

## Governmental Relations Report – November 2009 CDA Board of Trustees

### *Recent Highlights*

- A record number of state legislators attended the 2009 COMOM in Brighton.
- The CDA secured an official governor's proclamation for COMOM.
- The CDA testified before the legislature's interim Health Care Task Force. The presentation was well received and resulted in the introduction of a bill to establish a carve-out for administration of the Medicaid dental program.
- The CDA submitted extensive comments on the CDPHE's x-ray rule proposal, which resulted in favorable changes to the proposal.
- A bill exempting most dentists from the federal red flags identity theft rule was passed in the U.S. House.

### *Governmental Relations Objectives, 2009-2010*

- Recruit and train state Action Team Leaders before the start of the 2010 legislative session.
- Help familiarize the CDA membership with the Capwiz process and get at least a 10% response rate for two or more Capwiz alerts during the 2010 legislative session.
- Develop a legislative and government relations communications plan that ensures timely updates to leadership, the government relations council and CDA membership.
- Develop and distribute a legislative handbook to educate and inform legislators about the CDA and dental issues.
- Re-establish CODPAC with new leadership and in compliance with updated bylaws.

### *2010 Legislative Session*

- Updates on Dental Bill Concepts: The CDA has discussed three potential bills for the 2010 legislative session. Updates on each bill and its related strategies are provided below. At this point, sponsors are a primary focus, as the rules of the legislature require that a sponsor file initial bill information no later than Dec. 1. After that time special permission is required for a bill to be introduced. The 2010 legislative session will convene on or before Jan. 13.
  - *Carve Out Bill:* Whereas the Medicaid dental program is currently administered by the state, a carve out would bid administration of the program out to a separate, third-party benefits administrator. This type of arrangement can result in reduced costs to the state and better streamlining for the practitioner and patient. The CDA, along with several dental stakeholders, have been exploring whether a carve out of the Medicaid dental program would be beneficial. A carve out bill received unanimous support from legislators on the legislature's interim health care task force. It will move forward and be introduced in the general legislative session beginning in January 2010. Rep. Beth McCann will be the sponsor in the House. Sen. Joyce Foster will be the sponsor in the Senate. We continue to seek input from dentists and stakeholder groups on parameters that would help a carve out be successful in Colorado. Please let us know if you have any feedback or suggestions.
  - *Non Covered Services Bill:* We are seeking a sponsor for the bill that would prevent dental insurers from setting fees for procedures they do not cover. We have a good lead that we hope to have secured by the Nov. 14 meetings. Draft bill language closely mirrors language proposed in Rhode Island and other states. There has been some interest from the medical community in expanding the bill scope to address all insurance carriers. However, there may

be wisdom in pursuing a narrow scope (dental only) bill to set a precedent that the medical community at large can benefit from in future pursuits. We have indication that a major dental insurer has elected to stay neutral on bills that are very limited in scope in other states. Once a bill sponsor is secured, we will be reaching out to see if this arrangement would be feasible in Colorado.

- CCD Immunity: In reviewing options for liability protections for the Colorado Concerned Dentists (CCD) peer assistance group, we discovered that existing state and federal law already offer strong liability protection to non-profit volunteer activities, including peer assistance activities. These protections should address almost all of CCD's concerns. Thus, we do not plan to pursue legislation on this matter at this time.

### *2009 Legislative Interim*

- Health Care Task Force Presentation: The Colorado legislature has several interim committees that meet over the summer and fall months when the legislature is not in session. The committees, comprised of both state Senators and Representatives, hold hearings on topics of interest and are authorized to draft bills for the legislature to consider during the next session. One interim committee is the Health Care Task Force (HCTF). The CDA was able to secure time to present to the task force immediately following COMOM. We used our time before the task force to talk about the impact of COMOM, the importance of good oral health options for Coloradans and Medicaid program challenges. We also allowed the Colorado Foundation of Dentistry for the Handicapped a few minutes of our allotted time to discuss their Dental HouseCalls program and the impact of a recent cut to dental funding under the Old Age Pension act. The presentation was well received by legislators and resulted in a bill to establish a carve-out for administration of the Medicaid dental program.
- COMOM Legislator Tours: Prior to COMOM, the CDA personally invited all 100 state and 9 federal legislators to tour the event. From a policy perspective, the event was a tremendous success. We received great coverage by the local and national press (from the Channel 9 to the Wall Street Journal) and had a record number of legislators visit the event. The six state legislators who attended were impressed with the effort people invested to get care (including sleeping on the sidewalk) and the willingness of dentists to volunteer their time to help people in need. After the event, we followed up with legislators who attended, as well as those who did not. We shared a compelling video documentary of the event with those who could not attend and the story had a significant impact on many legislators. In addition, per our request, Gov. Bill Ritter issued a proclamation declaring that Sept. 11-12 were "Colorado Mission of Mercy Days in Colorado." Senator Nancy Spence was instrumental in helping get this proclamation through the process.

### *State and Local Policy*

- SBDE Anesthesia Rule Revisions: In June, the Colorado State Board of Dental Examiners proposed a new structure for anesthesia permits and administration. The CDA has provided regular updates on the status of this rule and encouraged members to submit comments to the SBDE. The state board of dental examiners (SBDE) continues to review and revise the rule. The latest published rule revision addressed most concerns that members had conveyed to the CDA. However, at the most recent rule hearing in October, testimony raised a number of new and notable concerns. The SBDE sent the rule back to committee in response to these concerns. The rule is expected to be reconsidered by that SBDE at its January 2010 meeting.
- SBDE Licensure Reinstatement Rule Revisions: In October, the SBDE adopted proposed changes to the licensure reinstatement rule with minor amendments for clarification. The

revisions improve consistency across licensees and type of licensure, and give more flexibility in reinstatement of lapsed licenses than previously had been allowed. This revision applies only to dentists and dental hygienists whose licenses have lapsed.

- **CDPHE X-Ray Rule Revisions:** In October, the Colorado Board of Health adopted revisions to its rules on radiation control, which include provisions governing the use of dental x-ray equipment. Prior to the hearing, the CDA conducted an extensive review of the 400-page rule proposal and filed formal comments with the Department of Public Health and Environment (CDPHE) to address some concerns. The CDHPE was extremely cooperative in finding reasonable solutions to address our concerns. The implementation date for the new rule is July 1, 2010, which is designed to allow time for practitioners to review the new rule and implement any necessary modifications in their practice. The CDA will be publishing additional communications discussing impact of the rule changes on dental practices and best practices for x-ray technology in dentistry.
- **Medicaid Rate Cuts:** The state of Colorado continues to face a significant fiscal shortage. In both August and October, the Governor's office announced substantial and wide-ranging cuts to rebalance the budget. These cuts have repeatedly affected Medicaid provider reimbursement rates. The latest 1% cut, effective Dec. 1, 2009, is in addition to previous rate cuts of 1.5% in Sept. 2009 and 2% in July 2009. In addition, the state will delay payments for Medicaid services provided in the final two weeks of the 2009-2010 fiscal year. This is an accounting maneuver being used to shift some expenses from one fiscal year to the next and will result in a two-week delay in payments to Medicaid providers for services provided during the final two weeks of June 2010. Additional state cuts impacting dentistry and oral health have included funding reductions for FQHCs (Federally Qualified Health Centers or Community Health centers) and the elimination of a dental assistance program for low income seniors. We continue to work with the state to find ways to minimize the impact to patient populations and providers as cuts are implemented.
- **Fluoridation:** The anti-fluoridation efforts organized in Montrose ended favorably, with the water board electing to maintain the existing level of fluoridation. The participation of local dentists was critical to this success.

#### *Federal Legislative and Regulatory*

- **Healthcare Reform Legislation:** Healthcare reform continues to be a major agenda item in D.C. The House and Senate have both worked to merge multiple bill drafts into single bills that can be considered for adoption in each chamber. At the end of October, the House bill published a merged bill, which is almost 2,000 pages long. ADA worked to incorporate several provisions favorable to dentistry into the merged House bill. However, the ADA still has a number of concerns with the bill and has elected not to support the draft at this time. Relevant dental provisions in the merged House bill include:
  - Repeal of much of the McCarran-Ferguson antitrust exemption.
  - Provision of funding for dental and medical education programs.
  - Recognition of dentists as emergency responders.
  - Disregard of the problem of lack of access to dental care for Medicaid populations.
  - Exemption of many small businesses from the requirement to purchase health coverage for employees.Senate negotiations are ongoing.
- **Red Flags Rule Compliance Deadline Extended:** The Federal Trade Commission (FTC) has further delayed enforcement of its "red flags" identify theft rule through June 1, 2010. The latest extension gives more time to build support in Congress for a bill that would permanently

exempt most dental offices from the rule. In late October, the U.S. House of Representatives unanimously passed legislation that would exempt many small businesses from the red flags rule. The bill, H.R. 3763, would provide an exemption for healthcare, law and accounting practices with 20 or fewer employees and give the FTC the flexibility to waive the rule for other industries and professions. The bill is now before the U.S. Senate, which must also pass the bill before the permanent exemption will take effect.

- **McCarran-Ferguson Antitrust Bill:** The ADA has long encouraged Congress to repeal an insurance industry exemption from federal antitrust laws. The exemption allows health insurance companies to work jointly in setting rates without fear of federal antitrust scrutiny. A bill (Senate Bill 1681), introduced to eliminate this exemption, has gained much support. President Obama recently mentioned the repeal in a morning radio message to the nation. In addition, Senate Majority Leader Harry Reid (D-Nev.) advocated for repealing the exemption before the Senate Judiciary Committee, and a number of senators expressed support for the exemption's repeal. There is good momentum building around changing this policy.
- **Bennet Appointed to Senate HELP Committee:** Colorado Senator Michael Bennet has been appointed to the Senate Committee on Health, Education, Labor and Pensions (HELP). The HELP committee is one of the most influential committees in the Congress and the committee that has jurisdiction over healthcare matters. This is a huge honor for Senator Bennet and raises Colorado's influence and access on critical healthcare matters.

#### *Governmental Relations Resources*

- **ADPAC:** ADPAC just concluded a successful fundraising drive during the ADA Annual Session. ADPAC is currently considering contribution requests from Rep. DeGette, Rep. Perlmutter and Rep. Salazar. In addition, federal action team leaders have been busy over the fall months. Colorado dentists have met with Representatives Diana DeGette, Mike Coffman, Doug Lamborn and 4<sup>th</sup> congressional district candidate Cory Gardner. ADPAC is hosting a state PAC conference in New Orleans Nov. 6-8 and three Colorado representatives will be attending.
- **CODPAC:** CODPAC is just beginning its 2009-2010 funds drive, which occurs in conjunction with the CDA dues renewal process. We will be evaluating the CODPAC solicitation process in the coming months and discussing the possibility of adding solicitations apart from the CDA dues renewal process. In addition, 2010 is an election year and the CODPAC Board will be making recommendations on candidate support starting early in the year. CODPAC bylaws have been revised, as detailed in a separate report in the Board packet. CODPAC will be participating in the aforementioned ADA State PAC conference and will also be exhibiting at the Rocky Mountain Dental Convention in January.
- **State Action Team Leaders:** We continue to identify action team leaders across the state in advance of the 2010 legislative session. We have 16 confirmed volunteers and several promising leads. While we are slightly behind our initial timeline, we remain confident that we can have a thorough team of equipped volunteers in place by the beginning of legislative session. The CDA recently attended a new dentist committee event to publicize the program and recruit volunteers. We have also drafted a thorough manual as a resource to educate and aid volunteers. With the completion of this manual, we are prepared to begin calling through lists of CDA members in each legislative district to request their help. In depth training for action team leaders is being planned for early in the legislative session. We will partner with the ADA to offer the training.