



ISSUES UPDATE

FINANCE MEDICARE

[Goal 1.1]¹ AHCA is opposing the proposed FY 2009 budget that President Bush submitted to Congress

on February 4, which cuts Medicare long term care funding by \$24 billion over 5 years (see Estimated Impact chart). The President’s FY 2009 budget slices into Medicare funding from several angles and includes both cuts that pass through the Congressional appropriations process and cuts achieved through administrative action. First, the President’s budget recommends that Congress provide a “zero” market basket update for SNFs in FY 2009, eliminate bad debt by FY 2012, and cap Medicare Part B therapy services at just over \$1,800 per beneficiary per year. [Goal 1.8] The current exceptions process for therapy caps extends through June 30, 2008, and is estimated at \$200 million in the President’s budget; Congress is expected to address this issue when it reconsiders changes to the physician fee schedule later this spring.

The President’s budget also seeks to cut \$35 million into long term care by reinstating the Survey & Certification revisit user fees that our advocacy succeeded in removing from Congress’ final Omnibus spending bill, which was signed into law on December 26, 2007. Our success with the revisit user fee issue means that providers no longer pay \$2,072 per onsite revisit survey nor a \$168 per offsite revisit survey as of December 26, though we clearly expect to face this fight again. [Goal 1.5] Slicing even further into long term care funding, the President’s proposed budget calls on CMS to adjust for “code creep” in Medicare reimbursement for the upper 9 Resource Utilization Group (RUG) categories that were added in 2005 as we moved to the RUGS-53 system. We have confirmed that CMS plans to issue a proposed rule that would make such an adjustment later this spring and anticipate this administrative action to redirect \$720 million in SNF Medicare reimbursement in FY 2009—and \$4.7 million over 5 years.

AHCA is pleased to have early support from some Members of Congress. Once again, Representatives Shelley Berkley (D-NV) and Shelley Moore Capito (R-WV) have agreed to send a bipartisan “Dear Colleague” letter to House Budget Committee Chair John Spratt (D-SC) and Ranking Member Paul Ryan (R-WI) expressing opposition to these cuts. AHCA is encouraging our membership to contact their representatives about co-signing the Berkley-Capito letter and has shared this information with our State Executives, Federal Political Directors (FPDs), and grassroots as well as highlighting this effort in *Capitol Connection*. AHCA also is sending a letter to every Member of Congress and contacting House and Senate Budget Committee and other key Members of Congress to discuss our concerns regarding President’s budget.

Estimated Impact – President’s Proposed FY 2009 Budget (\$ million)		
	FY 2009	Over 5 Years
SNF Market Basket Update	\$990 ¹	\$17,030 ¹
SNF Budget Neutrality Adjustment (RUGs)	\$720 ¹	\$4,700 ¹
SNF Bad Debt	\$30 ²	\$930 ²
SNF/NF Revisit User Fee	\$32 ³	\$160 ⁴
Medicare Part B Therapy Caps (SNF/NF only)	\$200 ⁵	\$1,000 ⁵

1. FY 2009 Administration Budget (OMB)
2. OACT
3. AHCA estimate based on CMS data
4. Preliminary AHCA estimate (assumes 5-year policy)
5. Avalere Health based on CBO estimates

[Goal 1.6] On February 15 in accordance with the “45% trigger” provision of the *Medicare Modernization Act of 2003 (MMA)*, the President submitted a proposal to Congress to lower Medicare costs that includes a section on value-based purchasing (also known as pay-for-performance). Though the *MMA* requires Congress to introduce the proposed *Medicare Funding Warning Response Act of 2008* within three days of returning from its congressional district work period, we do not believe that the President’s proposal will receive serious consideration on Capitol Hill. Nonetheless, AHCA has taken this opportunity to point out the significant medical liability reforms outlined by the President in a recent [press release](#). These reforms include setting a 3-year statute of limitations on all health care lawsuits; capping non-economic damages at \$250,000; capping attorneys’ contingency fees; permitting the introduction of collateral source benefits in all health care lawsuits; specifying new guidelines for awarding punitive damages as well as capping punitive damages at either \$250,000, or two times any awarded economic damages (whichever is greater); and allowing for periodic payment of any damage award over \$50,000.

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[Goal 1.7] Other recent press outreach generated interest – primarily from Hill and trade press – in our *Post Acute & Long Term Care Finance Reform Proposal*. We unveiled this proposal – developed by AHCA, NCAL, and the Alliance for Quality Nursing Home Care in conjunction with Avalere Health – at a January 15th media briefing at the National Press Club.

[Goal 1.10] Until comprehensive reform can occur, AHCA is working with stop-gap measures to shore up Medicaid shortfalls. AHCA/NCAL’s work with Congress has codified provider tax into law, which ensured that CMS could not drop the maximum provider tax below 6% in 2007 and that states keep a 5.5% rate over the next three years before reestablishing the maximum provider tax rate at 6% after 2011. AHCA also successfully advocated for delayed implementation of the Intergovernmental Transfer (IGT) rule. Even so, we continue to work this issue as the one-year moratorium on the IGT Rule expires on May 25, 2008. [Goal 1.11] We are working to repeat that kind of success by working with Representatives Lois Capps (D-CA) and Devin Nunes (R-CA) in seeking a moratorium on CMS’ roll out of the Medicare Recovery Audit Contractor (RAC) program when the RACs demonstration project concludes on March 31, 2008. AHCA is sending a letter to Secretary of Health & Human Services (HHS) Michael Leavitt to detail our concerns with the RACs. AHCA also will accompany officials from Skilled Healthcare, who will be scheduled to meet with Representatives Capps and Nunes and with CMS early next month.

AHCA has reached out to leaders in the U.S. Senate and House of Representatives on proposals that would provide temporary relief to states caught in the economic downturn. States like Oklahoma, for example, will experience a decrease in federal matching funds (i.e., Oklahoma’s Federal Medical Assistance Percentage (FMAP) for FY 2008 is 67.1%, but drops to 65.9% for FY 2009, which means an approximate 1.8% rate of decrease in federal matching funds for Oklahoma). In January, Senator Rockefeller (D-WV) proposed amending the economic stimulus package to include a boost for FMAP, and was joined by Senators Cantwell (D-WA), Lautenberg (D-NJ), and Menendez (D-NJ) in cosponsoring the *State Fiscal Relief Act of 2008 (S. 2586)*. Representatives Pallone (D-NJ), Dingell (D-MI), King (R-NY), and Reynolds (R-NY) introduced legislation in the House (*H.R. 5268*) that would temporarily increase Medicaid funding for states and could mean tens of millions of federal dollars for states’ overall Medicaid budget.

REGULATORY

[Goal 2.4] AHCA continues to work diligently with CMS on a variety of issues. Recently, we succeeded in securing clarification from CMS regarding the use of CMS State Operations Manual (SOM) and other guidance. CMS' clarification reinforces the fact that guidance is intended to inform the survey process and underscored that guidance should not be viewed as new regulation.

[Goal 2.8] One of our most challenging regulatory issues of late is dealing with the confusion and misinformation around CMS' Special Focus Facility (SFF) program. AHCA continues to request that CMS provide the formula that the agency uses in determining that a facility should be designated as a Special Focus Facility (SFF). We also have been actively addressing the political and media fallout from CMS' release of the SFF list and added confusion that CMS generated by publicly posting a separate and distinct list of 4,026 facilities that the agency labeled as "targeted for improvement" by working with the Quality Improvement Organizations (QIOs) under its 9th Scope of Work. In addition to setting the record straight—for these facilities with policymakers, the press, and the public—we are also developing tools and resources to help facilities with the special focus designation to work toward graduating from the SFF list.

QUALITY

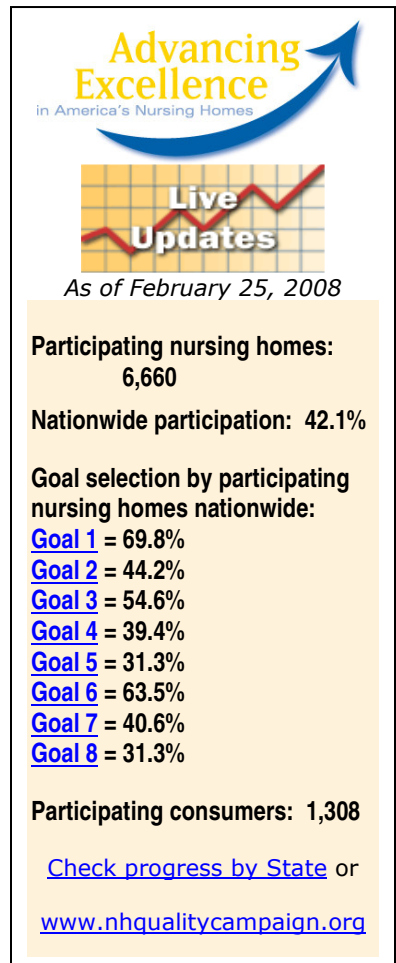
[Goal 4.2] Much of our work on these regulatory issues crosses over into our quality initiatives. AHCA continues helping to lead *Advancing Excellence in America's Nursing Homes* coalition with other long term care stakeholders. Participation in *Advancing Excellence* is gaining prominence, especially as greater attention is paid to quality of care issues in the media. Even with 42.1% of nursing home providers enrolled in *Advancing Excellence* nationwide – 6,660 facilities – we strongly encourage others to get involved (see *Advancing Excellence* chart). AHCA also continues to work with our State Affiliates and My InnerView, Inc. to promote use of consumer (resident and family) and employee satisfaction surveys – both of which are identified as *Advancing Excellence's* operational effectiveness goals.

WORKFORCE

[Goal 4.3] We are pleased that AHCA member facilities are applying for our Quality Awards and hope to increase the number of Step I, II and III awardees this year. The deadline for Step I applications is February 28, and Step II and III applications are due at the end of March. [Goal 4.3] AHCA also looks forward to reporting on this program in April, when we expect to see updated findings from My InnerView on consumer satisfaction surveys. AHCA's vacancy and turnover study will be completed later this spring—we strongly encourage all providers to participate in this important survey of the long term care workforce.

OPERATIONAL EFFECTIVENESS

[Goal 5.2] AHCA continues to develop data and resources to better serve members' needs and boost our advocacy efforts on their behalf. Later this spring, AHCA will debut a new interactive Web tool, which we believe will add tremendously to the data and research on which AHCA and our membership can draw. For more information, please visit www.ahca.org.



¹ Goals referenced in this document (e.g., [Goal 1.1]) align with AHCA's Strategic Goals & Objectives.