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AHCA Testifies On House Reform Bill

Cuts Could Have Heavy Consequences, Association Warns

Nursing facilities face the potential of a “double barrel shotgun in funding cuts” if massive Medicare reductions advanced by the administration and included in a House of Representatives draft bill on health reform are enacted, said Bruce Yarwood, president and chief executive officer of AHCA, in June 25 testimony before the House Energy and Commerce subcommittee on health.

The House package, which runs in excess of 800 pages and was created by three committees with jurisdiction over health care, includes a devastating array of funding cuts for nursing facilities.

The draft plan would codify a proposed rule from the Centers for Medicaid & Medicare Services (CMS) that would cut nursing facility payments by 3.3 percent, or \$1.05 billion in fiscal 2010, to correct for the agency’s underestimation of the cost of revamping and expansion of skilled nursing resource utilization groups (RUGs). The RUGs changes were made in 2005 to more accurately capture the needs of high-acuity patients and encourage the provision of care in the most cost-effective setting.

In testimony presented in person, as part of a provider panel that responded to the plan, Yarwood said

this reduction would amount to taking back payments that are a result of an increase in acuity and case-mix change. The agency “should and must continue to pay providers for real case-mix change,” he said.

Yarwood detailed the profession’s measurable quality gains in such areas as restraint use, pressure ulcers, and pain management, but warned that “quality care is inextricably linked to stable funding,” and quality

enhancements could not continue “if at the same time funding is drastically reduced.”

In addition to adopting CMS’ proposed rule, the House draft plan would eliminate the market basket update for the final nine months of fiscal year 2010—landing the second half of a two-part blow. Yarwood urged lawmakers to reject both of these savings options in future

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AHCA's Yarwood testifies before House Energy and Commerce subcommittee on health.



LTC Providers Converge On Capitol Hill With Weighty Legislative Agenda

AHCA's annual Congressional Briefing drew 335 attendees to the nation's capitol June 3-4, where they made more than 380 congressional visits and carried a message that reflected how much is at stake in this year's health care debate for providers and the frail elderly patients and residents in their care.

Topic A was the preservation of Medicare funding, in the face an administration rule that would cut \$1.05 billion in skilled nursing facility (SNF) payments in fiscal year 2010 and \$18 billion over 10 years. Medicare funds could also be threatened by pressure to fund health reform and

several proposals for an untested "bundling" initiative that would put hospitals in control of post-acute care reimbursement.

Other priority issues that members brought to Capitol Hill were arbitration and the elimination of Medicare Part D co-payments for dual-eligible residents in assisted living residences.

With health care reform a central plank in the legislative agenda for the new Congress and administration, this year's briefing was particularly timely, says Matthew Smyth, AHCA's director of grassroots and member advocacy.

"The quickening pace of health care reform negotiations in Washington

should remind us all that health care reform should not come at the expense of care for America's seniors, and we must remind every lawmaker of the immutable fact that there is—and always will be—a direct correlation between adequate funding and quality patient care," said Bruce Yarwood, AHCA president and chief executive officer.

In addition to making visits to Capitol Hill, participants were briefed on health policy issues and the political landscape by prominent lawmakers, Washington insiders, and AHCA staff. Members also attended several receptions for elected officials and special events, which included:

- The AHCA/National Center for Assisted Living (NCAL) Joe Warner Patient Advocacy Award ceremony. The award was given to five recipients, and the presentations were made by each recipient's representative or senator. The annual award recognizes outstanding advocates for the nation's frail elderly from within the long term care profession.

This year's recipients were John Elliot of AMFM in Charleston, W.Va.; Patricia Giorgio, Evergreen Estates in Cedar Rapids, Iowa; Neil Pruitt Jr. of UHS-Pruitt Corp., Norcross, Ga.; Jan Thayer, Riverside Lodge in Rancho Mirage, Calif.; and Randy Wyatt of the Arkansas Health Care Association in Little Rock.

- A thank you reception and dinner for those who made significant contributions to the AHCA/NCAL PAC. The event, held just prior to the beginning of the Congressional Briefing, was attended by almost a dozen members of Congress.

- A CEO Legislator/Regulator Forum, attended by 34 of the nation's leading long term care executives. Speakers included Ellen Doneski, chief of staff for the Senate Committee on Commerce, Science, and Transportation; Ray Scheppach, executive director of the National Governors Association; and Chris Jennings, who talked about the intricacies of policy making in the White House. ❁

Reform Bill, continued from page 1

iterations of the plan. Coupled with the "unfortunate reality of Medicaid underfunding for skilled nursing care," these Medicare cuts could destabilize the long term care sector, putting more than 30,000 jobs at risk, Yarwood said. He suggested that the Medicaid funding deficit—which was estimated at \$4.4 billion in 2007—would worsen in the midst of an economic crisis in which "46 states are freezing or cutting nursing facility rates, and 75 percent are not keeping up with inflation."

A stable long term care sector is critical to the nation's recovery from the economic crisis, as it contributes 1.1 percent of the gross domestic product, or \$158 billion annually; employs nearly 4.5 million individuals; and supports \$161 billion in labor income, he said.

"As a direct employer, long term care provides more jobs than our nation's entire educational services industry and 40 percent more than Wal-Mart, the world's largest employer," Yarwood said. As a result, the impact of health reform on the health of the long term care sector "must be addressed prior to implementing major overhauls to the system."

He commended the House plan for including a provision that would eliminate Medicare Part D co-pays for dual-eligible beneficiaries receiving services as part of a Section 1915 or 1115 waiver program, saying it "creates parity with dual eligibles" in nursing facilities. He encouraged the panel to expand the measure to include beneficiaries in home- and community-based settings, including assisted living, that are covered directly under Medicaid.

Yarwood also praised the panel for its modified approach to the administration's "bundling" proposal—under which hospitals would receive and distribute post-acute care payments—by creating a demonstration project that takes into account such critical issues as "the nature of payments, the interaction of the acute and post-acute care providers, the development of appropriate quality measures, and program policies such as eliminating the three-day hospital stay."

His 17-page prepared testimony also responded in detail to a 100-page nursing facility transparency section of the House plan, addressed workforce issues, and called for essential changes to CMS' "misguided five-star rating index." ❁



AHCA members and national and state staff meet with lawmakers on Capitol Hill: 1.) Rep. Shelley Berkeley (D-Nev.), right, and Rebacca Moreno, board member of the Nevada Health Care Association, flank state Executive Charles Perry. 2.) Fran Kirley, AHCA/NCAL PAC chair, and AHCA's Bruce Yarwood. 3.) Sen. Susan Collins (R-Maine) meets with Maine delegation. 4.) L. to r.: AHCA Chair Rick Miller, Sen. John Cornyn (R-Texas), and Kirley. 5.) Sen. Ben Nelson (D.-Neb.) with Nebraska delegation. 6.) Rep. John Larson (D-Conn.). 7.) Newsweek's Howard Fineman. 8.) Rep. Chris Van Hollen (D-Md.). 9.) Sen. Jeanne Shaheen (D-N.H.). 10.) Texas provider Dick Stebbins, Stebbins Five. 11.) Sen. Richard Burr (R-N.C.) with Yarwood. 12.) Rep. Lois Capps (D-Calif.) with California member Phil Chase, Chase Group.



Government Must Integrate Long Term Care Needs Into Disaster Planning, Preparedness, State Exec Tells Congress

Government agencies at all levels must do a better job of recognizing and addressing the needs of long term care facilities in disaster planning and preparedness activities, said LuMarie Polivka-West, senior vice president of the Florida Health Care Association (FHCA).

In testimony before a June 24 hearing of the Senate Special Committee on Aging, Polivka-West described many of the tragic consequences during the 2005 hurricane season of inadequate coordination with long term care facilities and planning failures in key areas

such as communication, transportation, and utility service restoration.

“Long term care providers were not incorporated into existing emergency response systems and plans at the

federal, state, or local levels,” Polivka-West said.

“Vulnerable medically frail elderly and disabled patients and residents were largely dependent upon the limited capability of each individual provider and their individual disaster plan, which was not coordinated with governmental emergency efforts.”

Polivka-West, who also serves on AHCA’s Disaster Planning Committee and is a principal investigator for the John A. Hartford Foundation’s national effort to fund initiatives aimed at strengthening hurricane and disaster preparedness for long term care facilities, said many of those gaps still exist.

For example, at the national level, long term care residents are still an “undifferentiated” special needs population within the federal government’s master disaster response plan, called the National Response Framework.

FHCA maintains a Web site (www.fhca.org) with resources tailored to the hurricane and disaster planning needs of long term care providers, including a 290-page emergency management guide for nursing facilities, a comprehensive emergency management plan software application, and a report on caring for vulnerable seniors during a disaster. These resources have been created through collaborations with academia and other private organizations and with the financial support of the John A. Hartford Foundation. But government agencies need to do more, Polivka-West said.

“While the long term care community prides itself on its preparatory work and planning for emergencies, the long term care community alone cannot prepare effectively for disaster; we must be part of the larger unified national response,” she said. ❁



Polivka-West testifies before Senate Special Committee on Aging.

Disaster Preparedness Recommendations To Congress

LuMarie Polivka-West made recommendations before the Senate Special Committee on Aging in six broad areas for revamping disaster and evacuation preparedness, urging policy makers to:

- Expedite the development of interoperable health records;
- Enact the Nursing Home Emergency Assistance Act of 2009, which would allow for-profit—as well as nonprofit—facilities to receive federal financial assistance during and after disasters;
- Address health care providers’ emergency communications needs—such as satellite phones and generator-powered broadband satellite Internet capacity;

- Reconfigure the National Disaster Medical System to support the evacuation and care of residents in nursing, assisted living, and residential care facilities;
- Identify disaster preparedness requirements for long term care facilities in a more coordinated way. Polivka-West cited recent confusion caused by the Centers for Disease Control and Prevention’s recommended use by nursing facility staff of N95 respirators to prevent transmission of the H1N1 virus; and
- Develop new protocols for improved communications and coordination between providers and government agencies, with the National Response Framework as the primary guide at all levels. ❁

AHCA Makes Market Basket Update Case

MedPAC's longstanding tradition of recommending no annual inflation adjustment for Medicare SNF payments is "inconsistent with the best interest of patients and caregivers alike," said AHCA's comments on the Senate Finance Committee's health reform options paper for potential savings and revenue measures.

The committee's options paper included a provision to follow MedPAC's yearly recommendations for annual market basket updates. In formal comments submitted to the panel, AHCA pointed out that while providers have received some

inflation adjustment to their rates in recent years—despite MedPAC's persistent recommendation for a zero update—there has been wide disparity every year since 2002 between actual provider cost increases and the Medicare market basket update. In fiscal year 2005, for example, the difference was 3.3 percentage points, as costs rose 6.15 percent, but provider payments increased only 2.8 percent. For the 2009 fiscal year, costs are expected to rise 5.27 percent, while reimbursement goes up just 3.4 percent.

Allowing providers a full market

basket increase each year "is critical to enable nursing homes and Medicare to continue to move forward in providing quality services for our nation's most vulnerable citizens," AHCA said.

The comments also addressed MedPAC's failure to recognize the severe Medicaid funding shortfall. The panel's "exclusive focus on Medicare margins in the long term care sector in determining payment recommendations does an enormous disservice to the poor frail, elderly, and vulnerable individuals who receive care and services in America's nursing facilities," AHCA said. ❁

CNA Voices Heard On Capitol Hill

Lawmakers on Capitol Hill heard personal, compelling appeals from frontline caregivers seeking to preserve Medicare funding and stave off dramatic cuts proposed by the administration.

About 20 certified nurse assistants (CNAs) flew to Washington, D.C., to visit their representatives on June 18 and deliver the message that cutting Medicare hurts patient care, quality, and jobs. They asked lawmakers to oppose a Centers for Medicare & Medicaid Services rule that would slash Medicare funding by \$1.05 billion in fiscal year 2010 and \$18 billion over 10 years. According to the Coalition to Protect Senior Care, the proposed cuts put 30,000 caregiving jobs at risk.

One CNA told her representative that "for some residents, I'm the last person's hand they will hold, and if funding is cut, no one will be there to do that for them," said Matthew Smyth, AHCA's director of grassroots and member advocacy, who accompanied some of the CNAs on their visits to lawmakers' offices.

The group included CNAs from New Jersey, New Mexico, Iowa, Michigan,

Delaware, Florida, Kansas, Maryland, West Virginia, and Missouri. One of the CNAs had been at the same facility for 38 years, while another pair had 44 years of combined experience.

The event was sponsored by the Coalition to Protect Senior Care,



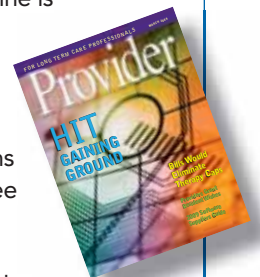
a 15-member group that includes AHCA; the National Association of Health Care Assistants, which represents CNAs; several professional groups representing nurses and therapists; the National Rural Health Association; the Coalition of Women in Long Term Care; the American College of Health Care Administrators; and the American Health Quality Association, which represents quality improvement organizations. ❁

Market Basket Increases Fall Short Of Annual Inflation		
Fiscal Year	SNF Market Basket Update	Actual Cost Increase
2002	3.30%	6.16%
2003	3.10%	4.88%
2004	3.00%	4.55%
2005	2.80%	6.15%
2006	3.10%	4.35%
2007	3.10%	5.27%
2008	3.30%	5.27%
2009	3.40%	5.27%

Your Input Needed!

Provider magazine is conducting a short survey to find out what readers like best and what innovations they might like to see introduced.

Please take a few moments to fill out the brief online questionnaire by going to ProviderMagazine.com and clicking on the survey link under "What's New!" We greatly appreciate your participation.



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Emergency Management Guide for Nursing Homes

The *Emergency Management Guide for Nursing Homes* can help you develop standard operating procedures to deal with a wide range of emergencies. This guide provides a format for developing a basic plan. It summarizes the latest national concepts and practices in emergency planning and response.

This guide's concepts and step-by-step planning process are designed to assist nursing homes to become proficient in developing, conducting, and evaluating preparedness exercises that meet the Homeland Security Exercise and Evaluation Program standards.

There is also a companion CD that will help administrators and lead staff to develop disaster preparedness plans using a computer-guided process. The software cues the user to provide information that will be packaged into a preparedness document specific to the organization's needs. These tools may be used separately or in tandem. They are closely linked with one another and users will recognize similarities between the products.

Product #6844 (manual only)

AHCA Members: \$75.00

Non-Members: \$100.00

Product #6844CD (CD-ROM only)

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NEW

Resident Evacuation Documents (RED Envelopes)

These bright red, 10" x 13", waterproof "Resident Evacuation Documents," or RED envelopes, are pre-printed with space for the basic information that should go with a resident in an evacuation, e.g., allergies, photo, facility's emergency contact. In addition to its value during an emergency evacuation, it also provides an opportunity to talk with residents and their families, at the time of admission, about a facility's emergency evacuation plan. No facility should be without this simple and effective tool for evacuation.

Product #8107A (100 count)

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Product #8107B (200 count)

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Non-Members: \$375.00

Product #8107C (250 count)

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Dietary Disaster Plan

Stay in control during any type of emergency! Be prepared for a variety of disasters that may reduce your electricity, gas, and water supplies. This manual contains comprehensive and practical information for planning both before and during a disaster. It also includes regulatory requirements from OSHA, JCAHO and CMS.

Product #6870

Price: \$74.95

ahca
American Health Care Association

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National Center for Assisted Living

Visit www.ahcapublications.org or call 800-321-0343.

AHCA Praises LTC Insurance Bill Giving Consumers Greater Protection

Legislation that would make it easier for consumers to compare the coverage and price of long term care insurance policies, and establish rate stability for the products, would help spur confidence in this market and encourage more Americans “to take personal responsibility for planning for the future by protecting those who invest in long term care policies,” said a statement in support of the measure from AHCA and the National Center for Assisted Living (NCAL).

The purchase of long term care insurance is among the most important actions people can take “in their 30s, 40s, and 50s to avoid impoverishing themselves in order to qualify for Medicaid in later years,” said Bruce Yarwood, AHCA/NCAL president and chief executive officer.

The Confidence in Long Term Care Insurance Act of 2009 (S 1177), introduced by Sen. Herb Kohl (D-Wis.), chairman of the Senate Special Committee on Aging, would create standard marketing and disclosure requirements for long term care insurance carriers and require them to use a standard methodology for calculating inflation protection.

The legislation calls for the development by the National Association of Insurance Commissioners (NAIC) of consistent definitions for coverage of the services and benefits provided by long term care policies and consistent language to explain services and benefits to consumers.

In addition, NAIC would develop a form describing different inflation protection options and how the premium prices of policies with differing levels of this protection compare.

NAIC would also develop standard language that states could use to bar carriers from selling policies that did

not comply with model disclosures, definitions, and rate stability provisions. In addition, a Web site would be created to help consumers shop for and compare insurance products in their state, with information that includes the rating history of insurance carriers for the past five years.



Kohl

The legislation would require states participating in the Medicaid long term care insurance “Partnership” program to set more stringent consumer protections, including rate stability standards that must be enacted by 2012.

In addition, marketing materials for Partnership products would have to be state-approved, and agent training would have to incorporate the approved materials.

“The bill would encourage more Americans to take personal responsibility for planning for the future.”

With 43 states poised to launch Partnership programs, it is expected that these protections would be widely applied if the federal legislation is enacted. ❁

AHCA Underscores MedPAC Flaws In Response To Proposed Transformation

The Medicare Payment Advisory Commission (MedPAC) should take into account the severe deficit in Medicaid funding for nursing facility services as it makes recommendations for Medicare payment policy, AHCA said in a June letter to Sen. Jay Rockefeller (D-W.Va.), chairman of the Senate Finance subcommittee on health.

“Historically, MedPAC has recommended no Medicare annual update for skilled nursing providers, despite the traditional underfunding of care at the hands of Medicaid,” said the letter from AHCA President and Chief Executive Officer Bruce Yarwood.

The commission’s recommendations “have a profound and lasting impact on all post-acute care providers, especially skilled nursing facilities,” as most residents rely on both Medicare and Medicaid to fund their care, Yarwood said. “In order for MedPAC to make the most

appropriate recommendations on payment updates, we believe that changes to Medicare policies should not be considered through a siloed approach.” All payers, including government programs such as Medicaid, private funds, and insurance “should be considered together,” the letter said.

The importance of MedPAC making a more holistic determination of provider payment rates would be heightened under legislation proposed by Sen. Rockefeller that would transform MedPAC from a congressional advisory panel, with no authority to implement its recommendations, to an independent executive branch agency—similar to the Federal Reserve—that would have sole jurisdiction over Medicare payment rates, exempt from even judicial review. The new agency would also have sole discretion in the design and evaluation of demonstration projects. ❁

Bipartisan Letter Protests Medicare Cuts

Lawmakers from both sides of the political aisle have signed onto a letter addressed to Health and Human Services Secretary Kathleen Sebelius, urging her to reject a proposed rule resurrected from the Bush administration that would slash Medicare funding for nursing facility care by \$1.05 billion in the coming fiscal year, \$7.23 billion over five years, and \$18 billion over 10 years.

The letter—drafted and circulated in the House of Representatives by Reps. Shelley Berkley (D-Nev.), Shelley Moore Capito (R-W.Va.) and Earl Pomeroy (D-N.D.)—warns that the rule would result in deep cuts that would threaten access to high-quality skilled nursing care and harm local economies.

“These cuts will result in the loss of

at least 30,323 jobs in skilled nursing facilities around the country and diminish business activity by \$2.5 billion, further reducing federal, state, and local tax revenue,” the letter says. It also contends that the “well-recognized underfunding of SNF care by the Medicaid program” makes it all the more important to preserve federal Medicare funding and to “examine federal reimbursements as a whole when making decisions with such potentially harmful consequences.”

AHCA applauded the lawmakers for their leadership in shielding funding for frail seniors.

The rule was first proposed in 2008 by the Centers for Medicare & Medicaid

Services (CMS), as a correction for the agency’s underestimation of the cost of a 2005 expansion of Medicare resource utilization groups, designed to more accurately account for high-acuity patient needs.

“To address the agency’s projection errors, CMS proposes to ‘recalibrate’ the payment rates in order to ‘rebalance’ the system,” the letter says. “While this proposal may provide the agency with an easy administrative solution, such action will be harmful and shortsighted for Medicare beneficiaries and caregivers alike.”

The initial proposal was withdrawn following an outpouring of protests, including public opposition from more than 150 members of Congress. ❁

