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LEGISLATIVE UPDATE

“We are going to need everyone’s help to save our health system”

Shahram Lotfipour, MD, FAAEM

Vice President for Cal/AAEM

This continues our CAL/AAEM official representative update on the CAL/ACEP Governmental Affairs Committee (GAC).

911 Ballot Initiative: CAL/AAEM’s Board voted to fully endorse and join the Cal/ACEP-CMA-led Coalition to Preserve Emergency Care and its statewide ballot initiative. After months of preparation, the Coalition to Preserve Emergency Care initiative provides funding for emergency personnel training and equipment, reimbursement for uncompensated emergency physician care, uncompensated community clinic care, emergency telephone system improvements, and to hospitals for emergency services. CAL/AAEM is joining CAL/ACEP in asking each Emergency Department to contribute 20 cents per ER visit annually to fund the initiative during the next couple of years.

For 2003 each individual physician may wish to contribute the alternative of \$500 dollars to make this effort possible. This is an extremely promising effort to save emergency services in California. The annual estimated money raised will be 550 million dollars for California Emergency Care.

CMA Lawsuit: the California Medical Association has filed a suit to prevent the state from cutting Medical reimbursements by 5%. Cal/ACEP is a co-plaintiff in the case. In federal court the CMA has won a preliminary injunction. Medi-Cal helps to provide health care for up to 6 million poor, disabled, elderly and children. The current administration has proposed a new budget with an additional 10 % cut in Medi-Cal provider rates and caps enrollment for Healthy Families and other health/welfare programs. The CMA victory will likely make the proposed 10% unlikely to pass.

Implied Contracting Legislation: CAL/ACEP activity continues to oppose the “Dobberteen Letter” challenge to our specialty and emergency services that we had reported in the last issue. DHMC continues its effort, supported by the HMOs, to prohibit our ability to bill non-contracting HMO patients for the balance that has been denied by their HMOs or IPAs. DMHC had upped the ante by proposing an emergency regulation to prohibit billing patients. This is clearly illegal, in the opinion of legal counsel, and will be fought by organized Emergency Medicine in court. Other

options remain out there such as direct billing of patients with no bills being sent to HMOs or IPAs in the first place. More will follow about this very important battle for our specialty and our patients. Legislative activity is being considered and planned.

On a related matter, a significant victory for physicians occurred in a Los Angeles trial court that ruled that non-contracting physicians who provide emergency services to health plan enrollees are not prohibited from balance billing those patients if an HMO fails to reimburse them for the entire amount billed.

In this case, *Prospect Health Service Medical Group v. St. Johns Emergency Medical Group*, the plaintiff (a capitated IPA) argued that when a physician bills and is paid by an HMO or its contracting intermediary, an “implied contract” has been created whereby the physician is prohibited from balance billing the patient under the Knox-Keene Act.

In her decision, Judge Linda Lefkowitz ruled that non-contracting physicians are not precluded from balance billing patients and that an opinion published by the Department of Managed Health Care to that effect wrongly relied on unpublished, distinguishable cases, which have no precedential value.

Judge Lefkowitz also rejected the plaintiff’s request to set Medicare rates as the defined “reasonable” rate for emergency medical services.

CMA Supports Physicians’ Rights to Fair Peer Review: CMA has filed an amicus brief with the California Court of Appeal in San Diego, supporting a physician’s fundamental right to fair peer review hearings and procedures. This should be very interesting

State Budget Act 2003-04: The state budget has an approximately 12 billion deficiency that will need to be rectified. There is still the issue on how to absolve the state of the previous 15 billion budget deficit. One likely idea is the bond referendum per the governor which might just as quickly be challenged by a potential lawsuit.

Nursing Ratio changes: We have seen the impacts of the recent nursing ratio changes in the ED. The EDs are now being forced to either get more nurses when the patient number or acuity increases or immediately close to outside ambulances and trauma.

Please donate to **EMPAC** (<http://capwiz.com/aaem/home/>) directly through the AAEM website. AAEM members, the CMA and Cal/ACEP are working extremely hard to preserve the care of Emergency Patients in California.