



HPCA LEGISLATIVE UPDATE

February 6, 2009

[HPCA Legislative Day Scheduled](#)

[83rd Iowa General Assembly Convenes; Party Leaders Speak](#)

[Governor Culver Says: 'Condition of the State is Strong'](#)

[Federal Stimulus Package Will Determine State Medicaid Budget](#)

[Governor Releases FY 2010 Budget](#)

[Private Cause of Action Legislation Introduced](#)

[State False Claims Act Bill Introduced](#)

[Legislative Update Provides Monthly Legislative Updates](#)

[Legislative Timetable Set](#)

[Bill Summaries](#)

HPCA Legislative Day Scheduled

The 2009 HPCA Legislative Day will be held on Tuesday, March 3. The day will begin at 11:00 am at the HPCA 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 HPCA Legislative Day, please contact Shannon Strickler or Becky Anthony at 515.243.1046. Go to www.iowahospice.org for more information and to register to attend Legislative Day.

[Top](#)

83rd Iowa General Assembly Convenes; Party Leaders Speak

The Iowa Legislature convened January 12 for its first session of the 83rd Iowa General Assembly. Democrats, who control both chambers of the Legislature, opened the session in the midst of a state budget crunch and collapsing national economy.

Senate Majority Leader Mike Gronstal (D-Council Bluffs) told the Senate that the deteriorating economic situation nationwide will make for a particularly difficult session.

“In my 26 years in the Legislature, I’ve never seen such a tough situation,” said Gronstal. “Our resources are limited. We will say ‘no’ to many good ideas. We are going to disappoint some people

and frustrate others.”

The state is currently experiencing a near \$500 million budget shortfall that will put pressure on many state programs including Medicaid. “Our greatest challenge, perhaps, is to lead our state through these tough times without sabotaging the commitments we’ve made on economic growth, health care and education,” Gronstal said.

Democratic leaders called for Republicans and Democrats to work together to balance the budget and pass responsible policies for Iowans.

Senate Republican Leader Paul McKinley (R-Chariton) responded that Republicans “will offer solutions and advice for our friends in the majority.”

“And our offerings will come from a pretty simple notion that I believe we have lost sight in recent years. I believe it is time we re-establish the notion that it is Iowans who run government and not the other way around.”

[Top](#)

Governor Culver Says: ‘Condition of the State is Strong’

Governor Chet Culver addressed a joint session of the Iowa General Assembly along with other state leaders on January 13 and outlined key priorities of his agenda, most of which focused on the recent natural disasters, collapsing U.S. economy and the tight state budget.

The governor spent most of his hour-long address outlining his plans to rebuild portions of the state affected by the natural disasters of this past spring and summer. Key among his priorities is a plan to create the Rebuild Iowa Infrastructure Authority that would oversee the state’s entire infrastructure. The authority will also be charged with implementing recommendations of the Rebuild Iowa Commission.

The governor said of the authority, “I’m not just talking about bridges and roads. I mean all infrastructure: rail, trails, public buildings, water and sewer treatment facilities, the utility grid, and telecommunications, too.”

The Iowa Finance Authority will oversee the department and will be responsible for providing grants to areas of the state affected by floods and tornadoes.

The governor spent the second half of the speech discussing the economic situation saying, “Our second real challenge this session is to balance the budget. As you know, along with the rest of the nation, we’re now entering a period of economic upheaval.”

Culver asked state officials to rein in spending and balance the budget even if it means tapping the state’s “rainy-day funds,” which he reported have record high balances. He recognized that it will be a tough budget year for Iowa, but remained hopeful that priorities will be met for Iowans.

The governor did not specifically address health care, but did announce his intent to monitor the economic stimulus package currently being discussed in Congress. The potential trillion-dollar package is likely to contain health care provisions for states including increased funding for the Federal Medical Assistance Percentage (see following article).

Overall Gov. Culver said the condition of the state is strong, “because Iowans are strong.” The governor will release his budget targets for FY 2010 in the coming weeks setting the framework for legislative action this session.

[Top](#)

Federal Stimulus Package Will Determine State Medicaid Budget

Governor Chet Culver announced a 1.5 percent budget cut to Medicaid services due to the faltering national economy, troubled state budget and lower-than-usual projections for state revenue last December. However, it appears now that state officials will hold off on implementing cuts to Medicaid until Congress takes action on the Federal Medical Assistance Percentage (FMAP), as part of an upcoming economic stimulus package that would bring more Medicaid dollars for Iowa.

The U.S. House has passed its version of the recovery package that included a 4.8 percent (\$87 billion) FMAP increase. The House version also contains a provision that grants a delay in the regulation to eliminate the Budget Neutrality Adjustment Factor (BNAF). The Senate continues to finalize its version of the stimulus bill that currently includes a 5.6 percent increase in the FMAP. Every percentage increase equals approximately \$26 million for Iowa. It's expected that an amendment to grant a delay will be introduced on the Senate Floor.

This investment from the federal government will help to minimize any cuts to Iowa's Medicaid program, and free up additional dollars for the state budget. Hospice Medicaid reimbursement levels are tied directly to the Medicare program so any percentage-based provider cuts will not impact hospices. However, the increased FMAP dollars are very important because if the state budget cannot sustain expenses in Medicaid utilization and enrollment growth, then they may be faced with the elimination of optional Medicaid services such as the hospice benefit.

To this end, HPCAI is very supportive of measures at the federal level that increase the FMAP that will provide needed relief to the state Medicaid budget. HPCAI is also supporting the delay in the implementation of the regulations eliminating the BNAH. If allowed to remain in effect, the regulation will cost Iowa hospices more than \$1.2 million in Medicare dollars in fiscal year 2009.

[Top](#)

Governor Releases FY 2010 Budget

Governor Chet Culver released his recommendations for the FY 2010 state budget the last week in January. The total budget for the state exceeds \$6.2 billion and includes a 6.5 percent cut to almost every state program. At this point, it appears the Medicaid program will not face these cuts, pending action at the federal level.

“This is not a game. We're doing what we have to do by law to balance the budget.” That was the governor's response to a reporter who suggested that the 6.5 percent cut was not enough to help the budget shortfalls in Iowa. The governor went on to say, “To suggest that 6.5 percent is not enough, which represents perhaps the largest cut in the history of our state, is just wrong.”

As previously noted, Congress is working on an economic stimulus package that contains significant investment in Medicaid programs across the country. HPCAI is optimistic that Congress will finalize this bill in the coming weeks and provide relief to struggling states like Iowa, where the Medicaid program is the second largest budget item.

The Legislature will now go to work to pass a budget before adjournment. In a joint statement, party leaders said all lawmakers will “review every program and line item in the state budget to find waste and efficiencies.” Senate Majority Leader Mike Gronstal (D-Council Bluffs) also indicated that there is a potential for even more cuts than what the governor has recommended.

HPCAI will continue to follow the budget process and advocate for hospice priorities.

[Top](#)

Private Cause of Action Legislation Introduced

Three bills, [House Study Bill 80](#), [Senate Study Bill 1037](#) and [Senate Study Bill 1082](#), creating a private cause of action for consumer fraud violations, have been introduced.

SSB 1037 and HSB 80, proposed by the Iowa Attorney General's Office, applies to violations of deception, fraud, false promise and misrepresentation of material facts, among others. The bill allows a consumer to bring a lawsuit enforcing the state's consumer fraud act instead of relying upon the attorney general's office. The bill draft currently exempts hospices and other licensed health care providers.

On the other hand, SSB 1082, proposed by the Senate Judiciary Committee, creates a private cause of action for violations of deception, fraud, false promise and misrepresentation but does **not** exempt hospices and other healthcare providers.

HPCAI opposes SSB 1082 because similar legislation in other states has been used to bring lawsuits typically filed under medical malpractice laws, creating an additional or alternative 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, HPCAI has concerns lawsuits and liability costs will increase if the bill applies to health care providers. Further, consumers would have the ability to bring a private cause of actions so the attorney general would no longer screen cases.

Senators Keith Kreiman (D-Bloomfield), Steve Soddors (D-Marshalltown), and Steve Kettering (R-Lake City) serve on the subcommittees for both SSB 1037 and 1082. Representatives Eric Palmer (D-Oskaloosa), Lance Horbach (R-Tama), and Kurt Swaim (D-Bloomfield) serve on the subcommittee for HSB 80. These legislators will determine which bill, if any, is moved forward to the Senate Judiciary Committee.

[Top](#)

State False Claims Act Bill Introduced

The Department of Inspections of Appeals (DIA) proposed [Senate Study Bill 1061](#) and [House Study Bill 92](#), bills creating a state false claims act.

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. A person or entity found in violation of the act would be liable for three times the amount of damages. Damages 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 conditions of participation.

The legislation would also allow the state to recoup a portion of the funds collected under the federal false claims act and provide reimbursement for investigative costs DIA.

HPCAI opposes SSB 1061 and HSB 92 because it is duplicative of the federal false claims act and provides financial incentives for further DIA investigations. Senators Pam Jochum (D-Dubuque), Keith Kreiman (D-Bloomfield), and Brad Zaun (R-Urbandale) serve on the subcommittee for SSB 1061. Representatives Tyler Olson (D-Cedar Rapids), Erik Helland (R-Grimes), and Beth Wessell-Kroeschell (D-Ames).

[Top](#)

Legislative Update Provides Monthly Legislative Updates

The beginning of the 2009 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 formal 2009 Legislative Agenda.

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

- Notice:** These bills are of some interest to hospices are placed on the chart largely for informational purposes. “Notice” bills are included on the chart for only one week.
- Monitor:** These bills have potentially significant impact on hospices or public policy. “Monitor” bills receive ongoing attention by HPCAI staff.
- Support:** These bills have significant positive impact on hospices or public policy. HPCAI staff work actively to move “support” bills through the legislative process.
- Oppose:** These bills have negative effects upon hospices or public policy, or are contrary to HPCAI positions. HPCAI staff work to prevent passage of “opposed” bills.

[Top](#)

Legislative Timetable Set

A full 2009 Legislative Calendar is available [here](#). Key dates to remember are **March 13 and April 10**, 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 May 1.

[Top](#)

BILL SUMMARIES

- **Workers’ Compensation** – ([Senate Study Bill 1119](#)). Allows employees to choose their own physician to provide treatment for a workers’ compensation claim. (*Proposed Committee on Labor and Business Relations Bill*) **HPCAI Position: Oppose**
- **Caucus Attendance Time Off** – ([House Study Bill 87](#)). Provides time off from work to attend presidential precinct caucus. (*Proposed Committee on State Government Bill*) **HPCAI Position: Monitor**
- **Employee Lifelong Learning Accounts** – ([Senate Study Bill 1042](#)). Establishes a lifelong learning program to encourage employees and their employers to save for worker training. Creates a refundable tax credit for employers offering the program. (*Proposed Department of Workforce Development Bill*) ([Companion to House Study Bill 19](#)) **HPCAI Position: Monitor**
- **Outdoor Smoking Areas** – ([House File 174](#)). Current law prohibits smoking in the outdoor seating and serving areas of restaurants. The bill eliminates this prohibition, allowing smoking in the outdoor areas of restaurants and effectively eliminating any distinction between bars and restaurants under the Smoke Free Air Act. However, under current law, a person in custody or control of either a bar or a restaurant may still declare the outside area as a nonsmoking place. (*Sponsored by May*) **HPCAI Position: Oppose**

[Top](#)