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## Carnage in Sacramento

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The budget crisis continues to dominate the political landscape in Sacramento. Since the option of tax increases, as proposed by Proposition 1, was soundly defeated we must brace for a third round of massive budget cuts. Gov. Schwarzenegger must slash spending in order to balance the budget. Latest estimates place the shortfall in excess of \$26 billion, or about one-fourth of California's budget last year. The cuts must be deep, especially in the areas of education and health care since 68% of the general fund expenditures are allocated to primary education (39%) and Health and Human Services (29%). The writing is on the wall; in order to close the deficit, education and healthcare are sure to take a beating.

### **Prop 99 Funds: Word on the Street**

The strain on emergency departments (EDs) is sure to increase in the coming months. With rising unemployment comes the loss of employer-sponsored health insurance. The state's public health prevention programs have been decimated. We face sharp cuts in the Healthy Families and Medi-Cal programs. In fact, Healthy Families narrowly escaped being mothballed entirely. Further, the proposed Medi-Cal cuts threaten to eliminate almost a quarter of a million children from coverage.<sup>1</sup> Most basic services that are not federally mandated, such as dental care, have already been eliminated. Of course, "these patients will still require care, but the cuts will force Medi-Cal enrollees to substitute the less expensive preventative treatments with more expensive, mostly emergency room, acute-care services."<sup>2</sup>

However, instead of reinforcing the healthcare safety net – the last portal of access to care for swaths of Californians—the governor instead has decided to accelerate the erosion of our emergency rooms just as massive Medi-Cal disenrollment will take effect. His May Revision to the fiscal year (FY) 2009-2010 budget proposes to redirect the Tobacco Tax and Health Protection Act (Prop 99) funding. If this proposed redirection of Prop 99 funds is approved by the legislature, which in this time of fiscal catastrophe is a distinct likelihood, the California Healthcare for Indigents Program, Rural Health Services Program, and Emergency Medical Services Appropriation will not receive funding for the FY 2009-2010.<sup>3</sup> Loss of these funds, which amount to about \$24.8 million, together with the shrinking Medi-Cal roster will have a crippling effect on emergency

departments, disproportionately impacting those in our neediest and hardest hit communities. As the economy continues to deteriorate, saving this fund is increasingly unlikely, even if the historically far-fetched effort to raise the tobacco tax is overcome.

### **Medi-Cal Payments and IOU's?**

As the state inched towards the brink of bankruptcy in early July, Controller Chiang announced that the state would pay many of its obligations with IOUs beginning July 2 until a budget was in place. Short term borrowing, the traditional solution to cover the state's expenses during the annual budget battle, is not an option as California's declining bond rating has driven up the cost of borrowing. In spite of this fiasco, Chiang has announced that Medi-Cal providers will continue to receive payments until the reserve in the state coffers are completely exhausted.

### **Counting our Chickens – A Few Important Victories:**

#### ***AB 911: Crowding***

This bill requires hospitals to develop and implement, in consultation with its ED staff, a full- capacity protocol that must be filed with the state. Crowding is determined by using a modified NEDOCS scoring system that must be updated and recorded periodically by the hospital. Although lacking "teeth," since individual facilities can shift the numerical scale to make any score mean "crowded" or "not crowded," this bill is a monumental first step in drawing attention to ED crowding as well as setting the precedent of compelling hospitals to develop full capacity protocols. This bill has already passed the Assembly, is currently in the Senate Health Committee, and is widely expected to be adopted.

#### ***SB 743: Immunity***

This bill extends liability immunity to hospitals and physicians, even at non-§5150 designated facilities, for detaining a patient who would otherwise meet §5150 criteria. For the immunity to be effective, attempt to arrange transfer to a psychiatric facility must commence at the earliest possible time when the physician has determined the time at which the patient will be medically stable for transfer. Immunity does not extend beyond a 24-hour

detention. This bill provides essential protections and should provide needed coverage for hospitals struggling with detention procedures for psychiatric patients. This bill currently lacks opposition, has been placed on the consent calendar and is expected to pass.

### **Dodging Bullets**

#### ***AB 542: Never Events***

Coordinated opposition to this bill by CMA, CAL/ACEP, and the CHA has proved pivotal in defeating (at least for now) a bill that would have precluded payment to physicians and hospitals for the treatment of various “never events” that included a laundry list of adverse medical outcomes that are often expected or even unavoidable. After a litany of negotiations, reference to “adverse events” was changed to “hospital acquired conditions,” physicians were dropped from the non-payment provisions, and the list of “hospital acquired conditions” was confined to the list already promulgated by CMS. Fortunately, we do not have to contend with this bill at all this year, as the author has decided to hold this bill over to the next legislative session.

#### ***AB 1503: Mandated Medical Charity***

AB 1503 would have required physicians providing emergency medical services to only collect the higher of Medicare or Medi-Cal for patients at 350% of the poverty

level or lower and patients with medical costs exceeding 10% of their annual income. This bill is redundant, as most emergency medicine groups already have charity policies in place. Further, this bill presented a potential administrative nightmare: Were emergency groups to collect patients’ tax returns and audit their medical bills? This bill is an affront to the specialty that provides more uncompensated charity care than any other specialty, surpassing \$130,000 of uncompensated care per emergency physician per year.<sup>4</sup> Fortunately, this bill has been held over in the Senate Health committee until next year when the author will decide whether or not to pursue this legislation.

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