

LEGISLATIVE AND REGULATORY UPDATE

Written on December 1, 2017

We are at the end of the first year of a two-year legislative cycle for 2017/2018. Hundreds of bills were introduced and have now been signed, vetoed or turned into two-year bills (for additional work). CAMFT has reviewed these bills to help determine the impact on CAMFT members and the profession. This article provides a brief overview on CAMFT's legislative priorities/outcomes for 2017. 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 Legislation for 2017

AB 191 (Wood)—Psychiatric Holds: This bill adds LMFTs and LPCCs to the list of eligible providers who can act as a second signatory to extend involuntary commitments. Currently, extensions on involuntary mental health holds need to be signed first by a psychiatrist or psychologist and then either a second psychiatrist/psychologist or social worker or registered nurse (RN). Although LMFTs and LPCCs routinely work as part of the treatment team within treatment centers where assessments are made, they are unable to act as secondary signers. When treatment teams need to find a secondary signer, there are often delays because the pool of signers is limited and, thus the patient could end up being held longer than the 72 hours, breaching the patient's rights. The addition of LMFTs and LPCCs allows facilities the flexibility to efficiently utilize their provider care teams while maintaining patient safety and patient's rights. This bill was signed by the Governor and goes into effect on January 1, 2018.

SB 374 (Newman)--Mental Health Parity: This bill mandates health care plans regulated by the Department of Insurance (DOI) to cover mental health and substance use disorder benefits in compliance with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). This is a follow-up bill to SB 857 (2014--Committee on Budget and Fiscal Review) that mandated the same for plans covered by the Department of Managed Health Care. The purpose of the bill is to reinforce and clarify that the DOI has the authority to enforce the MHPAEA. CAMFT is a co-sponsor of this bill, along with the California Psychiatric Association. This bill was signed by the Governor and goes into effect on January 1, 2018.

Other 2017 State Legislation

AB 93 (Medina)—Supervision Requirements: This bill, sponsored by the Board of Behavioral Sciences (BBS), revises and recasts some LMFT supervised experience requirements. To

address changing and evolving supervised experience and supervisor relationships, the BBS formed a special committee in 2014, to examine supervision requirements. Through that Committee, and relying on fruitful stakeholder participation, came SB 620 (2015) and AB 93. CAMFT participated in all stakeholder meetings and has taken a position of support on this legislation.

Unfortunately, in recent months the Senate Business and Professions Committee has utilized AB 93 as a vehicle to make amendments to the 90-day rule (which allows providers to count hours between graduation and registration if the provider has applied for a registration number within 90 days of the degree posting). The Senate Business and Professions Committee raised a public protection concern that the 90-day rule allows unregistered individuals to provide mental health services without a fingerprint clearance. In response to the Senate Business and Professions Committee's concerns, the BBS Policy & Advocacy Committee, in October 2017, voted to recommend to the BBS Board of Directors the removal of the 90-day rule.

CAMFT is very concerned about this vote and recommendation, believing it will not only lead to further exploitation of pre-licensees but will also harm continuity of care and lead to possible patient abandonment. CAMFT will continue to work with the BBS to find a viable alternative to the removal of the 90-day rule in the hopes that the BBS Board rejects the Committee's recommendation. CAMFT will keep members apprised of this situation, and send out an alert if any action is required by members.

AB 154 (Levine)—Prisoners and Mental Health: This bill was originally drafted to allow the court to order a defendant to serve all, or part, of their state prison or county jail sentence in a residential mental health facility, when a defendant establishes that they meet specified criteria regarding mental illness. Defendants with a current conviction for a violent felony would not qualify. This bill also mandated that the California Department of Corrections and Rehabilitation (CDCR) or the county jail prepare a post-release mental health treatment plan six months prior to the defendant's release. Recent amendments watered-down the language to simply encourage the court to recommend mental health treatment during a prisoner's term if they suffer from mental illness. Although CAMFT was in support of this bill, the Governor vetoed the bill stating that, "The CA Department of Corrections and Rehabilitation already conducts mental health evaluations on every defendant sentenced to state prison, regardless of a recommendation from the court."

AB 254 (Thurmond)—LEA and Mental Health Services: This bill requires the Department of Health Care Services, if funded, to establish the Local Educational Agency Pilot for Overall Needs program for the purpose of improving the mental health outcomes of K-12 students through a "whole person care approach" including mental health. Given CAMFT's priority of increasing mental health within the K-12 public school system, CAMFT took a support position on this bill. This bill was held in the Appropriations Committee and will not move forward this legislative season.

AB 387 (Thurmond)—Minimum Wage and Allied Health Professionals: This bill expands the

definition of employer under provisions related to minimum wage, to include any person who persons engaged in a period of supervised work experience to satisfy requirements for licensure, registration, or certification as an allied health professional (as defined under federal law). This bill met with fierce opposition from numerous health care provider and hospital advocacy groups with concerns about fiscal implications. This bill remains unclear as to its definition of what professions actually fall under “allied health professional.” Although this bill is being heavily lobbied by labor advocacy groups, it is not likely to move forward, as currently written given the opposition by state, county, private employers and provider groups.

CAMFT is aware of the controversial nature of this issue, not only within the California work arena, but within the CAMFT membership. The CAMFT Board of Directors has long prioritized ensuring that pre-licensurees are not exploited, and that the therapy field is open to a financially diverse population. CAMFT is also aware of the financial struggles of low or no-pay client service agencies. Until further fiscal analysis is put forward, CAMFT has taken a neutral position on this bill. Given the controversial nature of this bill, it has become a two-year bill.

AB 595 (Wood): This bill requires plans regulated under the Department of Managed Health Care that intend to merge with, consolidate, acquire, purchase, or control a health care service plan doing business in California to give notice to, and secure the prior approval from, the Department. Consolidation of the health industry can often mean fewer choices and competition, with little to no benefit to the consumer or the provider. The state must be able to scrutinize these deals and ensure that the mergers are good for California consumers. CAMFT has taken a position of support on this legislation. This bill has become a two-year bill.

AB 834 (O’Donnell)—School Based Health Programs: This bill would establish an Office of School-Based Health Programs (OSBH) that would support and advise school districts on issues related to the delivery of school-based health services. Due to a recent federal change, schools will soon have access to far greater resources to pay for these services. This change means that many more students will be eligible to receive health services at school, including school nurse services for chronic conditions, mental health and counseling services, occupational therapy, speech pathology, audiology, and targeted case management. The OSBH program would develop infrastructure within the various state departments to increase access to services and remove barriers to reimbursement. CAMFT has selected increasing mental health services within the K-12 system as a priority and has taken a position of support on this legislation. This bill was held in the Appropriations Committee and will not move forward this legislative season.

AB 1116 (Grayson)—Peer Support and Crisis Referral: This bill provides that a communication made by emergency service personnel to a crisis hotline or crisis referral service is confidential and shall not be disclosed in a civil or administrative proceeding. This bill originally added this communication under the psychotherapist-patient privilege; concerned about unintended consequences of the odd placement within the Evidence Code, CAMFT originally opposed this bill. After negotiations, the author amended the language to include this confidential communication in a more appropriate location, and given the merits of the bill in itself, CAMFT

has taken a position of support. This bill has been placed in the inactive file by Senator Atkins for 2017.

AB 1188 (Nazarian)—Loan Repayment: Prior law allowed MFTs, and other BBS and Board of Psychology licensees, who work at publicly funded mental health facilities or nonprofit mental health facilities, and provide direct patient care, to apply for grants under the Licensed Mental Health Service Provider Education Program to reimburse for educational loans. This bill increases each licensee's annual renewal fee by \$10 to be applied towards the existing Education fund for his/her license. The CAMFT Board of Directors has made it a priority to advocate that pre-licensees and newly licensed MFTs have increased opportunities for paid employment—CAMFT believes this bill will assist in that goal. This bill is co-sponsored by NASW and CALPCC, and supported by the California Psychological Association. CAMFT is in support of this legislation. This bill was signed by the Governor.

AB 1134 (Gloria)-- MHSOAC Fellowship Program: This bill authorizes the Mental Health Services Oversight and Accountability Commission to establish a fellowship program for the purpose of providing an experiential learning opportunity for a mental health consumer and a mental health professional. The fellowships provided for in this bill would complement the make-up of the Commission, which includes two mental health consumers, as well as two mental health professionals appointed by the Governor. Bringing fellows with professional and life experience into the Commission's offices would fortify its ability to ensure that it has access to subject matter experts who can inform and guide the Commission's operations. CAMFT is in support of this legislation. This bill has been signed by the Governor.

AB 1591 (Berman): -- LPCCs within the FQHC/RHCs: This law provides that federally qualified health center services and rural health clinic services, as defined, are covered benefits under the Medi-Cal program to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. "Visit" is defined as a face-to-face encounter between a patient of a federally qualified health center or a rural health clinic and specified health care professionals. Similar to CAMFT's AB 1863 (2016), which made marriage and family therapists health professionals covered under that definition, this bill includes licensed professional clinical counselors within those health care professionals covered under that definition. CAMFT is in support of this legislation. This bill was vetoed the Governor, arguing that there are other ways to provide payment to LPCCs aside from adding them as providers.

SB 191 (Beall)—Pupil Health: This bill creates the County and Local Educational Agency Partnership Fund to promote partnerships between counties and school districts in an effort to better address student mental health and substance use disorders. This bill reduces barriers to access for children and families, such as stigma, affordability, and problems recognizing symptoms, and provide maximal coverage for universal prevention and early intervention programs. As noted above, CAMFT has prioritized increasing mental health services in the K-12 system, and believe this legislation will assist in that effort. CAMFT is in support of this legislation. This bill was held in the Appropriations Committee and will not move forward this legislative season.

SB 562 (Lara)--The Health California Act: The primary intent of this bill was to replace private medical insurance with a government health care system providing comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all 38 million residents of the state. Proponents of a single-payer system have gained a lot of traction over the last few years, especially with the recent threat of an ACA repeal. Historically, however, single-payer bills have been given a hefty price-tag – often an amount that exceeds the entire California state budget. This legislation was heavily opposed by health care plans, and received varying responses from provider groups across the state. The bill, as currently written, did not address the specifics of financing. During its June Board meeting, the Board voted to take a position of support on the concept of single-payer, and articulate concerns about the fiscal unknowns. Subsequent to the Board meeting, SB 562 was held in the Assembly Rules Committee.

Recognizing the need for continued dialogue on universal health care, and Affordable Care Act uncertainties, Assemblypersons Joaquin Arambula and Jim Wood are co-chairing hearings of the California Select Committee on Health Care Delivery and Universal Coverage that affords both expert testimony and public comment on these issues. CAMFT continues to monitor and attend the hearings and will keep members apprised of any updates.

SB 798 (Hill)—Healing Arts Board: This bill, among other things, removes confidentiality protections of the psychotherapist-patient privilege by making private patient information protected by the privilege subject to investigations or proceedings conducted by the Medical Board without patient consent. There was concern within the psychotherapy community, that this bill allowed the Medical Board to overstep their authority and access client files regardless of patient consent—files that contain patient’s most embarrassing and private information. Although this bill did not directly affect MFTs, it was not unlikely that the intent and language would move from the Medical Board to the BBS. For the above reasons, CAMFT joined the California Psychiatric Association in opposing this legislation to pressure the author to remove the particular section. The lobbying efforts worked and the bill has moved forward without the section removing confidentiality protections. This bill was signed by the Governor.

Non-Legislative Advocacy

LMFTs within FQHCs/RHCs: CAMFT-sponsored Assembly Bill 1863 (2016-Wood) added LMFTs as providers within Federally Qualified Health Centers (“FQHCs”) and Rural Health Clinics (“RHCs”). The bill was intended to increase the pool of licensed professionals who could be hired in these entities so that adequate mental health services could be provided to the patients. The bill was signed by Governor Brown in 2016 and was set to go into effect on January 1, 2017. Unfortunately, the implementation date has been moved to no later than July 2018. CAMFT will continue to advocate that this bill move forward as required in law and that FQHCs/RHCs can begin pursuing positions for MFTs after July 2018.

FEDERAL ADVOCACY

Medicare: CAMFT's priority on the federal landscape is to pass legislation that will allow LMFTs to reimburse as Medicare providers. CAMFT has obtained bi-partisan co-authors in both the House and Senate (Sen. Barrasso (R-WY), Sen. Stabenow (D-WY), Rep. Thompson (D-CA), and Rep. Katko (R-NY)). HR 3032 has been introduced in the House, and S 1879 in the Senate. HR 3032 has 42 co-sponsors, including 11 from California. S 1879 has 8 co-sponsors, and neither Senators Feinstein nor Harris have signed on to date. We are hopeful that through member pressure, we can get both Senators as co-sponsors in 2018.

Veterans Affairs: CAMFT continues to monitor Department of Veteran Affairs (VA) as they discuss implementation of the Military Construction, Veterans Affairs, and Related Agencies Appropriation Bill. This bill, signed into law in 2016 removed the requirement that LMFTs must be graduates of COAMFTE-accredited programs in order to work at the VA. A committee consisting of five LMFTs employed through the VA, and a psychologist, have begun drafting the new employment standards for LMFT hiring with a target date of completion of Fall. Fall has essentially come and gone with no observable movement to date. CAMFT has begun circling back with Congress to pressure the VA to implement these standards, as required by law.

Department of Homeland Security: The U.S. Department of Homeland Security, Immigration and Customs Enforcement Department ("Department") has moved to exclude LMFT opinion testimony or declarations in recent deportation cases. The government incorrectly argues that LMFTs can only diagnose or administer and interpret psychological testing if done within the purview of solving a marriage counseling problem or other family issues. CAMFT has submitted amicus briefs, as well as letters to presiding judges, arguing that it is within an LMFT's scope of practice to diagnose and treat, as well as administer psychological testing to, an individual in the context of his/her relationships, which may include work relationships or other relationships, not just marital and familial relationships. In addition, CAMFT has reached out directly with the Department on this important issue in the hopes of remedying this situation directly. CAMFT has placed [sample letters and briefs](#) on the CAMFT website those members who encounter this situation.

Oregon to Recognize CA LMFTs: The Oregon Board of Licensed Professional Counselors and Therapists recently passed a rule amendment that will make it easier for California licensed MFTs to obtain licensure in Oregon. The rule amendment adds California's BBS MFT Written Clinical Exam as an approved competency exam for licensure as a Licensed Marriage and Family Therapist in Oregon. For more information on this new rule, please see: <http://www.oregon.gov/oblpc/Pages/web-lr.aspx>

Nuclear Regulatory Commission (NRC): In 2010, CAMFT petitioned the NRC to include LMFTs as "Substance Abuse Experts." Over the last six years, numerous delays at the NRC have impeded CAMFT's petition to be put out to public comment. Although CAMFT was assured that this process would begin by late 2016, the NRC expects additional delays given President Trump's

recent cautions about new regulatory packages. This is disappointing news, given our work to date, but we remain vigilant to push this package forward. CAMFT has requested members to reach out to the NRC advocating to push the petition out to public comment. [Click here](#) to add your voice with the NRC.