

STATEMENT

OF



RESPONSE TO THE SENATE FINANCE COMMITTEE'S POLICY OPTIONS PAPER

ON

FINANCING COMPREHENSIVE HEALTH CARE REFORM:

PROPOSED HEALTH SYSTEM SAVINGS AND REVENUE OPTIONS

MAY 26, 2009

The American Health Care Association and National Center for Assisted Living (AHCA/NCAL), which represents nearly 11,000 dedicated long term care providers, commend Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) for pursuing a thoughtful, deliberative, inclusive approach in seeking to transform our health care delivery system. AHCA/NCAL shares the Committee's goals of improving patient care and reducing health care costs, and offers these comments and our assistance in achieving much-needed health care reform in 2009.

We agree with the Senate Finance Committee's assessment that the U.S. health care system is in crisis and that rising health care costs affect American families, businesses, and both federal and state health care programs. As the largest association of long term care providers, AHCA/NCAL fully appreciates the importance and need for addressing the rising health costs as part of overall health care reform. Long term care accounts for 1.1 percent of the Gross Domestic Product (GDP) – \$153.8 billion annually – and often a long term care facility can represent the largest employer in a town. If we expect that these providers will be able to continue to offer quality long term and post-acute care for frail, elderly, and disabled Americans, and if our nation hopes to extend health care coverage to the 46 million uninsured and underinsured Americans who need it, then, we must address these tough issues now.

AHCA/NCAL supports the Committee's efforts to achieve significant savings by reforming our nation's health care system. Taking on the tough issues that surround such reform will not only help to contain costs and achieve savings, but also will affect quality. In fact, quality of care is inextricably linked to stable funding – stability that cannot be achieved over the

long term without both containing health care costs and making strategic investments in health information technology and other approaches that will yield cost-savings in the future.

As the policy options contained in *Financing Comprehensive Health Care Reform: Proposed Health System Savings and Revenue Options* and the other two policy options recently released by the Senate Finance Committee are discussed, we ask that the Members of this Committee look beyond just reform of our nation's acute care system, and include much-needed reform of our fragile long term care system, which must be a seamless part of our nation's overall health care system.

Long term care has proven its ability to provide quality care, often in a less-costly care setting. Indeed, many of the underlying principles regarding acute care reform discussed in the Committee's *Financing Comprehensive Health Care Reform: Proposed Health System Savings and Revenue Options* echo proposals outlined in AHCA/NCAL's long term care financing reform proposal, which we developed with our colleagues at the Alliance for Quality Nursing Home Care and with the analytical and policy expertise of Avalere Health LLC. Given the significance of Medicaid as the largest payor of long term care and services, and the impact that reform will have on Medicaid beneficiaries (who represent two of every three long term care residents), we again offer to work with Members of this Committee and urge that long term care be included in any overall health care reform package.

As with our previous comments regarding the Senate Finance Committee's exhaustive list of policy options, we have focused our comments on those provisions that pertain most to long term care, and include a reference to both the topic and section as outlined in the Committee's policy options paper, *Financing Comprehensive Health Care Reform: Proposed Health System Savings and Revenue Options*.

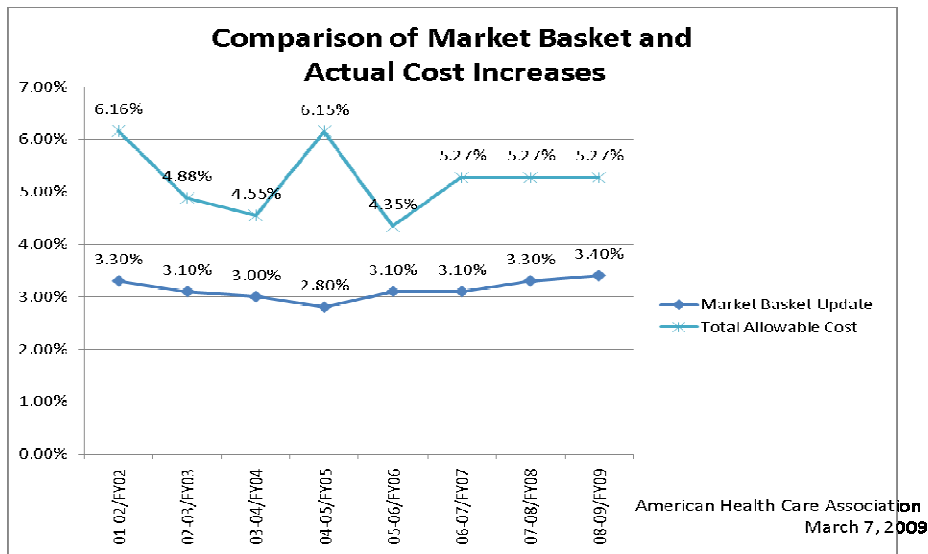
Section I Health Systems Savings Ensuring Appropriate Payment

With our profession's quality agenda as both a backdrop and a desirable ongoing public policy priority, the matter at hand is relatively simple. When Medicare funding for skilled nursing services is stable, quality of care and services improve. When Medicare funding is inconsistent and unstable – especially in the face of growing demand – our nation's long term care infrastructure deteriorates to the detriment of every senior today and every retiree tomorrow.

AHCA supports the Committee's goal of improving payment accuracy, but believes that this may be better accomplished in methods other than adopting the Medicare Payment Advisory's (MedPAC's) recommendations for annual Market Basket updates. MedPAC has historically recommended no annual inflation adjustment for skilled nursing facilities (SNFs). When considering that annual market basket increases have been significantly lower than the increase in allowable costs to provide care, and the fact that MedPAC fails to address the chronic Medicaid underfunding of nursing care, it is evident that the Commission's recommendation is inconsistent with the best interest of patients and caregivers alike.

Market Basket Updates Fail to Meet Rising Costs

Currently, the annual market basket update for skilled nursing facilities is intended to reflect an increase in the cost to provide quality care. However, as the chart below illustrates, the increases in nursing facility costs from 2001 – 2007 exceeded the increases in the market basket updates each year (FY 2002 to FY 2009). It is clear that a full market basket increase is critical to enable nursing homes and Medicare to continue to move forward in providing quality services for our nation's most vulnerable citizens.



Medicare Reductions Would Exacerbate CMS Proposal to Slash \$18 Billion Over Ten Years

The Centers for Medicare & Medicaid Services (CMS) has proposed to cut Medicare funding for SNFs by 3.3 percent in FY 2010 to correct a CMS mistake made in 2005. A further reduction of a market basket increase could create instability and uncertainty for a sector that provides care and services to the nation's frail and elderly. The CMS proposed rule which once again seeks to accommodate for a projection error related to the adoption of new patient classification categories would cut SNF Medicare reimbursements by \$1.05 billion in FY 2010 alone. Some projections estimate that this proposal would eliminate \$18 billion from quality skilled nursing care over the next ten years.

In 2005, CMS revised and expanded the Medicare patient classification system – called Resource Utilization Groups (RUGs) – which are used to set Medicare Part A daily payment rates for seniors needing SNF care. CMS' flawed assumptions failed to account for the increasingly complex patients that seek and receive nursing and rehabilitative care in our nation's nursing homes. The agency's attempt to recoup Medicare funds through implementation of the SNF proposed rule is incongruous with CMS' own policy efforts to encourage certain high-acuity Medicare beneficiaries to receive care in the cost-efficient, quality SNF setting.

Further complicating the issue, CMS has included within this same proposed rule major revisions to its current RUGs system to be implemented in FY 2011 – with only a 60-day comment period ending June 30, 2009. The proposed RUG-IV system has the potential to destabilize and redefine the provision of skilled nursing care.

Medicare & Medicaid – Inextricably Linked

It is important to recognize that MedPAC'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. By ignoring the underfunding of care by Medicaid, MedPAC's analysis and recommendations do not present an accurate picture of the long term care marketplace. Medicaid is responsible for funding the care for 63 percent of patients in America's nursing homes, and those nursing homes lose an average of \$12.48 per Medicaid patient, per day.

MedPAC's continuing and exclusive focus on Medicare ignores the real and growing inter-dependence between Medicare and Medicaid. While 63 percent of nursing facility patients rely on Medicaid to fund part, or all of their nursing facility stay, those benefits account for only half of nursing facility revenues. Given that the prevalence of Medicaid patients in our nation's nursing facilities, special consideration of the relationship between Medicare and Medicaid seems particularly relevant to nursing facility care.

Long Term Care – A Major Economic Driver

A major driver of national economic activity, long term care facilities are a source of employment for more than 4.4 million Americans, generate more than \$56 billion in annual tax revenue, and indirectly contribute nearly \$372 billion to the U.S. economy each year. In this time of economic uncertainty and distress, the long term care sector is one of the few business sectors that is hiring well-qualified candidates and creating new jobs. In fact, according to the U.S. Bureau of Labor Statistics (BLS), nursing and residential care facilities added 58,400 jobs in 2008 alone.

We are concerned that coupling the proposal to eliminate or adjust the market basket update for SNFs, with CMS' efforts to significantly cut Medicare funding, and with the unfortunate reality of Medicaid underfunding for skilled nursing care, the long term care sector could be destabilized and many jobs could be placed in jeopardy. Taking the CMS' "projection error" proposal by itself, it is estimated that the \$1.05 billion reduction in Medicare nursing facility expenditures on a nationwide level has a substantial impact on the local, state, and national economies – with a reduction of \$1.1 billion in labor income, and a loss of more than 30,000 jobs.

At a time when our nation's healthcare requires stability and efficiency, we believe that a proposal to eliminate or adjust the SNF market basket update could have dangerous repercussions – jeopardizing quality care and eliminating much needed jobs.

Section I Health Systems Savings **Modifying Beneficiary Contributions** *Making Beneficiary Contributions More Predictable*

AHCA/NCAL supports the Committee's efforts to simplify Medicare beneficiary contributions. However, the Committee should exercise caution and ensure that coverage for the poorest and frailest beneficiaries is not compromised. As we stated in response to the Committee's *Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans* options paper, AHCA/NCAL believes that there are ways that Congress can act immediately to better coordinate care for this population. One way to better coordinate and simplify care for the dual eligible Medicare population would be enactment of the *Home & Community Services Copayment Equity Act of 2009 (S. 534)*. This legislation would improve the care for dually eligible beneficiaries, who receive both Medicaid home and community-based services (HCBS) and Medicare Part D drug coverage, by providing copayment parity with dually eligible beneficiaries living in facilities. Current law creates an unlevel playing field because dually eligible beneficiaries receiving HCBS must pay Part D copayments while those in institutional settings such as nursing homes and hospitals do not. Given that many of these individuals have very low incomes and still require nearly nine prescription drug medications per day, many of these frail elderly now cannot afford these Part D copayments and may forgo certain needed medications.

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Conclusion

Next year will mark 30 years since the Bipartisan Commission on Comprehensive Health Care (aka the Pepper Commission) released its report calling on Congress to make long term care reform a priority. It is time to make good on that call to action.

We applaud Chairman Baucus, Ranking Member Grassley, and members of this Committee, who have already contributed to a thoughtful discussion about how to reform our very complex health care system. AHCA/NCAL stands ready to work with Congress and the Administration in achieving meaningful reform that ensures all Americans have access to person-centered, cost-effective, quality health care.