

CDA bill to ban fee caps sent to governor

By Bill Lewis

After months of behind-the-scenes negotiations and, ultimately, a series of unanimous votes in both the Senate and Assembly, CDA-sponsored legislation to prohibit dental plans from capping fees that dentists may charge for noncovered services was sent to the governor in late August. The governor will have until the end of September to sign or veto the legislation, Assembly Bill 2275 (Hayashi).

Fee caps for noncovered services have been an issue of rapidly growing intensity for the dental profession throughout the nation, with 15 states now having laws in place prohibiting the practice, 14 of which were enacted just in the past year. The 2009 CDA House of Delegates in November approved Resolution 36RC, which directed CDA to consider options, including legislation, to ban these fee restrictions on noncovered services.

"Fee caps for noncovered services have rapidly become the most disliked insurance company practice identified by dentists around the country, and CDA's own member surveys have shown them to be the top priority for California dentists as well," said CDA President Tom Stewart, DDS. "Following the House of Delegates' passage of Resolution 36RC last November, CDA leadership began to assess the most effective strategies for advancing the issue in California."

In the end, an existing mechanism for improving dialogue between CDA and the dental insurance industry provided the impetus for legislative success. Earlier in 2009, in response to CDA's sponsorship of two bills dealing with dental plan issues, CDA and the California Association of Dental Plans had agreed to form a high-level workgroup to discuss various issues of concern to dentists. Although the issue of noncovered services was already on the workgroup's agenda earlier in the year, the passage of House Resolution 36RC in November increased the urgency of those discussions as 2010 began.

"By the late spring, we had reached agreement, first with Delta Dental and then with CADP as a whole, on noncovered services legislative language on which they could comfortably adopt a neutral position," said Dan Davidson, DMD, CDA vice president and a workgroup participant. "At the same time, CDA agreed to suspend further action on our two other sponsored bills and to utilize the workgroup process to continue discussion of those issues."

Because conceptual agreement with CADP was reached after the deadlines for introducing new legislation had passed, Assemblymember Mary Hayashi (D-Alameda), chair of the Assembly Business, Professions and Consumer Protection Committee and already the author of two significant dental-related bills this year, offered to delete the existing contents of one of her bills and instead pursue the noncovered services issue on CDA's behalf. The new contents of AB 2275 first appeared in print on June 10, 2010.

"The wide philosophical differences within the California Legislature made this a very challenging issue to pursue, despite CADP's neutral position," said Jean Creasey, DDS, chair of CDA's Government Affairs Council.

"Some relatively liberal legislators were concerned that the bill could allow dentists to overcharge patients for noncovered services once the fee caps were removed, while more conservative legislators were generally concerned about any perceived 'mandates' restricting the insurance marketplace. Our challenge, therefore, was to convince both sides that AB 2275 was a reasonable approach to the issue."

The first, and most significant, test for AB 2275 came on June 30, when the bill was heard in the Senate Health Committee. Although the bill passed on a 9-0 vote, CDA agreed to work with the committee chair and staff to develop amendments to address the chair's concerns that dental patients receive adequate disclosure about their options, and that dentists' own fees for noncovered services re-

main reasonable.

Over the next several weeks, amendments were agreed to which state that dentists shall not charge more than their usual and customary fees for noncovered services, and which require dental plans to provide a disclosure statement in their enrollees' evidence of coverage document. The disclosure statement should inform patients that:

- Their dentist may charge their usual and customary fee for noncovered services;
- The dentist should provide the patient with a written treatment plan including charges before providing noncovered services;
- They should carefully review their documentation; and
- They should contact their plan or insurance broker for further information.

"Because caps on noncovered services fees have sometimes been portrayed by dental plans as a benefit to patients to protect them from dentist overcharges, it became important that we clearly state in this bill that dentists simply want to be able to reasonably cover their costs of providing services by charging the standard fee that would apply to most private-pay patients," Creasey said.

Following that key hearing in the Senate Health Committee, AB 2275 moved quickly through the remainder of the legislative process, receiving a 33-0 vote in the full Senate on Aug. 18 and a 76-0 vote in the Assembly on Aug. 26.

"While we are thrilled with AB 2275's successful passage in the Legislature, we cannot declare victory quite yet," Stewart said. "The most important step of all still remains, which is the governor's signature. Delta Dental has written a support letter to the governor, which we greatly appreciate. In addition, the bill already has been amended in an effort to minimize potential agency enforcement costs, and we will continue to work with the administration to address any concerns that might remain. We hope to be bringing our members more good news next month."