

STONE ADVOCACY

2021-2022 REPORT

CALIFORNIA ORTHOPAEDIC ASSOCIATION

OCTOBER 2022

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HIGHLIGHTS:

- Led effort to pass AB 356 (Chen) to create a one-time temporary permit for out of state doctors while they go through the process to get a regular permit.
- Led effort on AB 404 (Salas) to allow a cost-of-living adjustment for Qualified Medical Examiners if such adjustment is necessary. Bill was held in Senate Appropriations Committee in 2021 and then also failed to get out again in 2022.
- Worked (with many others) to stop single payor health care bill, AB 1400 (Kalra).
- Worked (with many others) to again stop antitrust legislation that would affect mergers, partnership sales and other business practices, AB 2080 (Wood).
- Helped analyze and craft messaging around MICRA update bill AB 35 (Reyes), which COA did not oppose.
- Secured amendments to make podiatrist bill about assistants, AB 1704 (Chen) workable and unoffensive to orthopaedists.
- Worked to defeat AB 2060 (Quirk) a bill to create a civilian majority on the medical board. COA was the first (and for a while, only) registered opposition to the bill.
- Monitored budget process regarding the upcoming Office of Health Care Affordability.
- Represented COA before legislators and staff with enthusiasm, passion, and integrity.
- Opposed 13 bills; killed or amended to satisfaction 11 of them – 84 % kill rate.
- Sponsored 2 bills; one became law – 50% success with sponsored legislation.
- Supported 20 bills; 6 became law– a 30% success rate with supported bills.
- Read each of the 2775 bills introduced (1811 in Assembly and 964 in Senate) in 2021 and another 3000 introduced in 2022 and each of the amendments to each of the bills to issue spot for COA. Provided background information and analysis to Diane, Legislative Committee, and Board.
- Monitored meetings of the AB 890 working group of the Bureau of Registered Nursing and the Board Meetings of the Board of Registered Nursing.
- Represented COA at PAC events.
- Responded promptly and professionally to member inquires.

MICRA HIGHLIGHTS:

The anti MICRA initiative, the so-called Fairness for Injured Patients Act (or FIPA) would have basically un-done MICRA in California.

- The initiative would have eliminated the MICRA cap for any “catastrophic” injury. “Catastrophic” was defined as to include ANY disfigurement or disability, even one as minor as a scar on a pinky finger.
- The initiative would have eliminated any caps on attorney’s fees.
- For cases that were somehow under the MICRA cap the limit would have been one million dollars adjusted yearly.

Even though the coalition defeated the previous anti MICRA initiative soundly there was no such guarantee of a win this time:

- Insurer money was not coming in as robustly as before.
- Polling was not as strong for our side as before.
- The high number of initiatives on the November 2022 ballot, especially those about sports betting and gambling were driving up the price of political ads and would make the budget required to defeat the initiative even higher than initially expected.

CAPP and CMA and other provider groups supported AB 35 the compromise measure, which COA did not oppose.

- AB 25 limits attorneys fees to 25% if there is a settlement and 33% if the case goes to trial.
- AB 35 creates two sets of caps for three different classes of defendants. The two sets of caps depend on whether the patient died or not. In the event of an allegation of wrongful death there is a \$500,000 cap but that cap can be applied to up to three parties: doctor, hospital and a third entity if relevant. That cap ratchets up to \$1M over ten years and then two percent a year increase thereafter.
- If there is no allegation of wrongful death, the cap is \$350,000 but can be applied to up to three separate defendants: the doctor, the hospital and a third entity. That cap ratchets up to \$750,000 over ten years and is then increased by two percent a year thereafter.
- Apologies or expressions of sympathy are inadmissible in subsequent litigation, should it occur.
- The bill goes into effect January 2023.

BIG WIN: AB 356 FLUOROSCOPY SIGNED INTO LAW

The third time really was a charm with COA’s attempt to allow out of state doctors who come to California to use fluoroscopy in surgery while they complete the sometimes-lengthy process to get a permit. AB 356 (Chen) allows a one-time, temporary permit to use fluoroscopy while they go through the process to get a regular permit. Although the department has yet to officially open up the temporary permit process, they report that they will before the end of 2022 and they have provided at least two temporary permits that COA knows about.

OTHER OPPOSE BILLS: 84% KILL RATE

COA opposed or opposed-unless-amended thirteen bills in 2021-2022 and we killed or amended to our satisfaction eleven of the thirteen:

- **AB 510 (Wood)** would have added burdens to our members by imposing additional requirements on billing of patients if the patient was out of the insurers network. The forms were required to be available in fifteen languages. If a patient is out of network, the treating physician would have been required to give the patient a list of doctors who are in-network, even though the treating physician would not have access to that information. The bill died for 2021 and did not return in 2022.
- **AB 1130 (Wood)** would have created the office of health care affordability to address rising health care costs. The bill would have given the office the authority to set cost targets and to penalize entities for failing to meet targets. COA fears that cost targets may be incompatible with accessible and complete patient care, so we opposed the bill. The bill died for 2021 but became a two-year bill so is eligible to move again in 2022. It did in fact return in 2022 and we killed the bill again, but the office of health care affordability was put in the budget so will be created.
- **AB 1278 (Nazarian)** would have required physicians to disclose additional information to patients about the federal database for physician gifts. COA, CMA and other medical groups opposed. The Governor signed the bill into law over our opposition.
- **AB 1400 (Kalra)** would have created single payor health care for California. The bill died for 2021 but became a two-year bill so is eligible to move again in 2022. It was in fact revived in 2022 and we killed it again.
- **AB 1704 (Chen)** was sponsored by podiatrists to allow them to have podiatrist assistants. As introduced, COA opposed the bill for fear of patient safety issues, but we were able to work to secure amendments and go neutral on the bill. The Governor signed the bill into law.
- **AB 2060 (Quirk)** would have created a civilian majority for the medical board. COA was the first group to oppose the bill and the bill died in the first house.
- **AB 2080 (Wood)** was yet another antitrust bill that would have affected the business operations of orthopedic practice by limiting mergers, acquisitions, and perhaps even partnerships. We were able to stop this bill again.
- **AB 2236 (Low)** which increases the scope of practice for optometrists, allowing them to do advanced procedures like lasers and incisional surgeries. COA joined ophthalmologists, CMA and other physician groups opposing the bill because optometrists lack the training and experience to keep patients safe when doing these procedures. The Governor vetoed the bill.
- **SB 477 (Laird)** became law over COA opposition. This bill will allow recovery for pain and suffering (noneconomic damages) even after the plaintiff dies.
- **SB 605 (Eggman)** would have created a "right to repair" medical devices with non-manufacturer parts. COA wanted to ensure that implants were excluded from the bill, but the bill died.
- **SB 788 (Bradford)** which COA opposed as introduced in a different bill last session, was amended to COA's satisfaction because it basically re stated existing law regarding apportionment in workers compensation. The Governor vetoed it in 2021.
- **SB 920 (Hurtado)** would have allowed the medical board greater inspection rights to physician records. COA opposed the bill and it failed passage in the Senate.

- **Bill to require all surgeons who work at an ASC to have medical privileges at their local hospital.** This bill idea was proffered by plastic surgeons who feel that non plastic surgeons are doing plastic surgery work, to the detriment of patients. They wanted to solve the problem by requiring any surgeon who works at an ASC to also have admitting privileges at their local hospital because they felt that would weed out their “bad” docs who were encroaching on their work. But we felt this was unduly burdensome for all surgeons and tried to work with the plastic surgeons to address their concerns without burdening orthopedics. Ultimately the bill was not introduced.

BUDGET ISSUES

- Even though AB 1130 (Wood) stalled in the legislative process, the office of healthcare affordability was put in the state budget in 2022 and so the office will be funded and opened.
- The Budget provided additional Medi-Cal funding and allowed additional Medi-Cal patients to Kaiser in what opponents characterized as a backroom no bid deal.
- The budget included a provision eliminating the 10% budget cut to Medi-Cal providers that had been implemented in 2011 as a result of declining revenues. COA advocated for this increase, and we are happy to report it will go into effect.

OTHER WINS: 6 COA SUPPORTED AND SPONSORED BILLS BECAME LAW

- **AB 356 (Chen)** was our COA sponsored temporary permit for fluoroscopy bill.
- **AB 359 (Cooper)** was a CMA sponsored bill to make it easier for out of state doctors to practice in California.
- **AB 457 (Santiago)** was the CMA sponsored, COA supported bill to promote telehealth parity. It requires patients to see a provider in their own community and requires records to be sent to patient’s primary doctor.
- **SB 242 (Newman)** was the CMA sponsored bill, which COA supported, to require health plans to reimburse for PPE expenses.
- **SB 510 (Pan)** was a CMA sponsored, COA supported bill to prohibit prior authorization and cost sharing for COVID tests.
- **SB 1419 (Becker)** was a CMA sponsored bill that COA supported to add imaging to the rules for lab results to be disclosed to patients but also adds protections for some information so the doctor can provide necessary context to a result. The Governor signed it into law.

FIGHTING THE GOOD FIGHT: 14 SPONSORED AND SUPPORTED BILLS THAT DID NOT BECOME LAW (YET!)

- **AB 32 (Aguiar Curry)** was a CMA sponsored bill to promote telehealth parity. COA supported the bill, but it became a two-year bill, and could return in 2022. The bill did return and was passed but limited to allowing phone calls for telehealth in rural areas.
- **AB 248 (Choi)** would have allowed a business to deduct the cost of COVID cleaning supplies from their income for tax purposes. The bill, which COA supported, became a two-year bill but never returned in 2022.

- **AB 368 (Bonta)**, which COA supported would have created a pilot project in the East Bay regarding food as medicine. COA supported the bill because healthy people have fewer orthopedic problems. The bill became a two-year bill but never returned 2022.
- **AB 404 (Salas)**, which COA sponsored, would have originally required an annual cost of living adjustment for Qualified Medical Examiners in the workers compensation system. It was then amended coming out of Assembly Insurance to allow a COLA for QMEs if the department felt it to be necessary, and with this change the insurers removed their opposition. Nevertheless, the bill was held in the Senate Appropriations Committee. It is a two-year bill, did return in 2022 and once again was held in Senate Appropriations Committee.
- **AB 454 (Rodriguez)**, which COA supported would have required health plans to pay supplemental payments for additional costs like PPE during emergencies. This CMA sponsored bill died in 2021 and did not return in 2022.
- **AB 685 (Maienschein)**, which COA supported would have required health plan to pay docs within fifteen days. It has become a two-year bill and did not return in 2022.
- **AB 864 (Low)**, which COA supported, was a CMA sponsored bill to move the CURES database from the Department of Justice to the Department of Health. It became a two-year bill and did not return in 2022.
- **AB 1160 (Rubio)**, which COA supported was a spot bill regarding medically supportive food that did not move in 2021.
- **AB 1313 (Bigelow)** would have provided businesses who follow COVID protocols with immunity from liability if someone contracted COVID there. It became a two-year in 2021 and did not return in 2022.
- **AB 1627 (Ramos)** would have created a pilot project for information about opioid overdose prevention, which COA supported because we know that opioid prescriptions may be necessary but also carry risk of addiction. The bill failed passage in the Senate Appropriations Committee.
- **AB 2055 (Low)** was a CMA sponsored bill that COA supported to move the CURES database away from the Department of Justice. It failed passage in Assembly Appropriations committee.
- **AB 2153 (Arambula)** would have expanded availability of fruits and vegetables to CalFresh recipients. COA supported the bill, but it died in Assembly Appropriations Committee.
- **AB 2304 (Bonta)** would have created a food as medicine pilot project. COA supported the bill, but it failed to move.
- **SB 250 (Pan)**, which COA supported, was a CMA sponsored bill to reform prior authorization by allowing physicians who are in the middle regarding approvals to have two-year exemption from prior authorization. The bill became a two-year bill and returned again in 2022, but again did not proceed.

WATCH BILLS OF NOTE

AB 399 SALAS would have allowed an injured employee to request the Medical Provider Network name and ID number from their employer. The bill died in the Senate.

AB 852 WOOD as introduced the bill was a cleanup for nurse practitioners, but as passed the bill prohibits a pharmacist from refusing to fill an electronic prescription solely because the provider did not use that pharmacist's proprietary software. The bill became law.

AB 1892 FLORA would have required reimbursement for prosthetic and orthoptic appliances to be set at 80% of the lowest maximum for Medicare. The bill, sponsored by the California Orthotic and Prosthetic Association would have made the devices more accessible to Medi-Cal patients. Even though there was no registered opposition, the bill died in the Senate Appropriations Committee.

AB 2848 SANTIAGO extends by five years the time to study the impact of providing medical treatment within 30 days of a workers compensation claim. The Governor signed the bill into law.

SB 377 ARCHULETA as introduced would have established requirements necessary for a person to be called a Radiologist Assistant. The bill failed to move in the first year and then did not return in the second year.

Hospital employees whose employers apply before December 30, 2022, may be eligible to receive Covid 19 worker retention benefits. More info and details here:

<https://www.dhcs.ca.gov/Pages/Hospital-and-Skilled-Nursing-Facility-COVID-19-Worker-Retention-Payments.aspx> and here: <https://www.dhcs.ca.gov/Documents/FAQs-Hospital-and-Skilled-Nursing-Facility-COVID-19-Worker-Retention-Payments.pdf>.

EMPLOYER AND HEALTH /WATCH BILLS OF NOTE THAT HAVE PASSED, GOVERNOR SIGNED SO ARE NOW LAW

AB 237 (Gray) makes it an unfair practice to refuse to provide medical coverage during a strike.

AB 1003 (Gonzalez) creates criminal liability for wage theft.

AB 1033 (Bauer Kahan) streamlines the small employer family leave mediation program.

AB 1041 (Wicks) expansion of family leave to include one additional designated person within "family."

AB 1177 (Santiago) public bank. Employers required to provide employees with direct payroll deposit to BankCal if they provide direct deposit to any other bank.

AB 1636 (Weber) requires that physicians who have been subject to conviction or formal discipline for sexual abuse or misconduct lost their license. The bill was sponsored by CMA.

AB 1751 (Daly) extends workers compensation presumptions about COVID 19 through 2024.

AB 1949 (Low) requires employers to grant up to 5 unpaid days bereavement leave upon the death of a family member, within 3 months of death.

AB 2098 (Low) characterizes misinformation about vaccines as professional misconduct.

AB 2164 (Lee) provides funding to small businesses to become ADA access compliant.

AB 2188 (Quirk) Employers cant test employee for marijuana use in the past outside of work.

AB 2206 (Lee) if employer provides parking subsidy must provide a parking cash out program too.

SB 331 (Leyva) limits confidential settlements in employment litigation.

SB 838 (Pan) creates a plan for California to manufacture its own generic drugs, beginning with insulin.

SB 1044 (Durazo) Employees may leave or no show for work in a state of emergency.

SB 1162 (Limon) changes timeframe by which employers of 100 employees or more must report wage data. Job postings by employers of 15 or more must include salary range.

SB 1127 (Atkins) changes from 90 days to 75 days the time by which a workers compensation injury is presumed to be not rejected and therefore compensable for certain injuries like hernia, heart trouble, pneumonia and tuberculosis by a law enforcement officer or first responder.

SB 1334 (Bradford) employees who provide direct patient care in a hospital who are also public employees get one 30 min meal break on a 5 hour shift and 2 30 min meal breaks on a 10 hour shift – those breaks could be waived and they could get an on duty meal break instead of an off duty meal break.

SB 1364 (Durazo) If UC hospitals contract with a vendor, the vendor needs to provide notice re compensation to employees.

SB 1375 (Atkins) allows certain Nurse Practitioners to perform first trimester abortions.

SB 1473 (Pan) was sponsored by CMA and requires health insurers to cover specified FDA approved treatments and testing for Covid-19 with no cost sharing by patient; also requires open enrollment for Covered California health plans to be from November 1 to December 31 each year.

INCREASINGLY IMPORTANT: AGENCIES AND REGULATIONS

Stone Advocacy monitored ten meetings of the Nurse Practitioner Advisory Committee and the Board Meetings of the Board of Registered Nursing and weighed in on behalf of COA for several issues, including the naming of 103 and 104 nurse practitioners, educational requirements, and others. The most recent round of proposed regulations (9/6/22; language available here: <https://www.rn.ca.gov/pdfs/regulations/proposedlang-ab890.pdf>) define the scope of practice for nurse practitioners and create a title (advance practice nurse practitioner or certified nurse practitioner instead of independent nurse practitioner). The regulations also require posting of a notice that nurse practitioners are not doctors and that under certain circumstances patients must be referred to a physician and surgeon.

FEDERAL ISSUES OF NOTE

HR 3173 (Bera) – Prior Authorization: HR 3173 streamlines prior authorization requirements for patients covered by Medicare Managed Care plans by requiring the plans to adopt fully electronic processes for approving prior authorization requests, mandating that routinely approved services are approved within a timely manner, and require plans to make available statistics on the services they deny and how long it takes to approve or deny service and the successful rate of appeals. HR 3173 passed the House of Representatives with 326 co-sponsors - 36 co-sponsors from California. The bill next moves to the US Senate. Dr. Bera is also considering similar prior authorization reforms for other payors including other Medicare plans.

HR 8800 (Bera): The Centers for Medicare and Medicaid (CMS) is proposing to reduce physician reimbursement by over 8%. HR 8800 would restore those cuts, so that physician reimbursement under

Part B is not decreased. Congress is also discussing more widespread reforms to the Medicare reimbursement system. The bill must pass by December 31, 2022 to avoid the reductions.

Physician Assistants – change their title to “Physician Associates.” The American Academy of Physician Assistants adopted a national policy to change their title. There is no proposed change to their scope of practice which is largely governed by state licensure laws. Medicine opposed this change. While AAPA sees this as professional advancement and “enhancement of patient care”, physician groups believe that it will lead to confusion among patients. This also represents the first diversion of physician assistants being willing to work as a team member under the supervision of a physician and surgeon.

HR 6087: HR 6087 was introduced to expand the scope of practice of a physician assistant and nurse practitioner. HR 6087 will allow Pas and NPs to independently diagnose, prescribe, treat, and certify an injury and extent of disability for purposes of compensating federal workers under the Federal Employees’ Compensation Act. Passed the US House of Representatives. Pending action in the US Senate.

Fair Access in Residency Act: requires federally funded graduate medical education programs to accept DO and MD residency programs to address what the American Association of Colleges of Osteopathic Medicine called “the unfair barriers and discrimination that osteopathic medical students face” when applying for federally funded residency training.

PROPOSED MEDICARE 2023 CHANGES TO PHYSICIAN PAYMENT FEE SCHEDULE

The Centers for Medicare and Medicaid Services (CMS) are proposing 8.2% cuts in reimbursement for Medicare 2023 physician services along with other changes that medicine opposes. Changes that ignore the high inflationary costs faced by physicians. COA leaders travelled to Washington DC, to urge members of Congress to oppose these proposed changes. Attached are comments from CMA and AMA describing the proposed changes in more detail.

LOOKING AHEAD: ISSUES I EXPECT TO SEE IN 2023

- More with AB 890 Nurse Practitioner Advisory group and Board of Registered Nursing. We will need to continue to monitor these meetings.
- Implementation issues with Office of Health Care Affordability – we may wish to weigh in on the implementation and regulations.
- I expect a return of issues we killed this session including single payor and antitrust issues. I think issues of cost and cost containment will return.
- CMA leadership is undergoing change – their head lobbyist will be new and 3 of their 5 lobbyists will be new in 2023.
- Scope of practice fights!
- Insurer payment fights.