



# HPCA LEGISLATIVE UPDATE

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[Second Regular Session of the 83<sup>rd</sup> General Assembly Gets Underway](#)

[Government Reorganization Bill Raises Concerns for Hospices](#)

[Federal Health Care Reform Negotiations Continue](#)

[HPCA Attends MedPAC Meeting in Washington, D.C.](#)

[Legislative Update Provides Monthly Legislative Updates](#)

[HPCA Legislative Day Scheduled](#)

[Legislative Timetable Set](#)

## **Second Regular Session of the 83<sup>rd</sup> General Assembly Gets Underway**

The 83<sup>rd</sup> Iowa General Assembly convened for its second regular session this week and party leaders presented opening remarks to mark the beginning of the session. With major budget deficits looming, Democrats who control both chambers of the Legislature, opened this election-year session with calls for quick action to streamline government services, reduce unnecessary spending and find any and all ways to balance the struggling state budget.

Both chambers' leaders focused on the state's budget woes though Democratic leaders remained optimistic that the budget will be balanced come time for adjournment. Senate Majority Leader Mike Gronstal (D-Council Bluffs) said the state is currently facing the "worst economic recession since the Great Depression" but despite these problems, he said the state "will have a balanced state budget when we adjourn by March 31."

Republicans weren't so optimistic largely blaming Democrats for an inflated state budget that became unsustainable when national economic effects hit Iowa. Senate Minority Leader Paul McKinley said the Legislature faces the largest debt in state history due to the size of the budget approved by Democrats last spring. He also stated, however, that that Republicans will support efforts that seek to streamline government, keep government within its means and does not ask for the taxpayer to shoulder even more of the burden through higher taxes.

Governor Culver provided his annual "Condition of the State" address to a joint legislative session where he outlined an unexpectedly aggressive agenda for 2010. Though health care issues did not comprise a major part of the speech, Culver did lay out some ambitious proposals on other issues including helping public schools partly recover from recent budget cuts while continuing to invest in

alternative energy, jobs programs, early childhood education as well as flood and tornado recovery efforts.

[Top](#)

## **Government Reorganization Bill Raises Concerns for Hospices**

The House and Senate State Government Committees introduced the “Government Reorganization” bills this week, [Senate Study Bill 3030](#) and [House Study Bill 565](#). The bills, totaling more than 200 pages a piece, incorporate the recommendations from the consultant that the governor hired to find state savings as well as recommendations from the legislative Government Reorganization Interim Committee that was given the task to find methods to streamline state government.

HPCAI has some concerns with the legislation including:

**Medicaid False Claims Act (Division 28):** Of primary concern, SSB 3030 and HSB 565 include language creating a state false claims act as recommended by the governor’s consultant. The language in the bill is the same as [Senate Study Bill 1061](#), which was introduced by the Department of Inspections and Appeals in 2009 and opposed by HPCAI.

The bill duplicates the federal false claims act at the state level, allowing the attorney general’s office or a whistleblower to bring suit pursuing a perceived false claim. However, the proposed language was based on a model act drafted by a group of whistleblower attorneys and actually expands the authority of scope of the federal law by expanding the definitions of claim and prohibited acts. The proposed language also changes the elements of intent from the federal statute which creates inconsistency and could force a defendant to be held to different standards of liability for the same claim. Furthermore, the legislation expands the statute of limitations for whistleblower law suits from six years to ten years and gives the State authority to litigate under the new statute retroactively to January 1, 2007 raising serious fairness and due process concerns.

Provisions under the false claims act subjects a person or entity found in violation of the act to liability for three times the amount of damages. However, damages are not defined under the statute and could be construed as the amount of the false claim or, depending upon the case law applied, could be construed as the amount billed for a procedure with a negative outcome or the amount billed while out of compliance with any state or federal laws including the Medicare conditions of participation.

The purported cost savings of the Medicaid false claims act is \$900,000 by allowing the state to recoup a portion of the funds collected under the federal false claims act and provide reimbursement for investigative costs DIA. However, this fiscal note does not offset the increased costs created by the legislation for the Iowa Attorney General’s Office, the Iowa Medicaid Enterprise and health care providers sorting through and defending nuisance whistleblower claims.

**Information Technology (Division 1):** The legislation merges all of state government’s technology services into the state department of administrative services, which would include the Medicaid claims payment system. HPCAI has significant concerns with this change as Medicaid currently processes hundreds of claims per week in a timely manner and because the Medicaid claims processing software is supported by 90 percent federal matching dollars. This claims system is critical to the success of the Medicaid program in the state, has no ability for consolidation with other state government programs and services, and should remain solely under the authority of Iowa Medicaid.

The legislature is relying on these bills to find needed savings for the state's Fiscal Year 2011 budget so advocates need to be very vocal about concerns with the legislation. Subcommittee members for SSB 3030 include Senators [Staci Appel \(D-Ackworth\)](#), [Jeff Danielson \(D-Cedar Falls\)](#), and [Randy Feenstra \(R-Hull\)](#). Subcommittee members for HSB 565 have not yet been named but will likely include the House State Government Committee chair, Representative [Mary Mascher \(D-Iowa City\)](#).

[Top](#)

## **Federal Health Care Reform Negotiations Continue**

WASHINGTON D.C. – The House officially reconvened this week after its holiday break and the Senate is set to resume formal work on January 19. Over the past several weeks, leaders in both chambers and the president have been working behind the scenes to hash out a final agreement on health care reform with hopes of passing a final bill in the coming weeks.

There are still several issues that remain to be resolved, and Congressional leaders have chosen a less formalized conference committee process than usual by assembling key members from both chambers to make final decisions on what to include in the bill. At this time, no Republicans are expected to attend the meetings which will occur in a “closed-door” venue, drawing criticism from many members of Congress. C-SPAN and the Society of Professional Journalists have called on Democratic leaders to allow it to televise the health care negotiations, but to no avail.

Negotiators are expected to come to an agreement likely in the form of an amendment to the Senate bill. In theory, the House would then pass the amendment onto the Senate bill, send the bill as amended to the Senate to pass and then send it to President Obama.

It will be important for hospice advocates to stay engaged in the coming weeks as issues facing hospice will be in play. Senator Reid's manager's amendment, which modified the bill for the final time prior to its passage in the Senate on December 24<sup>th</sup>, softened the impact of some of the cuts facing hospice. The Senate bill originally included \$7.6 billion cuts to hospice, but the manager's amendment dropped the cut to \$6.8 billion by lowering the reduction in the marketbasket update to 0.3 percent during years 2013 through 2019. In addition, the Senate bill includes productivity adjustments beginning in 2013.

The House bill includes greater cuts for hospice, \$9.6 billion, and would begin the productivity adjustments in 2010. The House bill also, however, contains several provisions that are favorable for hospice including a provision that would extend the hospice budget neutrality adjustment factor regulatory moratorium through October 1, 2010. The Senate bill does not include this moratorium extension. To assist advocates, the National Hospice and Palliative Care Organization put together a [side-by-side comparison of the bills](#).

As for a timeline, it appears Congress is working toward a deadline of February 12 which is the Friday that begins the next Congressional recess for President's Day. Though the target is informal, it's likely the Obama administration desires to have the bill finished by the State of the Union address, which generally occurs near the end of January or early February.

[Top](#)

## **HPCAI Attends MedPAC Meeting in Washington, D.C.**

WASHINGTON D.C. – The Medicare Payment Advisory Commission (MedPAC) met this week to discuss and vote on the draft recommendations made last month in preparation for its March report to Congress. As a reminder, MedPAC issues two reports each year to Congress, one in March and one in June. These reports serve as the main outlet for the commission's recommendations. Yesterday, MedPAC commissioners assessed payment adequacy and voted on recommendations involving several providers, including: hospital inpatient and outpatient services, physician services, home health care services and hospice.

With respect to hospice, MedPAC voted to recommend that Congress should update payment rates for hospice for FY 2011 by the hospital marketbasket index less the commission's adjustment for productivity growth. Note, productivity growth is currently estimated at 1.3 percent. While discussing hospice payment adequacy, the chairman explained MedPAC's focus is on the growing length of stay and that the issue is the timing of the admission to hospice.

Also while discussing hospice payment adequacy, MedPAC staff explained that hospice use has grown substantially in recent years. Not only has MedPAC found that the number of hospice users has increased, but so has the average length of stay and Medicare spending. Staff found that since 2000, long hospice stays have grown longer while short stays have remained virtually unchanged. Staff also pointed out there is currently no quality data covering all hospices that is publicly available, so MedPAC cannot assess the quality of care provided by hospices.

MedPAC staff then presented its 2010 margin projection for hospice which is 4.6 percent. MedPAC explained this projection excludes cap overpayments from hospices' revenues, is based on Medicare reimbursable costs and therefore excludes bereavement costs because they are not reimbursable. Staff explains that if bereavement costs were included in its estimates, it would reduce the projected margin by about 1.5 percent, to 3.1 percent for 2010. During this discussion MedPAC Chairman, Glenn Hackbarth, expressed concern that Congress decided to exclude bereavement costs from Medicare. He explained that he understands why Congress decided to exclude bereavement services but he still feels troubled excluding the services when considering the margin projection. This morning, the National Hospice and Palliative Care Organization issued a press release objecting to MedPAC's calculation methodology as applied to hospice margins because it does not factor in the costs of bereavement or volunteer services.

With respect to home health care services MedPAC voted on four recommendations, explained below. At the same time, after much discussion and debate MedPAC decided to table two draft recommendations that involved improving physician accountability in home health: 1) requiring in-person visits related to certifying and re-certifying a patient's need for home health care services, and 2) requiring physicians to complete a standard form when certifying the need and eligibility for home health care services. MedPAC will return to these draft recommendations at a later date.

The home health recommendations passed by MedPAC include:

1. MedPAC recommended that Congress should eliminate the marketbasket update for 2011 and direct the Secretary to rebase rates for home health care to reflect the average cost of providing care. There was some discussion that this will force some agencies to close, with the expectation that it will not negatively impact patients. MedPAC's rationale is that patients had adequate access many years ago when fewer home health agencies existed than the number that exists today.
2. In conjunction with the above recommendation, MedPAC recommended that Congress should direct the Secretary to modify the home health system to protect beneficiaries from any stinting or lowering quality of care in response to rebasing.

3. MedPAC also made a quality recommendation stating the Secretary should identify categories of patients and develop outcome measures which measure the quality of care for those categories of patients.
4. The final recommendation involved expanding the Secretary's authority to act and respond to fraud and abuse issues. HPCAI will provide additional information as necessary to keep members informed as MedPAC finalizes its March report to Congress.

[Top](#)

## Legislative Update Provides Monthly Legislative News

The beginning of the 2010 legislative session marks the monthly publication of the *Legislative Update* to keep hospices informed on happenings at the Statehouse and summaries of bills of interest. In addition to the *Legislative Update*, HPCAI has also developed its [2010 Legislative Agenda](#) available for member view.

Key issues on this year's agenda include Medicaid, End-of-Life Decisions, and Pain Management.

[Top](#)

## HPCAI Legislative Day Scheduled

The 2010 HPCAI Legislative Day will be held on Tuesday, March 9. The day will begin at 11:00 am at the HPCAI offices at 100 E. Grand Avenue. Attendees will learn more about the legislative process; get an update on legislative activities impacting hospice and palliative care in Iowa and hear from a legislator. Following a complimentary lunch, participants will head to the Capitol to visit with their own legislators.

For more information regarding HPCAI Legislative Day, please contact Shannon Strickler or Becky Anthony at 515.243.1046. Click here to [register](#). A brochure for the event can be viewed [here](#).

[Top](#)

## Legislative Timetable Set

A full 2010 Legislative Calendar is available [here](#). Key dates to remember are the dates of **February 12 and March 5** – the so-called “funnel dates,” when bills have to reach certain points in the legislative process in order to remain eligible for debate. Note that legislative rules allow any bill that did not pass during the 2009 session to return to its committee for consideration again in 2010.

The Legislature is working under a compressed schedule having moved the session from 100 days to 80. This has also moved the funnel dates ahead by nearly a month, and the final day of session is scheduled for March 31.

[Top](#)