



AHCA/NCAL National Update

Health Care Association of New Jersey
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Overview

The Economy
Legislative Update
Spotlight: Health Care Reform Issues
Affecting Long Term Care
The Political Environment
Looking to the Future





The Economy



Long Term Care = Economic Driver

" Nationally, long term care directly generates \$153.8 billion, or 1.1% of the U.S. GDP



- 15,691 skilled nursing facilities in every state & Congressional District
- Each year 14% of patients rely on Medicare
- Each year 64% rely on Medicaid
- Long term care employs roughly 2.9 million individuals, representing close to \$93.8 billion in labor income nationally
- Nursing and residential facilities added **50,200** new jobs in 2009

Long Term Care = Economic Driver



" In New Jersey, long term care directly generates \$5 billion or 1.1% of the state's GDP

- 360 skilled nursing facilities in the state
- Each year 18% of patients rely on Medicare and 63% rely on Medicaid for skilled nursing care each year
- Long term care employs roughly 58,645 individuals across the state

Legislative Action

- RUG-IV fix
- Medicaid "Cliff" & FMAP Extension
- Medicaid Reform
- Survey Reform
- 3 Day Stay
- Therapy Caps
- Arbitration
- DEA

RUG-IV Fix

- On July 14, the House passed the Veterans', Seniors' and Children's Health Technical Corrections Act of 2010 (H.R. 5712)
- Among other changes, the bill eliminates the October 1, 2011 implementation date for RUG-IV
- AHCA is hopeful this bill will be addressed by the Senate during the lame duck session beginning November 15
- As of October 1, 2010, Medicare payments are paid on an interim basis under a RUG-IV payment system with 66 patient categories
- CMS is using a hybrid version of the RUG-III system to implement the concurrent therapy and look back provisions of RUG-IV until September 30, 2011
- Payments will be retroactively adjusted by CMS



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Medicaid "Cliff" & FMAP Extension

- States would have faced a Medicaid "cliff" when funding expires in December 2010
- Broad support for an extension among House/Senate Democratic Leadership
- AHCA/NCAL pushed strongly for an extension
- Senate passed H.R. 1586 containing stair step extension on August 5 by a vote of 61 to 39
- January - March 2011 matching rate will be increased by 3.2%
- April - June 2011 matching rate will be increased by 1.2%
- States with high unemployment would continue to receive additional percentage points, as they do under current law
- House passed it 247-161 on August 10
- President signed it into law on August 10
- States had to apply to HHS by September 24 for funds-- all did



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Medicaid Reform Bill

H.R. 5457, Improving Medicaid for Older Americans Act of 2010

- AHCA/NCAL initiative
- All concepts previously included in the House health care reform bill
- Creates a four year \$6 billion supplemental payments fund for nursing facilities that have a high volume of Medicaid patients
- \$1.5 billion is available for each of the 4 years (2011 -2014)
- Clarifies that payments will be made directly from CMS to the facility and not through the state
- Requires states to report rate setting methodology to CMS
- Rep. Kathy Castor (D-FL) is sponsoring
- AHCA currently pushing for co-sponsors



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Survey Reform Bill -- H.R. 6074, Enhancing Quality Through Survey System Improvements Act of 2010

- AHCA/NCAL initiative; introduced July 30 by Rep. Bart Stupak (D-MI)
- Makes improvements to current system
- Key points:
 - Every facility would still be visited by surveyors each year
 - Those facilities that achieve and maintain a designated level of compliance will have a shorter visit (about ½ a day) two out of three years-every third year those facilities would have a full survey- allows surveyor to focus on facilities that need more help.
 - Once a quarter off-site reviews of certain quality markers (which are to be identified by the Secretary and stakeholders)-this is aimed at creating consistency through data driven reviews.
 - Changes the title of 2567's to Report of Survey
 - Requires the Secretary to report to Congress on survey consistency, timeline of appeals and improvements being made.
- Much of this data already collected by CMS-- an improved data-driven survey system which will more accurately report the quality care provided to patients



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3 Day Stay

- Increasing use of observation stays by acute care hospitals
- Problematic for patients and SNFs because observation stays are not considered inpatient days by Medicare
- CMS Medicare Ombudsman launched a study to ascertain the problems related to observation stays and their effect on beneficiaries, and certain AHCA members and staff will be interviewed as part of that effort
- AHCA recently submitted comments focused exclusively on observation stays to the Advisory Panel on Ambulatory Payment Classification Groups, who had solicited comments on matters within their jurisdiction
- On June 29, Rep. Joe Courtney (D-CT) introduced the *Improving Access to Medicare Coverage Act of 2010*, which requires observation stays exceeding 24 hours to be considered as inpatient days for the purpose of meeting the 3-day inpatient hospital requirement for Medicare coverage of SNF stays, which AHCA has endorsed



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Therapy Caps

- “ Annual cap of \$1,860 for physical and speech language therapies combined with another, identical cap for occupational therapy, went into effect on January 1, 2010 for Medicare Part B
- “ Widespread, bipartisan Congressional support to reinstate exceptions process retroactively
- “ Final health care reform bill extended the exceptions process through December 31, 2010
- “ An extension of the current exceptions process not included in extenders bill; likely to be addressed in lame duck session-- AHCA/NCAL pushing for movement



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Fairness in Nursing Home Arbitration Act

- AHCA/NCAL opposes H.R. 1237, S. 512
- Would prohibit the use of all pre-dispute agreements in ALL long term care settings, applies to BOTH nursing homes & assisted living
- H.R. 1237 placed on Full Judiciary Committee Mark-up agenda but was not addressed
- H.R. 1020, Fairness in Arbitration Act, also placed on Committee agenda, but not addressed- would prohibit ALL pre-dispute arbitration for all businesses and consumers
- Next opportunity uncertain
- Letters sent from AHCA/NCAL to House Leadership and entire House Judiciary Committee
- S. 512: Legislation has not moved in Senate
- Likely dead for remainder of Congress- looking toward 112th



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DEA - Issue Background

- Last spring, DEA began raiding long term care pharmacies and facilities to review records relating to controlled substances (particularly pain medication -Schedule 2 drugs) given to patients
- DEA levied fines on LTC pharmacies that dispensed controlled substances to facilities based on faxed-in chart orders or verbal orders to the pharmacy from the doctor without first receiving a signed written prescription faxed to the pharmacy
- At the core of this issue is the fact that the DEA does not recognize long term care nurses as "agents of the prescriber" nor does it consider facility chart orders as valid prescriptions
- Long term care providers, pharmacies and nurses formed the Quality Care Coalition for Patients In Pain (QCCPP) to advocate for a solution to this problem



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DEA - Victory

- Senate Aging Committee involved and requested that DEA reevaluate the situation
- On October 1, DEA released a new policy statement:
 - The Controlled Substances Act will permit a practitioner to use an "authorized agent" to perform acts related to communicating a prescription for controlled substances
 - An authorized agent is a nurse identified by the prescriber in writing. Agent authority cannot be delegated or transferred to another agent. Once the written documentation is completed establishing the authorized agent, the agent may take the following actions:
 - May prepare a written prescription for the signature of the prescriber once it has been determined there is a legitimate medical purpose for the drug
 - May convey an oral prescription to the pharmacy for Schedule III, IV and V drugs only NOT oral Schedule II drugs, which still requires written Rx
 - May transmit via fax a practitioner-signed prescription to the pharmacy
- Does not require LTCFs to obtain DEA registration



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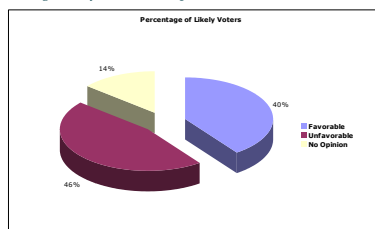
Spotlight: Health Care Reform



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Current Public Sentiment on Health Care Reform

As you may know, a new health reform bill was signed into law earlier this year. Given what you know about the new health reform law, do you have a generally favorable or generally unfavorable opinion of it?



Source: Henry J. Kaiser Family Foundation, October 18, 2010
<http://www.kff.org/kaiserpolls/upload/8115-F.pdf>

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Helpful Provisions in the Final Bill

- No SNF Market Basket Cuts for FY 2010 or FY 2011.
- Wyden MedPAC language
- Extends Current Therapy Caps Exceptions Process until 12/31/10
- Part D partial fix
- Workforce provisions
- The CLASS Act
- A Sense of the Congress statement on tort reform
- State demonstration programs to evaluate alternatives to current medical tort litigation.
- New grants under the Elder Justice section for health information technology and workforce training
- A General Accountability Office study and report on the Five Star Quality Rating System



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Harmful Provisions in the Final Bill

- SNF Productivity Adjustment beginning in FY 2012 (October 1, 2011)- \$14.6 billion over 10 years
- Implementation of RUG-IV was pushed to October 1, 2011, but neither concurrent therapy nor MDS 3.0 were delayed
- SNFs not exempted from Independent Payment Advisory Board (IPAB) recommendations
- New transparency requirements
- Additional background check requirements
- Changes to reporting of crimes requirement in the Elder Justice section
- The employer impact of the health care insurance requirements



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Health Care Reform: What You Need to Know Now

- Reporting of suspected crimes
- Reimbursement
- Survey and enforcement
- Criminal background check pilot



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Reporting of Suspected Crimes

- Applies to facilities receiving >\$10K in federal funds annually
- Report "reasonable suspicion" of crime against a resident to HHS Secretary and at least one local law enforcement entity
 - Within 24 hours EXCEPT
 - Within 2 hours if "serious bodily injury" involved:
 - "Serious Bodily Injury"
 - Extreme physical pain
 - Substantial risk of death
 - Protracted loss or impairment of function of bodily member, organ, or mental faculty
 - Requiring medical intervention (surgery, hospitalization, etc.)



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Reporting of Suspected Crimes

- Crime as defined by the law- city/county and/or state
- Facility must notify:
 - Owners
 - Operators
 - Employees
 - Managers
 - Agents
 - Contractors

- Failure to report

- Up to \$200,000 CMP and possible exclusion from Medicare/Medicaid
- Up to \$300,000 CMP and possible exclusion if failing to report exacerbated harm - to "victim of the crime" or "resulted in harm to another individual"

Must be posted in the facility and facility can suffer serious penalty if there is any retaliation attempted.



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Reimbursement

- " Reporting/Repaying Overpayments
- " Reduction in Timely Filing Deadline for Medicare
- " National Pilot on Bundling



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Reporting/Repaying Overpayments

- Effective March 23, 2010
- Overpayments must be reported and returned within the later of either
 - 60 days of identification of the overpayment
 - The date the corresponding cost report is due
- Any overpayment retained after the deadline is an "obligation" for False Claims Act purposes
- What does this mean?
 - The government could recover triple the damages normally allowed plus statutory fines allowed by the False Claims Act



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Reduction in Timely Filing Deadline for Medicare

- Effective March 23, 2010
- Medicare parts A and B claims – must be filed one (1) calendar year after date of service
- Claims with dates of service prior to 1/1/2010 must be filed by Dec. 31, 2010
- Secretary is given authority to specify “exceptions” which will be done in forthcoming regulation
- AHCA made recommendations to CMS about “exceptions”
 - Limitations on exceptions – “good cause”
 - Provider enrollment issues
 - Medicare Secondary Payor situations



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National Pilot on Bundling

- Pilot in response to lack of coordination and resulting increased costs
- Establishes a single, prospective payment rate for a sole “bundled” episode of care which begins in the acute care hospital and encompasses post-acute care settings for up to 30 days following discharge
- The pilot applies to all Medicare beneficiaries except those in Medicare Advantage of the Program for All-Inclusive Care for the Elderly (PACE) program
- Pilot must be established by Jan. 1, 2013
- After Jan. 1, 2016, Secretary can expand duration and scope of pilot



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Survey and Enforcement

- ~ Disclosure
- ~ Compliance and Ethics Programs
- ~ Escrow of CMPs and Independent IDR Process



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Disclosure

- Standardized format developed by Secretary by March 2012
- Effective March 23, 2010 – facility must have information available for:
 - Secretary of HHS
 - Office of Inspector General of HHS
 - State of operation
 - Long term care ombudsman in state of operation



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Disclosure

- Examples of information that must be available:
 - Any person of entity with ownership of 5% or more in facility
 - Each member of governing body of facility
 - Each managing employee of the facility (name, title, period of service)
 - Name, organizational structure, and a description of the relationship of each additional disclosable party to the facility and to one another



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Compliance and Ethics Programs

- March 23, 2012, Secretary must promulgate regulations for nursing facilities to develop and implement an effective compliance and ethics program
 - May include a model compliance program
 - Likely to be similar to compliance programs required of companies that had Corporate Integrity Agreements with CMS/HHS
 - Design of program may vary based on size of facility/company
- All facilities must have program in place by March 23, 2013
- AHCA will be providing additional guidance in the future based on forthcoming regulations



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Escrow of CMPs & Independent IDR Process

- Provisions of law take effect March 23, 2011
- Notice of Proposed Rulemaking published July 12, 2010 – comments due August 11, 2010
- CMS may collect CMPs and put into escrow prior to exhaustion of all appeals
- Escrowed CMPs will earn interest
- If facility is successful in appeal, CMPs returned with interest
- If facility reports and corrects a deficiency – 50% reduction in CMP



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Escrow of CMPs & Independent IDR Process

- First time any mention of informal dispute resolution process mentioned in law
- Law provides and an independent IDR
- Proposed rule – allows IDR to be done by outside entity; state agency, as long as the surveyors that conducted survey don't participate in process; a distinct component of the umbrella agency in which state agency is housed



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Criminal Background Check Program

- Must be modeled after the pilot under MMA
- Matching Federal funds (3 to 1) – Up to \$3 million unless state was in original pilot – then up to \$1.5 million
- Letter of intent to apply due June 25, 2010 – 28 states sent letter of intent



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SNAPSHOT – *More to come*

- This new law is a work in progress
- There is potential for change –AHCA/NCAL and will be fully involved
- Check our website frequently for updated materials and educational opportunities
- AHCA/NCAL Health Care Reform Resource Center



Health Care Reform Resource Center



<http://www.ahcancal.org/advocacy/Pages/HealthCareReform.aspx>



Grassroots

"Over 300,000 letters sent to Members of Congress during the last year"

"Our database currently contains 75,000 names"

" Goal is to reach over 100,000"

" It is extremely important to have an Army of Advocates"





Grassroots

" Our most recent success the fight to extend FMAP

- " Letter writing Campaign- over 83,000 letters sent
- " Targeted Capitol Hill Fly In
- " Congressional Briefing
- " Ad Campaign- partnered with SEIU, AARP, Families USA & others
- " RV Tour- 60 stops in 40 states
- " In-District Meetings and Town Hall Attendance

A comprehensive approach to grassroots





Looking to the Future

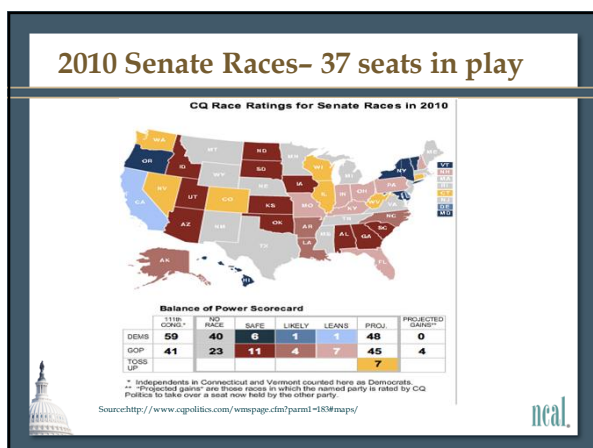



Political Mix at Present

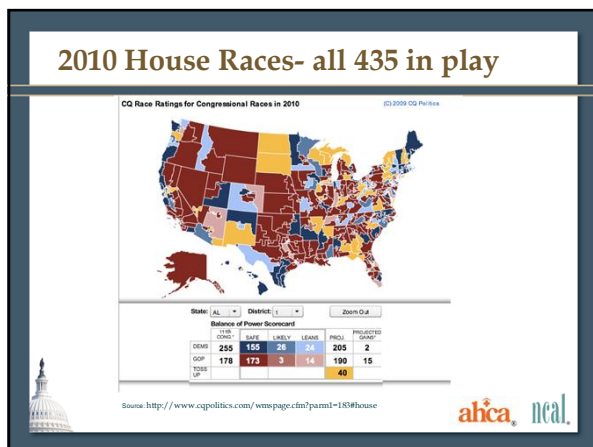
- President Obama
- U.S. House of Representatives
 - 255 Democrats, 178 Republicans, 2 Vacancies
- U.S. Senate
 - 57 Democrats, 41 Republicans, 2 Independents
- Governors
 - 24 Democrats, 26 Republicans




2010 Senate Races- 37 seats in play



2010 House Races- all 435 in play



Looking to the Future

- Not sure what the elections will hold for LTC?
- 112th Congress?
- Health care reform implementation continues



Looking to the Future

- AHCA/NCAL working hard to ensure better future:
 - Renewed focus on advocating for what is best for patients/residents, not just reimbursements;
 - Image and rebranding campaign being formulated;
 - Have demographics on our side and despite HCBS push, will always be a need for SNF/AL services;
 - Additional grassroots efforts forthcoming;
 - AHCA/NCAL will continue to provide value-added services to our membership as they serve the most vulnerable of patients



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Questions?



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