The California Legislature has finished the first of its two-year session. They will return in January 2020 for the second year. Bills that did not make it through the process are considered “two-year bills” and can technically still be considered in January 2020.

CALIFORNIA LEGISLATIVE/REGULATORY UPDATE

**AB 5 (Gonzalez) Dynamex ABC Test**

The ABC Test defines whether an individual working for a company is an employee or an independent contractor. This was a very controversial bill. If the individual was suddenly considered an employee under this bill, the employer was liable to carry Workers’ Compensation and unemployment benefits – significantly increasing employer costs.

Physicians were exempted from the bill, so they can work as an independent contractor in a medical group. Individuals with whom a physician practice might contract, e.g., billing services, transcriptionists, etc. still must meet the ABC Test. The test involves whether the individual is free from control and direction of the employer, performs work that is outside the usual course of services of the entity, and is in an independent trade or business in a separate location from the medical group. Generally, speaking these individuals can still be considered an independent contractor; although each medical office needs to evaluate their unique arrangements.

**COA Position:** Oppose Unless Amended – as amended COA moved to Watch

**STATUS:** Signed by Governor – Chapter 296

**AB 138 (Bloom) California Community Health Fund**

COA supported several bills that would have improved the health of California residents by pushing them to drink fewer sugar-sweetened beverages. This bill was one of those – it was a two-cent per ounce tax on sugary beverages. Unfortunately, the bill never even got a hearing in the first committee.

**COA Position:** Support

**STATUS:** Assembly Revenue and Taxation

Two-year bill

**AB 149 (Cooper) – Controlled Substances: Prescriptions**

Existing law classifies certain controlled substances into designated schedules. Existing law requires prescription forms for controlled substance prescriptions to be obtained from security printers approved by the department. Existing law requires those prescription forms to be printed with specified features, including a uniquely serialized number.

This bill delayed the requirement for those prescription forms to include a uniquely serialized number until a date determined by the Department of Justice that is no later than January 1, 2020. The bill would require, the serialized number to be utilizable as a barcode that may be scanned by dispensers. The bill would additionally make any prescription written on a prescription form that was otherwise valid prior to January 1, 2019, but that does not include a uniquely serialized number, or any prescription written on a form approved by the Department of Justice as of January 1, 2019, a valid prescription that may be filled, compounded, or dispensed until January 1, 2021. The bill would authorize the Department of Justice to
extend this time period for a period no longer than an additional 6 months, if there is an inadequate availability of compliant prescription forms.

**COA Position:** Support
**STATUS:** Signed by the Governor – Chapter 4

Emergency Legislation – Sponsored by CMA

**AB 241 (Kamlager Dove) Implicit Bias: Continuing Education Requirement**
This bill, by January 1, 2022, would require all continuing education courses for a physician and surgeon to contain curriculum that includes specified instruction in the understanding of implicit bias in medical treatment. The bill, by January 1, 2022, would require associations that accredit these continuing education courses to develop standards to comply with these provisions.

**COA Position:** None
**STATUS:** Signed by the Governor – Chapter 417

**AB 329 (Rodriguez) Hospitals: Assaults and Batteries**
This bill would have increased penalties for assaults on health care providers outside of a hospital, equalizing punishments to assaults that take place inside hospitals. COA believes health care providers should not have to face violence at work and therefore supported the bill. The bill was supported by several health care providers and opposed by criminal defense groups, who argued that the current penalties are sufficient and that people who injure others at hospitals need more mental health treatment not more time in jail.

**COA Position:** Support
**STATUS:** Assembly Public Safety
Two-year bill

**AB 370 (Voepel) Physicians and surgeons: forms: fee limitations.**
This bill would limit the amount that a physician and surgeon may charge a patient for filling out medical forms, including applications for state disability insurance at $25.00.

COA opposed this restriction and obtained amendments to the bill to allow a physician to charge a reasonable fee based on the actual time and cost of filling out the form.

**COA Position:** Oppose – as amended Watch
**STATUS:** Assembly Health Committee
Two-year bill
AB 379 (Maienschein) Youth Athletics Concussion Protocol
Assembly Maienschein, who just switched from being Republican to Democrat, carried several feel-good bills this year. This was one of them. This bill expands California’s concussion prevention protocols from 27 designated youth sports to all youth sports. COA believes that this expansion will help reduce youth head injuries. So did several other health and youth organizations. The bill received no “no” votes.

COA Position: Support
STATUS: Senate Floor - likely to pass in January 2020.
Two-year bill

AB 387 (Gabriel) – Physician and Surgeons: Prescriptions
This bill would have required a prescribing physician to write on the prescription, the condition or purpose for the prescription, unless the patient opted out of this option.

COA Position: Watch
STATUS: Senate Appropriations
Two-year bill

AB 407 (Santiago) Fluoroscopy and Radiography
COA and the California Podiatric Medical Association (CPMA) sponsored this bill, which would have allowed Joint Commission required radiation safety training to substitute for taking and passing the state-mandated fluoroscopy and radiography supervisor’s certification tests. This radiation safety training was required of all Joint Commission accredited facilities (hospitals, ASCs, physician offices) as of January 1, 2019. This bill was particularly important for orthopaedic surgeons moving to California to practice, who often were unaware of the certification requirements. Currently, it can take 6 months to apply for the state-mandated testing, sit for the test, and be notified of the results. During this time, the surgeon is unable to use fluoroscopy in their surgeries and they cannot supervise radiology techs.

Due to opposition from the American College of Radiology whose members did not want to be required to take the annual radiation safety training, the Joint Commission rescinded their accreditation standards on fluoroscopy radiation safety. Facilities are now able, but not mandated to offer this training. The California Radiology Society and radiology technologists opposed AB 407.

Despite this opposition, AB 407 enjoyed widespread legislative support and passed the Legislature with only a couple of no votes. The California Department of Public Health then weighed in with their opposition citing a fiscal impact of implementing the bill. They also did not believe that the facility-based radiation safety training would be comparable to the state tests. The bill was held in the Senate Appropriations Committee. COA is working to remove the Department’s opposition to the bill, so that the bill can move in January, 2020.

COA Position: Sponsor and Support
STATUS: Senate – Appropriations Committee
Two-year bill
AB 528 (Low) Controlled Substance – CURES Database
This bill will require pharmacies to report Schedule V prescriptions to the CURES database. Previously only Schedule II through IV controlled substances were reported. The bill also requires that pharmacies report controlled substance prescriptions to CURES in one working day. Previously, they had 7 days to report the prescription.

COA Position: Watch
STATUS: Signed by the Governor – Chapter 677

AB 613 (Low) Regulatory Fees for Doctors and Other Professionals
AB 613 would increase fees that doctors (and all other professionals, actually) must pay to be licensed by the state, by allowing the licensing board to increase fees each year by the amount of the consumer price index (CPI), with no required justification. COA was the first professional group to oppose the bill. CMA and other medical groups joined COA in our opposition.

The Dental Board and Board of Pharmacy also supported the bill, as did many of the other licensure Boards who didn’t want to come back to the Legislature to justify and ask for increased fees. Interestingly, this bill passed the Assembly easily (50-21-9) and then died in the Senate Business and Professions Committee, where it was never brought up for a vote. That usually happens if the Chair (Glazer) dislikes the bill, or if there were insufficient votes. Assembly Member Low, the author of the bill, Chairs the Assembly Business and Professions Committee, so it’s surprising that his bill died in the same policy committee in the Senate.

COA Position: Oppose
STATUS: Dead for now – could be reconsidered in 2020.
Two-year bill

Existing law requires a prescriber to offer to a patient a prescription for naloxone hydrochloride or another drug approved by the U.S. FDA for the complete or partial reversal of opioid depression when certain conditions are present, including if the patient presents with an increased risk for overdose or a history of substance use disorder, and to provide education on overdose prevention to patients receiving a prescription and specified other persons.

This bill would make those provisions applicable only to a patient receiving a prescription for an opioid or benzodiazepine medication and would make the provisions specific to opioid-induced respiratory depression, opioid overdose, opioid use disorder, and opioid overdose prevention, as specified. The bill, among other exclusions, would exclude from the above-specified provisions requiring prescribers to offer a prescription and provide education prescribers when ordering medications to be administered to a patient in an inpatient or outpatient setting.

COA Position: Watch
STATUS: Signed by the Governor – Chapter 231
AB 744 (Aguiar-Curry) Telehealth
COA supported AB 744 because it requires commercial health insurers to cover telehealth services as they would an in-person visit. Since California has a provider shortage, particularly in rural and low-income areas, COA supports encouraging telehealth services. The bill was sponsored by the CMA and supported by many health providers. Health plans and the Chamber of Commerce opposed the bill. The bill enjoyed widespread bipartisan support, even with potential additional Medi-Cal costs.

COA Position: Support
STATUS: Signed by the Governor – Chapter 867

AB 764 (Bonta) Sugar Sweetened Beverages: incentives
This was another of the multiple bills regarding sugar-sweetened beverages that COA supported. This bill would promote good health by prohibiting grocery stores from deeply discounting soda. Also, supported by CMA and several other health groups, the bill was opposed by the Chamber of Commerce, the Grocers’ Association, and many business groups.

COA Position: Support
STATUS: Assembly Floor
Two-year bill

AB 765 (Wicks) Healthy Checkout Aisles
AB 765 was another of the sugar-sweetened beverage bills that COA supported. This bill would promote good health by prohibiting the display of soda and sweets at the checkout lines. Supported by health groups and opposed by business groups, this bill didn’t even get a first hearing.

COA Position: Support
STATUS: Assembly Health
Two-year bill

AB 845 (Maienschein) Continuing Education: Physicians: Maternal Mental Health
This bill would require the Medical Board of California, in determining the continuing education requirements for physicians and surgeons, to consider including a course in maternal mental health. The bill also required the Board to periodically update any curricula developed pursuant to the bill to account for new research. As introduced, the bill would have required all physicians and surgeons to receive CME in maternal mental health.

COA Position: Oppose – Watch as amended
STATUS: Signed by Governor – Chapter 845
AB 888 (Low) Opioid Prescriptions – Non-Pharmacological Referrals
Sponsored by the California Chiropractic Association, AB 888 was an attempt to get at over-utilization of opioid medications by requiring physicians to offer a referral to a nonpharmacological pain management option – like chiropractic, yoga, meditation, etc.- every time they wrote a prescription for a controlled substance. COA opposed the bill because we did not believe these alternative treatments would be effective in managing post-surgical pain. The bill would have been impossible to implement since prescribing physicians would not have been aware of providers who could have offered these alternative treatments either in-network or out-of-network.

**COA Position:** Oppose  
**STATUS:** Senate Business & Professions and Health Committees  
Two-year bill

AB 890 (Wood) Nurse Practitioners
Sponsored by the California Association for Nurse Practitioners, this was going to be one of THE BIG FIGHTS of the year, but the bill died quickly in the Assembly Appropriations Committee. As introduced, the bill would have allowed nurse practitioners to provide services under their scope of practice without physician supervision. COA opposed NPs working independently because nurse practitioners have not received the same level of training and education as medical doctors. They receive between 500 and 1500 hours of clinical training; whereas, medical doctors receive over 15,000 hours of clinical training: a difference of at least 13,500 hours of training and experience. We support the appropriate use of nurse practitioners; but, believe that they are best used when part of a physician-led team. CMA and the medical community came out in full opposition as well. CMA entered negotiations with the NPs and negotiated a deal that would have allowed some NPs to practice independently after a certain level of training and experience working under physician supervision. The NPs wanted their own regulatory board, rather than being under the Board of Registered Nurses and that amendment added cost to the bill. Due to this cost, the bill failed to get out of the Assembly Appropriations Committee. Most two-year bills are just dying a slow death but this one may get revived in January 2020.

**COA Position:** Oppose  
**STATUS:** Two year bill – dead for 2019 could return 2020

AB 1268 (Rodriguez) Health Care Coverage Prospective Review
This COA supported bill, would have been a step towards amore streamlined prior authorization process. The bill requires reporting of UR denials to the appropriate regulator. Despite being voted out of Assembly Health 15-0, the bill died in Assembly Appropriations Committee. COA supported the bill because prior authorizations requirements infringe on physicians’ ability to treat patients and adds unnecessary costs to the health care system.

**COA Position:** Support  
**STATUS:** Two year bill – dead for 2019 could return 2020
AB 1404 (Santiago) Kaiser Compensation
This is the anti-Kaiser Permanente bill that the unions are sponsoring to help leverage their stalled union contract negotiations. AB 1404 requires nonprofit sponsored healthcare entities (essentially just Kaiser Permanente) to publicly disclose a contracted physician’s personal compensation/retirement arrangements. COA believes this public disclosure of private information may be in violation of both Federal and California privacy laws. Additionally, disclosure of compensation information could have antitrust implications. There is a real possibility that publishing compensation data could be used in a coordinated fashion to drive physician compensation down. This would create yet another disincentive for surgeons to practice in California and would harm public health.

COA Position: Oppose
STATUS: Inactive File – Senate Floor – could return 2020
Two year bill

AB 1490 (Carrillo) Medical Assistants
COA took a support position on this bill which would have updated a medical assistant’s scope of practice. The bill was never even scheduled for a hearing, so it has become a two-year bill.

COA Position: Support
STATUS: Assembly Business & Professions Committee
Two year bill

AB 1832 (Salas) – DWC – Medical-Legal Fee Schedule
This bill was introduced July 11, 2019 – late in the session. Sponsored by the California Society of Industrial Medicine and Surgeons (CSIMS), the bill required the Division of Workers’ Compensation to annually apply a cost-of-living increase to the Medical-Legal Fee Schedule. COA supported this language. CSIMS is now considering additional amendments to the bill, or not pursuing the bill at all now that the Division has formed Task Forces to update the Medical-Legal Fee Schedule.

COA Position: Support
STATUS: Not yet assigned to a Committee
Two year bill

SB 276 (Pan) Vaccinations
This bill makes it harder for doctors to write exemptions for children regarding mandatory vaccinations. Because vaccines are life-saving and necessary for general public immunity, some crackdown on the doctors who are overly liberal with exemptions is necessary. COA, CMA and many medical organizations supported the bill. Many individuals and anti-vaccine groups adamantly opposed the bill.

COA Position: Support
STATUS: Signed by the Governor – Chapter 278
SB 347 (Monning) Warning Label on Soda
This bill would have required a warning label on sodas and other sugar-sweetened beverages. COA and other health groups supported the bill because it may have encouraged consumers to make healthier choices. Opposed by the soda manufacturers, the Chamber of Commerce, and many business groups, this bill passed the Senate 22-11 but then was not brought up for a vote in the Assembly Health Committee.

**COA Position:** Support  
**STATUS:** Assembly Health Committee  
**Two year bill**

SB 441 (Galgiani) Electronic Health Records
COA supported this bill, which would have enacted the California Interoperability Enforcement Act to regulate electronic health record vendors operating in California to allow for the easier sharing of information between EHR systems. California lacks a meaningful way to enforce existing standards. This bill will provide that enforcement mechanism. The bill was never even set for a hearing.

**COA Position:** Support  
**STATUS:** Senate Health and Government Organization Committees  
**Two year bill**

SB 480 (Archuleta) Radiologist Assistants
This bill would create Radiologist Assistants who could only be supervised by radiologists. The proposed scope of practice would have allowed them to perform all services that could be performed by an MD radiologist, including Evaluation and Management services. COA and CMA questioned this broad scope of practice and objected to allowing only radiologists to be able to supervise this new category of radiology assistants and asked that other physicians also be able to supervise these individuals. The California Radiological Society resisted these amendments. The bill was never set for a hearing.

**COA Position:** Oppose  
**STATUS:** Senate Business & Professions Committee  
**Two year bill**

SB 537 (Hill) Workers’ Compensation
The bill requires MPNs to publish a list of participating providers starting in July 2021. The bill also prohibits an MPN from altering a treatment plan established by the treating physician or physical therapist if it complies with the Medical Treatment Utilization Schedule (MTUS). It also prohibits networks from altering, addition or deleting common procedure codes on bills without permission from the provider. Finally, the bill requires the Division of Workers’ Compensation, to publish utilization data on physicians who treat at least 10 injured workers in the previous year – like Medicare’s reporting of utilization data on physicians.

Originally, the bill also set the Official Medical Fee Schedule for Physician and Non-Physician services at Medicare reimbursement levels. This was an effort to curtail severe discounting experienced by physical
therapists and radiologists by third party entities such as One-Call. While COA was sympathetic to this issue, we strongly opposed setting the floor for OMS reimbursement levels at Medicare rates, fearing that payors would move reimbursements for other services down to Medicare rates. Currently, the reimbursement rate is at approximately 120% of Medicare. This fee schedule language was removed from the bill.

**COA Position:** Oppose to a Watch Position as amended  
**STATUS:** Signed by the Governor – Chapter 647

**SB 697 (Caballero) Physician Assistants: Scope of Practice**

This bill removes the requirement that the Physician Assistant Board make recommendations to the Medical Board of California concerning the formulation of guidelines for the consideration and approval of applications by licensed physicians and surgeons to supervise physician assistants. The bill removes the requirements that the medical record identify the responsible supervising physician and surgeon and that those written guidelines for adequate supervision be established. The bill instead authorizes a physician assistant to perform medical services authorized by the act as amended by this bill if certain requirements are met, including that the medical services are rendered pursuant to a practice agreement and the physician assistant is competent to perform the medical services. The bill also requires a practice agreement between a physician assistant and a physician and surgeon to require a practice agreement to establish policies and procedures to identify a physician and surgeon supervising a physician assistant rendering services in a general acute care hospital.

The act authorizes a physician assistant, under the supervision of a physician and surgeon, to administer or provide medication to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device, subject to specified requirements.

This bill would revise and recast these provisions to, among other related changes, authorize a physician assistant to furnish or order a drug or device subject to specified requirements, including that the furnishing or ordering be in accordance with the practice agreement and consistent with the physician assistant’s educational preparation or for which clinical competency has been established and maintained, and that the physician and surgeon be available by telephone or other electronic communication method at the time the physician assistant examines the patient. The bill would also authorize the physician assistant to furnish or order Schedule II or III controlled substances in accordance with the practice agreement or a patient-specific order approved by the treating or supervising physician and surgeon.

The bill would provide that any reference to “delegation of services agreement” in any other law means “practice agreement,” as defined by the bill. The bill would provide that “supervision,” as specified by the bill, does not require the supervising physician and surgeon to be physically present, but does require adequate supervision as agreed to in the practice agreement and does require that the physician and surgeon be available by telephone or other electronic communication method at the time the physician
assistant examines the patient. The bill would prohibit this provision from being construed as prohibiting the board from requiring the physical presence of a physician and surgeon as a term or condition of a PA’s reinstatement, probation, or imposing discipline. This was a negotiated agreement between the CMA and California Academy of Physician Assistants.

**COA Position:** Support  
**STATUS:** Signed by the Governor – Chapter 707

**SB 731 (Bradford) Workers’ Compensation Risk Factors**

SB 731 would have prohibited physicians from considering genetic characteristics when performing disability evaluations. COA opposed this bill. Genetic testing should not be mandated, but should be allowed to be considered, when appropriate to the causation of the injury. This bill would have led to inaccurate apportionment determinations. The supporters of the bill claim that bias is rampant in Workers’ Compensation system and that this bill is needed to reduce discrimination. This issue has been very controversial in the Legislature. The bill and this issue are likely to return.

There is history to this bill.

In a case titled, the City of Jackson vs Workers’ Compensation Appeals Board, the court found that the law governing apportionment of disability permits the determination of causation to include, “heritability and genetics,” which may result in the reduction of an individual worker’s benefits due to his or her heredity or genetic makeup. The QME in this case, apportioned a high percentage of the injured worker’s injury to genetics. This caused concern with members of the Legislature who felt this was unfair. Their concerns prompted a discussion trying to define what would be considered a genetic disease, whether providers would be able to reliably test whether an injured worker had a genetic disease, and whether the Division of Workers’ Compensation should develop guidelines for apportioning to the genetic disease.

In 2018, SB 899 (Bradford) became the vehicle for this issue.

COA members educated legislators and their staff regarding the importance of defining what is a genetic disease and providing them with the latest research in this area. We discussed the difficulties in testing to definitively say what portion of an injury should be attributed to genetic disease. Despite stakeholder consensus on the issue, in 2018, the bill was vetoed by the Governor. In the Governor’s veto message, he stated:

“I am returning Senate Bill 899 without my signature. Consistent with current law, this measure seeks to preclude a physician from using race, gender, or national origin as a basis for apportionment. I am vetoing this bill for many of the same reasons that I returned a similar measure in 2011 - Assembly Bill 1155. This bill is unnecessary as it would not change existing law and may disturb settled court decisions, which already provide protection from the inappropriate application of the apportionment statutes. Additionally, the proposed wording of the amended statute may create ambiguities in the law, resulting in increased litigation, costs for employers and confusion for injured workers and their representatives.”

**COA Position:** Oppose  
**STATUS:** Assembly Insurance Committee, Two year bill
Budget Bill
The Budget Bill is a comprehensive bill that covers many aspects of state government. One notable change this year is that the Budget Bill restores optional medical services to Medi-Cal beneficiaries. Optional services included services provided by doctors of podiatric medicine. Podiatrists and other health care professionals providing these optional services were eliminated from the Medi-Cal program several years ago when there was a state fiscal crisis.

COA Position: Supported restoring podiatrists to the Medi-Cal system
STATUS: Signed by Governor

REGULATIONS

Division of Workers Compensation – Medical-Legal Fee Schedule
COA has developed a more streamlined proposed system for the Medical-Legal Fee Schedule. The current Fee Schedule has not been updated in 13 years and is based on complexity factors which lends itself to controversy.

The COA revised proposal is based on a flat rate system that provides an additional reimbursement for review of medical records. After several years of urging, the DWC convened a joint meeting of stakeholders in October 2019 to discuss the fee schedule. COA will be actively participating in the Work Groups to shape the final Medical-Legal Fee Schedule. The goal is to streamline the system, increase reimbursement to at least provide a CPI increase over the last 13 years, and to remove uncertainty and friction for COA members and payors.

Radiologic Health Branch
The RHB held a hearing to receive comments on proposed regulations that would allow an uncertified person (surgical tech) assist a surgeon to move a patient during active fluoroscopy. These regulations are to implement recommendations from the Radiologic Technology Certification Committee. This problem was identified by a Kaiser Permanente facility.

COA was the only health organization to testify in support of the regulations.

COA Position: Support
STATUS: Pending – Radiologic Health Branch

FEDERAL LEGISLATION

HR 3630 (Ruiz) No Surprise Act
COA is working with a coalition of health organizations including the AAOS and CMA to support HR 3630 which would enact a baseball arbitration type system to resolve reimbursement disputes and protect patients from surprise medical bills when they receive services out-of-network.

COA Position: Support
STATUS: Pending in Congress