



Advocacy Update August 2009

Congress is in recess, to reconvene after Labor Day. Until then there can be no formal legislative activity, although congressional staff continue to work on current and future legislation and we maintain our legislative advocacy.

Health care reform

There are three bills under development on Capitol Hill:

- Senate Health, Education, Labor and Pensions (HELP) Committee – draft bill approved
- Senate Finance Committee – still working on a draft, which is not yet available
- House Tri-Committee – draft bill mostly finished, but amendments still being finalized.

We anticipate final committee action and floor consideration beginning in September, although enactment of a final bill may take until late in the year.

Long-Term Services and Supports/Health Care Reform

Enormous energy and commitment on the part of members, AAHSA's leadership and staff have enabled us to achieve inclusion of Community Living Assistance Services and Supports (CLASS) Act provisions in the health care reform measures approved by the Senate HELP Committee and the House Tri-Committee group. The CLASS Act provisions closely parallel the recommendations of AAHSA's Finance Cabinet. We now are working to gain acceptance of these provisions by the Senate Finance Committee and to make sure the provisions stay in the final version of health care reform legislation.

Health Care Reform has also been a vehicle for consideration of the Independence at Home Act that implements the "House call" program, which is included in the House Tri-Committee bill.

We greatly appreciate all of the efforts made by state executives, state staff, Board and House members, CEMO members and other AAHSA members to advocate on this issue and to involve residents and staff in their advocacy as well.

Other long-term services and supports issues/Health care reform

On the plus side, the health care reform measures that have so far emerged from House and Senate committees contain the following provisions ***we support***:

- Reform in Medicare reimbursement of non-therapy ancillaries under the skilled nursing facility prospective payment system. This provision could increase reimbursement for non-profit facilities by an average of 7%.

- Separate reporting of staffing expenditures in Medicare cost reports. This provision, which we initiated, would be the first step toward improving reimbursement for facilities that commit the largest proportion of revenues to staffing. The information to be reported would be the same as is required now on Medicaid cost reports.
- Medicare bundling. The House measure directs a study of bundling Medicare post-acute care payments. Some forms of bundling we obviously would oppose; for example, we would not favor giving a large pot of money to hospitals to divide among post-acute care providers. However, other forms of bundling could be to the advantage of AAHSA members and could facilitate more effective transitions among various levels of care. We are pleased that the proposed legislation contains a study of bundling as opposed to immediate implementation.
- Nursing home transparency. The House bill includes provisions earlier introduced as separate legislation by Senators Grassley and Kohl to require greater reporting of nursing home ownership information, so that consumers, regulators and policymakers would be able to determine who should be held accountable for the quality of care at individual facilities.

Provisions in health care reform we oppose:

- Loss of 2010 Medicare payment update for nursing homes and home health care providers. The impact of this provision would be magnified by regulatory changes CMS has made in the payment systems for these categories of providers. The effect would be cumulative over time as well, since any future inflation updates would be based on 2009 rates rather than on inflation-adjusted 2010 rates. We are doing substantial advocacy in both the House and Senate to save the payment updates.
- Increased penalties for nursing home survey deficiencies. The House bill would increase civil monetary penalties payable for survey deficiencies and would require CMPs to be deposited into escrow accounts pending any appeal of the deficiency citations. We are strongly opposed to these provisions.
- The House "Tri-Committee" proposal is calling for accelerating the case mix adjustment for home health by combining the 2010 case mix adjustment cut of 2.75% with the 2011 cut of 2.71% to be applied to 2010 (a 5.46% cut in one year). Besides this large cut, there also will be no annual update. There would then be rebasing after 2011.
- For hospice, the House of Representatives' health care reform bill draft has proposed an additional \$2.3 billion in cuts over a five-year period and \$9.8 billion over a 10-year period, a 3.2 percent annual cut in reimbursement.

Medicaid

At the beginning of this year, we succeeded in getting \$87 billion in additional federal funding for the Medicaid program through the end of calendar 2010.

Health care reform legislation may increase Medicaid eligibility for moderate-income families and single people without children as a means of enlarging access to health care coverage. However, we do not anticipate any further Medicaid legislation to benefit long-term services and supports providers.

Housing reform

We have succeeded in getting the provisions of S. 118, our signature senior housing reform legislation, included in the draft of a larger housing preservation bill to be introduced in the House in September. We worked to get Section 202 properties included in the preservation bill's provisions for incentives at mortgage maturation, and participated in a housing preservation roundtable at HUD which addressed Section 202 reform. We also have solicited AARP's endorsement of our senior housing reform legislation, and so far they at least have not opposed it.

Housing appropriations

For the first time in several years we cracked \$1 billion in total appropriations for senior housing programs under the fiscal 2010 HUD appropriations bill approved by the House Appropriations Committee. This is a huge success, as senior housing has languished at \$765 million for the past several years while housing costs continued to climb and the population needing affordable housing grew. We are working to maintain this gain in the Senate and in the final version of the appropriations legislation.

Home- and Community-Based Services Appropriations

We succeeded in getting 2009 funding increases for several OAA programs under the stimulus bill and omnibus 2009 appropriations enacted earlier this year. The 2010 spending bill approved by the Senate Appropriations Committee locks in these gains but provides few increases. Since we believe that funding must keep up with rising demand for home- and community-based services, we continue to advocate for spending increases for 2010. Also, AAHSA was instrumental in the introduction of the Medicare Adult Day Services Act by Rep. Linda Sanchez. The bill already has 13 co-sponsors, and we are working on getting the bill introduced in the Senate.

Nursing home five-star rating system

We continue to work with other stakeholders and officials at CMS to either withdraw the system or to suspend it while critically-needed revisions are made. Unfortunately, it appears that CMS will not be able to make any substantive changes to the system until a new CMS administrator has been appointed.

Miscellaneous legislation

We are monitoring a few bills about which we have concerns on behalf of our members:

- Union card check: while this legislation would not do away with secret ballot elections on organizing workplaces, it would make them unnecessary, because a workplace could be certified once a majority of workers had signed a postcard or petition in favor. The legislation's progress slowed when the House Democratic leadership decided to wait for the Senate to act on it and several senators who formerly supported it rethought their position. This is a major initiative for unions, however, and some business groups also are exploring compromises that might allow the bill to move forward.
- Ban on pre-dispute arbitration agreements in nursing homes and assisted living: we are advocating against this legislation and have proposed alternatives to protect consumer interests while at the same time preserving the time- and money-saving arbitration option.

Workforce

We have joined with approximately 60 other stakeholder organizations as the Eldercare Workforce Alliance to advocate for policies to facilitate the recruitment, education and training of qualified people to serve the elders of today and tomorrow.

We are following two bills introduced in Congress:

- Retooling for an Aging America Act, S. 245 and H.R. 248, would expand opportunities for health care professionals at all levels to obtain education and training in geriatrics and gerontology. Introduced by Sen. Herb Kohl (D-WI) and Rep. Jan Schakowsky (D-IL).
- Caring for an Aging America Act, S. 750, to attract and retain trained health care professionals and direct care workers to care for people as they age. Introduced by Sen. Barbara Boxer (D-CA), referred to HELP Committee.

Only a few provisions of these bills have been incorporated into health care reform, so we will continue advocating on them as separate legislation.

We also await the recommendations of AAHSA's Workforce Cabinet. One of the primary items on our workforce agenda has been advocating for the determination of core competencies for all positions involved in long-term services and supports. This recommendation by the Institute for the Future of Aging Services would be an essential first step toward assessing education and training needs for long-term services and supports leaders and staff.