray Davis issued a proclamation to call the Legislature back to Sacramento for a third special session to aid the distressed utility. He set the date to reconvene the Legislature on October 9. However, on October 2, the Governor's office issued a press release indicating that he would cancel his call for a third extraordinary session. This decision was based on the settlement approved by the CPUC and Edison.

Throughout the year, the CDC Board had many conversations concerning the energy crisis. We helped our members submit requests to the PUC for exemption from rolling blackouts. Most importantly, we were instrumental in convincing a powerful state Senator not to introduce legislation to require a power generator at every dialysis clinic!

4. Reapportionment (AB 632 / SB 802)

California's reapportionment process was quickly completed without too much partisanship. AB 632 contains the Assembly and BOE plans and SB 802 contains the Senate and congressional plans. For the first time in more than 20 years, Democrats were in absolute control of the reapportionment process. However, the final agreement between the Democrats and the Republicans was for an incumbent protection plan which solidifies the current ratios in the Assembly, State Senate, and U.S. House. The new plan "guarantees" for the Republicans 30 Assembly seats, 14 State Senate seats, and 20 U.S. House seats. The Democrats have 50 Assembly seats, 26 State Senate seats, and 33 U.S. House seats (an increase of 1 because of the new U.S. House seat). Most importantly, both measures were passed as urgency legislation meeting the minimum two-thirds vote requirement, thus making the plans immune from a referendum.

5. SB 1027 (Romero) – Overtime by Nurses

This bill became an issue late in the session. The bill prohibits mandatory overtime for nurses and other hospital staff. During the second half of the session, we worked hard in opposition to the measure. We argued that the bill could result in serious problems of patient safety. We stated that there are times when personnel shortages create situations where dialysis clinics must require overtime by nurses and other staff members to ensure proper care for patients. Ultimately, the author, Senator Gloria Romero, chose to hold her bill on the Assembly Floor. The rumors around the Capitol are that there are two possible reasons as follows: (1) Governor Davis may have indicated to Senator Romero that he was planning to veto SB 1027; and (2) the Senator may have been uneasy about the impact of newly amended language. Whichever the cause, the bill did not move off the Assembly Floor. SB 1027 is now a two-year bill. Senator Romero has the option to take the bill up when the Legislature returns in January of 2002. CDC will continue in strong opposition!

6. Hemodialysis Technician Training Regulations

As you will recall, the California Dialysis Council sponsored AB 1202 (Firebaugh) during the 1999 legislative session. We were successful in securing passage of this measure and it was signed into law by the Governor as Chapter 979, Statutes of 1999. The need for AB 1202 was to eliminate “sunset clauses” in various sections of the hemodialysis technician law which would otherwise have caused those sections of law to be automatically repealed. During the course of the consideration of AB 1202, the Legislature took notice of the fact that the Department of Health Services (DHS) has never formally adopted a set of regulations governing the training of hemodialysis technicians. Thus, during the consideration of AB 1202, the Legislature added an amendment requiring DHS to adopt such rules and regulations by July 1, 2001. We have been working closely with DHS since the adoption of AB 1202 on the development of a new set of hemodialysis technician training regulations. The last draft of these regulations was dated October 17, 2000. We were recently advised by DHS staff that additional concern has now been raised by the DHS legal department.

The lawyers within DHS are now of the opinion that additional statutory changes are necessary prior to implementation of the hemodialysis technician training regulations which have been developed by DHS. We have been further advised that DHS staff is now working on statutory language for possible introduction in the 2002 legislative session. We have advised DHS staff that CDC would like to review their legislative proposal when it is developed. This is a matter which we must watch very carefully since there are some groups who would now object to provisions of the hemodialysis technician training law which make it clear that hemodialysis technicians are authorized to administer limited drugs and engage in other activities involving direct patient care in a dialysis facility. We will carefully monitor continuing development in this subject area during the interim and will keep you updated as more information becomes available. We may not want to give DHS this much broad authority based on problems we are having with interpretations of LVN laws and

regulations.

7. LVN Scope of Practice

We have been working throughout the year with the Board of Vocational Nursing and Psychiatric Technicians (BVN) in an effort to secure their assistance regarding the ability for LVNs to access central lines and to administer limited drugs in a dialysis clinic under specified conditions. The BVN staff suggested the adoption of a new set of regulations designed to specifically set forth the fact that LVNs who are board certified in intravenous therapy are permitted to infuse intravenous medications that are integral to the hemodialysis process. The BVN expanded our request to also cover pheresis and blood bank procedures. The regulations drafted by the BVN staff would allow LVNs to engage in such intravenous therapy if the individual LVN follows a list of specific activities. A new comment period was opened until October 16. We encouraged all CDC facilities to comment in support of the regulations. The staff at the BVN will be preparing responses to comments received on the proposed regulation.

At the BVN's November 16 meeting, the final regulation package, together with responses to the comments received during the comment period, will be sent to be reviewed at the highest levels within the Department of Consumer Affairs and must then go to the Office of Administrative Law. We are doing what we can to ensure that we get a favorable position from the Department of Consumer Affairs. We are hopeful that if this package is adopted, it can be used to convince the BRN that they should modify their stance with respect to RN supervision of LVNs accessing catheters and administering limited drugs in the dialysis setting. The staff at the BVN believes such a result will flow from the final adoption of the regulatory package. However, staff has indicated that this process may not be concluded until February 2002. We shall provide you with additional information as it becomes available. If we are unable to resolve this issue through the above-described strategy, the Board may wish to consider the introduction of legislation during the 2002 legislative session which would allow LVNs in a dialysis clinic to access central lines and/or administer limited drugs. It would be a tough fight, but at that point we may have nothing to lose.

8. Social Workers in Dialysis Facilities

An issue on which we spent a great deal of time was the change in interpretation relative to social workers in the dialysis environment. As part of the federal ESRD program, all dialysis facilities are subject to a set of federal regulations called the Conditions of Coverage for ESRD Facilities. These regulations established requirements for qualified social workers in a dialysis facility. In the past, dialysis facilities have been required to have LCSWs or at minimum MSWs working on their licensure and being ever seen by an LCSW. Recently, surveyors have been very rigid in their interpretation of the LCSW/MSW requirement. We have been in contact with staff at the Department of Health Services (DHS) to discuss the parameters that are used when surveying a dialysis facility. In addition, we have contacted staff at the Centers for Medicare and Medicaid Services (CMS) to request their assistance.

On behalf of CDC, we requested written clarification from CMS and/or the Department of Health Services (DHS). We also requested a meeting with representatives from CMS, DHS, the Board of Behavioral Sciences (BBS), and CDC to discuss this issue in detail.

2001-2002 Biennial Session – Interim Hearings Scheduled

The 2001 legislative year was the first year of the 2001-2002 biennial legislative session. The state legislature will return to Sacramento on Monday, January 7, 2002. During the interim between the 2001-2002 legislative years, the legislature will be holding interim hearings on two-year bills and topics for consideration in 2001. We will monitor these hearings and will participate as appropriate.

Conclusion

We must immediately begin planning for the 2002 legislative year. We will carefully monitor the session to ensure that any issue which may impact us is closely analyzed and discussed, and that our position is effectively pursued throughout the process. We sincerely appreciate all of the support and assistance you have rendered over the past year.