



CMA in Wonderland



By Steven M. Thompson, CMA Vice President, Government Relations

THIS YEAR I FELT LIKE ALICE must have felt when she fell down the rabbit hole and discovered she was in another land...politics in Sacramento simply didn't resemble anything I had seen before, and I am not exactly a political naïf.

Down the Budget Rabbit Hole

The year began with a budget hole of \$36 billion (18 months), made substantially larger because the Legislature failed to deal properly with the deficit from the previous fiscal year. For the first time, the Governor's Budget proposal dealt quite realistically with the state's fiscal situation. Initially, and as revised in May, the \$36 billion budget deficit was to be addressed by \$12 billion in program cuts, \$12 billion in new revenue, and \$12 billion in fees, loans and other one-time fixes.

However, the Governor had lost most of his credibility on the budget. Critics on both sides of the debate - no taxes vs. no cuts — unloaded on the Governor's proposals. CMA was part of the chorus. The Governor's proposal would have reduced Medi-Cal eligibility for 500,000 Californians, slashed all provider rates by 15 percent "across the board," and eliminated "optional benefits" including durable medical equipment and adult dental services.

Nonetheless, given the size of the state budget deficit, preventing any cuts at all was a formidable task. CMA immediately convened a coalition of Medi-Cal providers and consumers to develop a united front on the proposed budget cuts. Eventually, 75 organizations signed on to the coalition, called Californians United for Quality Care. The CMA was asked to be the lead representative for the coalition and prepared a white paper "Moving Toward Third-World Medicine in the World's Fifth Largest Economy," which outlined the reasons why Medi-Cal should not be significantly reduced.

Our arguments were powerful:

1. every Medi-Cal dollar reduced was also a lost federal dollar from the California economy;
2. reducing eligible beneficiaries would dump more uninsured on locally-funded "safety net" programs some of which, particularly Los Angeles County, were already in financial crisis; and
3. legislation had been introduced in Congress to increase the percentage of federal-match dollars, obviating the need for a large state general fund reduction.

Thanks to the hard work of Congressman Bill Thomas (R-Bakersfield), the federal match was increased.

Medi-Cal escaped deep cuts in provider rates and eligibility reductions, but not without some damage. Provider rates were reduced by 5 percent; 150,000 beneficiaries became ineligible for Medi-Cal and many optional services were not reinstated. After the initial enactment of the budget (albeit many weeks late), the coalition attempted to reinstate all

Medi-Cal cuts.

We had sufficient votes to accomplish this, but the joint Republican/Democratic leadership in the Senate refused to allow the bill to be voted on; they believed if we "busted the budget" in this one request, every other group would attempt to do the same thing.

Formation of the Medi-Cal coalition was significant to our success in keeping the Medi-Cal cuts to a minimum.

This coalition will continue to function and grow because most analysts agree we will start next year's budget dance with an \$8 - \$10 billion deficit. Thus, the budget battles will continue.

The Mad Hatter's Tea Party

While the Legislature debated a budget that was impossible to balance without new revenues (both political parties agreed there was little room for substantially larger budget reductions), external factors began to significantly alter the behavior of politicians.

The first, and most influential of these, was the movement to recall the Governor, a movement that gathered steam as the budget deadline approached — June 30. I frankly didn't expect a budget to be approved until October.

Even during "mad times," there is someone willing to provide leadership... in this case Senate Pro Tempore John Burton (D-San Francisco) and Senate Republican Leader Jim Brulte (R-San Bernardino). The two worked out a budget deal and produced enough votes in each of their caucuses to obtain a two-thirds vote of the Senate. They then shipped the result to the Assembly, whose members would have looked like total goof heads if they refused to pass a bi-partisan budget product. In spite of the Assembly's natural inclination to hold out just because they could, the political imperative to act became overwhelming. By then, the recall had qualified, and a special election was called for October.

The second major external factor was the sudden huge increase in Workers' Compensation premiums. Some California businesses saw their premiums more than double in less than a year; a statewide outcry gathered steam at about the same time the budget was being debated and the recall was qualifying for the ballot.

The table was indeed set for the Tea Party.

The CMA had been working all year with medical specialties to fashion a new Workers' Compensation Fee Schedule, one which would raise fees for basic care provided by treating physicians without penalizing reimbursement for specialist physicians, particularly surgical specialties. A simple conversion to a Medicare RBRVS methodology, being pushed by the Administration, would not achieve this result.

CMA developed a white paper, "Issues Relevant to Fee Schedule Revision," which contained the principles that *would* achieve this result, but would have required a systemwide increase in physician reimbursement of between \$400 and \$700 million. Despite the cost, the Administration and Legislature were prepared to adopt most of the CMA proposal — until coming face-to-face with the political necessity to make huge cuts in Workers' Compensation. As one legislator put it, "How can we give physicians an increase when we're drastically cutting everyone else?" We had to switch gears from an offensive to a defensive strategy.

With a major portion of the premium increases attributed to the rise in health costs (55 percent of each premium dollar is spent on health and rehabilitation, including administration), health care became the major target for cost reductions. The Legislature focused on three service areas for major reductions: 1) facility fees for outpatient surgery; 2) chiropractic utilization; and 3) vocational rehabilitation.

During early hearings, the outpatient facility fees became a major legislative target. Testimony indicated some outpatient facilities were charging more than 1,000 percent of Medicare rates, inappropriate surgeries were being performed and physicians had a financial incentive to refer patients to facilities in which they had a financial interest. Outpatient surgery centers that had not excessively billed and had utilization standards approved by Workers' Compensation carriers were unfortunately lumped in with the "bad actors." Three bills were introduced to prohibit all referrals in which physicians had a financial interest, no matter how small. The major legislation SB 228 (Alarcon) proposed to cap the facility fee at 120 percent of Medicare.

Inasmuch as many CMA physicians have investments in outpatient surgery centers — and, indeed, had been encouraged to do so because of both lower cost and greater access to services — we weighed in on this issue as well as the proposed reductions in the physician fee schedule. Many outpatient centers hired contract lobbyists to represent them. A lot of money was thrown around Sacramento, which in my opinion only confirmed the legislative perception that "something was rotten in the State of Denmark." We could have achieved a better result in reimbursement for outpatient surgery centers, somewhere between 150 and 170 percent of Medicare.

But that was unacceptable to many of the outpatient centers, and their lobbyists were telling them they could do better. The Legislature said "to hell with them all" and enacted the lowest reimbursement level, 120 percent. This issue must be revisited early next legislative session, as 120 percent is simply unacceptable.

We were more successful on other Workers' Compensation issues: We held the physician fee reduction to 5 percent (a 10 percent cut was on the table during most of the deliberations); physician-developed clinical standards are to serve as the basis for treatment approval; second opinions will be required for all spinal surgeries; and a cap was imposed on chiropractic and physical therapy visits.

In addition to the enormous reduction in outpatient facility fees, the legislation eliminated vocational rehabilitation entirely except where specifically approved as part of a medical rehabilitation plan. Finally, all prescriptions were placed on a Medi-Cal schedule of reimbursement, which is significantly lower than current reimbursement levels. While there is debate over the actual amount of savings in SB 228 (between \$3.5 and \$6.0 billion), there is little disagreement that it will forestall an immediate premium increase, and perhaps, generate a rate rollback as much as 10 percent.

Playing Croquet with the King and Queen

The significant savings of the Workers' Compensation package was a high priority for the two Senate co-authors of Senate Bill 2, John Burton (D-San Francisco) and Jackie Speier (D-Hillsborough), partly because of the hue and cry over premium rates. They also knew passage of SB 2 (employer-required health insurance) would be impossible without significant Workers' Compensation costs. In this sense, SB 228 and SB 2 were politically coupled, even though not statutorily joined.

While Workers' Compensation and the recall campaign occupied the headlines in Sacramento, the SB 2 Conference Committee staff and the bill's sponsors met repeatedly during August and September with payors, consumers, providers and the business community to fashion a bill that could be supported by the major stakeholders involved in the debate. Because CMA sponsorship of Senate Bill 2 was not fully supported by all CMA members, it was important that the final legislative result closely adhere to program criteria approved by the House of Delegates and Board of Trustees.

Our co-sponsorship of Senate Bill 2 allowed us to achieve most of CMA's goals. Chief among the bill's provisions:

- There is a significant exemption for small businesses — firms under 20 employees are not impacted at all;
- A tax credit offsets the cost of insurance for firms between 20 and 50 employees.

This tax credit would also apply to firms between 20 and 50 employees *currently providing health coverage* (which is a tax cut). The requirement to provide health insurance for employers between 20 and 50 employees would not "kick in" until, and unless, the Legislature enacts a tax credit;

- Employees will be required to contribute up to 20 percent of the premium cost. The legislation also allows for current market levels for co-payment and deductibles, which in many ways means the product requirement is quasi-catastrophic;
- The legislation does not require physicians to participate, nor does it mandate levels of reimbursement; for better or worse, this is left to the marketplace;
- The bill "provides that" health coverage currently offered through Taft Hartley Trusts, Multiple-Employer Trusts, and Association Plans meet the requirements of the bill, and thus, are "grandfathered" in respect to compliance.

The only specific mandate, without a tax credit, is for firms between 50 and 200 employees (employee coverage only) and firms over 200 employees (family coverage required except for working spouses).

While the Chamber of Commerce strongly opposed Senate Bill 2 (a mandate was a Rubicon they couldn't cross), other businesses, led by Genentech, either supported or were neutral on the bill. Notably, most large agricultural employers were neutral because of the "grandfather" for existing coverage. For the first time, nearly all of the health community supported the bill. Led by Kaiser and Blue Shield, every health plan was in support or neutral. However, even with labor as a co-sponsor, the bill was hard fought. Workers' Compensation premium increases certainly didn't help, but the agricultural community's neutrality was crucial in gaining support from San Joaquin Valley Democrats. We worked extensively with the agricultural community to ensure the least disruption possible.

There is much left to do before SB 2 becomes a reality (because of legal challenges, etc.), but California's mandated health coverage would be the first, since Hawaii, on such a scale. If nothing else, it sends a huge message to Congress and the President, as well as other states that the uninsured should receive national attention. I believe CMA should be proud of its leadership role in this accomplishment.

Tidbits for the Cheshire Cat

While major issues dominated this year's legislative debate, CMA was actively involved in other significant legislation as well.

Assembly Bill 175 (Cohn, D-Saratoga). AB 175 was a CMA-sponsored bill providing that when a health plan "leases or rents" its network of contracted physicians to another entity, physicians cannot be required to provide services at terms differing from the original and signed contract. This legislation adds to "the Physician Bill of Rights" enacted last session and reflects a response to numerous physician complaints. *AB 175 was signed by the Governor.*

Assembly Bill 221 (Koretz, D-Hollywood). Co-sponsored by CMA and Preventing Tobacco Addiction Foundation, AB 221 would raise the age to purchase tobacco products from 18 to 21. *This bill died in the Assembly;* it will be introduced in the Senate next year.

Assembly Bill 801 (Diaz, D-San Jose). Co-sponsored by CMA and the Hispanic Healthcare Foundation, AB 801 establishes a voluntary training program, in conjunction with county medical societies on linguistic and cultural competency. CMA will lead a work group with the Medical Board of California to develop continuing medical education credits for participating physicians. This was basically CMA's response to legislation mandating interpreter services. *AB 801 was signed by the Governor.*

Assembly Bill 923 (Firebaugh, D-East Los Angeles). Co-sponsored by CMA and the United Farm Workers, AB 923 would have provided a tax credit to farmers who provide health insurance, in lieu of a sales-tax exemption for the purchase of farm equipment. While some farmers would have benefited more by the credit than the sales tax exemption, the agricultural community was united in opposition. The bill was not brought

up the last night of the Legislative session in consideration of the agricultural community's neutrality on Senate Bill 2. *AB 923 was held on the floor of the Senate.*

Senate Bill 151 (Burton, D-San Francisco). After six long years, CMA succeeded in repealing triplicate prescription requirements for Schedule II drugs. Instead, all prescription blanks will be manufactured on forgery proof paper (*i.e.*, water marked). *SB 151 was signed by the Governor.*

Assembly Bill 932 (Koretz, D-Hollywood).

AB 932 would have expanded the scope of practice of podiatrists to include amputations, diagnosis and treatment of conditions of the lower extremities and assisting physicians in surgery. *CMA opposed this legislation, and it was held in Committee.* During the fall, CMA representatives will conduct a site visit to the School of Podiatric Medicine to evaluate the education and training in regard to scope expansions requested.

Assembly Bill 1286 (Frommer, D-Los Angeles) Senate Bill 244 (Speier, D-Hillsborough). As introduced, AB 1286 would have required physicians to continue to treat patients up to one year after termination of a contract — a requirement we believed was a modern version of indentured servitude. The Department of Managed Health Care has pushed this proposal for the last three years, and we have strongly opposed it. The author agreed to amendments providing that the provisions were voluntary, not mandatory. With those amendments CMA removed its opposition. *AB 1286 and SB 244 were signed by the Governor.*

Senate Bill 77 (Burton, D-San Francisco).

SB 77 would have removed the requirement for physician referral for physical therapy services and expanded their scope of practice to include diagnosis and treatment of mechanical, physiological and developmental impairments. CMA strongly opposed this legislation. *It was held in Committee.*

Senate Bill 867 (Burton, D-San Francisco). Another "turkey" scope-of-practice bill, SB 867, reintroduced legislation defeated by CMA last session. It would have expanded acupuncturists' scope of practice by allowing diagnosis, evaluation and disability determination within the Workers' Compensation program. *SB 867 was held in committee in the Senate.*

Senate Bill 907 (Burton, D-San Francisco). SB 907 provides for licensure of Naturopathic doctors who have graduated from accredited institutions. The bill was introduced with financial backing of Hollywood producer Steven Bing, a major contributor to the Democratic Party who is convinced a licensed naturopath in the State of Washington saved his life.

CMA conducted a site visit to the premier accredited Naturopathic School (Bastyr) last fall and primarily based on that visit recommended an oppose position on the bill unless: all minor office surgery procedures were eliminated from the proposed scope provisions; prescription authority was eliminated from the bill; and naturopaths could not provide childbirth services. The proponents accepted most, but not all of the CMA amendments, (*e.g.*, minor office surgical procedures were narrowed to minor abrasions). CMA continued to oppose the bill, but opposition was blunted by the extent of amendments proponents were willing to accept. *The legislation was signed by the Governor.*

Senate Bill 24 (Figueroa, D-Fremont). This bill streamlines enrollment into Medi-Cal and Healthy Families for children and pregnant women. Newborns up to one year of age could be enrolled in Medi-Cal through the Child Health and Disability Prevention Program (CHDP) application process if deemed eligible. For children up to age 19, enrollment would be accelerated through a process developed by the Department of Health Services (DHS). Applications for pregnant women would be simplified and filed electronically to DHS by the health facility. This bill would also require establishment of

an electronic process for hospitals to enroll newborns and their siblings with presumptive eligibility. *SB 24 has been signed into law.*

Senate Bill 261 (Speier, D-San Mateo). SB 261 was introduced with CMA support to resolve the debate over financial information that the Director of the Department of Managed Healthcare (DMHC) proposed to disclose regarding risk-bearing organizations (medical groups and independent practice associations). The proposed disclosure prompted the successful CMA lawsuit. SB 261 was the product of endless conversations with the Administration, CMA, CMGA and consumer groups who purported to sponsor the bill. The Administration insisted on public disclosure of each risk-bearing organization's audited financial statement, which we believed would have put them at even a greater disadvantage than in present health plan negotiations. Resolution of this issue would prevent future legal action. *However, the bill was vetoed by the Governor.*

Back from the Looking Glass

This summary only highlights the year. CMA followed and participated in resolving issues in more than 350 bills. A copy of the Council on Legislation's complete report can be requested from the Government Relations office.

With the success of the recall, the Mad Hatter's Tea Party may not be over. In many ways, chaos might work to our advantage; after all, ophthalmologists tell us that in "the land of the blind, the one-eyed man is king." However, even though CMA enjoyed a good legislative year, it gets more and more difficult to deal with a fractionalized legislature and a state government seemingly adrift... Oh, democracy, ain't it fun.

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