



HPCA LEGISLATIVE UPDATE

May 1, 2009

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Iowa Hospice Advocates Visit Capitol Hill

HPCA members met with Iowa's Congressional Delegation on April 22 to talk about hospice and palliative care. The visits were scheduled during the National Hospice and Palliative Care Organization's Capitol Hill Day.

The Iowa group met with Jenelle Krishnamoorthy, Senator Tom Harkin's (D-IA) legislative health aid, and Michael Park, who serves as health policy counsel to the Committee on Finance and Senator Charles Grassley (R-IA). Discussions with these staff as well as the other Iowa Congressman or their legislative aids, focused on eliminating the rate cut for hospice that has been put on hold until October. That cut would occur do to the phasing out of a key component in calculating Medicare hospice reimbursement, the budget neutrality adjustment factor (BNAF). The cut was temporarily put on hold earlier this year with the passage of the economic stimulus package by Congress.

In addition, the hospice advocates discussed how hospice and palliative care should be a part of health care reform as a solution to many of the high costs of health care during the last year of life for Medicare beneficiaries. In an era of restrained resources, hospice is a high-quality and cost-efficient model of care that also delivers high satisfaction to patients and families.

At each meeting, members of the Iowa delegation provided a copy of the Iowa 2008 survey results for the Hospice Family Evaluation of Care along with a few hospice statistics for Iowa. (attached with this Update)



HPCA Board President Chris Oleson (*left*) and President-Elect Lori Bishop (*right*) with Senator Tom Harkin

The hospice leaders from Iowa also attended Senator Harkin's constituent coffee held each Wednesday morning. NHPCO had asked the group to present a Public Policy Award to Senator Harkin on behalf of the National Hospice Foundation.

Board officers and members of HPCAI who participated in the Hill visits included:

- Lori Bishop, HPCAI Board President-elect and Director, Hospice of Pella/Comfort House, Pella
- Marvin Fagerlind, Executive Director, Cedar Valley Hospice, Waterloo
- Norene Mostkoff, President/CEO, Hospice of Central Iowa, Des Moines
- Chris Oleson, HPCAI Board President and Director, Great River Hospice, West Burlington
- Linda Todd, Director, Hospice of Siouxland, Sioux City
- Becky Anthony, Executive Director, HPCAI



Becky Anthony, Chris Oleson, Marvin Fagerlind, Senator Tom Harkin, Norene Mostkoff, Linda Todd and Lori Bishop.

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Legislative Session Comes to a Close

Working through marathon sessions that lasted to nearly dawn, the 2009 Iowa General Assembly finally adjourned over the weekend. The 2009 session was marked by contentious debates on a variety of issues, some of which passed and many of which did not. Highlights of the year of interest to the Iowa hospice community included:

- No cuts to Medicaid services or benefits.
- Passage of health care reform legislation that creates a process for future funding of increased workforce training in Iowa as well as providing insurance coverage for all Iowa kids.
- Failure of labor initiatives such as "fair share," open-scope collective bargaining, employee choice of physician in workers' compensation cases and setting prevailing wages for public construction projects to gain legislative approval.
- Failure of bills seeking to establish a health care whistleblower mandate.

Because the General Assembly has adjourned, this will be the final *HPCAI Legislative Update* of the year. However, the process for 2010 is already beginning. A complete 2009 legislative summary will be available by June 1 and the HPCAI Advocacy Committee meets May 12 to begin the process of developing next year's legislative agenda.

Questions about HPCAI legislative activity may be directed to [Shannon Strickler](#).

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Standings Bill Affects Hospices

The Standings Bill, sometimes referred to as the “Christmas tree” bill, contains standing appropriations for state salaries and serves as a catch-all bill at the close of each legislative session. At the close of this session, the House and Senate passed [Senate File 478](#), containing a variety of policy issues that had failed earlier legislative deadlines. Two of those issues will have an impact all non-profits and employers including hospices: franchise fees and workers’ compensation penalties.

SF 478 authorizes cities to assess franchise fees up to 5 percent of the gross revenue sale of the franchise within the city regardless of the city’s cost of inspecting, supervising and otherwise regulating the franchise. The city must deposit franchise fees into the city’s general fund and any fees beyond those necessary to inspect, supervise or regulate the franchise must be used for one of nine specified purposes, including property tax relief, public safety, public works and economic development.

Before a city adopts or enhances a franchise fee, the legislation requires it to publish a revenue purpose statement explaining how the increased revenue will be spent. SF 478 originally authorized franchise fees retroactively, but was later amended to have an immediate effective date following the governor’s approval.

The Standings Bill also contained policy language relating to workers’ compensation penalties. The final bill amended Iowa Code section 86.13, similar to [Senate File 262](#) and [House File 791](#), enhancing penalties for wrongfully denied, delayed or terminated workers’ compensation benefits based on the knowledge or the employer at the time of the denial, delay or termination.

The bill allows the commissioner to award up to 50 percent additional benefits to those payable under workers’ compensation if the commissioner finds that the employer or insurer denied, delayed or terminated benefits without a reasonable or probable cause or excuse. The bill outlines three criteria that must be met in order to be considered a reasonable excuse:

- The excuse was preceded by a reasonable investigation.
- The investigation results were the actual reason for the denial, delay or termination.
- The employer or insurer contemporaneously conveyed the basis for the denial, delay or termination of benefits to the employee.

The governor has 30 days to act on SF 478; unless otherwise noted, all provisions approved by the governor will become effective July 1.

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Wrongful Death Bill Averted

In one last attempt at passage, the Iowa Senate called [House File 758](#) up for debate at in the middle of the night over the weekend, just hours before final adjournment of the General Assembly for the year. The Democrats immediately went to caucus on the issue to debate internally over the merits of the legislation.

HF 758 would create a new category of damages in wrongful death cases to measure the “loss of enjoyment of life.” The legislation, supported by the trial lawyers, would increase damages in wrongful death cases and may drive up medical liability premiums by as much as twenty percent.

Ultimately, calmer heads prevailed and the Senate did not move forward on HF 758, but it most certainly will be an issue next year.

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Charles Krogmeier Appointed to Head Human Services

Governor Chet Culver has appointed Charles Krogmeier as the new director of the Iowa Department of Human Services (DHS). Krogmeier is currently Chief of Staff in the governor's office, with three decades of experience in state and local government.

His other state government experience includes director of the Department of Management (2007-2009); director of the Culver/Judge transition office following the 2006 election; deputy secretary of state (2004-2007); deputy attorney general (1989-1997); and general counsel to the Iowa Department of Transportation (1986-1989).

Krogmeier served two terms as an elected member of the Lee County Board of Supervisors (1979-1986) and was in private legal practice in both Polk and Lee counties. He is a graduate of the University of Iowa and the Drake University Law School.

The senate considered and rejected the appointment of Gene Gessow as DHS director on April 15 in a party-line vote. Per the Iowa Constitution, the Iowa Senate must confirm all Gubernatorial appointments by a super-majority vote, meaning at least 34 "yes" votes. The Senate Republicans refused to support Gessow's confirmation citing concerns with his lack of transparency regarding the Atalissa and Glenwood controversies. Senate Democrats argued that he is qualified for the director position and has been selected by the Governor, but Republicans did not concede. Gessow served as the Iowa Medicaid director for five years before being named as interim DHS director.

Krogmeier's appointment is effective immediately and will be placed before the Senate for confirmation in 2010.

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Proposed Changes to Hospice Wage Index Rule

On April 21, 2009, CMS posted to the CMS website a proposed FY2010 Hospice Wage Index rule (CMS 1420-P). It will be published in the Federal Register on Friday, April 24. The proposed rule is available on the [Federal Register Web site](#) (PDF). NHPCO has begun preparing the Excel spreadsheets by state and by county, as well as the Wage Index Calculator detailing the impact of the proposed wage index on rates for FY2010.

The NHPCO Regulatory Committee will be meeting to further discuss this proposed rule and will be developing an NHPCO response. They will solicit input from providers and state organizations in the coming days. The comment period closes on June 22, 2009.

Budget Neutrality Adjustment Factor:

The proposed FY2010 Hospice Wage index incorporates a 75% reduction in the Budget Neutrality Adjustment Factor (BNAF), implementing the second year of the BNAF phase out. While the President's economic stimulus package (The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (ARRA)) eliminated the BNAF phase-out for FY 2009, there is no provision for completely eliminating the BNAF reduction in FY2010 and FY2011. The combination of the BNAF reduction and the lowered hospital marketbasket increase mean that the average wage index area will experience a **-1.1% decrease in rates for FY2010**, beginning October 1, 2009.

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FY2010 BNAF Impact:

CMS estimates that the proposed FY 2010 hospice wage index with the BNAF reduction of 75% will result in approximately a 4.76 to 4.77% reduction in most hospice wage index values. For those low wage index areas, the proposed rule continues to keep a wage index floor of .8000.

FY2011 BNAF Impact:

The elimination of the BNAF in FY 2011 would result in an estimated final reduction of the FY 2011 hospice wage index values of approximately 1.66 to 1.67 % compared to FY 2010 hospice wage index values.

Estimated Hospital Marketbasket Increase for FY2010:

Although the final hospital marketbasket increase for FY2010 will not be released until the summer of 2009, CMS estimates that the marketbasket increase for FY2010 will be 2.1%, effective October 1, 2009.

Physician Certification:

In response to the MedPAC recommendations and concerns regarding accountability and enforcement for the certification and recertification of hospice patients, the rule proposes greater physician engagement in the process. In the proposed rule, the hospice physician would provide a brief narrative explanation supporting the terminal prognosis on the certification form, not as a separate attachment.

Covered Services:

The proposed rule makes adjustments to 418.202 and instructs the hospice to include all co-morbidities in the plan of care, even if the co-morbidities are not related to the terminal illness. The hospice is not responsible for providing the care or the medical supplies related to those co-morbidities unrelated to the hospice diagnosis.

Proposed Clarification of Intermediary Determination and Notice of Amount of Program Reimbursement:

The proposed rule incorporates the language issued as a transmittal (CR 6400, Transmittal 1708) on April 3, 2009 which requires the fiscal intermediary to issue a letter of determination of program reimbursement to every hospice, whether or not there is an inpatient cap or aggregate cap overpayment issue. A demand for repayment will be included for those hospices which have exceeded either cap. If a hospice disagrees with the contractor's cap calculations, the hospice has appeal rights which are set out at 42 CFR §418.311 and Part 405, Subpart R.

Requesting Comment for Future Payment Policy**Recertification visits:**

CMS is asking for comments about the MedPAC recommendation that a physician or advanced practice nurse make a visit for recertification visits. There is no proposed rule at this time, but CMS is asking for feedback on all aspects of this suggestion including practical issues for implementation.

Aggregate cap calculations:

CMS is asking for comments about the calculation of the aggregate cap, including the timing of the cap letter, determining alternate formulas for cap calculations between providers and across years, and ways to make the cap calculation process more efficient.

Hospice Payment Reform:

CMS is soliciting comments regarding MedPAC's suggestions on reforming the hospice payment system, as well as broader comments and suggestions regarding hospice payment reform. MedPAC's suggested payment reforms would require Congressional action to change the statute.

Update on Phase 3 Data Collection:

In October 2008, CMS asked for comments on data collection using hospice claims, including data collection using hospice cost reports. Based on the feedback received, CMS revised their plans and is developing written instruction to be released sometime this spring or summer. Details include:

1. Time reporting requirements in 15 minute increments for nurses, social workers, and hospice aides.
2. Visit and visit time reporting in 15 minute increments for physical therapists, occupational therapists, and speech language therapists.
3. Some social worker phone calls and their associated time, related to the palliation and management of the terminal illness and related conditions as described in the patient's plan of care.
4. Only social worker phone calls related to providing and/or coordinating care to the patient and family, and documented as such in the clinical record, would be reported.
5. Visit and time data for respite and general inpatient care provided by non-hospice staff in contract facilities would be exempt from the reporting requirement.
6. Travel time, documentation time, and interdisciplinary group time would not be included in the time reporting.
7. These changes would necessitate line-item billing on hospice claims.

These changes are part of a transmittal to be issued by CMS later this spring or summer and not to be considered as proposals in this rule.

Questions may be directed to regulatory@nhpco.org.

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Instruction on Cap Amounts

The Centers for Medicare & Medicaid Services (CMS) has issued Change Request 6400 which requires Medicare contractors to send each of their hospice providers a letter which serves as a determination of program reimbursement, regardless of whether or not the hospice has exceeded a cap. The contractor will calculate the cap on payment for inpatient days and the cap on total payments and issue the hospice a determination of program reimbursement. If there is a cap overpayment, there will be an accompanying demand for repayment.

To review this Change Request, visit the [CMS Web site](#). Contact [Heather Hulscher](#) at HPCAI with any questions.

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HPCAI Seeks Presentations for Fall Conference

Have you heard a great hospice or palliative care related speaker recently? Do you have a question you've always wanted answered? Does your hospice have a successful initiative or program you would like to share? This is your opportunity to ensure topics you are interested in are covered at the HPCAI Fall Conference.

The 2009 Fall Conference Call for Presentations was sent out in April, it also is attached to this issue of the *Update*. Please review the Call for Presentations and either complete the application form or pass it on to someone you think would make a great presenter. To complete the application form online, [click here](#).

Deadline: The deadline to submit an application has been extended to **Friday, May 8, 2009**.

Questions: Contact Stacey Nay, HPCAI Director of Education, 515.243.1046.

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Bereavement Software Training Available

The Colorado Center for Hospice & Palliative Care is offering two webinars on their Hospice Bereavement Manager Software. This software was developed by CCHPC and sponsored in part by a

grant from The Colorado Health Foundation and was created to help hospice bereavement programs track bereavement clients, develop individualized care plans for bereavement clients and to research risk assessment data to enhance bereavement services.

Webinars are scheduled for July 7 and November 3. For more information on the software and on the webinars, visit the [Colorado Center for Hospice & Palliative Care Web site](#).

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