

ORNCC Legislative Report October 15, 2011

Federal Legislation

AORN is not tracking any Federal legislation at this time.

Appeals court sides with White House on Health Care Reform: In two opinions released at the same time on September 8, 2011, the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, handed President Barack Obama significant victories in the ongoing legal battle over the year-old Patient Protection and Affordable Care Act.

The appeals judges ruled that neither Liberty University, a Christian school in Virginia, nor the state of Virginia had standing to challenge the law that enacted one of the president's signature domestic initiatives. The appeals court remanded both cases back to the trial courts with orders to dismiss for lack of subject matter jurisdiction.

The Virginia rulings become the third and fourth major appeals decisions on the Affordable Care Act. In August, 26 states won a critical victory in their fight against the law when the 11th U.S. Circuit Court of Appeals in Atlanta struck down as unconstitutional the law's requirement that individuals purchase private health insurance. The ruling out of Atlanta followed the 6th U.S. Circuit Court of Appeals in Cincinnati, which upheld its constitutionality.

Experts say the Atlanta and the Cincinnati decisions created the classic split in the circuit courts that the U.S. Supreme Court looks for in deciding which cases it will take up for oral arguments.

The Cincinnati ruling has already been appealed to the high court, which has not yet decided whether it will take up the case. If the Supreme Court took the case in its upcoming session, observers say it could elevate the national discussion about health reform in 2012, when the president faces re-election.

On September 28, the Obama administration asked the Supreme Court to hear a case concerning the 2010 health care overhaul law. The development came unexpectedly fast and makes it all but certain that the court will soon agree to hear one or more cases involving challenges to the law, with arguments by the spring and a decision by June, in time to land in the middle of the 2012 presidential campaign. The Justice Department said the justices should hear its appeal of a decision by a three-judge panel of the United States Court of Appeals for the 11th Circuit, in Atlanta, that struck down the centerpiece of the law by a 2-to-1 vote.

California Legislation

October 9th was the last day for Governor Brown to sign or veto bills passed by the Legislature on or before September 9th and in the Governor's possession after September 9th (Article IV, Section 10(b)(1)).

ANAAC, through the efforts of the Legislative Committee, monitors all bills and regulatory changes on the behalf of ANAAC members. The Legislative Committee communicates its decisions and how the organization is involved in each bill by posting its positions on the Bill Folder Page. The link is <http://www.anacalifornia.org/legislative.html>

CA SB 161 [Diastat Bill] (Huff – R): was signed into law by Governor Jerry Brown on October 7, 2011. It authorizes a school district, county office of education, or charter school to participate in a program to provide nonmedical school employees with voluntary emergency medical training for assistance to pupils with epilepsy suffering from seizures when a nurse is unavailable, using specified guidelines.

Requires posting guidelines on a specified Web site. Authorizes certain parents or guardians to request such employee training. Requires the posting of training best practices on a specified Web site. ANA\California fought long and hard in opposition to this bill, and had support from the California Democratic Party. The **Diamond Bar Patch**, from Huff's home town, said "There was opposition to the bill from union groups."

CA AB 375 (Skinner-D): provides, with respect to hospital employees who provide direct patient care in an acute care hospital, that the term injury includes a bloodborne infectious disease or methicillin-resistant *Staphylococcus aureus* that develops or manifests itself during the period of the person's employment with the hospital. On September 9, 2011, it was read for the third time and refused passage.

CA AB 1083 (Monning-D): amends the federal Patient Protection and Affordable Care Act, the Knox•Keene Health Care Service Plan Act of 1975, and the Voluntary Alliance Uniting Employers Purchasing Program. Changes definitions and criteria related to certain risk adjustment factors. Prohibits the use of risk adjustment factors and preexisting condition factors, and specified persons or entities from encouraging or directing small employers to seek coverage under the benefit exchange pool. Requires essential health benefits coverage. It conforms California to the Federal Healthcare Act with stronger controls. On September 8, 2011, it was ordered to the Inactive File at the request of Senator Hernandez.

CA SB 538 (Price-D): extends the application of existing law regarding the employment of specified personnel to investigate and prosecute all violations related to the State Board of Registered Nursing. Extends the operation and meetings of the board. Specifies that the board is subject to review by the appropriate committees of the Legislature. Requires certain schools of nursing to adhere to requirements of existing law relating to granting nursing degrees. Subjects such schools to fees. Authorizes cease and desist orders. This is a sunset bill with strong support from ANA\C. As of October 9, 2011, it is in the Senate with consideration of Governor's veto pending.

CA SB 747 (Kehoe-D): requires registered nurses and other specified professionals to complete at least one CE course of 2 to 5 hours on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual and transgender persons, and requires licensing entities to enforce these requirements. ANA\C opposes it unless it is amended. As of October 9, 2011, it is in the Senate with consideration of Governor's veto pending. Tricia Hunter reports that, if this bill is signed into law, ANA\C will have to work to inform its members. There is no enforcement from the BRN but if one got randomly reviewed there may be consequences.

CA SB 943 (Senate Business Professions and Economic Development Committee): is an omnibus bill which relates to the licensure of healing arts practitioners and registered nurse education requirements. It was chaptered on September 26, 2011.

The **California Health Benefit Exchange Board** unanimously approved the appointment of Peter V. Lee as its first Executive Director on August 25, 2011. Pat Powers will continue as Acting Administrative Officer through the end of December.

The Exchange is overseen by a five-member board appointed by the Governor and Legislature; the California Health and Human Services Secretary serves as an ex officio voting member and is its current Chair.

California was the first state to create a Health Benefit Exchange following the passage of federal health care reform. It is charged with creating a new insurance marketplace in which individuals and small businesses will be able to purchase competitively priced health plans using federal tax subsidies and credits beginning in 2014.

The Health Benefit Exchange is part of the National Health Care Plan. It is a process for individuals and small business to be able to get reasonable health care insurance. If the individual mandate does not hold up in court (a recent court said it was unconstitutional) this program will probably not be able to fund itself.

The Federal Government is going to hold a hearing in California on the Health Exchange to get public input. Tricia Hunter is monitoring its process.

In August, the California Health Benefit Exchange received a **\$39 million federal Level 1 Establishment grant** that will help the state plan for and design a new health insurance marketplace to cover millions of Californians, Board Chair Diana Dooley announced today. Specifically, the federal funds will be used to create a three-year business and operational plan, begin development of an information technology infrastructure, and conduct other start-up activities including consumer outreach.

“These federal funds will enable California to build a successful Health Benefit Exchange program,” said Dooley, who is California’s Health and Human Services Secretary. “California continues to be a leader in the development of a Health Benefit Exchange that will provide access to affordable, quality health care.”

The Level I grant funding will be used to recruit necessary technical and support staff, and to contract for specific subject matter experts. The funds will also support the active engagement of stakeholders in planning and implementation activities.

The grant period is August 15, 2011 to August 15, 2012. By June of 2012, the Exchange will apply for a Level II grant to fund the final phase of development and its first year of operation through 2014. Once the Exchange is fully operational in 2015, it must be self supporting.

Other News

Major General Patricia D. Horoho, MSN, MS, RN, a member of the North Carolina Nurses Association (NCNA) and currently the United States Army’s Deputy Surgeon General and 23rd chief of the Army Nurse Corps, has been nominated to become the 43rd **Army Surgeon General**, an appointment announced by U.S Department of Defense Secretary Robert Gates. If confirmed by the U.S. Senate, she would become the first registered nurse and woman to serve in that post in Army Medicine’s 236-year history. She is awaiting confirmation from the Senate.

On May 25, 2011, *Periop Insider* reported that **surgical tech bills** failed in Florida, Georgia, Illinois, Missouri, Nebraska and Wisconsin. In New York, Governor Cuomo vetoed a surgical technologist education and certification bill that passed the New York State Senate and State Assembly earlier this summer. Governor Cuomo urged the bill’s supporters to work with the New York State Department of Health and State Education Department to develop a more comprehensive and direct approach to ensuring that the state’s surgical technologists are well-trained and well-qualified to serve patients undergoing surgery. AORN believes education and certification of allied health professionals such as surgical technologists are important steps toward patient safety and achieving optimal outcomes in all operating rooms. AORN supported the intent and purpose of this bill but asked for changes clarifying that the surgical technologist works under the supervision of the registered nurse circulator in facilities licensed under Article 28 of New York’s public health law. Moving forward, AORN hopes to work with the interested stakeholders, the bill sponsors, and the New York State Department of Health and State Education Department on language. “Our hope in New York and all states where surgical technologists are pursuing education and certification legislation is that our AORN State Councils and State Coordinators can work collaboratively with the surgical technologists to achieve their legislative objectives while also preserving and affirming the supervisory role of the registered nurse in the operating room,” commented AORN President-elect Deborah Spratt, MPA, BSN, RN, CNOR, NEA-BC,

CRCST. “We share the common goal of assuring patient safety with collaborative teamwork.” California has a “Law / Strong Rule” supporting the RN Circulator.

In July, ANA asked lawmakers to oppose budget proposals that would lead to drastic cuts in **Medicare, Medicaid and Social Security** programs. ANA sent letters to lawmakers in the House and Senate highlighting the devastating impact severe budget cuts to these programs would have on those who rely on them.

AORN’s Government Affairs staff will assume **staff support responsibility for State Councils** from AORN’s Membership Department. Government Affairs staff will work to maintain the same level of support provided to the membership while exploring more formal coordination between AORN and the State Councils in the area of advocacy, providing State Councils broader access to Government Affairs resources for their legislative and advocacy efforts. AORN resources for State Councils are not expected to change, and State Council website references will be maintained in the Community section of the AORN website., Rhonda Anders, RN, BNS, MSM, CNOR, will continue as Chair of the State Councils, and Rosemarie Schroeder, RN, BSN, CNOR, will continue as Board Liaison.

ANA is a member of the **National Preparedness Coalition**, and wants you to **join!** The coalition is a broad group, encompassing national, state, and local organizations, governments and individuals. It’s very simple, and requires no commitment. A project of the Department of Homeland Security and FEMA, the campaign has lots of great tools and resources to help organizations, communities, and individuals prepare for emergencies. September was National Preparedness Month, and the FEMA National Preparedness Month Team is asking members to invite five other people to be part of the Coalition to increase awareness about emergency preparedness. The more people who know about the online tools that are available, the more prepared communities and businesses will be, and the easier it will be for them to bounce back after a disaster strikes. The link is <http://community.fema.gov/connect.ti/READYNPM>

By the way, the reason I am not at this ORNCC meeting is that I am participating in two of six San Francisco neighborhood drills for NERT, the Neighborhood Emergency Response Team, which is a volunteer arm of the San Francisco Fire Department. NERT’s mission is: “Beginning with ourselves, we will be prepared to work as individuals or together in emergency response teams, to assist our families and neighbors in times of disaster, and to make decisions that do the Most Good for the Most People.”

Respectfully submitted,

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