



CNAP 09 Legislative Update #16 – Amendments, Bills & Thanks
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Bills Fall Victim to House Slowdown, Deadlines and Germaneness Rule: Will CHIP Be a Victim Too?

In Updates #13 and #14, I wrote about deadlines for passing bills and the fact that over 4,000 House Bills officially died in the House on May 14th when they failed to pass by midnight. The House reached another critical deadline last Tuesday, May 26th. That was the last day the House could pass Senate Bills that were on the Major State or General Calendars. Many Senate Bills remained on the Calendar at midnight, including some of the biggest bills of the session.

Most of you who follow the news know that the slowdown in the House worsened as controversy over the Voter ID bill resulted in prolonged debate on hundreds of bills on a Local & Consent Calendar. Bills are referred by House committees to the Local & Consent Calendars Committee when the bills are local in nature (only affect a city, county or defined area) or are not controversial and passed unanimously by the committee. Normally, once placed on the Local & Consent (L&C) Calendar, these bills are passed with very little debate. In fact, no bill on the L&C Calendar can be debated more than 9 minutes and 59 seconds. If any member stands at the back microphone and asks questions about the bill for 10 minutes, under House Rules, the bill is dead.

Starting with last Friday's Local & Consent Calendar, House Democrats who wanted to stop consideration of the Voter ID bill, started debating each bill on that L&C Calendar for 9 minutes and 45 seconds. This meant that no more than 5 or 6 bills could be considered each hour when normally the entire Calendar would have been completed in 4 - 6 hours.

Motions by Democrats to suspend the House Rules to allow the House to consider some of the critical bills of the session out of order were defeated by Republicans who favored the Voter ID Bill. This resulted in the House staying on one L&C Calendar from Friday through Tuesday.

The House had one other Local & Consent Calendar on Wednesday (the last day that Senate Bills could be passed on a L&C Calendar). While the House completed that Calendar at a faster pace, it was slower than usual due to the large number of amendments on those bills. With the death of so many bills, there was a scramble to get provisions or entire bills passed by amending them onto other bills. Each amendment was explained and voted separately. However, the House completed the Calendar that day.

From last Thursday, May 28th, through the end of the session on June 1, the House only considers bills being returned from the Senate with amendments and Conference Committee Reports (bills that had different versions pass the House and Senate and the bill author did not concur with the version passed by the other chamber so a compromise bill had to be negotiated). Unfortunately, some of those bills are returning with amendments that may be ruled not to be germane to the intent of the original

bill.

Just as in the House, in an effort to save language, some of which was in major legislation, Senators amended provisions, and sometimes entire bills, onto House Bills that were being considered for final passage in the Senate. Unfortunately, sometimes the choices of bills to amend were highly questionable based upon the fact that amendments must be germane to the content in the bill, as introduced.

From an alert I sent last week and news articles, most of you know that one of the Senate bills that did not pass the House would have expanded eligibility for the Children's Health Insurance Plan (CHIP) to include an estimated additional 80,000 children. The Lt. Governor responded to our request, and that of many Texans, to save the CHIP bill. Unfortunately, the Senate amended the CHIP bill onto a bill pertaining to newborn screening rather than the bill passed by the House dealing with CHIP that was also in the Senate.

That leaves the CHIP amendment very vulnerable to being ruled not germane to the original intent of the bill. That, coupled with the Governor's threat to veto the newborn screening bill if it contains the CHIP provisions, may doom the CHIP expansion for 2009.

SB 532 on the Way to the Governor

On Thursday, May 28th, the Senate officially concurred with House amendments on the retail clinic bill, SB 532. The Governor is expected to sign SB 532.

Over the past week, I received several questions indicating that some people misinterpreted what I wrote about the provisions on primary practice sites contained in SB 532. ***Nothing in SB 532 requires physicians to spend more time on site with APNs to whom they delegate prescriptive authority than currently required.***

For instance, if you currently have prescriptive authority in a long-term care facility or a school-based clinic based on the fact that you are seeing the delegating physician's patients, and therefore the prescriptive authority site is designated as a primary practice site, nothing will change for your practice. While there is a rule that requires a quality assurance process to be in place, no law requires you and the physician to spend face-to-face time, and SB 532 does not change that. Likewise, there are no requirements that a physician spend a particular amount of time with APNs in facility-based hospital and long-term care practices. Nothing will change for APNs in medically underserved sites either.

The new language in SB 532 that requires physicians to spend 50% of the time with APNs is a limitation that *only* applies to physicians also delegating prescriptive authority to APNs in charity care and disaster relief sites. Nothing in SB 532 sends anyone's prescriptive authority backwards. In a few cases, particularly in alternate practice sites, it will reduce the onerous supervisory requirements in those sites. Information on SB 532 is posted on [CNAP's Website](#).

Hard Fought Victories and Little Gifts

Those who have read CNAP Legislative Updates in the past know that part of my job during each legislative session is to identify bills that should include APNs but do not, and then to get those bills amended to include APNs. We do this by either specifically adding APNs or getting provider neutral language, as appropriate. We have worked diligently and consistently to make this happen. Every session there are five to ten bills that pass that include APNs because of our efforts. This session that number may be lower, but that actually may be a sign of progress.

The ground work we laid in prior sessions to consistently include APNs, plus a meeting with Legislative Council (the agency that drafts bills for legislators) staff during the last Interim, made a noticeable difference this session. Many more bills, including major legislation, included the term “health care provider,” “practitioner,” or specifically identified “advanced practice nurses” in the bills as introduced.

This milestone was marked by some interesting twists. This is the first time we got an amendment to exclude APNs. We also got a little unexpected gift along with a significant amendment. Both involved intensive efforts on my part, as well as other members of our lobby team.

Most APNs Will Not be Regulated Under Provisions in SB 911

[SB 911](#) by Senator Tommy Williams (R-The Woodlands, SD #4) and sponsored by Rep. Mike “Tuffy” Hamilton (R-Mauriceville, HD #19) creates a licensing requirement for certain pain management clinics and practices. We appreciate the intent of this bill to establish a mechanism to close “pill mills” in which physicians, physician assistants, and in a few cases, NPs have been identified as inappropriately prescribing controlled substances for patients without doing adequate assessment and follow-up.

SB 911 is designed to target pill mills that are not owned by health care professionals licensed in the state of Texas. However, the reach of SB 911 is much broader and I decided it was important to get APNs exempted from the bill to the extent possible.

We were particularly concerned about this bill because it requires physician ownership and regulation by the Texas Medical Board for any clinics or practices that would fall under the definition of a pain management clinic in SB 911. Admittedly, “pain management clinic” is very narrowly defined in this bill. It is limited to “a publicly or privately owned facility for which a majority of patients are issued on a monthly basis a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.”

While, most APNs’ practices would not fall under this definition, we determined that some APNs who specialize in pain management or psychiatric-mental health might. We have Allie De Beer, FNP, PMHNP, and TNP Legislative Fellow to thank for this. She gave me the example I needed to argue for the amendment to exempt APNs. (This highlights the importance of having all APN specialties working closely with CNAP.) Previous efforts to amend the bill failed, partly because we were unable to demonstrate potential harm to APNs.

Arlene Wohlgemuth, who represents the Texas Association of Nurse Anesthetists, and I started working early in the session to try to get APNs exempted. Early in the session we had no success, but as the bill moved through the process, it was amended to exempt physicians who own or operate a clinic “who uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients.” This opened an opportunity to get a similar exemption for APNs.

In the very last step of the process, I was able to get agreement from both Senator Williams and Rep. Hamilton to get that exemption. Eric Glenn, one of CNAP’s lobbyists who works with Texas Capitol Strategies, also helped me get that amendment done. As always, Kathy Hutto’s guidance on wording and process was key to our success.

Those in Senator William’s district should thank him for accepting the amendment and also recognize the work of Senator William’s legislative aide, Amanda Montagne. Those in Rep. Hamilton’s district should thank him and his chief of staff, Nikki Gonzales. They were very helpful and efficient in getting our amendment on SB 911.

SB 911 was reported from the House as amended on May 26th and the Senate concurred with the House amendment on May 29th. We expect the Governor to sign the bill. SB 911 becomes effective on

September 1, but implementation of the certification process will not occur until the following year, September 1, 2010. This gives the Texas Medical Board time to adopt rules and establish the certification process for the pain management clinics that fall under these requirements.

Bad Language Changed to Good in HB 802

A big thank you is again in order for Rep. John Davis (R-Houston, HD #129) and his chief of staff, Meghan Weller for accepting an amendment on Rep. Davis's respite care bill, HB 802. As filed this bill contained language that was concerning because it indicated that nurses provide care under the direct supervision of another health care provider. We explained the problem to Meghan and Rep. Davis and he agreed to accept our amendment on the House Floor. The bill passed both the House and the Senate with our language and the bill was sent to the Governor on May 26th.

Medical Home Study in SB 7 Lives on in HB 1218...But Will It Be Germane?

SB 7, authored by Senator Jane Nelson (R-Lewisville, SD #12) and sponsored by Rep. Lois Kolkhorst (R-Brenham, HD #13), was a big bill containing pilot programs and initiatives to improve delivery of health care and reduce costs in the Medicaid and CHIP Programs. While SB 7 was in the House Public Health Committee, we targeted one key amendment that could be very helpful for APNs.

The bill contained a pilot study on the Patient-Centered Medical Home. The language in the Senate version was drafted to use provider-neutral language that could include APNs who are already primary care providers in Medicaid and CHIP Programs. However, I identified a way to amend the bill and assure the data was analyzed using the type of provider as an additional factor. Once again, Rep. John Davis helped and agreed to submit the amendment on our behalf.

Sixty amendments were proposed in committee. The Committee Substitute that emerged from the Public Health Committee included 36 of those amendments. One of those amendments was the one we proposed. In addition, Chairwoman Kolkhorst gave us an extra gift. She included a Nurse Practitioner on the HHSC advisory committee created in this bill to help oversee this and many of the other programs created by SB 7.

But the fate of SB 7 was the same as many others on Tuesday night's House Calendar. It died at midnight. At that point, the only way to save the language in a bill was to amend it onto another bill that is about to pass. Senator Nelson found a vehicle in the form of HB 1218 authored by Rep. Donna Howard (D-Austin, HD #48) and sponsored by Senator Kirk Watson (D-Austin, SD #14). This is a health information technology bill that requires the Health & Human Services Commission to establish a health information exchange pilot program. Some provisions in SB 7, including our language in the Patient-Centered Medical Home pilot and the NP on the advisory committee, were amended onto that bill.

We hope that all the provisions that were added in the Senate will be found to be germane by the House. SB 1218 with amendments was returned to the House on May 28th. I will let you know the outcome in the next update.

Mixed Blessings

The victories associated with greater recognition for APNs at the Texas Capitol are also accompanied by challenges. As APNs become better recognized, the medical organizations are equally diligent to get delegation language into bills. This created some dilemmas and mixed blessings this session.

In the case of two bills that passed, medical associations did not oppose the bill as long as the author

included language that indicates the APN may sign a form or perform or order a service, but the act is delegated by a physician. This is very concerning because this carves away certain pieces of practice that APNs should be able to do independently. The following are two examples of bills that passed.

Ordering Diabetic Equipment and Supplies for Patients Covered by Medicaid

[HB 1487](#) by Jim Pitts (R-Waxahachie, HD #10) was an example of legislation that seemed like a little gift early in the session that became a mixed blessing in the end. Rep. Pitts filed HB 1487 on behalf of a constituent who has a medical supply business. The business owner thought it was inappropriate that Medicaid only allows physicians to order diabetic supplies while Medicare allows a variety of providers, including APNs, to do so. The business owner asked Rep. Pitts to address the problem through legislation.

Rep. Pitts did so by filing HB 1487 and Senator Jane Nelson (R-Lewisville, SD #12) filed the companion bill, SB 1881, in the Senate. Initially the bill required the Health & Human Services Commission (HHSC) to allow certain practitioners to order diabetic medical supplies. The initial bill included nurse practitioners and clinical nurse specialists. At CNAP's request, Rep. Pitts added certified nurse-midwives.

However, in order for the bill to pass, the wording was changed in route through the House and Senate. As finally passed on May 23rd, the bill requires HHSC "to provide for an ordering system that is comparable to the ordering system for diabetic equipment and supplies under the Medicare program."

That part is good, however, language was added to the bill that specifically limits this legislative mandate to only forms involving diabetic supplies and requires conformity with the chapter on delegation of medical acts in the Medical Practice Act and with the Dangerous Drug Act (includes ordering and prescribing medical devices).

The bill was sent to the Governor on May 26th. SB 1487 goes into effect on September 1, 2009. However, it usually takes HHSC a few months or longer to implement the changes in forms.

While the language in HB 1487 is not particularly onerous, language in another bill that may pass directly states delegation and supervision is required. This bill is definitely a mixed blessing.

APNs and PAs Ordering Disabled Parking Placards in Counties with a Population of 125,000 or Less

[SB 1984](#) will allow APNs and PAs in counties with a population of 125,000 or less to verify that an individual has a mobility problem that qualifies them to park in a handicapped parking place. SB 1984 was authored by Senators Uresti (D-San Antonio, SD #19) and Hegar (R-Katy, SD #18) and sponsored by Tracy King (D-Eagle Pass, HD #80).

For years, many APNs have had patients with mobility limitations that meet the eligibility requirements for a temporary parking placard, but have to get the verification signed by a physician. The Transportation Code limits verification to physicians unless the mobility limitation is related to the foot. In that case, a podiatrist may sign the verification.

This has proved to be a difficult statute to change. The disability community objects to having other providers allowed to sign the verifications because they feel that too many people obtain the placards but do not actually qualify. They think that more practitioners having authority to sign the verifications will exacerbate the problem. In addition, medical organizations object to allowing APNs to sign the verifications except as delegated by a physician.

These challenges meant that both Senator Uresti's bill that allowed PAs to sign verifications as a

physician's agent (SB 1984) and Senator Hegar's bill that would allow both APNs and PAs to sign under the supervision and delegation of a physician (SB 785) had a great deal of trouble making it through the Senate Transportation and Homeland Security Committee. It was only because Senators Hegar and Uresti agreed to combine the bills and limit the authority only to initial applications for temporary parking placards in counties with a population of 125,000 or less that they were able to get the bill out of committee and through the Senate.

No doubt this is far from the bill that APNs would have wanted. APNs had nothing to do with the language in SB 1984. Senator Hegar filed his bill at the request of the Texas Rural Health Association. It is frustrating that something so basic to APN practice as performing an assessment to evaluate if the patient meets specific eligibility criteria for a disabled parking placard becomes a delegated task. To some extent, the cure for this problem may ultimately prove to be worse than the problem of not having legal authority to sign these verifications at all. On the other hand, we know this will be helpful for some APNs.

SB 1984 passed the House on Second Reading on May 27th. It is the same bill passed by the Senate so the bill will go directly to the Governor. The bill will go into effect on September 1, 2009. Before that date, I will publish more information on the legal criteria for eligibility for a parking placard and discuss other aspects of implementing this authority. In the meantime, you can find if you are in a county of 125,000 or less by going to <http://www.tsl.state.tx.us/ref/abouttx/popcnty42008.html>. Based on 2008 population estimates, APNs and PAs working in 30 counties will be excluded from verifying a patient's need for the disabled parking placard. That means 224 counties do qualify, at least until the next census data is posted.

Loan Repayment for APNs Fail

The session started with great hope that Nurse Practitioners and Certified Nurse-Midwives would finally be included in a loan repayment program that had a significant source of funding. HB 1876 by Rep. Warren Chisum (R-Pampa, HD #88) and SB 2527 by Senator Juan Hinojosa (D-Mission, HD #20) were companion bills that would have provided a loan repayment program for health care professionals that qualify for the National Health Service Corps under [42 USC §254d \(b\)](#). This includes nurse practitioners, certified nurse-midwives, as well as physicians, physician assistance, dentists and several categories of mental health providers.

The bill included a funding mechanism based on changing the tax structure on certain tobacco products to base the tax on the weight of the product instead of the price. This meant certain generic smokeless tobacco products would be taxed at a higher rate and the revenue would be dedicated to funding the loan repayment program to the health care providers who serve in medically underserved areas. Some of the money would also have been dedicated to operating expenses for Federally Qualified Health Centers.

As the bills stalled in the legislative process, the physicians developed a new strategy to take all the remaining money for a physician loan repayment program by tacking the taxing structure on to a smaller physician loan repayment bill, HB 2154, by Rep. Al Edwards (D-Houston, HD #146) and Senator Juan Hinojosa. Later, some of the money appropriated to loan repayment was siphoned to the Property Tax Relief and General Revenue Funds.

While we worked hard to get an amendment to include a program for APNs on another loan repayment bill, in the end we failed. As a result of our last minute attempt, we found that we need to gather much more information on the average amount of loans accrued by APNs upon completion of their educational programs, the number of APNs who have outstanding student loan debts, and the number that would seriously consider practicing in an underserved area in exchange for loan repayment. If anyone has a source for this information, please let me know. Ultimately we hope to get a reasonably

well funded loan repayment program for APNs, but that is on next session's agenda.

More to Come

Obviously, the legislative session is not over yet. I will report on more bills as we have time to analyze all the bills that passed along with the amendments added in these last few days. You may also receive occasional alerts in June asking you to contact the Governor's office. While we do not anticipate any problems at the Governor's office with bills important to us (with the exception of the CHIP bill in case it is retained in HB 1218) we sometimes receive requests from others to support various health care bills. In July, I anticipate completing the 81st Texas Legislative Session Summary that includes a brief analysis of each bill that will become law and affect APNs and our patients.

Thanks to each of you who responded to the action alerts I sent this session. Your efforts helped us achieve the successes we had and were critical to preventing bad language from being added to Texas law.