



Issue Update
April 16, 2010

Health Care Reform

Patient Protection and Affordable Care Act, P.L. 111-148, signed 3/23/10. Some revisions contained in the Health Care and Reconciliation Act, P.L. 111-152.

Highlights:

- Preservation of Medicare 2010 and 2011 payment updates for skilled nursing facilities.
- Extension of Medicare therapy caps exceptions process through Dec. 31, 2010.
- CLASS plan to reform financing of long-term services and supports.
- Government Accountability Office study and report on nursing home five-star rating system.
- Demonstration projects on culture change and on the application of technology in nursing homes.
- Expansion of Medicaid coverage of home- and community-based services.
- Gradual closing of the Medicare prescription drug doughnut hole.
- Increased funding for nurse training and geriatric training for health care professionals, and new training opportunities for direct care workers.

More detailed information available on AAHSA's Health Reform Hub, <http://www.aahsa.org/healthreformhub.aspx>. Includes discussion of provisions applicable to AAHSA members as employers.

We continue to work with other stakeholder organizations on timely and effective implementation of the CLASS plan.

Medicare

Part B therapy reimbursement for skilled nursing facilities

- This part of nursing home reimbursement is tied to the physician fee schedule, which was due for a 21% cut in its annual inflation update at the beginning of calendar 2010. Congress has passed a series of short-term fixes to prevent this cut; the latest one will last through May 31, 2010. We support pending legislation to extend the payment relief through December 31, 2010.

RUGs IV

- The transition to the RUGs IV payment system for skilled nursing facilities is supposed to take place October 1, 2010. Health care reform delayed part, but not all of the transition to RUGs IV until October 1, 2011.
- CMS has advised Congress that this split transition is not workable. All three nursing home associations are agreed on the need to fix this glitch in the law, but a correction could not be included in the reconciliation bill because of procedural requirements. An appropriate legislative vehicle to return to the original date is being explored.

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- We have posted a calculation tool on the AAHSA website for members to determine how they will fare under RUGs IV (Access the calculator by plugging “RUGs IV” into the Search box).
- Our analysis, including work with several members who have contacted us about RUGs IV, indicates that most AAHSA members will suffer little, if any reimbursement loss under the new system and many may experience reimbursement gains. Although “legal loopholes” will be closed (that part of the RUGs IV transition was not delayed under health care reform), reimbursement rates for several categories of residents disproportionately served by non-profit nursing homes will increase.
- We already have conducted one audioconference for members on RUGs IV, and we will continue developing informational materials on it.

Therapy caps exceptions process

- For 2010, Medicare coverage of outpatient therapy is limited to \$1,860 for physical and speech therapy combined and another \$1,860 for occupational therapy. The exceptions process that gives beneficiaries coverage for medically-necessary therapy in excess of the caps expires periodically. The health care reform law extended the exceptions process through December 31, 2010; we continue to advocate for a longer-term extension.

Adult Day Services

- The Medicare Adult Day Services Act, H.R. 3043, would allow adult day service providers to be certified to provide Medicare-covered post-acute services to beneficiaries. We are doing direct and grassroots advocacy in favor of the bill, especially to add cosponsors, and are soliciting a sponsor to introduce it in the Senate.

Medicaid

Extension of increased federal Medicaid funding

- The 2009 economic stimulus package gave states a temporary increase in the federal Medicaid match to help them avoid draconian cuts in their Medicaid programs. The additional federal Medicaid funding is due to expire December 31, 2010.
- Many states still face budget crises due to the lingering effects of the recession. For many states, fiscal year 2011 will begin 7/1/10, so their legislatures are planning 2011 budgets now.
- AAHSA supported provisions of health care reform legislation in the House that would have extended the additional federal Medicaid funding through June 30, 2011. Although those provisions were deleted from health care reform, an extension of the extra Medicaid funding may be incorporated into jobs legislation to be considered in the next several weeks.

Housing reform

- S. 118, the Section 202 Supportive Housing for the Elderly Act, is our signature legislation to reform affordable senior housing. It would ease refinancing for project rehabilitation and modernization and

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allow the use of excess refinancing proceeds to develop additional affordable housing, increase accessibility and help residents age-in-place by expanding supportive services.

- Provisions similar to S. 118 now have been incorporated into H.R. 4868, the Housing Preservation and Tenant Protection Act introduced in the House March 17. The preservation bill includes provisions to address the next preservation crisis, maturing mortgages, with programs and assistance to ensure that the housing will remain affordable even though the original affordability restrictions have expired. We testified in favor of the legislation at a March 24 Financial Services Committee hearing and are doing direct and grassroots advocacy to gain support for it in the House.

Senior Housing Funding for Fiscal 2011

- We oppose President Obama's fiscal 2011 budget proposal to cut funding for Section 202 housing by \$550 million and to suspend the program pending reforms. Last year we were able to achieve a \$60 million increase in funding for Section 202, bringing appropriations up to \$825 million. We are doing direct and grassroots advocacy to fully fund the Section 202 Capital Advance program and continue the development of affordable, supportive senior housing across the country.

Home- and Community-Based Services Funding for Fiscal 2011

- The Obama fiscal 2011 budget proposal called for a 7.4% increase in total funding for Older Americans Act programs, which we support. However, we are concerned that the budget calls for only a one percent increase in funding for congregate and homebound meal programs, not enough to meet inflation and address the existing waiting lists.
- Social Services Block Grants: this program, which many states use to provide in-home and adult day services, has been flat-funded for many years. We are seeking increased funding.
- Senior Transportation Programs: Increase funding and the flexibility for the Federal Transit Administration's Section 5310 formula grant for the elderly and persons with disabilities. We are requesting \$176.8 million in fiscal year 2011 to ensure that needed transportation is available for the millions of older adults age 60 and over and the tens of millions of persons with disabilities.

Survey and certification

5 star nursing home rating system

- The Patient Protection and Affordable Care Act includes a directive to the Government Accountability Office to study the five-star system.
- We anticipate the nomination of a new administrator at CMS shortly. One of the obstacles we have encountered in advocating for changes in five-star is the current officials' unwillingness to take any significant action before a new administrator comes in.
- Secretary of Health and Human Services Kathleen Sebelius has stated that she sees room for revisions in five-star, particularly in the bell curve, and we will continue working with her and others in the Administration on necessary revisions in the program.

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Institutes of Medicine study of the survey and certification system

- We are close to the introduction of legislation to require the IOM to examine the present system, determine whether it is serving the purpose for which it was established, and recommending changes to Congress.

Deficit reduction commission

- By executive order, President Obama established a commission to come up with a set of recommendations by December 1 on reducing the federal budget deficit to 3% of gross domestic product by 2015. We have been told that all issues will be on the table, not just entitlement programs like Medicare and Medicaid. The commission's first meeting will be April 27.

Union Card Check

- We continue to keep an eye on HR 1409/S 560, the Employee Free Choice Act. However, there has been no activity on this legislation for over a year. It appears that the congressional leadership is not anxious to take up another divisive measure after the long, highly partisan struggle over health care reform.

Ban on pre-dispute arbitration agreements in nursing homes and assisted living

- This is another issue on which we have seen little activity. We oppose the bill and have proposed alternatives to protect consumer interests while at the same time preserving the time- and money-saving arbitration option.