



programs have remained static, covering less than 10% of beneficiaries. While acknowledging some criticism of capitated systems, the Commission noted that several prepaid health plans in California have been successful, and recommended legislative support for capitated care. This legislation should include safeguard provisions (e.g., guaranteeing timely access, preventive care, and complaint/grievance procedures) and incentives for beneficiaries to choose capitated care.

The Commission also evaluated Medi-Cal's current detailed treatment authorization method. Providers must obtain prior authorization for all surgery, long-term care admittance, hospital inpatient stays, some office procedures, non-emergency medical transportation, medication not on Medi-Cal's list of allowed drugs, and all optional medical care (e.g., psychiatric care). The Commission found that many providers are unwilling to perform the burdensome steps required, in spite of their belief that treatment is medically necessary. Without approval, the Medi-Cal recipient is denied coverage for the treatment. The Commission recommended the elimination of this approval process for routinely authorized medical procedures.

**-Reimbursement—**the Commission reported that the complex and lengthy billing process itself is a major reason many providers refuse to participate in Medi-Cal. The Commission recommended that the Medi-Cal claim form be modified to mirror other types of health care provider claim forms. The Commission also recommended that Electronic Data Systems, the fiscal intermediary for Medi-Cal, be directed to use its expertise to improve the current reimbursement system.

**-Prescription Drugs—**the Commission noted two problems with the state's procedures for purchasing drugs for Medi-Cal recipients: the state was paying top dollar due to its inability to bargain for discounts, and it had a rigid formulary which did not keep pace with developing drug therapies. While acknowledging the 1990 passage of Medi-Cal Drug Discount Program legislation (which enables the state to negotiate contracts with drug manufacturers), the Commission noted that the legislation creates a potential conflict of interest, because it gives the Department of Health Services (DHS), which already has the power to exclude drugs from the approved list, the authority to bargain over prices. Additionally, the legislation includes a two-year sunset provision.

The Commission recommended that this legislation be revised to give the

California Medical Assistance Commission (CMAC) the power to bargain for state health care services, including prescription drugs. Under this arrangement, CMAC would work closely with DHS, which would retain the authority to determine which drugs should be included on the Medi-Cal formulary. The Commission also recommended that the legislation be made permanent.

**K-12 Education.** On October 25 and November 15, the Commission held hearings on K-12 education, focusing on the portion of funding which reaches the classroom. The Commission staff expects the report on K-12 education will be completed by April 1991.

## DEPARTMENT OF CONSUMER AFFAIRS

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In addition to its functions relating to its 38 boards, bureaus, and commissions, the Department of Consumer Affairs (DCA) is charged with carrying out the Consumer Affairs Act of 1970. The Department educates consumers, assists them in complaint mediation, advocates their interests before the legislature, and represents them before the state's administrative agencies and courts.

### MAJOR PROJECTS:

**Vehicle Arbitration Program.** Through its Bureau of Automotive Repair, DCA recently certified California's first state-approved program to bring new car consumers and automakers together to resolve disputes without resort to the court system. The program allows consumers to pursue warranty repairs, a replacement, or a refund during the time their vehicle is covered by an express written warranty. The Department has approved programs sponsored by General Motors, Ford, Toyota, Saab, and Volkswagen/Audi, and is considering applications from Chrysler, Maserati, and Peugeot. Approximately 60% of all new vehicles sold in California are now affected by the program, which was created pursuant to a 1987 bill, AB 2057 (Tanner). (See CRLR Vol. 7, No. 4 (Fall 1987) p. 104 and Vol. 7, No. 3 (Summer 1987) p. 129 for background information.)

Hearings are conducted by volunteer and independent arbitrators trained in appropriate state laws and regulations. When the program receives an applica-

tion for a hearing, the arbitrator seeks information from the buyer and manufacturer and renders a decision, normally within forty days. Arbitrators may arrange for mechanical inspections by independent experts and may order, where appropriate, a refund or exchange of the vehicle or further repairs. Automakers are bound by the arbitrators' decisions; however, consumers may reject the finding and pursue the case in court. Automakers bear the costs of the program, but have an incentive to apply for certification; those who decline to join the program may be subject to punitive damages in cases where consumers prevail in court.

**Hearing on Access to Legal Services.** On November 14, DCA held a public hearing on the issue of consumer access to legal services for persons of low or modest means. The topics addressed included consumer legal access difficulties; the benefits and limitations of alternative legal services, such as small claims court, informal dispute resolution, arbitration, and pro bono legal services; the special legal needs of ethnic communities and senior citizens; and consumer issues regarding the proposed licensure/certification of legal technicians. (See *infra* LEGISLATION; see also CRLR Vol. 10, No. 4 (Fall 1990) pp. 42 and 185 for background information on the legal technician movement.) The hearing was held in San Francisco, and received substantial participation. A report on the hearing was scheduled to be released in February.

**Conflict of Interest Code.** DCA recently filed proposed changes to its Conflict of Interest Code with the Office of Administrative Law (OAL). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 43 and Vol. 10, No. 1 (Winter 1990) p. 41 for background information.) OAL approved the changes on October 30; DCA subsequently notified affected employees that they must comply with the requirements of the revised Code by filing Form 730—Statement of Economic Interest.

**Publications.** In honor of the twentieth anniversary of the Consumer Affairs Act of 1970, DCA will release a new edition of *The Complete California Consumer Catalog* in early 1991. Last updated in 1981, the guide covers more than forty topics and contains information about consumer rights and buying tips.

DCA recently released a publication entitled *Professional Therapy Never Includes Sex!* This 24-page booklet was developed pursuant to SB 1277 (Watson), enacted in 1987, to help victims of psychotherapist sexual exploitation, and



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outlines patient rights and options for reporting exploitation.

Also, DCA has released *California Tenants—Your Rights and Responsibilities*, a 49-page booklet answering questions about rental agreements, deposits, repairs, discrimination, moving out, and evictions.

## LEGISLATION:

*AB 168 (Eastin)* proposes to create a new DCA board to regulate non-lawyer "legal technicians." (See CRLR Vol. 10, No. 4 (Fall 1990) p. 42 for background information.) Existing law provides that no person may practice law unless he/she is an active member of the State Bar. As introduced December 20, this bill would instead provide that no person may advertise or otherwise hold himself/herself out to be an attorney, or use a title that in any way implies that he/she is an active member of the State Bar, and that no person may appear, or advertise or hold himself/herself out as entitled to appear, on behalf of another, before any court or tribunal of this state unless that person is authorized to so appear pursuant to a rule adopted by the court or tribunal or pursuant to law. This bill would also create the Board of Legal Technicians within DCA, and would require every person who practices as a legal technician to be licensed or registered by the Board, which would determine which areas require licensure and which require registration. The bill would require various disclosures by legal technicians, and would provide for conciliation and arbitration of customer complaints. At this writing, this bill awaits committee assignment in the Assembly.

*SB 2627 (Beverly)* was sponsored by DCA and signed by Governor Deukmejian on September 24 (Chapter 1305, Statutes of 1990). Although the bill makes no changes in substantive law, it reorganizes existing statutes related to small claims court into a single act, and simplifies the language of the statutory provisions, making them more accessible to lay people using the small claims court system. The new Small Claims Act may be found at Code of Civil Procedure section 116.110 *et seq.*

## OFFICE OF THE LEGISLATIVE ANALYST

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Created in 1941, the Legislative Analyst's Office (LAO) is responsible for providing analysis and nonpartisan advice on fiscal and policy issues to the

California legislature. LAO meets this duty through four primary functions. First, the office prepares a detailed, written analysis of the Governor's budget each year. This analysis, which contains recommendations for program reductions, augmentations, legislative revisions, and organizational changes, serves as an agenda for legislative review of the budget.

Second, LAO produces a companion document to the annual budget analysis which paints the overall expenditure and revenue picture of the state for the coming year. This document also identifies and analyzes a number of emerging policy issues confronting the legislature, and suggests policy options for addressing those issues.

Third, the Office analyzes, for the Assembly Ways and Means Committee and the Senate Appropriations and Budget and Fiscal Review Committees, all proposed legislation that would affect state and local revenues or expenditures. The Office prepares approximately 3,700 bill analyses annually.

Finally, LAO provides information and conducts special studies in response to legislative requests.

LAO consists of 76 professionally trained analysts and 26 support staff. The staff is divided into ten operating sections, each of which is responsible for a specific subject area. These areas are health, welfare and employment, taxation and economic research, agriculture and natural resources, business and transportation, criminal justice, employee compensation and general service agencies, education, capital outlay, and long-term policy issues.

## MAJOR PROJECTS:

*LAO's Examination of the State's Budget Problems.* As 1990 drew to a close, LAO declared that California is confronted with its most difficult budget dilemma ever. During fiscal year 1990-91, the state faces a deficit of nearly \$800 million if no corrective action is taken. LAO's estimate of the budget problem for the next three years indicates spending will exceed projected revenues by almost \$6 billion in 1991-92, and by comparable amounts in the subsequent two years.

The budget gap is due both to a short-term downturn in the economy and a longer-run, structural budgetary imbalance between expenditures and revenues, claims LAO. LAO believes the gap must be addressed by Governor Pete Wilson and the legislature during deliberations over the next several months.

The cause of California's troublesome budget deficit is in dispute. Former

Governor Deukmejian repeatedly claimed that the budget problem is primarily caused by automatic cost-of-living increases for beneficiaries of health and welfare programs. However, LAO faults the Deukmejian administration's overly optimistic budgeting practices, the state's approval of new programs without new revenues, and the increased need for child welfare services, education, and prisons.

In December, Legislative Analyst Elizabeth Hill called on Wilson and the legislature to seek a "long-term solution—an evaluation of our priorities and how best to pay for them." She also warned policymakers to keep the two components of the budgetary gap distinct: the cyclical component (the recent fall-off in revenues), and the structural component (spending is projected to grow faster than revenues). The two components require different methods of attack.

In describing the "structural imbalance," Hill noted several factors which are responsible for increasing expenditures for existing programs. Demographic forces cause many programs to expand at a rapid pace; for example, enrollments in K-12 schools are growing almost twice as fast as the state's general population. Thus, Proposition 98's allocation of 40% of the general fund to education absorbs much of the state's new revenue growth each year. Further, governmental policy choices are responsible for growth in some programs; for example, longer prison sentences have caused a dramatic increase in the Department of Corrections' budget. Finally, societal changes increase the need for some programs; the increase in the number of child abuse and neglect cases has caused child welfare services spending to increase 15% over the past five years.

Hill also noted several legal provisions which prevent the legislature from decreasing spending in certain areas (such as Proposition 98), and which prevent the legislature from modifying the amount of revenue spendable each year (such as the Gann limit).

The Legislative Analyst warned the legislature that if it does not take action soon, part of the budgetary gap will be closed by an automatic spending reduction provision enacted in 1990. This mechanism, known as "the trigger," would result in across-the-board spending reductions totaling about \$1 billion in 1991-92, without regard to the priority of individual programs.

Others are also concerned about California's budget crisis. In November, the staff of the Joint Legislative Budget Committee recommended the creation of