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*Inside this issue:*



# The New Health Law and Your CalPERS Health Plan

By Ted Anagnoson, Editor

President Obama signed the Patient Protection and Affordable Care Act into law on March 23, 2010. According to the law, the first provisions, including extending coverage of children from age 23 to age 26, became effective six months later, on September 23rd. All in all, the adjustments to CalPERS health plans from the Act are small, reflecting the comprehensive nature and quality coverage already provided through CalPERS, but some of the changes may affect a few CalPERS retirees.

The law includes five basic sets of provisions to extend health insurance to cover over half of the 50.7 million people who lacked health insurance in 2009. That number equates to 16.7% of the American public, and almost 19% of those under age 65. Almost everyone 65 and over is covered by Medicare.

**The fundamental provision** is a requirement that everyone have health insurance in 2014, with a penalty of $695 per year or 2.5% of household income if you do not. Sliding scale subsidies are provided for those with incomes under 400% of the federal poverty line, and there is a cap on out-of-pocket costs for all those purchasing policies.

**The second provision is a substantial expansion of Medicaid** (Medi-Cal in California), including all those with incomes under 133% of the federal poverty line. This provision will help adults without children, heretofore not eligible for Medicaid, in particular. The federal government will require states to reimburse providers in Medicaid at 90% of the Medicare reimbursement levels.

**The third provision is to establish health insurance exchanges in each state** to assist those wishing to purchase

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## On the 2010 Election:

**"You can't expect to support and finance political candidates who preach that government is menacing and wasteful, that public employees are incompetent and corrupt, that taxes are always too high and destroy jobs, and then turn around and expect that the government will respond to your demands to hold down the cost of health care, or fund basic research, or provide good schools, efficient courts and reliable transportation systems."**

Steven Pearlstein, "Can Business Afford Jim DeMint?"
Washington Post, September 29, 2010

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# From the President...

Since these lines are being written the day before the mid-term election, I will refrain from commenting on political matters – although the temptation to do so is great. By the time this newsletter goes to print, a number of critical issues will have been decided, some of which may impact us as higher education faculty retirees.

**State Council meeting.** Instead let me make a few remarks about the recent ERFA State Council meeting, which took place on October 16 in the student union at CSU Dominguez Hills. This was the first time we had one of our meetings on this campus, and I want to say "Thank you!" again to the folks in our Dominguez Hills affiliate who made the arrangements for us! All of us felt welcome – and well taken care of!

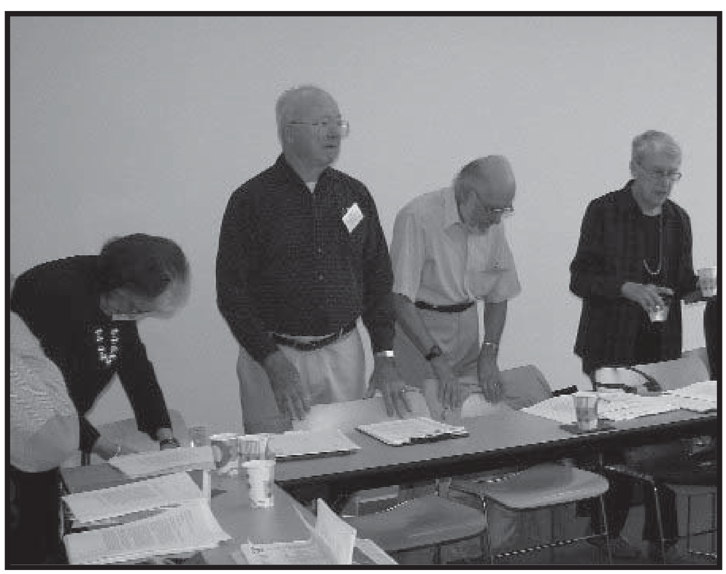
Rather than reviewing the meeting agenda, I want to focus on one important action item, an amendment to the CSU-ERFA bylaws that had been postponed from the April State Council meeting: We amended Article II, Section 1, by changing the terms of officers from one year to two years. The rationale was simple: It takes a newly-elected officer nearly a year to fully appreciate his or her responsibilities and feel comfortable in the position. (I know I am not speaking just for myself).

In that context a suggestion was made to have staggered terms for the president and vice president, and also for the secretary and the treasurer. Since it was getting close to the end of the session, it was proposed that the executive committee address this matter and make a decision.

Well, we did consider the pros and cons of this approach, and in the end we decided that it would be more practical to have identical terms for all four officers. Our reasoning: It is a common practice, though not a requirement, for the vice president to succeed to the office of president once the latter's term has expired and s/he does not wish to be re-nominated. Thus, it would be much less complicated if the president's and vice president's terms began and ended at the same time. And the same reasoning applies if the secretary or the treasurer were to be nominated for the office of president (or vice president).

**Public employee pensions.** Finally, let me make one comment after all which could be regarded as being of a political nature. What struck me during the weeks and months leading up to the mid-term election was one particular campaign topic: the relationship between public employee pensions and the budget problems of the state. I worry that, even after the election, this will continue to be a political issue. If it does, we as an organization of public sector retirees may feel obligated to become more actively involved in this particular debate. Just a thought!

H. Dieter Renning
President, CSU-ERFA



## CSU-ERFA State Council Meeting

Pictured at the October 16, 2010 State Council meeting at CSU Dominguez Hills are, from left, Barbara Sinclair, Vice President; Don Cameron, Executive Director; Dieter Renning, President; and Judith Stanley, Secretary. See story, p. 7.

# Q & A: What Legal Case Shows That Our Pensions Have the Protection of Contract Law?

## By Tom Donahue, Pre- and Post- Retirement Concerns Committee

**Q: Can you direct me to a legal case showing that our pensions have the protection of contract law?**

**A.: Yes. There was a markedly influential case in 1978, "Betts vs. the Board of Administration," cited many times in recent years.** The case involves Bert A. Betts, California Treasurer from 1959 – 1967, who sued the retirement system in 1974 to have his retirement pension calculated on the figure of the State Treasurer's salary in that year rather than on the figure paid in 1967, the year of his retirement.

**California Supreme Court.** The California State Supreme Court found in favor of Mr. Betts, and the language in the opinion written by Justice Richardson has been quoted quite often since that time. Justice Richardson wrote, "A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity." Further, Justice Richardson held--based on previous case law-- that "*changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages*." [Italics in the original.]

This case, which can be viewed on Lexis/Nexus if the reader enters the citation "Betts" versus "Board of Administration," has been found relevant in a variety of lawsuits since 1978. If you wish to sample this material online, just Google Betts v. Bd. of Admin., 21 Cal. 3d 859, 863 (1978). Note especially the case of Carman v. Alvord, 31 Cal. 3d 318, 325 (1982), and also Thorning v. Hollister School District (1992); look as well at the rather politicized summary in http://goliath.ecnext.com/coms2/gi_0199-8528978/Everything-You-Always-Wanted-To.html, and do not miss the remarks in Opinion Number-2010-1 by Jan I. Goldsmith, City Attorney, City of San Diego.

**Conclusion.** The bottom line is that our pensions are a contract right starting with our first day of employment. As the San Diego analysis concludes:

> *Under settled case law, core pension benefits are vested benefits, which may not be bargained away through the collective bargaining process. Core pension benefits are considered deferred compensation. They vest upon the first day of employment, and may be only be modified or changed to allow for flexibility to adjust to changed economic circumstances and to protect the integrity of the retirement system. Any change in a vested benefit must be accompanied by "comparable new advantages" for employees disadvantaged by the change [p. 31.]*

In the current California budget, this contract right with CalPERS may be modified for future hires who take the "second tier" in their pension arrangements beginning their first day on the job.

## CSU-ERFA Trivia

**In what state outside California do the most CSU-ERFA members reside?**

Answer: Oregon, which is the current home of 61 CSU-ERFA members. Washington comes next, with 48.

**In what postal code do the most CSU-ERFA members currently reside?**

Answer: 95521 (Arcata), which 40 CSU-ERFA members list as their mailing address. The next most popular zip code is 95926 (Chico), with 39 members.

**What is the most frequent last name among CSU-ERFA members?**

We have 24 Johnsons, followed by 17 Smiths.

**Which campuses have the largest number of CSU-ERFA members?**

Northridge currently has 248 CSU-ERFA members, followed by San Jose 219 and San Francisco with 217. San Diego is a close fourth with 212 menbers.

## CSU-ERFA Foundation Research Grant Deadline January 3, 2011

***Who?***

**CSU-ERFA members pursuing scholarly research, creative projects, and publications.**

***What?***

**Grants up to $4,000 for the current 2010-11 grant cycle.**

***Applications and Information?***

**Grant applications, guidelines, and submission information may be downloaded from the CSU-ERFA web site at http://www.csuerfa.org or contact the CSU-ERFA office for more information at (818) 718-7996.**

# Statewide Academic Senate Liaison Report

## By Bill Blischke, CSU-ERFA Liaison to the Statewide Academic Senate

The Statewide Academic Senate (ASCSU) met in plenary session for the first time this academic year on September 15-16th in Long Beach at the chancellor's office. The 2010-2011 ASCSU executive committee consists of chair James Postma (Chico), vice chair Kevin Baaske (Los Angeles), secretary Diana Guerin (Fullerton), members-at-large Thomas Krabacher (Sacramento) and Susan Gubernat (East Bay), and immediate past chair John Tarjan (Bakersfield).

**The state budget.** Once again, our elected officials in Sacramento wantonly violated the state constitution by failing to pass a budget by June 15th. By mid-September, though the academic year had started, campuses did not have a definitive budget. Since then a makeshift budget was passed and signed by the governor. It is based, purportedly, on overly-optimistic income projections and creative accounting gimmicks that will probably require extensive revisions within the next few months. By the time you read this the new governor, Jerry Brown, will be facing this mid-year budget crisis in January.

**CSU's budget.** All seventeen items on the agenda were first reading items. Some were withdrawn, and most of them will be revised and acted on at the November meeting. There were three items for which the rules were waived so that they could be voted on immediately. One of them (AS-2970-10/FGA) was titled "Call for Adequate and Sustainable Support for the CSU." Even the best budget scenarios do not provide sufficient funding to return the CSU to previous levels, much less to adequate and sustainable levels. Secondly, AS-2971-10/FA endorsed the October 7, 2010 National Day of Action in Defense of Public Education but emphasized that such actions must be legal and non-violent.

**The transfer AA degree.** The most significant action (AS-2972-10/APEP) was a resolution calling for the formation of a joint California Community College and CSU implementation task force on transfer AA degrees. Senate Bill 1440 (Padilla) established subject-based transfer degrees. This item called for a task force of equal numbers of faculty from the two systems "to provide guidance and coordination of the academic activities and policies of the two systems towards enabling this legislation." Implementing this bill on a discipline by discipline basis for all of the majors in the CSU is going to be a complex, time-consuming process. This task force will oversee those cooperative efforts.

**Cooperation and collegiality?** Cooperative efforts are, apparently, the exception rather than the rule in these contentious times. Though no formal action was taken in this regard, the dominant theme both on the Senate floor and in informal interactions was the decline in collegiality and faculty involvement. In Sacramento, this included the continuing failure of Governor Schwarzenegger to appoint a faculty trustee, the passage of the budget and legislation (such as SB1440) without appropriate ASCSU involvement. In Long Beach, Chancellor Reed has seldom met with the senate in the last two years. Several chancellor's office liaisons to ASCSU committees have worked collegially.

However, major programs, such as the Graduation Initiative (fondly referred to as "deliverology" by many faculty) and Early Start, have been imposed without systemwide or, in many cases, sufficient faculty participation in campus implementation. At the campus level, the faculty in general and senates in particular feel disenfranchised. Four campus faculties have voted "no confidence" in their presidents, and a number of other campuses have demoralized and alienated faculty and staff. As an "eternal" optimist, I hope this is a symptom of these tough times, and that we will return to "normal" after we climb out of this crisis.

If you would like further information on any of these issues. go to the ASCSU website and search for the resolution numbers as indicated above. If you have any questions, email me at wblischke@csudh.edu.

# Health Benefits Report, by David Humphers

Remember the challenge that we faced in 2008 when CalPERS warned that our health plans would be terminated if we were enrolled in two Medicare plans? CSU-ERFA Webmasters Mark Shapiro and Steve Gregorich conducted a survey of members and within forty-eight hours we knew that the prohibition was a Medicare Part D pharmacy regulation, not Medicare.

Now we learn that CalPERS does not enroll all state retirees in Medicare Part D. Instead, CalPERS receives a Retiree Drug Subsidy and "...provides prescription drug coverage that is...as good or better than the non-CalPERS Medicare Part D drug coverage, so you cannot be enrolled externally in a non-CalPERS drug plan" (Medicare Part D - Prescription Drug Benefit, CalPERS Website, August 8, 2010).

Such an arrangement can have unintended – indeed, unfortunate – consequences for a retiree when the health plan wants evidence that one is enrolled in Medicare Part D. A few weeks ago I received a request from a CSU-ERFA colleague in Los Angeles enrolled in the PERS Choice health plan with Anthem Blue Cross. She had knee replacement surgery in August and she ended up with an infection in that knee. Three rounds of antibiotics did not stop the infection. Loss of the leg was a possibility. She ended up in the Emergency Room, and was hospitalized. A port was installed in a vein to receive the daily antibiotic infusion treatment for two weeks.

Her physician discharged her from the hospital after three days with the plan that a medical professional would make a daily visit to her home to perform the pharmacy infusion treatment. Such an arrangement makes good sense; less chance of a new infection, more comfortable for the patient, and in-home treatment is certainly less expensive. The hospital case manager was unable to get approval from our colleague's health plan, Anthem Blue Cross, for in-home

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# CFA Report: Collective Bargaining,

## by Dave DuFault, CSU-ERFA CFA Liaison

**California State Budget.** The passage of the California State Budget for 2010-2011 brought $356.6 million in increased funds for the CSU. This number included $199 million "to backfill previous cuts" and $60.6 million for an increase in enrollment growth. In addition, the federal government allocated $106 million. This brought the total increased funding to $365.6 million. Lillian Taiz, president of CFA, called the new budget "an important step toward recovery."

**Collective Bargaining.** A second important item for the CFA in recent months is the continuation of collective bargaining for the 2010-2011 successor contract. Although bargaining began several months ago not much has happened. In late September the chancellor's office put forward changes to contract articles having to do with appointment, evaluation and layoff. According to the CFA those proposals appeared to "eliminate consultation with the faculty." John Travis, chair of the CFA bargaining team, wrote that CSU's "Draconian take backs. . . would severely undermine the stability of the academic work force. . . ."

Early in October CFA responded during a bargaining session to the chancellor's proposals about layoff. Finding CSU's contract language confused and perhaps leading to unintended consequences, CFA negotiators hoped that CSU would soon clarify its proposals. The discussion about layoff will continue in scheduled bargaining meetings in November. Meanwhile CFA has put forward suggested "improvements in wages, paid leaves, and workload." Obviously negotiations between the parties have just begun.

**Faculty pay.** Also, CFA engaged in mediation with the CSU in hopes of solving the dispute about faculty raises bargained in 2009-2010. Although CFA put forward a compromise solution to the mediator, CSU would not budge from its "zero" percent increase proposal. With this standoff, both sides concluded that they were still at impasse. The dispute now will proceed to "fact finding."

**2010 Election.** In the run up to the election the CFA emphasized its get-out-the-vote activities and took positions on issues and candidates. It endorsed Jerry Brown for governor and called for "yes" votes on propositions 24 (Close Corporate Loopholes) and 25 (On-Time State Budgets).

**Film Review.** CFA recommends for those interested in public school education, a review by Diane Ravitch of the documentary film "Waiting for Superman" directed by Davis Guggenheim. This review appears in the November 11, 2010 edition of the "New York Review of Books." The film, she writes, identified the reasons for the difficult state of public education. Omitting other possible causes for the "failure" of public schools, the film simply blames ". . . the public schools, their teachers and their union."

## CSU-ERFA New Members

New members joining CSU-ERFA since the September issue of *The Reporter*:

**Bakersfield** – L. Maynard Moe

**Chico** – Stephen G. Metzger

**Fresno** – Benjamin Cuellar
Sari H. Dworkin

**Fullerton** – John W. Bedell
Barry Pasternack

**Long Beach** – Robert L. Alexander
Martha J. Dede

**Los Angeles** – M. Diane Klein

**Northridge** – Alyce S. Akers
Joseph A. Gardner
Jeffrey T. Lenham
Raul Ruiz

**Pomona** – Toni C. Humber

**San Bernardino** – Clark P. Molstad

**San Diego** – Roger M. Dunn
Maxine S. Jaffe

**San Francisco** – Susan E. Messner-Whipp

**San Jose** – Andrea K. Whittaker

**Sonoma** – Dorothy E. Freidel
Melissa L. Vandeveer

# Legislative Report: "Sound and Fury"

## By Alan Wade, Chair, CSU-ERFA Legislative Committee

The Tea Party/Republican tsunami seems to have dribbled to a stop when it came to the Humboldt Sink (Harry Reid's victory over Tea Party candidate Sharon Angle) and finally stopped short at the western edge of the Sierra Nevada.

Most Democratic candidates for statewide office prevailed in the Golden State. Whether that will result in a solution to our budget dilemma is doubtful. Jerry Brown is no stranger to us. Perhaps his frugality will bring rationality to California rather than the sheer brutality that the alternative might have wrought.

**Budget special session**. With the recently revealed new budget hole ($25.4 billion), the lame duck governor will call a special session of the lame duck legislature so that they can kick the can down the road once more. That will leave the next step up to Jerry Brown, who will probably be basing policy on Mao's mantra circum 1958—frugality and self-denial now to prepare for a thousand years of joy, happiness, and prosperity. Or maybe not so much of the latter!

**Legislation?** Since this is the report of your legislative committee chair, it should probably be mentioned that there will be little but sound and fury signifying nothing coming out of the capitol for a good while. Most of the action of direct concern to us as retired CSU faculty will be within the bureaucratic domain of CalPERS and, later, within the initiative process. We'll be the first to let you know if a ray of sunlight penetrates the bleak landscape ahead.

# Another Member Response on Long-Term Care Decision Making

In the May issue of *The Reporter* we asked if members wished to share their decision making concerning the fee increase in the CalPERS long-term care program. Three responses were published in the September issue, and here is one more.

From Marcia Bedard, Ph.D., Professor Emerita, CSU Fresno:

*I agree entirely with the thoughtful letter from David McNeil on our LTC coverage. As Mr. McNeil stated in the first paragraph, I have found out the hard way that one must apparently be in what I would consider a "near death" state or suffering from one of the incurable diseases that affect motor functions in order to qualify for benefits. I was one of the first group to enroll in LTC when it became available, as it is well known that ill persons do better in their own home than in a hospital or other institution, especially when all that is needed can be provided by home health aides and skilled nursing care is not required.*

*After my back injury, which included but was not limited to two herniated disks, I was under doctor's orders not to lift anything over 10 pounds, walk, drive, or stand for more than 5-10 minutes at a time, and avoid using stairs. Since all three entrances to my home had stairs, and I was not in a position to sell it, this meant that shopping for food was a violation of those orders and invariably exacerbated my condition. I live alone with just my dog, so have no assistance with shopping or other activities of daily living.*

*Yet eating is essential to life, and just driving to the nearest store took about 30 minutes, walking around the store with my shopping list took at least 30 minutes, standing in the check-out line almost always took at least 15 minutes, lifting bags of groceries (which always weighed more than 10 pounds) and carrying those bags up the stairs to my home (one at a time), and putting the food away took another 30 minutes, and standing to prepare my meals another 30 minutes. When I asked for a home health aide from the CalPERS LTC insurance company, I was told that as long as I could get a spoonful of food from my plate to my mouth I was ineligible for any type of benefits. ( I had asked for weekly assistance of 4 hours or less so that someone could shop for me, put the food away, and prepare some simple nutritious meals which I could then freeze, and microwave as needed, supplementing this diet with fresh fruit). I was told that home health aides are available only to people who are already receiving benefits. However, if I had a home health aide to assist me with shopping and meal preparation, perhaps I would never reach the point where I was too ill or weak to lift a spoonful of food to my mouth. This type of thinking appeared irrational to me, and still does. The woman I spoke with at the LTC office agreed, but said that is how the contract is written.*

*It is common knowledge that proper nutrition is essential to continued good health even for healthy people, and especially important to persons who are already sick. I also pointed out that the early advertisements (discontinued long ago) while they were still trying to get people to take out LTC as opposed to now, when they are using what I consider economic blackmail to discourage people from keeping up the policies on which some persons, myself included, have paid monthly premiums for over 20 years, focused on keeping people receiving benefits as healthy and active as possible, and all the photos and testimonials were about "how great it is that mom can stay in her own home, with her pet, while the home health aide cleans and shops for her one day a week." Not only does it relieve busy families from having to care for a chronically ill relative, it also keeps the ill person out of the hospital or nursing home, the costs of which are astronomical when compared to the cost of a home health aide.*

*As a result, I have used about ten years of my life savings for retirement hiring a cook and a housekeeper, while, of course, paying the ever-increasing premiums on my LTC insurance, which I keep only in the event that I have a debilitating stroke or develop one of those horrible diseases that will finally "qualify" me for assistance. When I asked the LTC provider why they mislead people into believing that they can get home health aides before they reach such a debilitated state of health, her comment was that "she was not responsible for the brochures and newsletters that were published in the early days of the LTC program, nor did she select the testimonials" about how wonderful it was that the LTC program provided home health aides as well as paying for skilled nursing care when that was necessary. Like Mr. McNeil, I would like to see some information published that goes beyond the misleading "policy" we all received, and tells the truth about precisely what kinds of benefits are actually available, and the physical condition of those persons who actually qualify for them.*

*PS: Does the term "PREVENTIVE CARE" mean anything to anyone who administers the LTC Program?*

# In Memoriam

**Chico** – Roy J. Brazzale

**Fresno** – Frederick M. Corum

**Dominguez Hills** – Solomon Marmor

**Humboldt** – Thomas G. MacFarlane

**Los Angeles** – Samuel M. Caplin
Marie- Antoinette Zrimc

**Northridge** – Yvonne Lofthouse
Ida N. Halperin

**San Diego** – Jeanette Hines
Robert J. Schlesinger

**San Francisco** – Jeannette D. Johnson

**San Jose** – Roger W. Chapman
Franklin R. Muirhead
Herbert H. Oestreich
Willard J. Saunders

**Stanislaus** – Douglas McDermott

## High IQ Puns

"A man's home is his castle, in a manor of speaking."
"Dijon vu - the same mustard as before."
"A hangover is the wrath of grapes."
"Does the name Pavlov ring a bell?"
"When two egotists meet, it's an I for an I."
"A bicycle can't stand on its own because it is two tired."

# State Council Meets At Dominguez Hills

Forty-one members of the CSU-ERFA State Council gathered at the new Loker Student Union at CSU Dominguez Hills on October 16, 2010, to hear about the state of the association and to discuss resolutions on due process for emeriti and "academic mobbing."

In general, the association seemed to be doing well, with membership constant, dues income gradually increasing, and expenses held below the level of dues income. Executive Director Don Cameron described the organization as "a healthy and active organization" that depends "on the efforts of many volunteers." He noted the increasing number of scholarships being provided to CSU students as a result of the efforts of emeriti in many of the campus chapters. The grant committee chair, Sally Hurtado de Lopez, noted that several research grants had been given during the last year and that committee procedures, applications, and scoring instruments had been updated.

At the October State Council meeting: Alan Wade, CSU-ERFA Legislative Director and second from the left, reporting on the current status of legislation in Sacramento. Also pictured, from the left, are Sam Wiley of CSU Dominguez Hills, Patricia Koppman of SDSU, and Tom Donahue, Chair of CSU-ERFA's Pre- and Post-Retirement Concerns committee.

Health Benefits chair David Humphers discussed a case where a member of PERSCare was told she had to belong to Medicare Part D to obtain reimbursement for a home health aid to administer a daily medication injection; however, CalPERS has a consistent policy that members who join a Medicare Part D plan are terminated from CalPERS health coverage. The case continues.

Archivist Judd Grenier noted that the archives were in new facilities on the 5th floor of the new library annex at the DH campus. The papers of Wilma Krebs, longtime CSU-ERFA legislative committee chair, are being added to the collection. Mark Shapiro stated that the association web site continues to grow consistently in usage.

Ralph Huntsinger of the Chico campus presented resolutions on due process for emeriti during the terms they are not teaching and on academic mobbing. After a lengthy discussion, the state council declined to pass the resolutions at this time, with several members saying they needed more information in order to make a decision on such complex matters.

Academic mobbing is a form of workplace bullying in which employees spread rumors, unfounded accusations and hearsay about another member of their workgroup, with the goal of forcing the victim to find other employment.

# Health Benefits Report, from page 4

treatment. Consequently, her husband had to take her to the emergency room every morning for the treatment.

After returning home she spent hours on the phone with Anthem Blue Cross, CalPERS and Medicare. Here is what she learned:

1. CalPERS told her that Anthem Blue receives a CalPERS payment of $800. per month for her and her husband's health care coverage.

2. She learned from Anthem Blue Cross they would not pay for the home health care visits because she was not enrolled in Medicare Part D. Later she received telephone calls from Anthem informing her that they would pay if CalPERS directed.

3. She learned from CalPERS that her health plan enrollment would be terminated if she enrolled in a Medicare Part D plan outside of CalPERS.

Two weeks later CalPERS has not contacted Anthem Blue Cross.

Last week I telephoned federal Medicare Customer Service to inquire about Medicare, Part D, in-home pharmacy treatment by medical professionals. I learned that Medicare, Part A, covers the pharmacy treatment both in-hospital or at home.

# MD Shortage?

The August 26th California HealthLine reports that a UC San Francisco survey found that almost all physicians in California are accepting new patients (90%), "most" are accepting new Medicare patients (78%), but many fewer are willing to take new Medi-Cal patients (57%). Meanwhile, unless Congress blocks the rule, payments for MDs who treat Medicare patients will be cut 23% on December first and another 6.5% on January first, which will certainly accentuate the problem with Medicare patients. The AMA is pressing for a 13 month fix to block the cuts, which according to the Congressional Budget Office will cost about $15 billion. A long-term formula fix through 2020 would run enough to wipe out the savings projected from the new health act. Stay tuned!

# The New Health Law and Your CalPERS Health Plan,

From page 1

health insurance, with standardized policies. A fourth set of provisions eliminates coverage barriers, including pre-existing condition denials and ratings, most lifetime and yearly limits, and insurance rescissions.

The fifth element of the bill is a set of provisions to pay for it, with the cost estimated by the independent and non-partisan Congressional Budget Office at $938 billion over 10 years. The bill contains provisions to raise $1,081 billion over the 10 year period, thus reducing the federal deficit by $143 billion by 2020.

**Can the bill be implemented?** During the recent election, congressional Republicans promised to keep elements of the bill from being implemented by failing to fund them. Republican governors and attorneys-general in the states are also fighting the individual mandate element of the bill in the courts, and several Republican governors have stated that they are considering not implementing the Medicaid elements of the bill. Medicaid is a joint federal-state program, with the federal government paying 60% of the bill overall, but with states handling most features of program implementation, within broad federal guidelines. We've even heard from one or two governors flush with the "Tea Party" spirit that they are considering dropping out of Medicaid. That's their right. Medicaid started in 1965, and Arizona in fact didn't have a Medicaid program until the early 1980s – it used to be one of my favorite examples of federalism.

**Covering children to age 26.** Several thousand additional 23-24-25 year olds were enrolled in CalPERS health programs during the recent open enrollment. The new law allows health insurers to include children from age 23, the previous cutoff, until their 26th birthdays.

**Removing limits.** CalPERS presently doesn't allow any health insurance rescissions or insurance rating or denials based on pre-existing conditions. However, there are a few lifetime or annual dollar limits that will be changed as of the 2011 plan year. According to CalPERS at the November Board of Administration meeting, "lifetime limits remain for speech therapy and hospice care for PERS Choice, PERSCare, and PERS Select for the 2011 health plan year. Annual dollar limits remain for occupational and physical therapy for PERS Choice and PERS Select for the 2011 plan year." Changes being made for the 2011 plan year include, among others:

• "Eliminating the lifetime limit for hospice care for Preferred Provider Organizations";
• "Converting lifetime and annual dollar limits for speech, occupational and physical therapy to 24 visits per year based on medical necessity";
• "Implementing annual $0 copay for preventive services for Medicare members."

**"Grandfathered" plans and clinical trials.** CalPERS health plans are "grandfathered" under the new law because they existed on March 23, 2010, the day the bill was signed into law. As of January 2014, grandfathered plans must cover clinical trials for cancer and "other life-threatening conditions." CalPERS has the language on clinical trials for cancer but must add the language for other life-threatening conditions at some point.

**The "Cadillac" tax.** Starting in 2018, expensive insurance policies will be taxed. The insurer pays the tax, not the policyholder. The tax is 40% of the value of the policy over a threshold amount. For CalPERS, the plans are all well below the limit except for PERSCare, which is just below the limit. We assume that CalPERS will act to keep all its plans below the limit in the future to avoid paying the tax.

**The income-related Part B premium.** Since 2007, higher income beneficiaries have paid more for Part B of Medicare than those below the threshold of $85,000 per individual or $170,000 per couple in income per year. These amounts were to be adjusted for inflation; in the Patient Protection and Affordable Care Act the inflation protection was eliminated. This will affect a small number of people whose income will rise above the threshold in future years. Most retirees on a CalPERS health plan, however, have the Part B premiums reimbursed in their monthly pension checks, so the provision should not affect them.

**Medicare tax on unearned income.** Individuals, estates and trusts will pay a Medicare tax on certain unearned income as of 2013. For individuals, it is 3.8% of the lesser of net investment income or the excess of modified adjusted gross income over $200,000 for an individual or $250,000 for a couple filing jointly. If you think this provision might affect you, see your tax adviser.

**The CLASS Act.** Beginning in January 2011, the CLASS Act will enroll those still working full time in a program of limited long-term care insurance. Once you are vested, which requires at least five years of paying premiums from working and at least three years of working full-time, you are entitled to approximately $75 per day that will go to the policy holder directly and can be used for home care, institutional care, etc. This is individual insurance, not social insurance. Only the policy holder, the adult who is working, is covered. We may still have a few retirees who are working full-time and might find themselves covered by the CLASS Act.

**Medicare Advantage Plans.** Only Kaiser is a Medicare Advantage plan in CalPERS, although there has been talk of converting the Blue Shield HMO to a Medicare Advantage Plan. Nationally, Medicare Advantage Plans on average are paid more than the fee for service average (for Medicare non-plan members) in each county; this was a deliberate policy of the Republicans in Congress in the 2003 Medicare Modernization Act to encourage private plans to replace conventional fee for service Medicare. In the 1990s, the plans were paid at 95% of the fee for service level; health policy experts considered that amount too high and lowered it in the 1997 Balanced Budget Act. The plans responded by withdrawing from areas where they considered the business unprofitable. In the new health act, plans in low cost areas will be paid more; plans in high cost areas will be paid less. The new payment rates are phased in over the four years after 2012.

**Things that will help CalPERS.** The Act includes a new early retirement re-insurance program to encourage firms that provide

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# Erratum - We Apologize

Your editor's face is red. When we received Prof. Burgess' letter (published in the September *Reporter*) mentioning the 116 books, we thought that listing some of them would be a good idea, and what better way to find some of them than to search Amazon.com. Unfortunately, there are four Michael Burgesses who are authors. Below we are printing the latest letter from Prof. Burgess and a corrected list of some of his books, this time drawn from his own web site. We apologize. (It semed like such a good idea at the time!)

The editor

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To the editor:

Alas, you've mixed me up with a half dozen other Michael Burgesses, including one in Canada, one in Oregon, and others scattered 'round the globe; most of the books you mentioned in your Sept. 2010 issue are not actually mine, although the Sex & Drinking one did sound interesting.

An up-to-date bibliography of my published books (116 to date, with two more about to go to press) can be found on my website, www.millefleurs.tv, under the Michael Burgess/Robert Reginald link, and then under the Bibliography sub-link. Because of the commonness of the name "Michael Burgess" in the general population, I do most of my work under my pen name, Robert Reginald – of which there is, thankfully, just the one!

The book that you perhaps SHOULD have mentioned, the one that would potentially be of most interest to your readers, was published at the end of July: *The Coyote Chronicles: A Chronological History of California State University, San Bernardino, 1960-2010.*

All best:
Michael Burgess

Ed note: This is the corrected list. A complete list may be found at http://www.millefleurs.tv. Among the books Prof. Burgess has published are the following:

*¡Viva California! Seven Accounts of Life in Early California*, edited by Michael Burgess and Mary A. Burgess;

*California Ranchos: Patented Private Land Grants Listed by County*, Second Edition, by Burgess McK. Shumway, edited by Michael Burgess and Mary Wickizer Burgess;

*First-Century Palestinian Judaism: An Annotated Guide to Works in English*, 2nd Edition, by David Ray Bourquin, edited by Michael Burgess;

*The Phantom's Phantom: A Novel of the Phantom Detective Agency: As Taken from the Case Files of Richard Curtis Van Loan, the Phantom Detective*, by Robert Reginald;

*Across the Wide Missouri: The Diary of a Journey from Virginia to Missouri in 1819 and Back Again in 1822, with a Description of the City of Cincinnati*, 2nd Edition, by James Brown Campbell, edited by Mary Wickizer Burgess and Michael Burgess;

*Invasion! or, Earth vs. the Aliens: A Trilogy of Tales Inspired by H. G. Wells's Classic SF Novel, War of the Worlds*, by Robert Reginald;

*The Nasty Gnomes: A Novel of the Phantom Detective Agency: As Taken from the Case Files of Richard Curtis Van Loan, the Phantom Detective*, by Robert Reginald;

*Choice Words: The Borgo Press Book of Writers Writing About Writing*, edited by Robert Reginald;

*The Coyote Chronicles: A Chronological History of California State University*, San Bernardino, 1960-2010, by Michael Burgess.

# New Health Care Act,
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retiree health coverage to keep it. CalPERS has already received several million dollars under the plan and will use the money to lower premiums in 2011. There is a provision for an extra 10% payment for Medicare primary care physicians in 2011 and forward; this will help those who have had problems finding a Medicare primary care physician to see them. The elimination over the next 10 years of the Medicare drug plan "donut" hole will not affect CalPERS; its drug plans are already vastly superior to those in Medicare.

# CalPERS News

**George Diehr Winner in CalPERS Board Election.** The recent CalPERS state member board election resulted in George Diehr, faculty member in management from CSU San Marcos, winning outright. The certified results show Diehr received the highest number of votes in the September election, more than 77.5 percent (22,008 votes of the 28,373 votes cast) compared to Inderjit Kallirai, who received 22.4 percent or 6,365 of the total votes cast. A 50 percent plus one vote majority is required to be elected.

Diehr was first elected to the CalPERS board in 2002 and was re-elected for a second four-year term in 2006. He presently serves as vice president of the board, chair of the investment committee and vice chair of the ad hoc board governance and benefits/program administration committees. His new four-year term begins January 16, 2011, and ends January 15, 2015. The state member representative is elected by eligible state and CSU members of CalPERS, excluding survivors and beneficiaries.

**CalPERS Transparency and Accountability Ranked High.** The Peterson Institute for International Economics has ranked CalPERS as one of the most transparent and accountable of sovereign wealth funds. Only Norway's Government Pension Fund was given better marks than CalPERS. The $514 billion Norwegian oil fund earned a score of 97 out of 100 compared to a 95 ranking for the $218.5 billion CalPERS fund.

The ranking of the organization's transparency, corporate governance and behavior appears in a new book by Edwin M. Truman entitled *Sovereign Wealth Funds: Threat or Salvation*? Mr. Truman has authored the rankings since 2008.

**CalPERS bonuses and performance.** In late September, the AP reported that CalPERS paid six figure bonuses and substantial raises to its top employees, reflecting contracts made two or more years ago before the steep drop in the value of the CalPERS investment portfolio.

In fact, said board member Tony Olivera quoted in the Associated Press, the system tried to reduce the bonuses but was under contractual obligations to pay them. CalPERS spokesperson Brad Pacheco said that the bonuses were based on the fund's

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## CalPERS News, from previous page

performance over five years, not just in the year preceding the bonuses. The five year period was selected to give managers incentives to seek long-term quality investments rather than short-term gains.

"Incentives are part of total compensation and critical to the fund's long-term success as well as recruitment and retention of skilled investment professionals," Pacheco said in an e-mail.

The number of executives at CalPERS earning more than $200,000 per year rose from 13 to 15 in the two year period from 2006 to 2008. The board of administration recently voted to allow the board to defer or cancel performance awards if the return for the fund is unsatisfactory.

**CalPERS investment return 13.3%.** CalPERS in November reported a final net return on its investments of 13.3 percent for the one-year period that ended June 30, 2010, beating the pension fund's preliminary return estimate by almost two percentage points.

Audited performance through the end of the 2009-10 fiscal year for all asset classes brought the Fund's total market value to $200.5 billion, or $500 million higher than reported last July. At that time, returns for real estate, private equity, infrastructure and forestland were available only for the 12 months ending March 31, 2010.

"This updated report indicates a gain of more than $40 billion since our turnaround from the lowest point of the recession in March 2009," said chief investment officer Joe Dear. "We also beat our benchmark of 12.95 percent and eclipsed return targets for every asset class except real estate. But even that asset class improved dramatically over what we reported in July."

The upturn for the 2009-10 fiscal year exceeded the long-term annualized earnings target of 7.75 percent and brought the 20-year return average through June 30, 2010 to 7.65 percent. The market value in mid November of CalPERS investments is $220 billion, somewhat below the all-time high of more than $250 billion but substantially better than the lows in 2008 and 2009 of less than $160 billion.

## Personal & Professional

**Sidney Albert** (Philosophy, Los Angeles, and the founder of CSU-ERFA) delivered a talk entitled *Shaw's West Ham Salvation March* (with musical accompaniment) at the 34th Comparative Drama Conference in Culver City on March 27.

He has just submitted a book for publication that involves a comparison of Shaw and Euripides, entitled *The Way From Athens: Classical Currents in Bernard Shaw's Major Barbara*. Sidney celebrated his 96th birthday in April 2010.

**Ted Anagnoson** (Editor, CSU-ERFA *Reporter*, Political Science, Los Angeles) spoke to a group of German Fulbrighters at SFSU in September on the new Patient Protection and Affordable Care Act, as well as to the CSULA Emeriti in October on the impact of the Act on CalPERS health plans. He also spoke on the election to the Griffith Park Adult Community Club and addressed a group of senior citizens in Santa Barbara in a course on water problems, policy and politics on "Pakistan's Water Problems."

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