

CAFP Legislative Report

May 10, 2012

While the 2012 legislative session has been dominated by budgetary issues and the Governor's education reform there have been issues of importance to the delivery of health care. CAFP staff has been reviewing all proposed bills and monitoring and advocating on those that will impact health care. Following is a brief overview of those issues that CAFP has been working on in recent weeks.

Certificate of Merit

Medical malpractice reform has been an issue at the Capitol for several years. This year, a bill that would weaken the certificate of merit in medical malpractice claims was introduced and was approved by the Judiciary Committee. **The bill was not passed by the full Legislature and is therefore dead for the session. Just because it was not passed this year does not mean that it won't reappear in future sessions.**

As the medical community is aware, the certificate of merit is one of the few protections currently in place that works to weed out frivolous lawsuits, however Senate Bill 243 - An Act Concerning Certificates of Merit sought to completely obliterate it. Certificates of merit are meant to deter weak claims and reduce unnecessary lawsuits by requiring that that an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint unless he or she has made a reasonable inquiry under the circumstances to determine that grounds exist for a good faith belief that the claimant received negligent medical care or treatment. The complaint must contain a certificate of merit which is a written, signed opinion from a "similar health care provider". The requirement of a "similar health care provider" is an important one but Senate Bill 243 sought to weaken that. Different medical specialties have different prevailing professional standards of care and practices. It would be incredibly unreasonable to think that differing specialties or even nonphysicians would be able to make a competent assessment of the standard of care that may or may not have been breached.

Palliative Use of Marijuana

The palliative use of marijuana was passed by both the House and the Senate and now awaits the Governor's signature. Medicine opposed the bill on the grounds that the scientific threshold for using marijuana for medical purposes was not met by the bill.

Specifically the bill allows a licensed physician to certify an adult patient's use of marijuana after determining that the patient has a debilitating medical condition and could potentially benefit from the palliative use of marijuana, among other requirements. The bill lists certain conditions that qualify as debilitating (e.g., cancer, AIDS or HIV, and Parkinson's disease) and also allows the Department of Consumer Protection (DCP) commissioner to approve additional conditions. Among other requirements, patients seeking to use marijuana for palliative purposes must have a written certification by a physician and register with DCP. The bill provides for temporary registrations until 30 days after certain required regulations take effect. The bill allows qualifying patients and their primary caregivers to possess a combined one-month marijuana supply. (Bill Analysis of HB 5389).

In addition, the bill sets conditions on who can be primary caregivers and requires them to register with DCP. The bill authorizes DCP to impose a \$25 registration fee for patients and caregivers, and other fees. Registry information is generally confidential and not subject to disclosure under the

Freedom of Information Act (FOIA), but may be disclosed for specified purposes (e.g., to law enforcement officials for investigating and prosecuting crime). (Id.)

The bill also requires the DCP commissioner to establish a board of physicians who are knowledgeable about palliative marijuana use. Among other things, the board must (1) recommend to DCP additions to the list of debilitating conditions and (2) convene public hearings to evaluate petitions by those seeking to add conditions to the list. It requires and allows the DCP commissioner to adopt regulations on various matters, including requiring him to submit regulations reclassifying marijuana as a Schedule II controlled substance (it is currently a Schedule I controlled substance, subject to the most stringent regulation). (Id.)

Targeted Health Care Areas

This legislation would have allowed the state to create 10 "Targeted Health Areas" (THAs). A municipality would have qualified as a THA if it has a medically underserved population or a high chronic disease rate. Licensed physicians and physician offices in THAs would have qualified for financing under the Department of Economic and Community Development's (DECD) Small Business Express Program, which provides revolving loans, creation incentive loans, and matching grants. Unfortunately the bill did not pass.

Scope of Practice Issues

A bill that would allow pharmacists to administer to adults vaccines that are listed on the National Centers for Disease Control and Prevention's adult immunization schedule was passed by the full Legislature, however a bill that would have given naturopaths the ability to administer vitamin B-12 by injection was not passed.

Lastly, physician assistants, with the backing of the Connecticut State Medical Society, were successful in passing a bill that expanded and defined written protocols between themselves and supervising physicians. Specifically, the bill requires the written protocols to: 1. describe the professional relationship between the supervising physician and the PA; 2. identify the medical services the PA may perform; 3. describe how the PA's prescribing of controlled substances must be documented in patient medical records and 4. describe how the supervising physician will evaluate the PA's performance, including (a) how often the physician intends to personally review the PA's practice and performance of delegated medical services and (b) how often, and in what manner, the physician intends to review the PA's prescription and administration of schedule II or III controlled substances. In addition, under the bill, supervising physicians in hospitals must also include or reference in their written delegation agreements applicable hospital policies, protocols, and procedures. The bill requires supervising physicians to review written delegation agreements at least annually. Supervising physicians must also revise the agreements as they deem necessary to reflect changes in (1) the physician's professional relationship with the PA, (2) the medical services the PA may perform, or (3) how the physician evaluates the PA. The bill currently awaits the Governor's signature.

Other Issues

Licensure Fees for Retired Physicians

A bill that would have expanded the retired licensure fee to any person who practices medicine for no fee, in connection with (1) a mobile health clinic that provides health care services to individuals of

this state, (2) a local health department, (3) the United States Department of Veterans Affairs' Veterans Health Administration, (4) a United States Coast Guard medical clinic, or (5) Doctors Without Borders was approved by the Public Health Committee but ultimately failed.

Cooperative Agreements

A bill that would have permitted health care providers to enter into cooperative arrangements that would not be subject to certain antitrust laws after approval by the Attorney General, and would require managed care organizations to negotiate in good faith with providers who participate in such arrangements did not pass.