LEGISLATIVE LAW

Health Care Bills Pending in Sacramento

by Kenneth M. Sigelman
Column Editor: Scott Levine

Kenneth M. Sigelman, J.D., M.D,. is the founder of Kenneth M. Sigelman & Associates. He represents plaintiffs in medical malpractice, product liability, and personal injury cases. Dr. Sigelman is a graduate of Dartmouth College, the University of Florida College of Law, and the University of Miami School of Medicine. He is currently the President-Elect of CASD. Dr. Sigelman is a past recipient of the CASD Outstanding Trial Lawyer Award and is a member of the American Board of Trial Advocates. He can be contacted by email at: ***ken@sigelmanassociates.com***.

Health care reform is currently a "front burner" issue in Sacramento. The need for reform is compelling. More than 6.5 million Californians, or approximately 20% of our state's population, do not have health insurance. In recent years, numerous employers have reduced coverage; some have stopped providing any health benefits. A recent entry into the marketplace has been the "catastrophic" health plan, which the carriers who sell it tout as viable means of providing affordable health coverage to many who could not previously afford it. However, these plans tend to have exorbitant deductibles and/or co-payments, which render routine medical care largely unaffordable. Astoundingly, **half of all bankruptcies in the United States are now related to medical costs**, and 75% of those bankrupted families actually had health insurance at the time.

The most ambitious reform proposal presently pending in the California Legislature is SB 840, authored by Senator Shiela Kuehl (D- Los Angeles). SB 840 would create a single payor system providing comprehensive medical benefits to every California resident. Federal, state, and local public programs would be incorporated into the universal system. The sale of private health insurance would be prohibited. Health care costs would be regulated. The programs would be financed with current federal and state government health care funding, a payroll tax to replace employer benefit plans, and other taxes to replace insurance premiums.

SB 840 would create an appointed commissioner who would establish the system's budget, set rates, establish expenditure limits, and oversee the administration and implementation of the plan. The specific financing provisions are contained in a companion measure, SB 1014, also authored by Senator Kuehl. According to the analysis prepared by the California State Senate, California's health care spending under the single payor program embodied in SB 840 would be more than $300 billion less than what our current multi-payor system would cost.

SB 840 was passed by the Senate in early June by a 23-15 vote. Among local legislators, Senators Denise Ducheny and Christine Kehoe voted "aye" and Senator Mark Wyland voted "no." The bill is now pending before the Assembly, and, approximately one week after this report goes to press, will have been heard before the Assembly Health Committee. A substantially similar bill was passed by both houses of the Legislature last year, but was vetoed by Gov. Schwarzenegger.

CAOC supports SB 840. CAOC's position is based on the fact that SB 840 would provide

affordable coverage to every Californian, with high quality care and comprehensive benefits. CAOC's letter of support cites a recent Boston University study which found that nearly half of all of our current health care spending is consumed by clinical and administrative waste. The administrative activities of a single payor system have been estimated to cost some $20 billion less than those of the thousands of different health insurance companies presently doing business in California. This savings could be shifted into direct health care. Another $5.3 million could be shifted into direct health care by consolidating statewide purchasing power for prescription drugs. It is also estimated that universally providing preventative and primary care could reduce California health care expenditures by up to $3.4 million in the first year.

Additional legislative reform proposals are contained in AB 8, authored by Assembly Speaker Fabian Nunez (D-Los Angeles) and SB 48, authored by Senate President Don Perata (D-Oakland), which have now been merged into a single bill. The Nunez/Perata proposal is not a single payor plan. Instead, it would guarantee access to health care coverage for everyone in the individual market without serious medical conditions, and guarantee access to a high risk pool for people with serious medical conditions. The high risk pool would be funded by a broad assessment on health plans. The Managed Risk Medical Insurance Board ("MRMIB") would be required to ensure that premiums for employees earning less than 300% of the Federal poverty level do not exceed 5% of family income. The merged bill would provide premium subsidies to families earning less the 300% of Federal poverty level who are offered employer-sponsored insurance. The MRMIB would have authority to adjust employer fees to insure fiscal solvency. The bill also contains certain insurance market reforms and seeks to contain health care costs through oversight by MRMIB. AB 8 was passed by the Assembly in early June by a 47-32 vote. It is scheduled to be heard before the Senate Health Committee on July 11, 2007. Because of the very recent blending of AB 8 with SB 48, CAOC has not yet taken any position on the blended bill as this report goes to press.

Governor Schwarzenegger has also unveiled a health care proposal, which has not yet been introduced as legislation. The governor's proposal would require all Californians to secure health care coverage for themselves and their children. Companies with ten or more employees who choose not to offer coverage would contribute 4% of payroll toward the costs of employees' health coverage. Companies with fewer than ten employees (80% of all business in California) would be exempt from this requirement. Health plans and insurers would be required to guarantee individuals access to coverage in the individual market and to spend 85% of every premium dollar on patient care. Medi-Cal reimbursement rates for doctors and hospitals would be increased.

Concurrent with the legislative debate on health care reform, Michael Moore's documentary "SiCKO," an examination of the American health care system, opens in theatres nationwide as this report goes to press. The film, which I have not yet seen, is reported to be harshly critical of our multi-payor, private insurance-driven system, and to advocate a universal single payor plan.

One of the stories featured in "SiCKO" is that of Dawnelle Keys. Dawnelle's daughter, Mychelle, became sick with a fever of 106 degrees, vomiting, lethargy, and difficulty breathing. Dawnelle called 911. The paramedics transported Mychelle to Martin Luther King, Jr. Medical Center ("MLK"), a Los Angeles County facility, because it was the closest hospital to Dawnelle's home.

However, Dawnelle and Mychelle were Kaiser members. When Mychelle arrived at the hospital the

medical resident assigned to her called Kaiser in order to obtain Kaiser's prior approval to pay for treatment at an outside facility. An off-site Kaiser doctor convinced the resident that it was not necessary for the resident to obtain blood tests or administer antibiotics before transferring Mychelle to Kaiser. Mychelle remained at MLK for three hours with no diagnosis or treatment initiated. Dawnelle, who had been trained as a paramedic, insisted that something be done. The hospital did so something --- security escorted Dawnelle out of the building. By the time, Mychelle arrived at Kaiser, she was in cardiogenic shock due to sepsis (overwhelming infection) and she died within 30 minutes after arriving at Kaiser. The bacterial organism that killed her was sensitive to penicillin or any other broad spectrum antibiotic that would have routinely been administered in the MLK emergency room.

We have all heard horror stories over the years of people dying or suffering serious harm because of inability to obtain medical treatment due to lack of insurance. The cruel irony of Mychelle's death is that she died not because of a lack of insurance, but precisely because of the type of coverage she had. Indeed, had Mychelle been uninsured, there is little doubt that she would have received prompt, life saving treatment at MLK.

I had the privilege of representing Dawnelle (then Dawnelle Barris) in her lawsuit against the County of Los Angeles and Kaiser. At trial, the jury awarded $1,353,000, of which all but $3,000 were non-economic damages. Because the jury found not only that both defendants had been negligent, but also that the County of Los Angeles had violated the Federal Emergency Medical Treatment and Active Labor Act ("EMTALA"), the "anti-patient dumping" statute, we argued that the $250,000 cap set forth in Civil Code §3333.2 did not apply. One of the required elements of an EMTALA violation is actual knowledge by the defendant hospital of an emergency medical condition, and, therefore, the claim is not one "based on professional negligence." The trial court's ruling that the $250,000 general damage cap applied to the EMTALA cause of action as well as the medical negligence claim was affirmed by the Court of Appeal. The California Supreme Court granted review, and then affirmed the Court of Appeal. *Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 83 Cal.Rptr 2nd 145, 972 p. 2nd 966. The United States Supreme Court then denied our Petition for Writ of Certiorari. Dawnelle's gross recovery for the death of her daughter was $253,000, after nearly seven years of litigation.

Dawnelle's tragedy combines bad medical care, a deeply flawed health care delivery system, and an unfair law that deprived her of what a jury of her peers found to be fair and reasonable compensation after hearing all of the evidence. As the health care debate in Sacramento continues, and "SiCKO" graphically illustrates why our health care system needs reform so badly, we must not forget that in order to achieve truly comprehensive reform the issues of full accountability for medical wrongdoers and fair compensation for victims must also be addressed.