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## **HOME HEALTH CARE ACCESS PROTECTION ACT OF 2007 (H.R. 3865; S. 2181)**

### **BACKGROUND**

The Centers for Medicare and Medicaid Services (CMS) is planning payment rate cuts of 11.75 percent over four years for Medicare home health services starting on January 1, 2008. These unprecedented cuts will end access to valuable home health services in many parts of the country since more than 50 percent of home health agencies nationwide project that they will be unable to cover the cost of care with the reduced payment rates. In some states as many as 90 percent of home health agencies will be unable to cover their costs. The ultimate effect of these unprecedented payment cuts will be the loss of home health services in many parts of the country, leaving patients with no alternatives for post-acute and long-term care other than more costly institutional care.

The administrative cuts proposed by CMS are based on the assertion that home health agencies have intentionally gamed the system by claiming that their patients have conditions of higher clinical severity than they actually have in order to receive higher Medicare payments. This unfounded allegation of "case mix creep" is based on what CMS contends to be an increase in the average clinical assessment "score" of home health patients over several years.

### **NEED FOR LEGISLATION**

- There are very real clinical and policy explanations for why the average clinical severity of home health patients' health conditions may have increased over the years. For example, the incentives built into the hospital DRG reimbursement system have led to the quicker discharge of sicker patients. Recent advances in technology and changes in medical practice have also enabled home health agencies to treat more complicated medical conditions that earlier could only be treated in hospitals, nursing homes, or inpatient rehabilitation facilities.
- A recent study by the Lewin Group raises significant doubts about the correctness of the Medicare cuts. This study found that home health patients changed significantly between 2000 and 2004, with a disproportionate increase in patients with intensive rehabilitation needs. This would increase the average home health case mix score.
- Lewin further notes that the growth in home health payments runs parallel to reductions in nursing home use and changes in Medicare payment policy in other provider sectors such as rehabilitation hospitals.
- CMS has not made public any of the details on the research method, data and findings they have used to justify the planned cuts, making it impossible for Congress or the public to evaluate the reliability or validity of its actions. Of particular concern is the fact that this penalty is being assessed across the board, even for home health agencies that showed a decrease in their clinical assessment scores.

## LEGISLATION

### **The Home Health Care Access Protection Act of 2007 would:**

- Establish a reliable and transparent process for determining whether the payment rate cuts are needed to account for improper changes in “case mix scoring” that are not related to changes in the nature of the patients served in home health care or the nature of the care they received. This process will still enable the Secretary of Health and Human Services to enact rate adjustments provided there is reliable evidence that there are higher case mix scores resulting from factors other than changes in patient conditions or an improper increase in overall home health expenditures as a result of such factors.
- Prevent the implementation of the 11.75 percent payment cuts for Medicare home health services that are included in the CMS Final Rule, titled “Home Health Prospective Payment System Refinement and Rate Update for CY 2008,” which was published on August 29, 2007 in the Federal Register (42 CFS Part 484), if the Secretary is unable to justify such payment cuts through the process set forth above.

*For more information contact NAHC Government Affairs 202-547-7424.*

*To cosponsor these bills, please contact Priscilla Hanley with Senator Collins at 202-224-2523 or Lisa Salerno with Congressman McGovern's office at 202-225-6101.*