

Legislative Update

by Mary Riemersma, Executive Director

October 2009

The Governor took until the last day to sign or veto bills, thus we were on pins and needles waiting to see the outcomes of our bills. Fortunately we ended the year with incredible legislative outcomes. All of our bills were signed into law.

In spite of legislative successes, California's budget continues to create numerous struggles that have impacted pending legislation and legislation that we might consider for next year.

Following are the key bills that CAMFT sponsored in 2009 as well as some of the many other measures we supported, opposed, or at least watched to see the outcome.

CAMFT-Sponsored Bills

Child Abuse Reporting

AB 247 (Emmerson)

This bill amends Section 11170(b)(1) of the Penal Code (part of the Child Abuse and Neglect Reporting Act) establishing that licensed health care practitioners are not required to investigate child abuse and corrects the reference made to "medical practitioner," which is a term no longer used. The way this section is worded in existing law may give the false impression that health care professionals have a responsibility to investigate suspected child abuse or severe neglect. Additionally, because California case law (*Alejo v. City of Alhambra*) implies a duty for health care professionals to investigate, it is necessary to clarify that these professionals are not under a duty to investigate suspected child abuse or neglect incidents. At least one CAMFT member indicated that she has been involved in more than one case where she was criticized for not "investigating" child abuse. This bill has been signed by the Governor and takes effect January 1, 2010.

Confidentiality of Medical Information

AB 681 (Hernandez)

This bill provides an exception to the requirements imposed by Section 56.104 of the Civil Code (part of the Confidentiality of Medical Information Act—CMIA) in the event the therapist must break confidentiality when there is an imminent and serious danger of physical harm to another [Section 56.10(c)(19) of the CMIA]. Section 56.104 provides that "no provider of health care, health care service plan, or contractor, may release medical information to persons or entities authorized by law to receive that information. . .if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient" within thirty days (unless the patient has signed a written waiver of notification) "and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes:" specific information relating to a patient's participation in outpatient treatment with a psychotherapist and its specific intended use, the length of time the information will be kept, a statement that the information will not be used for any other purpose, and a statement that the requester will destroy the information when the time specified has expired. It is clear that subsection (19) requires quick action in order to prevent serious and imminent harm to others. If a police officer asked a therapist for information about his/her patient relevant to the psychotherapy and to the danger, it is not necessary, and in fact would be somewhat absurd, to have to submit a written

request/report to the patient and to the psychotherapist to comply with Section 56.104. This bill has been signed by the Governor and will take effect January 1, 2010.

**Employment of Interns in California Department of Corrections and Rehabilitation (CDCR)
AB 1113 (Lowenthal, Author and Anderson, Coauthor)**

This bill amends Penal Code, Section 5068.5(c) to allow persons aspiring to MFT licensure to be utilized within the Department of Corrections and Rehabilitation (CDCR), as is the case with persons pursuing the psychology and clinical social work licenses. A local union of the American Federation of County, State, and Municipal Employees (AFSCME—the union representing the interests of psychologists and clinical social workers employed within the CDCR) raised substantial opposition. Their concerns included their statement that the State Personnel Board’s creation of a new job classification may not happen and the CDCR has done a bad job of recruiting qualifying employees to work with the mentally ill. They raised concerns, amongst others “that MFTs do not have the qualifications to work with the mentally ill in prisons like psychologists and social workers,” and that it would take away jobs from psychologists and LCSWs, even though there is currently a tremendous vacancy of mental health professionals. The union indicated that psychologists and clinical social workers should not have to supervise these MFT interns. Assembly Member Lowenthal (an MFT) did tell them that MFTs can and will become members of the Union. The Local Union also convinced the statewide union to speak out in opposition to the bill. In spite of the very vocal and heated opposition, the bill made it through the Legislature with only “yes” votes and is now before the Governor. We offer special thanks to Laura Ceballos with the Department of Corrections and Rehabilitation, Paul Riches with the Board of Behavioral Sciences, Randall Hagggar with the California Psychiatric Association, and others for being there to offer support. Also, great appreciation goes to Assembly Member Bonnie Lowenthal, an MFT, and her Legislative Aide Alberto Gonzalez who worked tirelessly to assure the measure’s passage. The bill has been signed by the Governor and takes effect January 1, 2010.

Citations and Fines

SB 819 (Committee on Business, Professions and Economic Development—Omnibus Bill)

This bill was a repeat of SB 1779 from 2008 that was vetoed by the Governor. It, among other things, addressed our desire to limit the amount of time the BBS can post citations and fines on their website. Any fine against a licensee or registrant that is under \$1,500 would be limited to a period of posting of five years. Fines that exceed this amount can be posted indefinitely, which is the case with all fines at this time.

One of the many other provisions of this bill includes naming the MFT licensing law as the Marriage and Family Therapist Act. This bill has been signed by the Governor and takes effect January 1, 2010.

Other Bills

Health Care Coverage

AB 108 (Hayashi)

This bill, which CAMFT supported, prohibits a health care service plan or health insurer from rescinding, cancelling, limiting or raising the premiums of an individual health plan due to an omission, misrepresentation, or inaccuracy in the application form after the plan has existed for 24 months. This bill was signed by the Governor.

Perinatal Mood and Anxiety Disorders Task Force

AB 159 (Nava)

This bill would permit the State Department of Public Health, in conjunction with the State Department of Mental Health, to establish a task force to develop recommendations and educational materials for the department's perinatal health programs in order to address specified issues relating to perinatal mood and anxiety disorders. A member of CAMFT would be one of the Committee's members. CAMFT is in support of this legislation. The bill is dead for this year.

Parity for Mental Health Care

AB 244 (Beall)

This bill would expand mental health coverage to all DSM IV mental disorders for certain health care service plans and insurance plans issued, amended, or renewed on or after January 1, 2010. This bill was vetoed by the Governor last year and again this year.

Professional Licenses

AB 484 (Eng)

This bill would have required licensing entities to provide the Franchise Tax Board with the names and social security numbers or federal taxpayer ID numbers of each licensee. If a licensee failed to pay taxes, where a state tax lien has been recorded, the Franchise Tax Board would have been required to mail a preliminary notice of suspension to the licensee. The licensee who failed to pay the unpaid taxes would be automatically suspended, and notice of such would be required to have been sent to the licensing board. The licensee would have been expected to pay the administrative costs incurred by the Franchise Tax Board. CAMFT was watching this bill in hopes that it would die a quick death. This bill is dead for this year.

Child Custody and Visitation

AB 612 (Beall)

This bill, as introduced, would have prohibited a court from considering a nonscientific theory in making a determination regarding child custody or visitation with a child. It would also have prohibited a court from considering or receiving into evidence a report, assessment, evaluation, or investigation if it included a nonscientific theory. CAMFT's position on the bill was "oppose unless amended." The bill was later amended in a way that we no longer opposed, providing that a child's expression of significant hostility toward a parent may be admitted as possible corroborating evidence that the parent has abused the child. The amendment prohibited a court from concluding that an accusation of child physical or sexual abuse against a parent is false based solely on the child's expression of significant hostility toward the parent. But, this amendment was merely a maneuver to get it out of a committee. As soon as the bill progressed, the offensive language was restored and we are once again opposed. This bill is now dead for this year.

Insurance and Health Plan Preexisting Conditions

AB 722 (Lowenthal)

This bill, which is supported by CAMFT, intends to enact legislation that would prohibit a health plan from denying or excluding coverage for an insured due to a pre-existing mental or physical condition. This bill is now dead for this year.

Unlawful Revisions of Health Coverage

AB 730 (De La Torre)

This bill would provide that a health insurer that engages in post-claims underwriting of a health insurance policy shall be liable to the state for a civil penalty in an amount not to exceed \$5,000, or if the insurer knew, or had reason to know, that the post-claims underwriting was unlawful, the civil penalty shall be in an amount not to exceed \$10,000. The current violation is not to exceed \$118. CAMFT supported this legislation, which the Governor vetoed.

Repeal of all State Agencies, Boards, and Commissions

AB 783 (Anderson)

This bill would require that all statutorily created state agencies, boards, and commissions be repealed on January 1, 2022. We presume that this bill would include the BBS amongst other vital governmental entities. CAMFT will oppose this bill should it make any headway, however, the bill is dead for this year.

Individual Health Care Coverage Choices

AB 786 (Jones)

The bill, amongst other provisions, would require, by September 1, 2010, the Department of Managed Health Care and the Department of Insurance to jointly develop a system to categorize all health care service plan contracts and health insurance policies offered or sold to individuals into five coverage choice categories that meet certain specified requirements. The bill would require individual health plans offered or sold after January 1, 2011, to contain a maximum dollar limit on out-of-pocket costs for covered benefits. CAMFT is watching this bill at this time to see what direction it takes. The bill is dead for this year.

Scopes of Practice

AB 877 (Emmerson)

This bill would declare the intent of the Legislature to enact legislation authorizing the Department of Consumer Affairs to appoint a committee of five members to prepare occupational analyses and written reports on any bill that seeks to substantively expand the scope of practice of a healing arts profession. CAMFT was closely watching this bill that is now dead for this year.

Health Information Disclosure

AB 952 (Krekorian)

This bill permits a health care provider or a health care service plan to disclose medical information to an employee welfare benefit plan or to an entity contracting with that employee welfare benefit plan if the disclosure is made pursuant to a request accompanied by a written authorization and it is consistent with HIPAA. The bill was signed by the Governor.

Medi-Cal Reimbursement for Same-Day Visits

AB 1445 (Chesbro)

This bill, sponsored by the California Primary Care Association, would provide that a MediCal patient could seek treatment on the same day from more than one health care provider and the providers' services would be reimbursed. CAMFT is in support of this legislation that is dead for this year.

MFT Education

SB 33 (Correa)

This BBS sponsored bill revises the educational requirements for aspiring marriage and family therapists. CAMFT supported this legislation.

To assure that MFTs are well-prepared to fill positions in the public and community sector, the education and training for MFTs is being enriched with additional educational curricula, including, but not limited to:

- Co-occurring disorders and treatment of severe mental illness;
- Cultural competency and sensitivity;
- Understanding the effects of socioeconomic status;
- Professional writing and documentation of services;
- Finding and using resources, services, and supports for consumers;
- Case management;
- Understanding systems of care;
- Collaborative treatment; and,
- Advocating for persons with mental illness.

Additionally, some of the other features of the bill include:

- Increases the units of instruction from 48 semester/72 quarter units to 60 semester/90 quarter units;
- Eliminates the unit requirement on most courses, e.g., two semester/three quarter units in psychopharmacology—thereby increasing educational institution discretion;
- Increases the counseling hours required within the educational program from 150 to 225 hours, of which 75 may be client-centered advocacy;
- Increases to a maximum of 1,250 hours for supervision and hours of experience including professional enrichment with a maximum of 250 hours; personal psychotherapy with a maximum of 300 hours when triple counted; and client centered advocacy.
- Provides an incentive for treating couples and families where two hours of experience will accrue for each hour for the first 150 hours of such work;
- Modifies the supervision ratios for persons post degree to require at least one additional hour of direct supervisor contact for every week in which more than ten hours of client contact is gained in each setting (in other words, the person who works 30 hours a week in a job and who has an individual supervisor would be required to get two hours of supervision);
- Permits interns working in non-profit or governmental entities to obtain hours of direct supervision via teleconferencing;
- Requires interns, when applying for their licenses, to provide copies of their W-2 tax forms or letters verifying employment or volunteer work status; and,
- Places additional requirements on out-of-state applicants for licensure to remediate educational deficiencies to be reasonably consistent with the changes proposed for applicants who have been educated in California.

The educational requirements will not affect persons already licensed or in the pipeline to acquiring licensure, and will only affect those who begin graduate study on or after August 1, 2012. This bill will also recognize an MFT educational institution as “accredited” if it has been accredited by a regional accrediting agency recognized by the US Department of Education,

which is significantly broader than the law was previously that recognized solely the Western Association of Schools and Colleges.

This bill has been signed into law. Parts of the bill take effect January 1, 2010. The educational requirements take effect August 1, 2012.

Extraterritorial Same-Sex Marriages

SB 54 (Leno)

This bill would provide that a marriage between two persons of the same sex contracted outside California that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state if the marriage was contracted prior to November 5, 2008. This bill further states that two persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, as specified, as are granted to and imposed upon spouses with the sole exception of the designation of "marriage."

Health Care Reform

SB 92 (Aanestad)

CAMFT was in opposition to this bill, however, it is now dead. While it is a huge bill aimed at massive health care reform, we were opposed to a couple of the bill's provisions. Among other things, it would mandate that health plans domiciled in other states would be exempt from abiding by California law. In other words, it would have permitted plans located outside of California to not have to follow California laws, which would mean they would not have to reimburse MFTs, pursuant to California's freedom of choice laws. The requirement for out of state plans, licensed to do business in California, to reimburse MFTs was passed in the mid-80s. It would be greatly problematic to the profession if eliminated.

Managed Health Care and Insurance Plans

SB 296 (Lowenthal)

This bill was a collective effort of professional provider and consumer advocacy organizations involved in the California Coalition for Mental Health. CAMFT is a part of the Coalition and had an instrumental part in drafting this legislation and has played a significant role in shepherding the bill, which of course, it supported. The bill, on and after July 1, 2011, requires every health care service plan and health insurer that provides mental health services to issue an identification card for each enrollee in order to assist the enrollee with accessing health benefits coverage. The bill also requires plans and insurers to provide, on or before January 1, 2012, specified information on their Internet websites, including, but not limited to: a telephone number that a provider or enrollee may call for assistance in obtaining mental health benefits, information on prescription drug formularies, a summary of the process to authorize or approve services, lists of providers or information on how to obtain a provider list, a summary of the grievance process, and information about the independent medical review process. This bill was signed by the Governor.

Health Care Coverage and Benefits

SB 316 (Alquist)

This bill would have required full service health care service plans and health insurers to expend on health care benefits no less than 85 percent of the fees/premiums collected for policies issued, amended, or renewed on or after January 1, 2011. CAMFT supported this legislation that is dead for this year.

Confidential Medical Information

SB 368 (Maldonado)

This bill would have authorized the Office of Health and Human Services Agency, Office of Health Information Integrity to audit the procedures and records of a provider of health care to determine the provider's compliance with the Confidentiality of Medical Information Act. CAMFT was opposed to this legislation, which is dead for this year.

Minor's Consent to Treatment

SB 543 (Leno)

CAMFT continues to be in support of this legislation, even though it appeared to be fraught with potential opposition, that would permit a minor age 12 or older to consent (on his/her own) to mental health services on an outpatient basis, or to residential shelter services, if the child was sufficiently mature to participate in the treatment. We support the intent of the sponsor (NASW) who is trying to assist youth who are struggling with LGBT issues to seek needed therapy to address the feelings they are experiencing. This bill is now dead for this year.

Regulatory Boards

SB 638 (Negrete-McLeod)

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief and would authorize successor board members and bureau chiefs to be appointed. CAMFT opposed this legislation that is now dead for this year.

Licensing of Alcohol and Drug Abuse Counselors

SB 707 (DeSaulnier)

This bill was considerably different than last year's legislation (AB 239), which was also intended to license alcoholism and drug abuse counselors. AB 239 was vetoed by the Governor. Previously, CAMFT started out in opposition to that bill but reached the point where all of our requested amendments were accepted and we moved to a position of "support." This bill, about which CAMFT had taken the position "oppose unless amended," would have placed the licensing of alcohol and other drug counselors under the jurisdiction of the State Department of Alcohol and Drug Programs, rather than the BBS, as previously proposed. The bill left much to be determined by regulation, which we generally find more difficult to influence than the legislative process. The scope of practice was excessively broad and could be misconstrued as permitting the counselor to work beyond the intended scope of practice. The proposal provided for a somewhat confusing tiered licensing scheme with differing requirements for persons who will be registered, issued certificates, or a license at various levels of education/experience. The bill provided for the license to be issued to persons with specified masters' level degrees, but MFT degrees, or other degrees qualifying for an MFT license, were not acceptable degrees. There was no exception in the law for providing alcohol and drug treatment by licensed mental health professionals.

As indicated, our position was back to "oppose unless amended" for the variety of reasons indicated, and while we were willing to work with the author and Department to fix the flaws, the bill died is dead for this year.

Professions and Vocations
SB 762 (Senator Aanestad)

This bill makes it unlawful for a city or county to prohibit a healing arts licensee from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee. CAMFT supported this legislation because a local municipality should not be permitted to limit a license that is issued by a State Regulatory Body. This bill has been signed by the Governor.

Licensed Professional Clinical Counselors
SB 788 (Senators Wyland and Steinberg)

This bill provides for the licensing, registration, and regulation of licensed professional clinical counselors and interns by the BBS.

The following timeline has been put forward by the BBS:

- Authorizes acceptance of LPCC Intern applications on 1/1/2011;
- Authorizes acceptance of LPCC examination eligibility applications on 1/1/2012;
- Authorizes acceptance of LPCC applications for out-of-state applicants on 1/1/2011;
- Authorizes acceptance of grandfathered LPCC applications between 1/1/2011 and 6/30/2011.

For LMFTs and LCSWs to become dually licensed as LPCCs in California, one should compare the LPCC educational requirements (B&P Code §4999.32) against one's transcript to see if there are deficiencies. If there are deficiencies, the deficient courses can be obtained now in preparation for acquiring the license. As indicated, one must have had in his/her educational program seven of the nine core courses. Thus, one can take two (or possibly three if one began graduate study prior to 1996) of these required courses outside of the degree program. These courses can be taken now to remediate the deficiencies. Each course must be a minimum of three semester or four and one-half quarter units. Courses taken now to satisfy these educational requirements are to be post-master's or post-doctoral courses from an accredited or approved educational institution. The nine core courses are: counseling and psychotherapeutic theories and techniques; human growth and development; career development; group counseling; assessment, appraisal and testing; multicultural counseling; diagnosis; research; ethics and law. For more complete descriptions of these core courses, carefully review the section of law that follows. Other required education can be completed outside of one's degree; such courses mirror the requirements for LMFTs (e.g., psychopharmacology, human sexuality, etc.).

LMFTs and LCSWs do not need to take the three exams indicated, but may have to take an examination if the BBS and Office of Professional Examination Resources determines that there are differences between the practices of each of the professions. It is anticipated that the differences between the professions will be minimal, therefore any required additional testing should be nominal. (B&P Code §4999.54.)

For more information on the educational requirements, grandfathering requirements, and timeline, please log on to www.camft.org or www.bbs.ca.gov.

Single Payer Health Care Coverage

SB 810 (Leno)

This bill would have established the California Healthcare System administered by a newly created California Healthcare Agency, which would have established a single-payer health care plan. This legislation has been vetoed twice by the Governor. CAMFT was watching this legislation that was unlikely to progress given California's budget. This bill is dead for this year.