LEGISLATIVE & REGULATORY UPDATE

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legislative update

The California legislative session for 2019 is ending. Hundreds of bills were introduced and many were signed or vetoed by the Governor. CAMFT reviewed these bills to determine the impact on CAMFT members and the profession. This article provides a brief overview on CAMFT’s legislative priorities/outcomes for 2019. For more information on what bills CAMFT is sponsoring or taking a position, we encourage members to review CAMFT’s Legislative Action Center.

STATE ADVOCACY

CAMFT Sponsored Legislation
SB 539 (Caballero)—WET Funding: Co-sponsored by CAMFT, the California Council of Community Behavioral Health Agencies (CBHA), and the California Behavioral Health Planning Council (CBHPC), this bill helps address the mental health workforce shortage by funding the Office of Statewide Health Planning and Development (OSHPD) 2020-2025 Workforce Education and Training (WET) Five-Year Plan. Access to services by California’s diverse population is essential to increase early identification and reduce years spent living with untreated mental illness. Workforce development, which includes recruiting, training and retaining behavioral health staff, is a top priority for CAMFT.

Although SB 539 was held in the Senate Appropriations Committee’s suspense file, CAMFT also submitted a budget proposal request to fund the implementation of the next five years of the WET program. CAMFT was successful in obtaining funding through the Governor’s proposed budget and the final budget was signed by the Governor.

Other State Legislation
AB 5 (Gonzalez)—Independent Contractors: 2018 case law, as established in the case of Dynamex Operations West, Inc. v. Superior Court of Los Angeles, creates a presumption that a worker who performs services for an employer is an employee (rather than an independent contractor) for purposes of claims for wages and benefits. This bill would state the intent of the Legislature to codify the Dynamex case and clarify its application. The bill also contains exemptions for specified professions that are not subject to wage orders of the Industrial Welfare Commission or the ruling in the Dynamex case, including physicians, securities brokers, lawyers, psychologists and other professionals.

CAMFT joined with hundreds of other professional organizations and stakeholders to add many California professionals, including mental health therapists, as exempted professions within AB 5. If exempted, these professionals would revert to the historical employee/independent contractor test that existed prior to the 2018 Dynamex case. CAMFT has received a large amount of member feedback expressing concerns about the effect the Dynamex case has had on their practice, ability to contract, and negative impact on patient access to care. The coalition included NASW-CA, CALPCC, the California Hospital Association, and California Chamber of Commerce. Ultimately, the legislation that moved forward did not include an exemption for LMFTs and other master’s level mental health professionals. CAMFT took an Oppose Unless Amended position on this legislation, which was signed by the Governor. CAMFT is exploring options for the 2020 legislative season to obtain an exemption for LMFTs (and other mental health professions).

AB 8 (Chu)—Mental Health in the K-12 Schools: The purpose of this bill is to increase mental health services geared towards children and youth. AB 8 would place paid mental health professionals onto campuses by 2023, both providing timely services for children as well as breaking down stigma surrounding mental health generally. CAMFT took a position of support on this bill. This bill has become a two-year bill and Asm. Chu can move it forward in 2020.

AB 630 (Low)—Consumer Notification: This BBS sponsored bill requires psychotherapy providers who provide services to give clients a notice disclosing where complaints against the therapist may be filed. This notification can be included within a provider’s general intake, disclosures or informed consent forms. CAMFT was in support of this legislation, and it was signed by the Governor.

AB 680 (Jones-Sawyer)—Mental Health Training: This bill requires the Commission on Peace Officer Standards and Training (POST) to adopt two mental health training courses for local public safety dispatchers, a basic training course of at least four hours, and a continuing education course of at least one hour. According to the author, “AB 680 will provide dispatchers, who are often the first point of contact in a crisis, with valuable training to help identify a mental health crisis and inform law enforcement how to appropriately approach the situation on the ground…This bill will both better inform those on the ground and provide important health intervention procedure for the person in crisis.” CAMFT was in support of this bill, and it was held in Appropriations Committee.

AB 769 (Wood)—LPCCs in FQHCs/RHCs: This bill would add licensed professional clinical counselors (LPCCs) to the list of health care professionals that qualify for a face-to-face encounter with a patient at Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) for purposes of a per-visit Medi-Cal payment under the prospective payment system (PPS). CAMFT sponsored similar legislation in 2016 that added LMFTs to the list of providers; that legislation was signed by the Governor in 2016. CAMFT is in support of this legislation. Unfortunately, AB 769 did not make it out of the Appropriations Committee.

AB 1116 (Grayson)—Peer Support Teams for Firefighters: AB 1116 creates peer support teams to help assist firefighters navigate the
psychological and emotional stress that first responders experience. While CAMFT is in full support of the intent of this bill, CAMFT is opposed to the language as written, as it conflicts with, and is vague, as to the obligations of peer support team members in circumstances of child abuse or scenario such as patient threat to self or others. CAMFT asked for a veto to this legislation unless the language was clarified. Unfortunately, this bill was signed by the Governor with the language as is.

AB 1117 (Grayson)—Peer Support Teams for Law Enforcement Personnel: AB 1117 is nearly identical to AB 1116, but directed at law enforcement personnel. This bill was also signed by the Governor.

AB 1145 (Garcia)—Child Abuse Reporting: The Child Abuse and Neglect Reporting Act requires a mandated reporter to make a report whenever the mandated reporter, in his or her professional capacity has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law provides that “child abuse or neglect” for these purposes includes “sexual assault,” that includes, among other things, the crimes of sodomy, oral copulation, and sexual penetration. This bill would provide that “sexual assault” for these purposes (mandated reporting) does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age. CAMFT supported similar legislation in 2015, and again is in support of AB 1145. Assemblyperson Garcia has made AB 1145 a two year bill.

AB 1651 (Medina)—LEP Supervision of Associates and Trainees: Currently, an MFT Associate or Trainee can receive supervision under an LMFT, LPCC, LCSW, psychologist or psychiatrist. This bill would expand the definition of “supervisor” to include a licensed educational psychologist who has provided psychological counseling pursuant to the Educational Psychologist Practice Act. In the current language, up to 1,200 hours could be gained under an LEP working within the school setting. The sponsor’s rationale for allowing LEPs to serve as supervisors is that they have qualifications to supervise in school educations settings that other types of supervisors are unlikely to have. CAMFT is always striving to obtain more supervision opportunities for pre-licensees while ensuring consumer protection. CAMFT has received mixed reactions from the membership and therapists working within the school system on the prospect of LEPs providing supervision. Although CAMFT did express its concerns about LEP direct work experience with DSM diagnoses and severe mental health issues, the Board of Behavioral Sciences supported AB 1651 and indicated no concerns of consumer protection. Accordingly, AB 1651 moved forward. CAMFT encouraged the sponsors of the bill, as well as the BBS to embolden additional training for LEP supervisors in these situations. This bill was signed by the Governor.

SB 360 (Hill)—Mandated Reporters, Clergy: Existing law, the Child Abuse and Neglect Reporting Act, makes certain persons, including clergy, mandated reporters. Under existing law, clergy are required to report whenever the clergy, in their professional capacity has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect, except when the clergy acquires the knowledge or reasonable suspicion of child abuse or neglect during a penitential communication. Failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor. This bill would delete that exception for a penitential communication, thereby requiring clergy to make a mandated report even if they acquired the knowledge or reasonable suspicion of child abuse or neglect during a penitential communication. This bill has been pulled by the author, which was being monitored by CAMFT.

SB 428 (Leyva)—Mental Health Training: This bill would add completion of a course in youth mental health first aid to the list of requirements for obtaining a clear multiple or single subject teaching credential. According to the author, “California is in the midst of a youth mental health crisis…Teachers are on the frontlines of these crises and as such should be trained to identify and help students who are suffering. Research shows that the sooner people get help for mental health and substance use concerns, the more likely they are to have positive outcomes.” CAMFT is in support of this bill. This bill was vetoed by the Governor.

SB 660 (Pan)—Mental Health Counselors: This bill originally created a requirement for higher educational entities in California to hire one fulltime equivalent mental health counselor per 1,500 students enrolled at each of their campuses. A similar bill was introduced in 2018 that was vetoed by Governor Brown. The bill, as currently written, does not define “mental health counselor” as to whether LMFTs, or MFT pre-licensees would be included. While CAMFT is supportive of adding additional mental health to the higher education system, we want to ensure that MFTs are included as mental health counselors. Because the author changed the requirement to a general goal, CAMFT is watching this bill and will work with the sponsors of the bill on the vague definition if the bill moves forward as a requirement. This bill was held in the Appropriations Committee.

BBS UPDATE

Supervision Regulation Package: The BBS’s rulemaking proposal pertaining to supervision was approved by the BBS at its meeting in November 2016 and was held aside while awaiting passage of AB 93, the BBS’s supervision legislation. The proposal was submitted to DCA for review on April 18, 2019. The packet will need to go back to the BBS Board for some language edits, however, BBS staff does not anticipate the changes to delay the process.

Private Practice Definition: The BBS Policy & Advocacy Committee is recommending changes to the licensing laws for LMFTs, LPCCs, and LCSWs, which will be reviewed by the BBS Board of Directors at its next meeting in September. The proposal includes changes to the
definitions of the various types of practice settings that licensees and applicants may be working in, the supervision of associates in private practice settings, and the increase in number of supervisees in private practice. If the Board approves the Committee’s recommendations, the changes will be introduced as 2020 legislation.

**Licensure Fees:** The BBS Policy & Advocacy Committee is also recommending for the Board to approve increase in Board licensure fees for LMFTs, LPCCs, and LCSWs.

**Future Issues of Interest:** The BBS Policy & Advocacy Committee is also recommending the Board convene the Exam and Licensing Committee in the near future (possibly 2020) to have further discussions on substantial changes to the subsequent registration number, clinical exam limits, and requiring continuing education for registered associates.

**FEDERAL ADVOCACY**

**Medicare (HR 945 and S 286):** CAMFT’s priority on the federal landscape is to pass legislation that will allow LMFTs to receive reimbursement as Medicare providers. For the 2019-2020 Congress, CAMFT obtained bi-partisan co-authors in both the House and Senate (Sen. Barrasso (R-WY), Sen. Stabenow (D-MI), Rep. Thompson (D-CA), and Rep. Katko (R-NY)). CAMFT has reached out to all members asking that they encourage their elected officials to co-sponsor HR 945 and S 286. If you have not already done so, please contact your legislator today to allow LMFTs to be Medicare providers. HR 945 currently has 93 co-sponsors and S 286 has 29.

**Veterans Affairs:** In May 2018, the Department of Veteran Affairs (VA) released their long employment standards for LMFT hiring within the VA. This was a two year delay, following the 2016 law, removing the requirement that LMFTs must be graduates of COAMFTE-accredited programs. CAMFT is very concerned about the make-up of the 2018 standards, especially the inability of LMFTs to be promoted above G-11 without a COAMFTE degree. CAMFT has had little success over the last year influencing the VA to amend their standards and will be seeking congressional action in 2020.

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