

Legislative Priorities 2011
A Summary
National Association for Home Care & Hospice

Home care and hospice providers seek a number of legislative reforms in order to more effectively address the challenges they face. Based on a survey of NAHC Members and input from the NAHC Government Affairs Committee, the Hospice Association of America, and the Forum of State Associations, following are the top-ranked legislative priorities for 2011, along with specific recommendations on the issues.

I. MEDICARE

REPEAL OR REFORM MEDICARE HOME HEALTH FACE-TO-FACE ENCOUNTER REQUIREMENT. 1) Congress should monitor the impact of the face-to-face encounter requirements and, if necessary, repeal the provision and devise more constructive ways to secure physician involvement in home health care. 2) Revise the face-to-face requirements to eliminate or significantly modify the physician documentation requirements as set out in the Medicare rule to eliminate the need for a physician to spell out why the patient's clinical condition requires Medicare covered home health services. 3) Revise the Patient Protection and Affordable Care Act (PPACA) section 6407 to remove the reference to section 1834(m) of the Social Security Act and substitute a definition of telehealth services that allows an individual to meet the face-to-face encounter requirements through modern technologies available in their home. These technologies should include two-way audio and video communications.

OPPOSE COST SHARING FOR MEDICARE HOME HEALTH SERVICES. Congress should oppose any copay or deductible proposal for Medicare home health services and should prohibit Medicare Advantage plans from charging a home health copay or deductible.

BLOCK CMS REGULATORY "CASE MIX CREEP" CUTS AND REQUIRE A NEW PROCESS FOR CALCULATING CASE MIX ADJUSTMENT. Congress should restrict the ability of CMS to modify payment rates and revise the case-mix adjustment system. These restrictions should require that no adjustments occur without adequate advance notice of at least 12 months and that CMS develop criteria for application of the BIPA case-mix adjustment correction authority through public rulemaking. The procedural standards set out in the Home Health Care Access Protection Act should be enacted immediately and applied prospectively to any further coding weight adjustments.

ENSURE FULL MARKET BASKET UPDATES TO MEDICARE HOME HEALTH. Congress should reject any proposals to reduce the market basket inflation update or impose additional rate reductions for home health agencies. Congress should maintain its carefully crafted schedule of payment rate changes as contained in PPACA in order to secure access to continued care.

ENSURE HOME CARE PARTICIPATION IN TRANSITIONS IN CARE AND OTHER HEALTH CARE DELIVERY REFORMS. Congress should monitor closely CMS's implementation of the health care delivery reform provisions in PPACA to ensure that the intended goals are fully met. Congress should encourage CMS to look to home care as part of the solution to rising health care spending in Medicare and Medicaid, including through community based chronic care management. Congress should investigate and remove any existing laws and regulations that create barriers to the inclusion of home care entities as integrated partners or participants with other health care organizations in transitions in care actions, bundling of payments, or other delivery of care innovations.

ESTABLISH REASONABLE STANDARDS FOR REBASING MEDICARE HOME HEALTH SERVICES PAYMENT RATES. Congress must closely monitor the implementation of the rate rebasing by the Centers for Medicare and Medicaid Services (CMS). Further, Congress should amend the legislation to require that the rate rebasing utilize all usual and customary business costs consistent with standards under the Internal Revenue Code, including telehealth services, all disciplines of caregivers, and usual business operating expenses along with needs for operating capital and operating margins.

ENSURE MEDICARE ADVANTAGE AND FEE-FOR-SERVICE ENROLLEES RECEIVE IDENTICAL HOME HEALTH BENEFITS. Congress should specifically mandate that all Medicare Advantage plans provide an episodic, care management home health services benefit and prohibit continuation of the antiquated home health benefit currently provided by most Medicare Advantage plans.

ALLOW NPs AND PAs TO SIGN HOME HEALTH PLAN OF CARE. Congress should enact legislation that would instruct CMS to allow Nurse Practitioners, Clinical Nurse Specialists, Certified Nurse Midwives, and Physician Assistants to certify and make changes to home health care plans.

II. MEDICAID

ENSURE APPROPRIATE MEDICAID RATES FOR HOME CARE AND HOSPICE. Congress should enact legislation that requires that states continually assess Medicaid home care and hospice rates of payment and the methodology utilized for establishing rates. The legislation should further require that rates be reasonable and adequate so as to: 1) assure access to care comparable to the non-Medicaid patient population; 2) ensure reimbursement sufficient for providers to conform with quality and safety standards; and 3) guarantee payments sufficiently adequate to incentivize providers of care to operate efficiently while meeting the cost of care provision.

ESTABLISH MEDICAID HOME CARE AS A MANDATORY BENEFIT AND SUPPORT REBALANCING OF LONG TERM CARE EXPENDITURES IN MEDICAID PROGRAMS IN FAVOR OF HOME CARE. Congress should ensure that CMS properly implements the Medicaid home care expansion in PPACA and

encourage broader coverage of home and community-based services under Medicaid. Congress should establish firm deadlines for Olmstead/ADA compliance with the penalty of lost federal financial matching payments for failure to meet the deadlines. Further, Congress should authorize an increase in the federal matching payment for expanded Olmstead/ADA-compliant home and community-based services, and 100 percent federal reimbursement for state Medicaid compliance costs in transitioning to improve home care alternatives. The rebalancing of long term care expenditures in favor of home care should be accomplished consistent with principles that: 1) establish Medicaid home care as a mandatory benefit in state Medicaid programs; 2) authorize care based on need; 3) assure quality of care through enforcement of comprehensive delivery standards; 4) provide the Medicaid client with a choice of care delivery models; and 5) ensure adequate reimbursement levels.

INCREASE FEDERAL MEDICAID PAYMENTS TO STATES. Congress should reject any consideration of placing caps on Medicaid spending and increase the federal match for state Medicaid programs, thereby bolstering efforts to bring states into compliance with the Olmstead decision and supporting continuation of home care and hospice services.

III. HOSPICE

REVISE REQUIREMENTS FOR HOSPICE FACE-TO-FACE REQUIREMENT. Congress should revise the requirements for the hospice face-to-face requirement to allow for reimbursement of costs related to the face-to-face requirement, and provide sufficient flexibility to ensure that hospices can comply with the new law and that it will not serve as a deterrent to patients receiving timely access to services. Congress should also allow use of telehealth technologies to assist hospices in meeting the face-to-face requirement. Congress should direct CMS to ensure that its data systems are available and contain adequate information for hospices to be able to determine with certainty whether a potential hospice patient will require a face-to-face encounter.

PRESERVE THE FULL MARKET BASKET UPDATE FOR THE MEDICARE HOSPICE BENEFIT. Congress should restore the market basket and productivity reductions authorized under P.L. 111-148 and reject any further proposals to cut the hospice market basket update. A study of the need for refinements in the Medicare hospice benefit as recommended by the Government Accountability Office (GAO) and MedPAC should be conducted before any cuts in reimbursement are undertaken. Also, Congress should oppose any reductions in the annual updates until such time as all payment reforms are instituted and then only after the issues are fully examined.

REJECT ADDITIONAL BENEFICIARY COPAYMENTS FOR MEDICARE HOSPICE SERVICES. Congress should reject imposition of additional copayments on beneficiaries for Medicare hospice services and other changes that would discourage use of the hospice benefit.

ENSURE ACCESS TO HOSPICE CARE FOR RURAL PATIENTS. Congress should enact an add-on for hospices located in and caring for patients in rural areas.

MONITOR PAYMENT REVISIONS TO MEDICARE HOSPICE BENEFIT. Congress must carefully review MedPAC's recommendations and ensure the impact of making changes to the reimbursement system do not affect the ability of terminally ill Medicare beneficiaries to access the MHB when they reach the final stage of life. Congress should work with the National Association for Home Care & Hospice and the hospice industry in legislating any changes in the Medicare hospice benefit. In the meantime, Congress should oppose any reductions in the annual updates until all payment reforms are instituted and then only after all issues related to coverage and payment for hospice services are fully examined. Any system reforms must be supported by credible study and preserve access to and quality of care, while maintaining sufficient reimbursement rates to support a viable and stable delivery system.

MANDATE HOSPICE COVERAGE UNDER MEDICAID. Congress should mandate Medicaid hospice coverage for all populations served.

IV. TECHNOLOGY

RECOGNIZE TELEHOMECARE INTERACTIONS AS BONA FIDE MEDICARE SERVICES. Congress should clarify legislatively that telehomecare "constitutes a service(s) ... provided on a visiting basis in a place of residence used as an individual's home" as defined in §1861m of the Social Security Act, and Medicare should provide appropriate reimbursement for technology costs to HHAs and hospices. CMMI should approve demonstration projects that would allow for new ways to use telehomecare technologies to monitor patients and avoid more costly health care interventions, such as the concepts embodied in the FITT Act. Finally, Congress should ensure that all health care providers, including HHAs and hospices, have access to appropriate bandwidth so that they can take full advantage of advances in technology appropriate for care of homebound patients.

RECOGNIZE TELEHOMECARE INTERACTIONS AS BONA FIDE MEDICAID SERVICES. Congress should establish telehomecare services as a distinct benefit within the scope of federal Medicaid coverage. The benefit should include all present forms of telehealth services and allow for sufficient flexibility for states to include emerging technologies. Congress should also ensure that all health care providers, including HHAs and hospices, have access to appropriate bandwidth so that they can take full advantage of telehomecare technologies.

V. OTHER (INCLUDING PRIVATE PAY)

MODIFY EMPLOYER RESPONSIBILITIES IN HEALTH REFORM TO ADDRESS HOME CARE-SPECIFIC NEEDS. Congress should amend the health care reform legislation to require that all government health programs adjust provider rates to meet the additional costs that will be incurred by health care providers to make

health insurance available to all their employees. Congress should also amend the legislation to either exempt home care providers from the employer responsibilities, provide a subsidy to home care providers to supply health insurance, or provide a subsidy/tax credits to home care clients to cover the increased cost of care triggered by the employer responsibility provisions. Congress should help the states ensure that low wage home care workers have health insurance by enacting proposals such as those contained in the Caregiver Access to Health Insurance Act. Finally, Congress should amend the reform legislation to allow for a definition of full time employee that evaluates the individual's working hours over a 180 day period.

OPPOSE CHANGES TO THE COMPANIONSHIP SERVICES EXEMPTION TO THE FAIR LABOR STANDARDS ACT. A companionship services exemption under wage and hour laws should be maintained at the state and federal level until a comprehensive plan can be implemented that addresses service funding, worker health insurance, and career development. Congress should block any attempt by the Department of Labor to modify the existing and longstanding definition and application of the companionship services exemption.

ENACT A COMPREHENSIVE HOME AND COMMUNITY-BASED LONG TERM CARE PROGRAM FOR ALL AGE GROUPS. Building on the recently enacted CLASS Act program, the federal government must take the lead in providing adequate coverage of long-term care needs for the physically disabled, chronically and terminally ill, and cognitively impaired. The foundation of this initiative should be home and community-based care and hospice.