

News Currents

In Brief

RUG 'Take Back' Bad Policy, AHCA Says

CMS' Authority Questioned

The \$770 million forecast error correction proposed by the Centers for Medicare & Medicaid Services (CMS) undermines the very essence of the prospective payment system and unfairly places skilled nursing facilities (SNFs) in the position of bearing the risk associated with providing post-acute care services to an increasingly frail, elderly, and disabled resident population, the American Health Care Association (AHCA) said recently in a letter to CMS.

In extensive comments to the agency regarding its fiscal year 2009 SNF prospective payment system proposed rule, AHCA outlines several reasons why CMS should not make the so-called resource utilization group (RUG) correction that it says was the result of a forecast error.

AHCA's primary argument rests on the notion that the agency does not have the legal authority to "renormalize the difference in case-mix indexes between RUG-44 and RUG-53 using 2006 data," which is expected to result in \$770 million in cuts to SNFs.

In its comments, AHCA adamantly opposes the adjustment and asks that it be withdrawn. "The law does not support the adjustment and neither do the facts," the comments say. "CMS should and must continue to pay for real case-mix change."

AHCA's comments specifically chal-

lenge CMS' authority, asserting that the agency has never sought authority to correct for an error in forecasting budget neutrality for case-mix adjustments under the Social Security Act. "The refinements made to the RUG system for fiscal year 2006 were based on the 'best data available' and, accord-

ing to CMS, resulted in 'parity,'" AHCA writes. "CMS has no authority to revisit that final agency action."

In addition to challenging CMS' authority, AHCA asserts that the pro-

posed rule seems intent on finding future budget savings that "take back" funding appropriately distributed according to existing Medicare policy.

The comments also point to data that indicate the acuity of SNF residents has risen dramatically. There has been a rise in the average case-mix for short-term acute care hospital patients discharged to SNFs by about 2.7 percent between 2004 and 2006 alone, the comments say.

"This shift toward patients with higher-acuity levels has been more pronounced in the wake of RUG refinement during 2005," AHCA says. "For example, the number of SNF residents that need extensive assistance with activities of daily living has increased, as has the use of prescription medications. The number and proportion of residents requiring pro-

'CMS should and must continue to pay for real case-mix change.'

Exceptions For Therapy Caps Extended

At press time, Congress had made good on a promise to enact a law that extends the Medicare Part B outpatient therapy exceptions process for another 18 months and averts a 10.6 percent pay cut for physicians.

The bill, known as the Medicare Improvements for Patients & Providers Act (HR 6331), replaces the physician pay cut with a 0.5 percent update, delays the competitive bidding program for durable medical equipment for two years, and allows skilled nursing facilities to serve as originating sites for Medicare telehealth services.

Just hours after President Bush vetoed the measure, Congress overrode it with a 383 to 41 vote in the House, followed by a Senate vote of 70 to 26.

Because the new law was made retroactive to July 1, 2008, it eliminated the break in the exceptions process so that all Medicare beneficiaries whose therapy had been provided during that two-week period (July 1 to July 15) were no longer subject to the caps. Had Congress failed to override the veto, a cap of \$1,810 for combined physical therapy and speech-language pathology services and \$1,810 for occupational therapy services would have taken effect.

—Meg LaPorte

cedures such as skin condition management and intravenous medications or special services from dementia care to rehabilitation has increased as well."

Finally, AHCA contends that making the forecast error adjustment is simply bad policy that is "short-sighted, budget-driven, inconsistent with CMS' longstanding efforts to rationalize

payments to post-acute Medicare providers, and threatens the economic stability of the profession.”

In addition to detailing why CMS should not make the forecast error adjustment, AHCA addresses several other issues in its comments, including the SNF area wage index, the “Staff Time and Resource Intensity Verification” study, the impending minimum data set 3.0, an integrated post-acute payment system, the CMS value-based purchasing demonstration, and consolidated billing.

CMS’ intent to use the inpatient hospital wage data for the SNF wage index is criticized by AHCA as “seriously flawed and completely inappropriate for SNFs.” Instead, AHCA suggests that “a SNF-specific wage index based on SNF wage data that allows for reclassification of SNFs—where warranted by local market conditions—is necessary so that substantial

wage index differences across acute and post-acute settings and within local labor market areas can be addressed.”

Developing a SNF-specific wage index could and should be accomplished very quickly, AHCA writes, “even as CMS pursues analysis and research called for by Congress on alternative wage index approaches.”

CMS’ pay-for-performance SNF demonstration drew a number of comments from AHCA, including a criticism that the agency did

not adopt AHCA’s guidelines or address its concerns about measuring performance.

CMS is asked to revisit the demonstration model “to ensure that it is clinically sound; reflects generally accepted standards of quality; and incorporates timely, accurate, predictable, and administratively simple elements that link payment directly to accurately measured performance.”

‘Making the forecast error adjustment is simply bad policy.’

By The Numbers



Scores represent nursing home employees’ responses to the survey items “How your direct supervisor cares about you as a person.”

Source: 2007 National Survey of Consumer and Workforce Satisfaction in Nursing Homes by My InnerView Inc.

For example, while AHCA agreed that the reduction of avoidable rehospitalizations is very beneficial to patients, “we nevertheless question the current state of the art in identifying those hospitalizations that might be avoidable.”

The comments ask CMS to further research the issue.

—Meg LaPorte

Automatic Sprinklers Will Be Mandatory in Five Years

Making an earlier-than-expected announcement, the Centers for Medicare & Medicaid Services (CMS) informed providers on a recent conference call that nursing facilities that receive funds from CMS will be required to install automatic sprinkler systems throughout their buildings by 2013 under a final rule that would soon be published.

Older facilities previously exempt from automatic sprinkler requirements will be held to the same standard as newly built and renovated skilled nursing facilities, said CMS Acting Administrator Kerry Weems on the call.

In a statement on the impending rule, the agency cited Government Accountability Office estimates that sprinkler systems decrease fire-related deaths in nursing facilities by 82 percent.

Weems said he did not expect government to help providers fund the installment of sprinkler systems.

Nursing facilities “finance improvements to physical plants all the time,” he said. “This is the kind of improvement they need to keep residents safe, and I don’t envision specific grants” for this purpose, he said.

—Lynn Wagner

Nursing Facility Arbitration Examined

Testimony Cites Fair, Timely Settlement For Providers And Consumers

Arbitration is an essential alternative to litigation, one that enables providers to operate in a climate of runaway tort costs and gives all parties access to fair and timely settlements, said witnesses testifying on behalf of the American Health Care Association (AHCA) in two separate hearings of the House of Representatives and Senate Judiciary Committees.

The hearings, held in June, addressed the Fairness in Nursing Home Arbitration Act, which has been introduced in both the House and Senate. Both proposals would bar pre-dispute arbitration agreements between nursing facilities and residents. These agreements, which have become more commonplace in the past 10 years in response to rising litigation and explosive insurance costs, are often signed upon admission to a facility.

Kelley Rice-Schild, owner-operator of the 60-bed Floridean Nursing and Rehabilitation Center, said that arbitration allows her to operate in an otherwise untenable environment.

Despite the passage of tort reform in her state, insurance is no longer widely available for most facilities, Rice-Schild told the Senate Judiciary subcommittee on antitrust, competition policy, and consumer rights.

Her facility is currently covered by a \$25,000 general and professional liability policy, for which it pays \$37,000 a year, she said. Despite a more than 60-year history of exemplary care, she told the panel that even if she could afford more coverage, it would only make her facility “a target for litigation.”

“Without arbitration as an alterna-

tive dispute resolution process, I am afraid that I am only one jury verdict, or negotiated settlement, from having to close the doors of the Floridean for good,” said Rice-Schild.

In 2002, AHCA developed a model



Kelley Rice-Schild (center), testifying for AHCA, is on a panel with Alison Hirschel, National Citizen's Coalition for Nursing Home Reform, and Ken Connor, Wilkes & McHugh.

arbitration agreement that gives residents 30 days to opt out after signing and does not make signing the agreement a condition of admission. Rice-Schild, who uses this model, said there have been several instances of residents or family members opting not to sign.

The Fairness in Nursing Home

Arbitration Act, sponsored in the Senate by Sen. Mel Martinez (R-Fla.), “needlessly discriminates against long term care providers, and more importantly the patients and residents in our nation’s nursing facilities and assisted living residences by eliminating their federal right to arbitrate future disputes,” she said.

Arbitration is “less adversarial than traditional litigation, produces quicker results,” and provides a “fair and timely resolution for both the consumer and long term care provider,” Rice-Schild said.

According to an analysis by Aon Risk Consultants, because it reduces transaction costs, “arbitration may also enable patients and their families to retain a greater proportion of any financial settlement than with traditional litigation.”

Gavin Gadberry, an attorney with Underwood, Wilson, Berry, Stein and Johnson, in Amarillo, Texas, testified on behalf of AHCA at an earlier hearing of the House Judiciary subcommittee on administrative law, also on arbitration.

—Lynn Wagner

Medicaid Regulations Delayed

President Bush signed a \$162 billion war supplemental spending bill in early July, triggering a moratorium on six Medicaid regulations, four of which are expected to impact long term care facilities.

The Centers for Medicare & Medicaid Services is prohibited from finalizing the following six Medicaid regulations until April 2009: Public Provider Cost Limits, Provider Taxes, Targeted Case Management,

Rehabilitation Options, School-Based Services, and Graduate Medical Education.

The controversial regulations were opposed by numerous provider groups as well as many lawmakers, including the American Health Care Association, the National Governors Association, and the National Association of State Medicaid Directors.

—Meg LaPorte

Advancing Excellence Extends Its Run

Facilities Moving To Higher Level Of Performance

The Advancing Excellence (AE) campaign will continue for at least another two years, building on its success of drawing nearly 7,000 facilities—more than 43 percent of the nation’s skilled nursing facilities—into a voluntary quality improvement effort, said program Chair Mary Jane Koren, assistant vice president of The Commonwealth Fund.

Launched in August 2006 as a two-year collaboration among providers, regulators, consumer advocates, and labor organizations, Advancing Excellence has led to measurable improvements in quality, Koren said in testimony on Capitol Hill.

Thirty organizations, including the Centers for Medicare & Medicaid Services and more than 1,500 consumers, have joined the campaign, Koren told the House Energy and

Commerce subcommittee on oversight and investigations.

In addition, 49 state-level coalitions have formed, Koren said. These groups, most of which were organized by quality improvement organizations (QIOs) “are already showing promise as an efficient way to share good ideas and provide technical assistance to nursing homes across the country,” Koren

said at the hearing.

Providers that participate in AE are required to make a commitment to improve quality in three of the following areas: reducing high-risk pressure ulcers; reducing the use of daily physical restraints; improving pain management for longer-term nursing facility residents; improving pain management for short-stay, post-acute nursing facility patients; establishing individual targets for improving quality; assessing

resident and family satisfaction with the quality of care; increasing staff retention; and improving consistent assignment of nursing facility staff.

Participants must also set at least one specific clinical goal and one organizational goal within their chosen areas of quality improvement.

During the first four quarters of AE’s existence, participating facilities made clinical improvements at a faster rate than non-participants, Koren said. For example, restraint use dropped by nearly 23 percent among AE facilities that set goals for this objective, compared with a 15 percent decline among non-participants in AE.

Raising the level of nursing facility quality is being accomplished by the combined impact of AE, QIOs, and the culture change movement, which together “are moving nursing homes to a higher level of performance,” Koren said.

—Lynn Wagner



Stock Check

PROVIDERS	Symbol	Where Traded	% Current Price 6/30/08	Adjusted P/E Ratio	Change From 1/1/08	52-Week Range High	52-Week Range Low	PROVIDERS	Symbol	Where Traded	% Current Price 6/30/08	Adjusted P/E Ratio	Change From 1/1/08	52-Week Range High	52-Week Range Low
Skilled Nursing								REITs							
Advocat	AVCA	NASDAQ	\$10.78	6.9	-2%	\$12.71	\$9.25	Care Investment Trust	CRE	NYSE	\$9.43	7.2%	-12%	\$14.96	\$9.40
Ensign Group	ENSG	NASDAQ	\$11.50	5.9	-20%	\$16.65	\$7.50	Health Care Property Investors	HCP	NYSE	\$31.81	5.6%	-9%	\$38.75	\$25.11
Kindred Healthcare	KND	NYSE	\$28.76	8.5	15%	\$32.34	\$17.35	Health Care REIT	HCN	NYSE	\$44.50	6.1%	0%	\$50.49	\$35.08
National HealthCare	NHC	AMEX	\$45.83	7.7	-11%	\$55.75	\$45.75	Healthcare Realty	HR	NYSE	\$23.77	6.5%	-6%	\$29.89	\$18.00
Skilled Healthcare Group	SKH	NASDAQ	\$13.42	8.7	-8%	\$16.81	\$9.83	LTC Properties	LTC	NYSE	\$25.56	6.1%	2%	\$28.30	\$19.02
Sun Healthcare Group	SUNH	NASDAQ	\$13.39	8.4	-22%	\$18.78	\$11.72	National Health Investors	NHI	NYSE	\$28.51	7.7%	2%	\$34.98	\$27.00
Assisted/Independent Living								Nationwide Health Properties							
Assisted Living Concepts	ALC	NYSE	\$5.50	9.1	-27%	\$11.13	\$5.42	NHP	NYSE	\$31.49	5.6%	0%	\$37.67	\$22.63	
Brookdale Senior Living	BKD	NYSE	\$20.36	12.8	-28%	\$48.41	\$20.15	Omega Healthcare	OHI	NYSE	\$16.65	7.2%	4%	\$19.23	\$12.00
Capital Senior Living	CSU	NYSE	\$7.54	10.9	-24%	\$10.12	\$6.32	Senior Housing Properties Trust	SNH	NYSE	\$19.53	7.2%	-14%	\$25.21	\$16.22
Emeritus Assisted Living	ESC	AMEX	\$14.62	13.3	-42%	\$33.38	\$14.57	Universal Health Realty	UHT	NYSE	\$30.00	7.8%	-15%	\$39.05	\$28.23
Five Star Quality Care	FVE	AMEX	\$4.73	8.9	-43%	\$10.20	\$4.71	Ventas	VTR	NYSE	\$42.57	4.8%	-6%	\$50.39	\$26.50
Sunrise Senior Living	SRZ	NYSE	\$22.48	N/A	-27%	\$41.05	\$16.27								

Quotes courtesy of www.seniorcareinvestor.com, Norwalk, CT (203) 846-6800

(1) Adjusted P/E=(market cap + total debt + capitalized leases = cash)/annualized EBITDAR based on the most recent quarter.

The rate used to capitalize the leases has been changed from 12.5% to 10.0% effective 1/31/06 to better reflect market conditions

Many Workers Lack Health Coverage

Workplace Injuries And Illnesses Common In Long Term Care

Direct care workers, many of whom work in nursing facilities, suffer a high rate of on-the-job injuries and illnesses, while one in three have no health insurance, according to a new report from the Health Care for Health Care Workers Campaign. The report recounts troubling data from the U.S. Department of Labor's Bureau of Labor Statistics regarding workplace injuries and insurance coverage for direct care workers.

The physically demanding work of direct care results in more than 500 annual days of missed work for every 10,000 workers. The national average for all workers is 128 days.

The high rates of back injuries, muscle strains, and tears, coupled with a lack of health care coverage, makes direct care work a very difficult profession, the report says.

Entitled, "The Invisible Care Gap: Caregivers Without Health Coverage," the report notes that direct care work-

ers are almost twice as likely as the general public to lack health insurance. With 885,000 of the 3 million workers providing elder care in the United States lacking health coverage, that's a gap of nearly 30 percent.

While caregivers working in three institutional settings—hospitals, nursing facilities, and residential care facilities—are more likely to have employer-sponsored health coverage, those who work in home- and community-based settings are least likely to be covered.

A particularly troubling aspect of this lack of coverage is the lack of employer-sponsored health care, according to the report. The majority of Americans still receive health insurance coverage from their employers, but only about half of direct care workers have coverage provided by their employers.

More than three-quarters of hospital care workers have employer-sponsored

coverage, compared with 57 percent of nursing facility care assistants and 42 percent of home care aides.

Because home care employment is growing more rapidly than hospital or nursing facility care jobs, nearly two out of every three direct care workers will be providing home-based services by 2016, according to the report. In the same year, there will be a need for nearly 4 million direct care workers, meaning that more than 2.6 million workers will be providing home-based services.

The expected 4 million direct care workers will likely be unable to afford their own health insurance. With a median hourly wage of \$9.56, direct care workers earn only about two-thirds of the median wage for all U.S. workers, according to the Bureau of Labor statistics. Individual insurance premiums average \$4,500 for individual coverage and \$12,106 for family coverage, which is prohibitive for workers living so close to the poverty line, the report claims.

In fact, four out of 10 direct care workers rely on public benefits to help meet their basic needs. Many depend on food and nutrition programs, housing subsidies, energy benefits, and cash welfare. Medicaid, in particular, is an important resource for direct care workers, with more than one-third living in households that receive Medicaid benefits, according to the report.

Because of these issues, many direct care workers prefer to work for employers that provide health care coverage, the report says. In fact, direct care workers enrolled in employer-sponsored health insurance plans remain in their jobs more than twice as long as those without employer coverage.

—Sarah Larson

Alzheimer's Disease Outranks Diabetes

Alzheimer's disease has now surpassed diabetes as the sixth leading cause of death in the United States and the fifth leading killer of Americans aged 65 or older, according to the Centers for Disease Control and Prevention (CDC) National Center for Health Statistics. In 2006, an estimated 72,914 Americans died of Alzheimer's disease.

This year, an estimated 5.2 million Americans will have Alzheimer's disease—with a new case developing every 71 seconds. With the increasing elderly population and a decline in other diseases, it is expected that by 2050 that number will rise to a new case every 33 seconds, according to CDC. "The CDC's announcement that

Alzheimer's disease jumped from the seventh to the sixth leading cause of death should serve as a wake-up call to the nation," said William Thies, vice president of medical and scientific relations at the Alzheimer's Association.

According to "The Alzheimer's Association 2008 Alzheimer's Disease Facts and Figures," more than one in eight baby boomers will develop Alzheimer's disease.

"The fact that there are no effective treatments for Alzheimer's has allowed the disease to pass diabetes," Thies said. "It is vitally important that we increase Alzheimer's research funding to slow or stop the progression of this devastating disease."

—Sarah Larson

Iowa Facility Navigates Flood Waters

Community Ensures Resident Safety During Crisis

The swollen banks of the Upper Iowa River in Decorah, Iowa, may have forced some 600 people to evacuate their homes in mid-June, but it did not break the spirit of the residents and staff at the Aase Haugen Home, where 126 residents were ushered to higher ground just after midnight on June 9.

Since Aase Haugen sits near a dike in Decorah that was in danger of breaching, staff members wasted no time launching evacuation procedures once the order came in, says Lynn Monroe, the facility's development director.

"People from the community showed up to help us, even though many of them had been evacuated from their own homes," she says. "It was amazing."

Aase's contracted bus company arrived on time for the evacuation, and together the staff, volunteers, and police officers identified each of the residents and checked off names as they exited the building and boarded the buses.

"We wrote their names on the back of their left hands as an added security measure," says Monroe. "Most residents were taken to two churches in a safer part of town, while some more critical patients were taken to a hospital or another facility."

During the first 24 hours at the evacuation site, staff became one cohe-

sive unit, with each making rounds nearly constantly to check on the residents. "We were not the activities department or the nursing department," says Monroe, "we were one team working

raise the spirits of residents. "We really wanted to emphasize that they were home now," says Monroe, "so we coordinated the timing of all the residents to arrive at once."

The entrance to the facility was brightened with balloons and a "welcome home" sign, while each and every staff member lined up along the sidewalk in the parking lot as the buses filed in.

There were cheers and applause as the residents disembarked. "We announced each resident's name as they came off the bus," says Monroe.

"The residents were very happy; it was a very

emotional event."

Although the evacuation was an unambiguous success, there were several items that Monroe says they will add to their list of emergency supplies. Among them are a lock box for extra flashlights, a tarp, medications, a blood pressure cuff, and a blood sugar monitoring device.

Monroe says she will remember the event best for the amazing way in which the staff came together as a team. "We were more like family than ever," she says.

—Meg LaPorte



Residents of the Aase Haugen Home, Decorah, Iowa, get a warm welcome home from staff. Aase Haugen's lobby now boasts a display of photos and thank you cards as a memorial to the event.

together to make the evacuation as comfortable as possible for the residents."

The community also played an invaluable role in helping things run smoothly: The local American Red Cross brought cots and blankets to the churches, a radio station asked listeners to donate food, a local disability services company generously allowed the staff to use its laundry facilities, and another business donated televisions.

Arriving home to the facility nearly 48 hours later, on June 10, was an event in itself, orchestrated by staff to

Robotic Pets Stem Loneliness: Study

Researchers Uncover Additional Benefits

Robotic pets can decrease loneliness among nursing facility residents as much as living pets, according to a recently published study in the *Journal of the American Medical Directors Association*. The study, performed by researchers at St. Louis University, compared the ability of a living dog and a robotic dog to ease loneliness in elderly patients living in long term care facilities.

The researchers interviewed residents at three facilities in St. Louis.

Residents received visits for eight weeks from either a living dog, named Sparky, or a robotic dog, named Aibo, with hearing and communication capabilities.

A control group did not visit with either Sparky or Aibo.

Throughout the study, residents answered questions about their levels of loneliness and their levels of attachment to the visiting animals.

During visits, researchers brought the pets into residents' rooms and placed the dogs near the resident. The pets communicated and interacted with the residents, responding to their touches and wagging their tails with excitement.

After the visits, residents were asked about their levels of loneliness, and their answers were then compared to the answers they gave at the beginning of the study.

Residents who received visits from either the living or the robotic dog were significantly less lonely than those residents who did not receive visits, the study found.

Additionally, there was no difference between the effectiveness of the living or robotic dog in reducing loneliness.

"The most surprising thing is that they worked almost equally well in terms of alleviating loneliness and causing residents to form attachments," said William Banks, MD, professor of geriatric medicine at St. Louis University.

Because loneliness is a common problem for long term care residents, care providers often look for ways to reverse those feelings of isolation.

Animal-assisted therapy has proven an effective method of reversing loneliness, but some residents and facilities cannot bring in a live animal such as Sparky.

This study, however, suggests an alternative. With a robotic animal like Aibo, many of the difficulties of having a living pet disappear.

"For those people who can't have a living pet but who would like to have a pet, robotics could address the issue of companionship," Banks said.

The study has other implications, as well. Robotic companions might be able to assist elderly adults who live alone: They could provide companionship, assistance, and reminders and even send out alerts when their owner is in need of help.

"This health companion could follow a person in his home, giving him reminders on when to take medication or sending out an alert when a person has suddenly gone from a vertical position to a horizontal one," said Banks.

—Sarah Larson



In Brief

Residents Merit Access To Converter Box Coupons

The American Health Care Association and the National Center for Assisted Living (AHCA/NCAL) recently provided comments to the Department of Commerce, National Telecommunications and Information Administration (NTIA), regarding a proposed rule that gives coupons to certain individuals for the purpose of purchasing converter boxes that will translate analog-only televisions to digital television.

While AHCA/NCAL applauded NTIA for recognizing that the nation's senior citizens "may have a greater need for converter boxes to continue receiving broadcast programming over the air using analog-only television sets," the association urged NTIA to

include nursing facilities, assisted living residences, and homes for individuals with developmental disabilities in defining those facilities whose residents qualify for a coupon.

AHCA/NCAL also signed on to a letter of support that was sent to NTIA along with 20 other organizations. The elderly are among those most likely to lose TV reception on Feb. 17, 2009, when the nation transitions to digital TV broadcasting, because they are "often among the most financially disadvantaged Americans—70 percent of nursing home residents use Medicaid to help pay for their care, for example—and are the most reliant upon television for news, entertainment, and connection with their community, state, and nation," the letter said.

—Lisa Gelhaus

ACTS Plans New CCRC Development

ACTS Retirement-Life Communities, West Point, Pa., will purchase a 48-acre land parcel located in Matthews, N.C., for the purpose of building approximately 350 independent living apartments and single family homes with additional numbers of assisted living and skilled care suites.

According to a company statement, the expansion is designed to complement an existing ACTS community adjacent to the property, Plantation Estates, which consists of approximately 560 retirees and is currently undergoing a \$9 million renovation and expansion of its own.

ACTS plans to begin marketing construction after 70 percent of the project is pre-sold.

—Meg LaPorte