



LEGISLATIVE UPDATE

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NHPCO Meets with CMS Administrator Kerry Weems

NHPCO met with Centers for Medicare & Medicaid Services (CMS) Administrator Kerry Weems and members of his senior staff on January 18 to discuss NHPCOs continuing issues with the interpretation and implementation of CR 5567. During the meeting, CMS expressed concerns about sustained growth in hospice expenditures. CMS stated that the CR 5567 is a continuation of its hospice data collection effort to allow better analysis of services, trends and utilization.

NHPCO affirmed its commitment to data collection but noted that the data requested in CR 5567 is flawed and outlined the following concerns:

- Collecting just the number of visits does not provide a complete picture of the type, length and intensity of visits
- Focusing the data on visits will provide CMS a skewed view of services, neglecting the case management functions and team involvement that are not captured in the data collection.
- Requiring GIP reporting requirements for the number of staff visits to the patient regardless of the patient's location may cause additional problems for hospices that already have strained relationships with hospitals. NHPCO expressed grave concern about how this data could be collected and whether it would ever be an accurate reflection of services.
- Requiring hospices to furnish charges for each discipline's visits is a particularly troublesome and difficult issue for hospices who have not "unbundled" the services previously. Furthermore, CMS' references to the False Claims Act have created a great deal of concern among hospice providers about how to complete the "charges" portion of the claim form accurately.

NHPCO asked Weems to collaborate with the organization on a comprehensive data collection tool for the hospice community that will give CMS, other government entities and NHPCO more detailed information on the care and services provided by hospices. The CMS representatives stated they feel intense pressure internally, as well as from other government agencies and Congress, to collect additional data about the hospice community to help them better understand the rapid and sustained growth in all areas under the benefit. While acknowledging the value of comprehensive data, CMS described CR 5567 as a step in a series of efforts to collect more information about the range and frequency of services being provided to patients and their families.

NHPCO Council of States Regulatory Update Call

NHPCO has instituted a bi-weekly conference call for state hospice organization staff and state association board presidents. Besides the meeting with Centers for Medicare & Medicaid Services (CMS) Administrator Kerry Weems (see previous article), the following issues were highlighted on this week's call:

- **NHPCO meeting with MedPAC commissioner:** NHPCO staff met with MedPAC Commissioner Nancy Ann Min DeParle, a former CMS administrator. HPCO characterized the meeting as relationship building for future conversations. During the meeting, DeParle shared that she was dismayed by a lack of understanding of hospice by the other MedPac commissioners and said she is committed to work to share correct information with them.
- **Congressional Medicare package:** NHPCO members shared that they are confident that the hospice rate can be sustained. NHPCO is also pursuing a delay of CR 5567 and suggesting the Congress replace it with a CMS/NHPCO comprehensive data collection project. Finally, NHPCO is asking for a correction to the hospice cap because a provision in the methodology utilizing a geographic index had been omitted. The correction that NHPCO is requesting would index the cap amount for the area wage index and include a hold harmless agreement.

Hospices Encouraged to Contact Congressional Delegation

In light of the Centers for Medicare & Medicaid Services (CMS) CR 5567 requirement and discussion nationally at the federal level, IHO encourages all hospices to contact their Congressional delegation. Enclosed with this week's *Legislative Update* is a sample letter to use when writing to legislators and contact information for the Iowa delegation. The letter asks for the Congressman's assistance in delaying the CR 5567 requirement and asking CMS to work with the industry on alternative models of data collection.

The letter also cautions the Iowa Congressional delegation on making extreme changes to the Medicare hospice cap based upon the experience of other states. Overall, Iowa has not had a problem with hospices meeting the cap. IHO has concerns that if Congress adjusts the cap, it will be done on a budget-neutral basis impacting payments negatively. Consistent with NHPCO, IHO will be recommending a correction to the hospice cap because a provision in the methodology utilizing a geographic index had been omitted. The correction would index the cap amount for the area wage index and include a hold harmless agreement. Senator Chuck Grassley, especially, needs to hear these concerns and recommendations from Iowa hospices because other states have been contacting him on the issue.

Iowa Legislature Convenes; Party Leaders Make Opening Remarks

The 82nd Iowa General Assembly convened for its second regular session on January 14 and party leaders presented opening remarks to mark the beginning of the session.

Democrats, who control both chambers of the Legislature, opened an election-year session with calls for bipartisanship, but some lawmakers made clear that partisan disagreements were looming.

“Too often in the past dozen years, the Legislature has failed to keep its promises,” said Senate Majority Leader Mike Gronstal (D-Council Bluffs). “Not only are we going to keep our promises on education, health care and jobs, we are going to go a step further by continuing to eliminate budget gimmicks used in previous years.”

Democrats promised not to let election-year politics interfere with effective governing. Meanwhile, Republican leaders voiced concern about pocketbook issues and the ability of Democrats to lead the state.

“The Democrats are so consumed with holding onto power that the governor’s office and the Democratic majorities are like deer frozen in the headlights of this problem,” Senate Minority Leader Ron Wieck (R-Sioux City) said.

In the House, the tune was no different. House Majority Leader Kevin McCarthy (D-Des Moines) said, “Last year we made great strides in education, health care, and renewable energy. This year we are perfectly poised to maintain that progress, if we have the will to do so, and we can maintain that progress while still balancing the budget.”

Across the aisle, House Minority Leader Christopher Rants (R-Sioux City) spoke about health care, saying, “For all the talk we have heard in this state about how poorly the federal government pays our doctors and hospitals for Medicare, the state of Iowa pays even less for Medicaid...It’s time to give Iowans a break by completing the job and eliminating the hidden health care tax.”

Despite the first-day rhetoric, Sen. Gronstal thinks the session can be wrapped up in the allotted 100 days, so lawmakers can get back to their districts to begin their re-election campaigns. “We’re going to get off to a fast start,” he said. “We’re encouraging our members who have bills to move them quickly.”

Governor Details Agenda and Budget in Condition of State Speech

Health care, the environment, tax fairness and a potential workforce shortage were the key areas Governor Chet Culver focused on in his Condition of the State address before a joint session of the General Assembly on January 15. His comments drew continuous standing ovations from Democratic lawmakers as he emphasized the condition of the state is “strong.”

On the topic of health care, Gov. Culver praised the work of the Legislative Commission on Affordable Health Care Plans for Small Businesses and Families (see following article) and outlined proposals aimed at helping the uninsured and reforming health care in Iowa.

Gov. Culver announced the formation of a new commission, under the leadership of Lieutenant Governor Patty Judge, that will address the health care workforce shortage.

“It is time to get more nurses and pay nurses better,” Gov. Culver said. The commission will make recommendations to the General Assembly by March 1 on efforts to increase nurse pay and address the shortage.

Other health care initiatives highlighted by the governor:

- Expanding health care coverage by allowing association and small business pooling options.
- Providing funding for more Iowans, especially women, with access to early screening for cancer and other illnesses.
- Allowing parents to cover their adult children up to age 25 on a family health care plan.
- Utilizing telemedicine and electronic medical records technology.
- Enhancing prevention, wellness and chronic disease management.
- Allowing localities to ban smoking.

On the budget, Gov. Culver called upon lawmakers to build upon their progress and protect their priorities to the tune of a 6 percent increase in his \$6.4 billion budget.

Affordable Health Care Commission Submits Recommendations

The legislatively mandated state commission announced its plan to make health care more affordable and accessible for all Iowans. The commission’s report contains 79 different initiatives developed in a series of public meetings across the state over the last seven months.

Senator Jack Hatch (D-Des Moines), commission co-chair, announced this week his expectation that legislation drawn from the work of the Legislative Commission on Affordable Health Care Plans for Small Businesses and Families will be introduced in early February. Sen. Hatch indicated that plans call for five bills to be introduced, including

- An overall bill dealing with universal health care coverage in Iowa, the concept of medical homes, telemedicine initiatives, and cost containment strategies.
- Wellness incentives.
- The development of a health care consumer advocate.
- Health care workforce shortage considerations.
- Whistleblower provisions (see following article).

Senate Democrats Resurrect Health Care Whistleblower Legislation

Senate File 2037, a bill mandating health care worker non-retaliation policies and setting forth a cause of action against health care employers, has been introduced and assigned to the Senate State Government Committee for consideration. This bill is identical to House File 182, which was introduced in 2007. While IHO and other health care providers maintain that federal and state laws already exist to protect health care workers in this regard, the language contained in SF 2037 goes well beyond those parameters and potentially would make it extremely difficult for any health care employer to appropriately discipline any employee.

Among other provisions, the bill would allow health care workers to make personal judgments based on patient safety concerns and to bring those concerns forward to a wide variety of state regulatory, licensing and law enforcement agencies. Any charge of retaliation would constitute a prima facie case against the employer, placing the burden of proof upon the health care employer to show that any actions regarding discipline or lack of promotion were not in conjunction with the patient safety complaint. The bill provides no penalties for employees who make false accusations or nuisance complaints.

IHO opposes SF 2037 both because it is duplicative of existing non-retaliation policies and because of the vast over-reach of the language. The bill has not yet been assigned to a subcommittee.

Faxed Physician Signatures Allowed on Hospice Certifications of Illness

The Centers for Medicare & Medicaid Services (CMS) has confirmed that handwritten and handwritten faxed physician signatures on the hospice certificate of illness are acceptable. The CMS guidance in CR 5550 also clarifies that **stamped** physician signatures are **not** acceptable.

Although requested to do so, CMS has not yet fully addressed questions about validated electronic signatures from hospice medical directors or the patient's attending physician. IHO will keep members apprised when CMS releases additional guidance on electronic signatures.

2008 IHO Legislative Day to be Held March 12 in Des Moines

IHO will host its annual Legislative Day on March 12, in Des Moines. This important grassroots event allows **your** voice to be heard by **your** legislators. All hospice professionals and volunteers are encouraged to participate.

Participants are encouraged to attend an issue briefing at 10:30 a.m. at the IHO offices at 100 E. Grand Avenue. Attendees will then go as a group to the Capitol from 11:30 a.m.-1 p.m.

The deadline to register for this important advocacy opportunity is March 5, 2008. For more information and to register, please see the IHO Legislative Day flier enclosed with this issue of the *IHO Legislative Update*.

Legislative Timetable Set

The 2008 Legislative timetable has been approved. Key dates to remember are **March 7 and March 28**, the so-called “funnel dates,” when bills have to reach certain points in the legislative process in order to remain eligible for debate. The final day of the session is scheduled for April 22.

Legislative Update Provides Monthly Legislative News

The beginning of the 2008 legislative session marks the monthly publication of the *IHO Legislative Update* to keep hospices informed on happenings at the Statehouse and summaries of bills of interest.

The Bill Summaries section of the *Legislative Update* summarizes activity on bills of interest to hospices. IHO positions may include:

Notice: These bills are of some interest to hospices and are placed on the chart largely for informational purposes.

Monitor: These bills have potentially significant impact on hospices. “Monitor” bills receive ongoing attention by IHO staff.

Support: These bills have significant positive impact on hospices or public policy. IHO staff work actively to move “support” bills through the legislative process.

Oppose: These bills have negative effects upon hospices, public policy, or are contrary to IHO Board positions. IHO staff work to prevent passage of “opposed” bills.

BILL SUMMARIES

- **Advanced Practice Registered Nurse Licensure Compact – (*Senate Study Bill 3051*).** This bill repeals the July 1, 2008, sunset of the Advanced Practice Registered Nurse Compact, which allows advanced practice registered nurses to hold a license in the state of residency and practice in other compact states subject to each state's practice law and regulation. (*Proposed Department of Public Health/Board of Nursing Bill*) **IHO Position: Notice**

- **Controlled Substance Schedules** – (*Senate Study Bill 3053*). Adds oripavine and lisdexamfetamine to the list of schedule II substances. Adds embutramide and dronabinol to schedule III substances and sets penalties for manufacturing, delivering or possessing these substances. Strikes references to pseudoephedrine and phenylpropanolamine as precursor substances which require reporting to the Board of Pharmacy. (*Proposed Board of Pharmacy Bill*) **IHO Position: Notice**
- **Dependent Adult Abuse Information** – (*Senate Study Bill 3014*). Expedites the background check process by allowing employers to access to the Dependent Adult Abuse Registry so long as they have written consent. (*Proposed Committee on Human Resources Bill*) **IHO Position: Notice**
- **Elder Abuse Initiative Program** – (*Senate File 2032*). Appropriates \$1.4 million for the statewide expansion of this program established to detect and prevent elder abuse. (*Sponsored by Bolkcom, Beall, Hatch, Black, Kibbie et al*) **IHO Position: Notice**
- **Employment: Unauthorized Aliens** – (*House File 2026*). Prohibits the employment of unauthorized aliens by any knowing Iowa company and sets penalties. Requires the publication of this law on a variety of company materials including its Web site. (*Sponsored by McCarthy, Whitakre, Bukta, Whitead et al.*) **IHO Position: Notice**
- **Smoking Ban: Bars and Restaraunts** – (*House File 2054*). Prohibits smoking in all restaurants beginning July 1, 2008, and all bars July 1, 2009. (*Proposed Committee on Commerce*) **IHO Position: Support**
- **Smoking Ban: Local Control** – (*House Study Bill 565*). Provides that a county or city may adopt an ordinance more strict than that listed in Iowa Code (Chapter 142B). (*Proposed Committee on Human Resources Bill*) **IHO Position: Support**
- **Smoking Ban: Statewide** – (*House Study Bill 537*). Creates a Smokefree Air Act. Prohibits smoking in public places, all enclosed locations within places of employment and specified outdoor areas. Bans smoking within 50 feet of any public place to ensure that smoke does not enter the area. (*Proposed Committee on Commerce*) **IHO Position: Support**

Hospice Payment System Fact Sheet Available

The Hospice Payment System Fact Sheet, which offers providers information about the Medicare hospice benefit, is now available from the Centers for Medicare & Medicaid Services Medicare Learning Network. It can be downloaded from the CMS Web site at www.cms.hhs.gov/MLNProducts/downloads/hospice_pay_sys_fs.pdf.

GAO Examines Key Components of End-of-Life Care

The U.S. Government Accountability Office (GAO) issued a report, “End-of-Life Care: Key Components Provided by Programs in Four States,” designed to identify key

components of end-of-life programs. The report, which focused on Arizona, Florida, Oregon and Wisconsin, “identified and described how certain programs incorporate key components of end-of-life care” and “described the challenges program providers have identified to delivering the key components of end-of-life care.”

The components were derived from studies by the Institute of Medicine and the Agency for Healthcare Research and Quality, and were defined as: “care management to coordinate and facilitate service delivery; supportive services, such as transportation, provided to individuals residing in non-institutional settings; pain and symptom management; family and caregiver support such as respite care; communication among the individuals, families, and program staff; and assistance with advance care planning to aid individuals with making decisions about their future care.”

The four programs interviewed by the GAO use care management through case managers or interdisciplinary care teams, provide support services to assist individuals in home settings, provide family and caregiver support both before and after the patient’s death and “use tools such as electronic medical records to facilitate communication among staff members.” They also encourage end-of-life planning.

Challenges to delivery of good end-of-life care, as described by the four programs, include the difficulty of providing good care to rural residents, because of distances involved and the lack of local services, and “physician training and practices (that) can inhibit the provision of pain and symptom management and advance care planning to individuals nearing the end of life.”

The Centers for Medicare & Medicaid Services called the report “a useful description of diverse provider types that deliver services to persons coming to the end of life” and say that it is “especially helpful as a time approaches when more Americans will be living with serious and eventually fatal chronic conditions.” To view the complete report, go to www.gao.gov and reference report 08-66.

Cahaba Webinars Address FISS Issues

Cahaba Government Benefit Administrators has planned the following educational programs. For more information about events and how to register to participate, visit the Cahaba Web site at: www.cahabagba.com/apps/course_registration/ia/calendar.jsp.

- February 5, “FISS 201: Exploring Eligibility and Mapping Hospice Claim Entry”: This Webinar will demonstrate how to use the eligibility screens ELGH and ELGA to determine a Medicare beneficiary's eligibility for Medicare-covered hospice services. It will also cover how to use the Fiscal Intermediary Standard System to submit basic billing transactions such as a Notice of Election and hospice claims to Medicare. The registration deadline for this educational event is January 31, 2008.
- February 19, “FISS 301: The Billing World Series”: This webinar will discuss the Fiscal Intermediary Standard System (FISS) specifically addressing FISS resources, FISS shortcuts and how to submit roster bills in FISS. This session will also address

Medicare Secondary Payer (MSP) information, determining whether Medicare is primary or secondary and how to use FISS to submit the most common types of MSP claims. The registration deadline for this educational event is February 14, 2008.

- February 26, “Did I Do That?!?”: This Webinar will discuss using the Fiscal Intermediary Standard System to correct claims that have gone to the Return to Provider file, adjust claims and cancel claims. The registration deadline for this educational event is February 21.

Member News

Jennie Edmundson Memorial Hospital will lease a five-acre Council Bluffs site for \$1 a year for **Hospice of Southwest Iowa** to build its hospice house. The projected completion date for the \$5.5 million hospice house is spring of 2009.

Enclosures

Sample CR 5567 Letter

Iowa Congressional Delegation Contact Information

IHO Legislative Day Brochure