

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 2, 2009
 SUBJECT: Governor's Decision to "Opt-Out" of Physician Supervision
 of Nurse Anesthetists for Medicare and MediCal Services
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REQUESTED ACTION:

Staff is asking that the members direct staff on how to act upon the Governor's action to "opt-out" of the Medicare and Medicaid (MediCal) requirement that California Registered Nurse Anesthetists (CRNAs) be supervised by physicians. The California Society of Anesthesiologists and the California Medical Association is opposed to the Governor's action and have asked the Board to examine and review the relevant issues surrounding it.

RECOMMENDATION:

The Board may decide to:

- Do nothing; allowing the legal community to grapple with the issues surrounding the Governor's action;
- Write the Governor and ask that he reconsider his decision in light of the Legislative Counsel's opinion that California law requires physician supervision, and therefore "opting out" is not consistent with state law;
- Direct the Advisory Committee on Physician Supervision to further study the issues and report their findings back to the Board.

SUMMARY:

At the October Board meeting, the California Society of Anesthesiologists and the California Medical Association provided the members with written materials explaining the issues relating to the Governor's action to "opt-out" of the Medicare and MediCal requirement that CRNAs be supervised by physicians. (Technically speaking, his action, on June 10, 2009, was exercising the option pursuant to the final rule published in the November 13, 2001, Federal Register, Volume 66, Number 219) They have asked the Board join them in opposing the Governor's action, and work to persuade him to reverse his decision.

In summary, Federal regulations governing Medicare and Medicaid services now authorizes hospitals to be exempt from the requirement that CRNAs be supervised by physicians if the Governor attests to three conditions:

1. The Medical and Nursing boards have been consulted about the access and quality of anesthesia provided in his or her state;
2. The state's citizens are better served if supervision by physicians is not required for CRNAs;
3. The opt-out of the physician supervision requirement is consistent with state law.

While there may be some disagreement about the merits of requiring physician supervision of CRNAs, and a difference of opinion from the Nursing Board relating to allowing independent practice of CRNAs, the Legislative Counsel Bureau has issued a formal opinion that California law requires physician supervision.

The reasons stated by Mr. Schwarzenegger's office for his action was to provide greater anesthesia services in counties where there are inadequate numbers of anesthesiologists. The Governor received a number of letters in support of his action from rural towns such as Willows, Sonora, Hanford, and Oroville, where there are few anesthesiologists willing to provide services.

CONCLUSION:

Legally speaking, it appears that California may not opt-out of the requirement that CRNAs be supervised by physicians, as this would not be consistent with California law. For that reason, staff would ask the members to choose one of the following options:

- Take no action; allowing the legal community to grapple with the issues surrounding the Governor's action;
- Write the Governor and ask that he reconsider his decision in light of the Legislative Counsel's opinion;
- Direct the Board's Advisory Committee on Physician Supervision to further study the issues and report their findings back to the Board.

FISCAL CONSIDERATIONS:

Unknown, although there will be no cost or savings to the Medical Board.

PREVIOUS MBC AND/OR COMMITTEE ACTION:

In the past, the Nursing Board has voiced its opinion that CNRAs are independent practitioners and are not required to have physician supervision. As late as 2005, the Executive Officer of the Board of Registered Nursing (BRN) issued a statement that CRNAs have a status as licensed independent practitioners. In 2002, the Executive Director of the Medical Board wrote to the BRN cautioning that this opinion was contrary to any opinions provided by the Attorney General's Office or DCA legal staff. To date, there has not been any legal documentation provided by the BRN to support their opinion that CRNAs are independent practitioners.