



LEGISLATIVE UPDATE

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February 22, 2008

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1. March 5 Deadline to Register for IHO Legislative Day

The IHO Legislative Day is just a few weeks away! This is an important grassroots event for hospice professionals and volunteers, especially this year due to the legislature's focus on health care reform including hospice and palliative care. The IHO Legislative Day provides an opportunity for hospice advocates to meet with their legislators from 11:30 a.m. to 1:00 p.m. at the Iowa State Capitol and discuss important end-of-life issues. Participants attending Legislative Day are encouraged to first meet at the IHO Offices at 100 E. Grand Avenue for an issue briefing from 10:30 to 11:10 a.m. Attendees will then go as a group to the Capitol.

For more information regarding IHO Legislative Day, please contact Shannon Strickler or Becky Anthony at 515.243.1046. Go to www.iowahospice.org for a link to register to attend Legislative Day.

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2. Health Care Reform Legislation Focuses on Palliative Care

During the first week of February, the Senate and House released two long-awaited health reform bills based upon the legislative interim work of the Affordable Healthcare Commission. **Senate Study Bill 3140** and **House Study Bill 636** are extensive bills that address providing all Iowans with health insurance, the creation of “medical homes”, prevention and chronic care management, electronic health records, the promotion of palliative care and advance directives, the release of consumer information on health care costs and quality, health care strategic planning and Iowa’s Certificate of Need (CON) program. The 75-page companion bills have been dubbed “The Iowa Health Care Coverage for All Act.”

All told, the legislation creates nearly a dozen new government divisions, councils and bureaus, with wide-ranging authority over both insurance coverage and health care resources in the state. Funding is not specified for many of these initiatives, although it is clear that the goal of providing all children in Iowa with health insurance is the top priority of the act. A consultant hired by the legislature to provide a fiscal note on the bill reported this week that the legislation as drafted would cost the state \$550 million.

Highlights of the legislation include:

- Creation of a new insurance program for the uninsured, including 100 percent portability, called “Iowa Choice Care.”
- All children covered with health insurance by December 31, 2009 “as funding becomes available.”
- Primary care medical homes created as defined by the National Committee for Quality Assurance.
- Development of electronic health records, including an oversight committee setting provider standards and adoption of a statewide single patient identifier system by January 1, 2010.
- An insurance mandate for hospice coverage, the authority for physician order for life sustaining treatment (POLST) form, and education requirements for palliative care.
- Creation of a Bureau of Health Care Quality and Consumer Information charged with collecting data on health care price, safety and quality and providing an Internet-based consumer guide, as well as a Bureau of Iowa Health Quality and Cost-Containment Collaborative to distribute information to consumers.
- By July 1, 2009 healthcare providers will have to provide consumers with their expected actual costs for a given procedure.
- Creation of a Bureau of Health Care Strategic Planning and Resource Development charged with developing a strategic plan regarding the needed growth of health care services for Iowa, including infrastructure.
- Changes the Health Facilities Council to the “Health Care Strategic Planning Council” requiring that all future CON applications would also have to include statements regarding expenses for executive salaries, profit or excess revenues and cash reserves for the applicants of the project.

IHO has been analyzing the bill, and the IHO board provided guidance on the various provisions of the bill during the February board meeting. IHO will be working to support the POLST form, although the language in the bill needs some improvement. Furthermore, IHO will work to remove the definition of palliative care in the bill and to change the focus on palliative care education to a

public education campaign.

The House and Senate have been working together on this bill. Subcommittees from the Senate Human Resources Committee and the House Human Resources Committee will be meeting to work on the bill each Tuesday and Thursday in February from 8-9 a.m. in the Supreme Court Chamber at the Capitol. Furthermore, the committee will meet on Monday at 9:00 a.m. to discuss the palliative care section. Following are the members of the initial subcommittee:

House

Lisa Heddens, Chair (D-Ames)
Mark Smith (D-Marshalltown)
Ako Abdul-Samad (D-Des Moines)
David Heaton (R-Mount Pleasant)
Linda Upmeyer (R-Garner)

Senate

Jack Hatch, Chair (D-Des Moines)
Amanda Ragan (D-Mason City)
Joe Bolkcom (D-Iowa City)
James Seymour (R-Woodbine)
David Johnson (R-Ocheyedan)

Questions about these study bills or the legislative progress of the proposals may be directed to or Shannon Strickler (stricklers@ihaonline.org) at IHO.

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3. House Passes Statewide Smoking Ban

On February 19, the House debated **House File 2212**, providing for a statewide smoking ban. After more than four hours of debate, the House passed the statewide ban on a 56-44 vote.

The bill prohibits smoking in public places, including restaurants and bars, effective July 1, 2008. HF 2212 exempts gambling facilities and congressionally recognized veteran's organizations. The bill also prohibits smoking within 10 feet of any entrance, window, or ventilation system of any public place covered by the bill.

IHO supports HF 2212 as a means to protect and improve the health of Iowans. The bill now moves onto the Senate for consideration. In 2007, the Senate passed Senate File 236 providing for local control of smoking bans, as opposed to a statewide ban.

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4. Governor Rolls Out Key Health Care Initiatives

This week Governor Chet Culver rolled out his own set of health care reform initiatives, Senate Study Bill 3194, aimed at increasing access to health care and reducing health care costs.

Last month Governor Culver proposed a budget which expanded health care coverage to 7,500 Iowa children through the state's HAWK-I program. The Governor introduced additional, specific health care legislation aimed at expanding health care access and reducing costs. The four-step plan seeks to mandate insurance companies to cover pre-existing conditions, provide coverage for dependent

children up to age 25, cap long-term care premium increases at 12 percent annually and create an electronic medical records council to develop a statewide Iowa health information plan by January 2009.

The governor's plan has a more modest scope in comparison the health care plans already introduced in the Legislature, Senate Study Bill 3140 and House Study Bill 636. As a result of the less aggressive approach, the majority of House Democrats have endorsed the Governor's proposal.

IHO will continue to monitor this legislation, and will provide updates in future editions of the *Legislative Update*.

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5. Subcommittees Meet on Health Care Whistleblower Bills

Both the Senate and House held subcommittee meetings on health care whistleblower legislation this month. Representative Mary Mascher (D-Iowa City), chair of the subcommittee for **House File 861**, began the subcommittee meeting stating this bill is a top priority and will be voted out of subcommittee. She further indicated her belief that the bill would be passed out of committee and onto the House floor. She also stated, in her opinion, that the bill is necessary to protect nurses who are concerned about retaliation from their employers and to improve patient safety.

IHO and other health care employers like hospitals and nursing homes pushed back on the need for the bill, stating that health care employees today are already protected from retaliation and encouraged to report patient safety violations. The bill would also penalize nurse managers and charge nurses individually with civil fines for violations. Furthermore, HF 861 includes language extremely slanted toward employees that would make it nearly impossible for employers to legitimately discipline employees which could also jeopardize care.

Unfortunately, the subcommittee had already determined its decision to move forward with the bill. Both Representatives Mary Mascher and Ako Abdul-Samad (D-Des Moines) voted to take HF 861 to the full House Labor committee, while Representative Jodi Tymenson (R-Winterset) voted against the bill.

However, despite the HF 861 being placed on both meeting agendas for the House Labor Committee this week, the committee has not yet considered the bill. This delay demonstrates that the opposition being shown by health care employer advocates is causing some hesitation by certain members of the committee, which passed a similar bill in 2007.

Hospice advocates are encouraged to continue opposing because IHO still expects the House Labor committee to pass HF 861 as was done last session, but the real battleground for the issue will, again, be the House floor.

The Senate subcommittee for the companion bill, **Senate File 2037**, still has not taken action on the legislation.

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6. Governor's Nursing Taskforce Meets

In Governor Culver's Condition of the State speech, he announced the need to evaluate low nursing salaries and the nursing workforce shortage in Iowa. To this end, the governor announced the formation of the Iowa Nursing Task Force under the leadership of Lieutenant Governor Patty Judge. The task force consists of 32 members representing nursing, health care, labor and education. There are four legislators on the committee as well as representatives from health care-related departments in state government.

After opening remarks by Lt. Gov. Judge, the committee heard presentations on:

- Current nursing licensee data.
- A nursing shortage report prepared by the Iowa Council of Nurses in 2002.
- Current nursing education data; including information on admissions, enrollment, graduates, faculty age and the number of open nursing faculty positions.
- Current rural nursing issues.
- The Direct Care Workers Task Force.

The group was broken into four subcommittees on wages, shortage, education and rural nursing issues. These subcommittees will meet weekly during February to draft policy recommendations. Those recommendations will be submitted to the full task force that will reconvene on February 26 to discuss the final report, which is scheduled to be delivered to the governor on March 1.

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7. Legislature Announces Budget Targets

The House and Senate released several budget targets last week, including the target for the Health and Human Services (HHS) budget that funds the Medicaid program. Of the six budget targets released, only two included additional funds over last fiscal year.

The budget target for education is \$60 million greater for FY2009, while the HHS budget target for FY2009 increased by \$38 million. The HHS will be tight because the projected need for the Medicaid program alone ranges between \$32 million and \$50 million, with a mid-point of \$41 million. As has been done in the past, the Legislature may underfund the Medicaid budget to allow for additional spending within the budget target.

IHO does not expect any cuts to the Medicaid optional benefits, including hospice.

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8. AG Seeks Resources for Nonprofit Oversight

In order to provide oversight of Iowa's nonprofit industry, the Iowa Attorney General's office has proposed implementing fees for nonprofits to cover the cost for additional staff. **Senate File 2194 and House Study Bill 656** would implement a fee on all nonprofits when they file their biennial reports with the Secretary of State's office.

The Attorney General's office states that it has the authority under Iowa Code Chapter 504 to regulate nonprofits, but that the office does not have the resources to investigate complaints or conduct litigation.

The Senate State Government Committee passed SF 2194 after amending the bill to set the fees in statute in the amount of \$25 for electronic filing and \$30 for paper filing; eliminate mutual benefit corporations from the bill; and clarify that the Attorney General's office has no additional authority under the bill than already provided under current law.

The subcommittee for HSB 656 has not yet met on the bill.

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9. Private Cause of Action Legislation Introduced

House File 2142, a bill creating a private cause of action for consumer fraud violations, was introduced this week. The bill is sponsored by Representative Eric Palmer (D-Oskaloosa) and applies to violations of deception, fraud, false promise and misrepresentation of material facts, among others. Current law requires the attorney general's office to enforce the state's consumer fraud act.

IHO has concerns with the bill as drafted because similar legislation in other states has been used to bring cases typically filed under medical malpractice laws, creating an additional cause of action for plaintiff's attorneys against health care providers. In particular, the Kansas Supreme Court ruled that the Kansas Consumer Protection Act, with a private cause of action, allowed a patient to bring suit against an orthopedic surgeon claiming that the surgeon failed to disclose the success rate for back surgery.

Because the elements of causation are easier to prove under a consumer fraud theory than a medical malpractice case IHO has concerns lawsuits and liability costs will increase if the bill applies to health care provider. Further, consumers would have the ability to bring a private cause of actions so the attorney general would no longer screen cases.

IHO will work with the subcommittee of Representatives Palmer, Lance Horbach (R-Tama), and Kurt Swaim (D-Bloomfield) to address these concerns.

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BILL SUMMARIES

- **Alternative Health Care Providers – (Senate File 2168).** Establishes an Iowa Access to Wellness Act. Sets certain limitations to the scope of practice of alternative health care providers, but does not prevent their practice. The bill further remedies certain unnecessary legal ramifications resulting from unlicensed practice. *(Sponsored by Dotzler, Boettger, Kreiman, Hatch and Zieman)* **IHO Position: Notice**
- **Heart Disease and Stroke Prevention – (Senate Study Bill 3154).** Appropriates \$400,000 annually to the department of public health to implement a heart disease and stroke prevention action plan. *(Proposed Committee on Human Resources Bill)* **IHO Position: Notice** *(Companion to House Study Bill 671)*
- **Insurance Mandate Commission – (House File 2128).** Develops a commission to evaluate bills containing insurance mandates. If a bill mandates a service be provided, it must be noted in the bill and before passing out of committee, the bill must receive evaluation from the commission. *(Sponsored by Tomenga, Clute, R. Olson, May et al)* **IHO Position: Notice**
- **Public Health Omnibus Bill – (House Study Bill 629).** Sets policies and makes changes to health-related activities and regulation by the Department of Public Health. *(Proposed Department of Public Health Bill)* **IHO Position: Monitor** *(Companion to Senate Study Bill 3137)*
- **Senior Living Trust Fund (SLTF) Limitations – (House File 2114).** Sets uses for funds in the SLTF and sets a minimum balance for the fund at \$200 million. *(Sponsored by Mascher)* **IHO Position: Notice**
- **Cancer: Early Detection – (House File 2037).** Makes an appropriation of \$300,000 for a breast and cervical cancer early detection program conducted by the Department of Public Health. *(Sponsored by Kaufmann, Swaim, Foristall, and Heddens)* **IHO Position: Notice**
- **Health Care Reform: Governor’s Proposal – (Senate Study Bill 3194).** Seeks to reform health care in Iowa. Establishes a health information council, wellness initiative, exemptions for pre-existing conditions, continuing coverage for certain dependent children and caps rates for long-term care insurance. *(Proposed Governor’s Bill)* **IHO Position: Monitor**
- **Health Care Workforce – (Senate Study Bill 3186).** Proposes strategies to increase the number of health care professionals in Iowa’s workforce through recruitment programs and tax credits. Makes an appropriation to expand psychiatric residency slots and reimburse Advanced Registered Nurse Practitioners for the provision of certain psychiatric services. The bill promotes telemedicine initiatives and seeks to remove barriers to reimbursement for telemedicine-based care. Increases compensation for direct care workers, as well as establishes a credentialing system for direct care workers. *(Proposed Committee on Human Resources Bill)* **IHO Position: Monitor** *(Companion to House File 2285)*
- **Health Information Technology (HIT) – (Senate File 2301).** Creates a HIT system with a goal of adopting a statewide HIT plan by January 2009. Requires that by January 2010, all health care professionals use the system as developed. *(Sponsored by Upmeyer)* **IHO Position: Monitor**
- **Health Licensure Updates – (Senate Study Bill 3182).** Makes technical updates to Iowa Medical Licensure code bringing it up-to-date. *(Proposed Department of Public Health Bill)* **IHO Position: Monitor**
- **Insurance Mandate: Cancer – (Senate Study Bill 3190).** Mandates coverage for certain cancer treatments considered clinical trials and establishes a clinical trial review board. *(Proposed Committee on Human Resources Bill)* **IHO Position: Monitor**

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10. Regulatory Alert: Duragesic Patch Recall

On Tuesday, February 12, 2008, patches containing the prescription pain medication fentanyl were voluntarily recalled because of a flaw that could cause patients or caregivers to overdose on the potent medication inside. Sold in the United States under the brand name Duragesic by PriCara and generically by Sandoz, Inc., the recall includes all 25-microgram-per-hour patches with expiration dates on or before December 2009. Other strength patches (12.5, 50, 75 and 100 mcg/hr) are not affected.

If you have recently received a new supply of the 25 mcg/hr Duragesic patch with an expiration date on or before December 2009, the following actions are recommended:

- Check the box or foil pouch for the expiration date to see if they have patches that are being recalled (dates on or before December 2009).
- Contact the following manufacturer immediately for further instructions:
 - Anyone with 25 mcg/hr Duragesic patches being recalled should call 800-547-6446.
 - Anyone with 25 mcg/hr Sandoz Inc. patches being recalled should call 800-901-7236.
- Notify your healthcare provider who prescribed this pain medication that you have received a recalled lot.
- If you have already opened one the foiled patches that is being recalled:
 - First inspect the cut edge to see if the gel has leaked.
 - Do not use the affected patches.
 - These affected patches should not be handled directly. Place them into a plastic baggie or wrap them in aluminum foil until directed further by the manufacturer.
 - If you accidentally touch the fentanyl gel, thoroughly rinse the area using a large amount of water -- without soap.
 - Contact the manufacturer and your healthcare provider as instructed above.

For additional information, please visit the following Web sites:

- www.painfoundation.org/
- www.pricara.com/pricara/pages/021208_press_release.jsp
- www.webmd.com/pain-management/news/20080213/fentanyl-pain-patch-recalled

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11. New Hospice White Paper Available

Hospice has long experienced the changing health care environment more as a relative outsider than as an integral part of the system. Hospice has been sustained by the Medicare hospice benefit, but has not been fully embraced. In April, CMS will begin to promote regulatory changes for hospices. OCS has developed a new white paper, *Two Words for Hospice Leaders: Prove It*. This white paper, authored by leading hospice expert Martha Tecca, provides the latest information on what new regulations hospices will be facing in 2008.

The white paper is available to be downloaded on the IHO Website: www.iowahospice.org.

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12. Updated Resources for CR 5567

Reissue of CR5567: During the CMS Home Health, DME, & Hospice Open Door Forum call held

February 20th, CMS reported that CR 5567 was reissued with one very small change. A statement was added *in the last paragraph of "Revenue Codes" in section 30.3* and reads, *"This information is being collected for purposes of research and will not affect the amount of reimbursement."* During the discussion, CMS staff also announced that the intent of this addition is to ensure that providers are aware that the False Claims Act will not apply. No other changes to the requirements in the CR have changed.

CR5567 Q&As: The [CR 5567 Q&A's](#) format has also been updated although the content remains unchanged. The new format can be accessed on the CMS hospice center at the following link: <http://www.cms.hhs.gov/center/hospice.asp> (click on the link for CR 5567 Questions & Answers.)

Counting Visits in the Inpatient Setting: Several questions were asked during the Open Door Forum regarding counting and recording "visits" in the hospice inpatient setting, either provided by a hospice inpatient facility or through a contracted facility. CMS staff directed callers back to the CR 5567 Q&A's on the CMS Web site (as noted above), but stated that she would review the answers related to counting inpatient visits for clarification.

Cahaba: This week Cahaba GBA also distributed a revised MLN Matters (MM5567) regarding CR5567 Reporting of Additional Data to Describe Services on Hospice Claims <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5567.pdf> .

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13. NHPCO Council of States Conference Call

Topics highlighted during the February 13 conference call included:

- **Hospice COPs:** NHPCO is launching a new Regulatory Center on its Web site in March. It will include resources and tools for the new hospice COPs. In addition, CMS is planning to offer three satellite broadcasts for hospice surveyors and these broadcasts will be available for providers as well.
- **President's Budget:** Discussion highlighted three hospice-related negatives within the proposed budget: changes to market basket updates; further cutbacks on state surveys; changes in wage index calculations. NHPCO staff are working on talking points for hospices to use.

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14. IHO to Offer Hospice Regulatory Boot Camp

The dates are now set for the hospice regulatory boot camp – August 11-13, 2008 in Des Moines. The two-and-a-half-day workshop for hospice professionals is co-sponsored by Weatherbee Resources and is widely regarded as the top offering of its kind in the country for hospice professionals. The curriculum will be updated to reflect changes in the hospices COPs that are set to take effect this summer. The individual rate is \$695; group of three or more from one organization get a \$100 discount per person. Watch your inbox and the IHO Web site for more details.

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15. Enclosure

[*Two Words for Hospice Leaders: Prove It*](#) (OCS white paper)

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