

**The “Manager’s Amendment” to
H.R. 3962, *Affordable Health Care for America Act*:
Issues Affecting Long Term Care
November 4, 2009**

Late on November 3, 2009, the House Democratic leadership released a “Manager’s Amendment” containing changes to H.R. 3962, the *Affordable Health Care for America Act*, which was introduced on October 29.

This document is a supplement to the AHCA/NCAL summary of H.R. 3962 that was released November 3 and reflects the changes in the Manager’s Amendment that impact long term care. If an issue addressed in the November 3, 2009, document is not addressed here, it is because there was no change.

Tort Reform

The Manager’s Amendment contains a “Savings Clause” for state medical malpractice laws providing that nothing in the act will modify or impair state medical malpractice law or the ability of states to make/implement these laws.

AHCA/NCAL support this provision, but would encourage the Congress to strengthen medical malpractice limitations at the federal level.

In addition the Manager’s Amendment provides that nothing in the “Medical Liability Alternatives” section will pre-empt or modify existing state laws, or impair the authority of the state to establish laws that limit attorney’s fees or impose caps on damages. It further provides that nothing in this section will restrict the state’s eligibility to receive incentive payments for having or establishing these laws.

Change in Date for SNF Classification Changes

Section 1111 of H.R. 3962 shifts some funds out of the case-mix adjusted therapy component of the SNF PPS and into the non-therapy ancillary services portion of the case-mix adjusted nursing component of the SNF PPS rate. In H.R. 3962 the shift takes effect on January 1, 2010, but the Manager’s Amendment changes the effective date to April 1, 2010.

AHCA research shows that while the change in budget may be neutral in the aggregate, the exact impact is uncertain at best but it will likely vary among individual providers across the country. We will continue look into this issue.

Criminal Background Checks

The Manager’s Amendment provides that states may agree to reimburse long-term care facilities/providers for all costs attributable to conducting background checks and screening under the

Nationwide Criminal Background Check Program. Federal funding available to the states is limited to the amounts available under the program funding provision of this title (\$160,000,000).

AHCA/NCAL appreciates the efforts of Representative Bob Etheridge (D-NC) to ensure that providers do not face an unfunded mandate when conducting criminal background checks. AHCA/NCAL strongly believes this provision must be strengthened to mandate the House provide additional guarantees that States will cover all the costs of these checks for both SNFs/NFs and ALFs.

Quality Indicators for Care of People with Alzheimer's Disease

The Manager's Amendment requires the Secretary to develop and implement indicators to measure the quality of care for patients with Alzheimer's and other dementias by physicians, hospitals and other appropriate providers. The Secretary will submit reports to various Congressional Committees in House and Senate.

90 Day Period of Enhanced Oversight for Initial Claims of DME Supplies

The Manager's Amendment contains provisions requiring that if the Secretary determines that there is a significant risk of fraudulent activity among suppliers of durable medical equipment for suppliers within a category or geographic area, the Secretary shall withhold payment for a DME supplier during the 90 day period following the first submission of a claim.

Disclosure of Medicare Fraud and Abuse Hotline Number

The Manager's Amendment would require statements or notices containing an explanation of benefits to prominently display a separate toll-free telephone number maintained by the Secretary for the receipt of complaints and information about waste, fraud and abuse in the provision of billing services.

Sense of Congress Regarding Community First Choice Options to Provide Medicaid Coverage for Community-Based Attendant Services and Supports

The Manager's Amendment contains "Sense of the Congress" language that Medicaid should cover community-based attendant services and supports furnished in homes and communities and that federal matching assistance percentage (FMAP) for such assistance should be enhanced. Sense of the Congress language does not have the force of law and is non-binding. Thus, it will have no impact on federal policy.