2014
Hospice Legislative Blueprint for Action

Hospice Association of America
228 Seventh Street, SE
Washington DC 20003-4306
**Hospice Association of America**  
**2014 Legislative Blueprint for Action**

**Table of Contents**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Introduction</strong></td>
<td>5</td>
</tr>
<tr>
<td>SECTION I: HOSPICE-SPECIFIC ITEMS</td>
<td>Reject Proposals To Include Hospice As Part Of Medicare Advantage Benefit Package</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Revise Requirements For Hospice Face-To-Face Encounters</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Ensure The Full Market Basket Update For The Medicare Hospice Benefit</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Oppose Expansion Of Copayments For Medicare Hospice Services</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Ensure Access To Care For Rural Hospice Patients; Establish Role For PAs In Hospice Care</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Oversee Hospice Payment Reform; Reject Rebasing And Site-Of-Service Adjustment For NF Residents</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Oppose Decreasing Hospice Reimbursement For Dually-Eligible Patients Residing In Nursing Facilities</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Provide Full Disclosure And Ensure SNF/NF Medicare Beneficiary Residents’ Right To Choose A Hospice Provider</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Ensure Access To Medications Necessary For Pain Control</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>Allow NPs To Certify Patients For Medicare Hospice Services</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Mandate Hospice Coverage Under Medicaid</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Protect Hospice Agencies From The Impact Of Sequential Billing</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Oppose Imposition Of Penalties For Erroneous Certification Of Terminal Illness</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>Support Demonstrations Allowing Concurrent Care Including Hospice And Traditional Medicare-Covered Services</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Oversee Hospice Quality Reporting Program</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Ensure The Portability Of Advance Directives; Support Advance Care Planning Consultations</td>
<td>32</td>
</tr>
</tbody>
</table>
Enact Hospice-Specific Compliance Measures .................................................................33

Mandate Frequency Of Surveys For Medicare Hospice Benefit Providers .......................35

SECTION II: JOINT HOSPICE/HOME HEALTH ITEMS .................................................36

Any Restructuring Of Medicare Cost Sharing Should Not Lead To Barriers To Home Health Services Or Hospice Care .................................................................37

Ensure Home Care And Hospice Participation In Transitions In Care, Accountable Care Organizations, Chronic Care Management, Health Information Exchanges, And Other Health Care Delivery Reforms .................................................................38

Ensure Appropriate Medicaid Rates For Home Care And Hospice ................................40

Support An Increase In The Federal Medicaid Match (FMAP) And Oppose Caps On Federal Payments .................................................................................................................42

Require Medical Residents And Interns To Have Home Care And Hospice Experience As Part Of Their Graduate Medical Education ........................................................................44

Provide Sufficient Home Care And Hospice Payments So That Agencies Can Provide Appropriate Wages And Benefits To Clinical Staff ..................................................................................45

Ensure Availability Of Home Care And Hospice Personnel To Meet The Growing Needs Of The Baby Boom Generation, Particularly In Rural And Other Underserved Areas ............................................................................................................46

Require Federally Funded Criminal Background Checks And Establish A National Registry System ..........................................................................................................................48

Recognize Telehomecare Interactions As Bona Fide Medicare And Medicaid Services.50

Establish Stability And Equity Among Medicare Health Care Providers In Application Of The Wage Index ..........................................................................................................................53

Enact Medicare Home Health And Hospice Program Integrity Measures ........................56
INTRODUCTION

Hospice and palliative care services reinforce and supplement the care provided by family members and friends and encourage maximum independence of thought and functioning, while preserving human dignity. Hospice is a crucial part of humane, cost-effective care in the final stage of life. The Medicare hospice benefit was created in 1982 primarily to serve terminally-ill cancer patients. Based on this success, hospices have now greatly expanded their end-of-life care expertise to include caring for terminally ill Americans with other diagnoses such as congestive heart failure, dementia, and lung disease.

The Hospice Association of America (HAA), an affiliate of the National Association for Home Care & Hospice (NAHC), is proactively representing its members in this new and challenging environment. HAA’s 2014 Legislative Blueprint for Action presents a comprehensive plan for addressing major health care initiatives facing hospice providers and reflects our agenda for the remainder of the 113th Congress. The Blueprint emphasizes the increasingly important role hospice plays in the continuum of health care delivery. This publication includes our members’ priorities and recommendations concerning hospice care.

The Blueprint is divided into two sections. Section I is dedicated to hospice-specific items in order of priority based on the input of HAA members. Section II contains items addressing issues of joint interest to hospice organizations and home health agencies.

This document has been produced by the Hospice Association of America, a professional association representing hospices and their thousands of caregivers who provide services to America’s terminally ill patients and their families. HAA hopes this document will be helpful to Congress in its deliberations in 2014 and that it will result in the enactment of legislation to preserve the Medicare hospice benefit and improve the quality of life for the thousands of Americans who must trust others for their care and protection.
SECTION I: HOSPICE-SPECIFIC ITEMS
REJECT PROPOSALS TO INCLUDE HOSPICE AS PART OF MEDICARE ADVANTAGE BENEFIT PACKAGE

ISSUE: Since its inception, the Medicare hospice benefit has been excluded from the Medicare private plan (currently Medicare Advantage --MA) benefit package. In late 2013, the Medicare Payment Advisory Commission (MedPAC) initiated discussion on the advisability of incorporating hospice as part of the MA benefit package; MedPAC has since voted to recommend that legislation be enacted that would incorporate hospice coverage under MA beginning in 2017. MedPAC’s rationale is based on the following:

- Concerns about the complexity of current coverage rules for MA patients that elect hospice;
- The desire for greater symmetry in Medicare coverage regardless of whether a beneficiary receives Medicare under fee-for-service, through an accountable care organization (ACO) or through a MA plan;
- The belief that MA plans should have full responsibility for coverage of Medicare benefits, including responsibility for coverage of all care delivered at the end of life; and
- The possibility that MA plans may be willing to offer additional services to patients who elect hospice – such as concurrent care – that is not available under standard Medicare coverage.

MedPAC’s proposal has raised significant concerns among hospice providers and advocates; among them are the following:

- Medicare beneficiaries enrolled in MA that elect hospice will no longer have a choice of the hospice provider that will care for them in their final days of life;
- Hospices currently provide a wide array of services to patients and their loved ones – a number of which are not reimbursed by Medicare. It is anticipated that in most cases MA plans will contract with Medicare certified providers to supply hospice services. In an effort to keep contracted rates low, MA plans may be incentivized to limit the services they contract with the hospices to provide, or may attempt to contract for hospice care on different terms and/or at significantly reduced rates. As a result, beneficiaries may not receive a hospice benefit equivalent to that which they would receive under fee-for-service;
- Similarly, many hospices provide additional services beyond the scope of the hospice benefit (such as massage, music, and other therapies) because they have proven value in improving the quality of life for many patients on hospice;
- Medicare hospice eligibility rules require that a patient be determined to be terminally ill with a prognosis of six months or less if the disease follows its normal course. Tensions could arise between the MA plans and a contracted hospice relative to whether a patient does or does not meet eligibility requirements;
- Additionally, the hospice per diem payment rate is intended to cover all care determined to be reasonable and necessary for the comfort and palliation of the
terminal illness and related conditions. Financial incentives may lead MA plans to shift responsibility for unrelated services to a contracted hospice provider; and

- The Medicare Hospice Benefit is currently undergoing significant change. Hospices anticipate a major overhaul of the hospice payment system over the near term but are currently uncertain about the impact these changes will have on their financial viability; these uncertainties will impact hospices’ willingness to enter into contracts with MA plans, particularly if the contracts do not, at a minimum, cover costs.

**RECOMMENDATION:** Congress should reject current efforts to incorporate hospice as part of the MA benefit package. If inclusion of hospice under MA is to be considered, thorough analysis of the impact of such a change should first be conducted. If and when Congress contemplates inclusion of hospice under the MA benefit package, it should include the following safeguards:

- MA beneficiaries that are determined to be terminally ill and eligible for the hospice benefit should be given the option of immediately disenrolling from MA so that they may elect hospice from the provider of their choice;
- MA plans should be required to contract with Medicare-certified hospices based on fee-for-service benefit and payment terms and levels;
- The hospice inter-disciplinary group (IDG) should be the ultimate authority on hospice eligibility, the hospice plan of care, and determinations of which conditions are related to the terminal diagnosis. Likewise, the IDG should determine the conditions that are not related to the terminal and related conditions that should be covered by the MA plan; and
- The quality and coordination of care as patient’s transition to end-of-life care should be assessed as part of the MA plan satisfaction ratings.

**RATIONALE:** Beneficiaries entering MA are, as a general rule, anticipating their needs for curative care rather than end-of-life care. Decisions about end-of-life care are deeply personal and of great significance to patients and their families. When a beneficiary is diagnosed with a terminal illness, he or she should retain the right to determine what level of care to pursue and under what provider’s care.
REVISE REQUIREMENTS FOR HOSPICE FACE-TO-FACE ENCOUNTERS

ISSUE: Section 3131(b) of the Affordable Care Act of 2010 requires a hospice physician or nurse practitioner (NP) to have a face-to-face encounter with every hospice patient prior to the patient’s 180th-day recertification, and prior to each subsequent recertification. The provision applies to recertifications on and after January 1, 2011.

In the Home Health Prospective Payment System Rate Update for Calendar Year (CY) 2011, the Centers for Medicare & Medicaid Services (CMS) finalized its implementation approach for this hospice provision. The final rule, codified at 42 C.F.R. 418.22(a)(4) (75 Fed. Reg. 70463, November 17, 2010) states that the encounter must occur no more than 30 calendar days prior to the start of the hospice patient’s third or subsequent benefit period. The regulation requires that the hospice physician or NP attest that the encounter occurred, and the recertifying physician must include a narrative describing how the clinical findings of the encounter support the patient’s terminal prognosis of six months or less. Both the narrative and the attestation must be part of, or an addendum to, the recertification.

A number of concerns have arisen relative to the hospice face-to-face requirement:

- Hospices must complete the face-to-face encounter PRIOR TO the beginning of the applicable benefit period. As the result, a patient’s care may be delayed while the hospice identifies an available physician or NP and completes the encounter requirement.
- If a patient is on continuing hospice care but the hospice is not able, due to staffing limitations or other complications, to conduct the face-to-face prior to the benefit period for which the encounter is required, the hospice will not be paid for services provided until the face-to-face has been completed.
- The face-to-face requirement is applicable to a patient’s full time on hospice regardless of when previous hospice service was provided. A patient may have been off hospice service for a lengthy period of time, after which he or she begins rapid deterioration and need immediate admission. In such cases the face-to-face requirement may delay admission.
- CMS data systems are not all available 24 hours, seven days a week to access patient information and most do not have full information related to a patient’s history on hospice care to establish with absolute certainty whether a face-to-face encounter is required.
- Hospices will not be reimbursed for costs related to the face-to-face requirements, which may be prohibitive — particularly for small hospices in rural areas.
- Hospices may not utilize telehealth services to meet the face-to-face requirement.

On Dec. 23, 2010, CMS announced a three-month delay in enforcement of the face-to-face requirements to allow time for hospices to establish operational protocols necessary to comply with the new law. In early 2011, CMS modified requirements so that under well-documented “exceptional circumstances” (for example, a hospice is unable to schedule a timely face-to-face prior to beginning needed services for a newly readmitted hospice patient or a hospice is not aware that a patient requires a face-to-face encounter because
CMS’ data systems do not contain adequate information) hospices are given an additional two days within which to complete the face-to-face.

During the 113th Congress, Sen. Ron Wyden (D-OR) and Rep. Tom Reed (R-NY) introduced S. 1053/H.R. 2302, the Hospice Evaluation and Legitimate Payment (HELP) Act. The legislation would permit hospices to utilize physician assistants and other clinicians for completion of the face-to-face encounter. Additionally, under CMS’ “special circumstances”, the legislation would give hospices seven days from the beginning of the benefit period within which to complete the encounter.

**RECOMMENDATION:** Congress should approve provisions included in S.1053/H.R. 2302 that would ease some of the burdens associated with the face-to-face requirement for hospice patients. Additionally, 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. 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.

**RATIONALE:** The intent of the face-to-face requirement is to ensure adequate and appropriate involvement and accountability of physicians relative to certification of eligibility for hospice care. However, as currently written and interpreted by CMS, it may delay access to care and serve as a deterrent for some hospices to take eligible patients in need of immediate care onto service. This was neither its intent nor an advisable result of the requirement.
ENSURE THE FULL MARKET BASKET UPDATE FOR THE MEDICARE HOSPICE BENEFIT

ISSUE: Section 3132(a) of the Patient Protection and Affordable Care Act (PPACA), enacted in March 2010 as Public Law 111-148, requires that the Centers for Medicare & Medicaid Services (CMS) develop Medicare hospice payment system reforms along the lines first recommended by the Medicare Payment Advisory Commission (MedPAC) in 2009. Under the law, system reforms may be implemented no earlier than October 1, 2013. P.L. 111-148 also includes interim hospice payment changes, including the institution of a productivity adjustment to the annual market basket inflation update beginning in FY2013. In addition, the final reform bill reduces the market basket index by 0.3 points for FY2013 through 2019, but conditions the 0.3 point market basket reductions in each of FY2014 – 2019 on growth in the health insurance-covered population exceeding 5 percent in the previous year. As the result of the PPACA reductions and a regulatory-imposed cut, hospice payments for FY2013 increased by only 0.9 percent over FY2012 levels. Effective in May 2013 payments were further reduced (by 2 percentage points) to comply with the automatic sequester enacted under the Budget Control Act.

RECOMMENDATION: Congress should restore the market basket and productivity reductions authorized under P.L. 111-148, cancel the 2 percent across-the-board sequester, and reject any further cuts to the hospice market basket update. 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.

RATIONALE:

- In FY2010, the Centers for Medicare and Medicaid Services (CMS) began phasing out by regulatory issuance the Budget Neutrality Adjustment Factor (BNAF) to the hospice wage index over seven years. In each year since FY2010 the phase out has reduced the scheduled annual payment increase by 0.6 percent. It is estimated that the phase-out, when completed, will reduce hospice payments by 4 percent overall.
- In addition to the BNAF phase out, the FY2014 payment cycle reflects additional reductions mandated by the PPACA, including a 0.5 percent productivity cut and a 0.3 percent market basket reduction. Further, hospice payments are further reduced by the 2 percent sequester. Rather than a scheduled 2.5 percent inflation update, hospice providers will be reimbursed a 1 percent below their scheduled FY2013 rates.
- MedPAC has projected that Medicare hospice financial margins for 2014 (without consideration of costs related to volunteer, bereavement, and other nonreimbursable services, or to the impact of the 2 percent sequester) will average about 7.8 percent; however, financial margins vary widely in the hospice sector, and many hospices are operating at serious financial risk. Additionally, there is some concern that MedPAC’s estimates may not take into full account costs associated with the face-to-face encounter requirements that went into effect Jan. 1, 2011, and other increased regulatory burdens.
- A study conducted for the National Hospice and Palliative Care Organization
(NHPCO) estimated that the combined impact of scheduled ACA cuts and elimination of the BNAF could result in average margins for hospice providers decreasing from 6 percent in 2011 to NEGATIVE 10 percent by 2022. Additionally, the study estimated that 66 percent of hospices could have negative Medicare financial margins by 2022.

- In late 2012 CMS announced its intention to change the hospice cost report and to require reporting of additional visit data on claims. While this information is needed, these changes will increase administrative costs to hospices.

- A study by Duke University showed that patients who died under the care of hospice cost the Medicare program an average of about $2,300 less compared with those who did not.

- At its November 2008 and subsequent meetings, MedPAC discussed potential recommended revisions to the Medicare hospice benefit reimbursement system. There is concern about the costs of short stay patients not being fully covered under the current reimbursement system. Financial margins for hospices with shorter stay patients are generally significantly lower than those of hospices serving long-stay patients. Paying accurately for all types of patients is important to ensure access to services for all Medicare beneficiaries who want to elect hospice care and to ensure that the program is paying rates that cover providers’ costs for all types of patients.
OPPOSE EXPANSION OF COPAYMENTS FOR MEDICARE HOSPICE SERVICES

ISSUE: The Medicare hospice benefit was created under the Tax Equity and Fiscal Responsibility Act of 1982 to expand the availability of compassionate and supportive care to Medicare’s many beneficiaries suffering from terminal illness at the end of life. Eligibility for hospice is based upon a physician’s certification that the patient has a terminal illness with a life expectancy of six months or less if the illness runs its normal course. When a patient elects hospice under Medicare, he or she agrees to forgo other “curative” treatment for the terminal illness. While the cost of most hospice care is covered by Medicare, the patient may be responsible for copayments related to drugs for symptom control or management and facility-based respite care. The patient is also responsible for copayments related to any regular Medicare services unrelated to the terminal diagnosis.

In discussion, some members of the Medicare Payment Advisory Commission (MedPAC) have suggested that it may be advisable to consider imposition of some type of copayment for Medicare hospice services. Additionally, as part of policy discussions on reform of Medicare, some have advocated consolidation of Parts A and B and imposition of uniform beneficiary copayments and deductibles on all Medicare services. Unless hospice is specifically excluded, beneficiary costs for hospice care could increase significantly.

RECOMMENDATION: Congress should reject imposition of additional copayments on beneficiaries for Medicare hospice services and other changes that would discourage use of the hospice benefit.

RATIONALE: Historically copayments have been imposed on health care services to reduce overutilization of services. While use of hospice services has grown significantly through the years, many Medicare beneficiaries are referred to hospice too late to reap its full benefit, and many more lack sufficient knowledge or understanding of hospice to consider it a viable option at the end of their lives. This is particularly the case for minority and low-income Medicare populations – who are the least likely to be able to afford additional cost-sharing burdens.

Beneficiaries who elect Medicare hospice services must agree to forego curative care for their terminal illness. Given that many “curative” interventions for terminal illnesses can involve administration of costly new medications and treatments, it is not surprising that numerous studies have documented that appropriate use of hospice services can actually reduce overall Medicare outlays while at the same time extending length and quality of life for enrolled beneficiaries.

While valid concerns have been raised about the length of time some Medicare beneficiaries are on hospice service, the median length of stay under the hospice benefit is about 17 days, and 95 percent of hospice care is provided in the home. In lieu of imposing additional beneficiary cost-sharing that could discourage appropriate and desirable use of the hospice benefit, Congress and other policymakers should explore additional ways to ensure that hospice services are being ordered for patients that are truly eligible, such as
through physician education.
ENSURE ACCESS TO CARE FOR RURAL HOSPICE PATIENTS; ESTABLISH ROLE FOR PAs IN HOSPICE CARE

ISSUE: Hospices are reimbursed one of four per diem rates based on the level of care provided. Payments for one patient in excess of actual costs are used to help offset higher costs that may be associated with other patients. This works if a hospice has a large enough case load to balance expenses. However, given the low population density in rural areas, rural hospices generally have smaller patient censuses; as a result, if a rural hospice has several high cost patients and a relatively low patient census, there are fewer lower cost patients to help balance expenses and keep the hospice financially stable.

In some areas of the country, a large number of residents receive health care through Rural Health Centers (RHC) or Federally-Qualified Health Centers (FQHC). Medicare law recognizes some of the higher costs associated with delivery of care in these areas and pays on a different basis than under regular fee-for-service reimbursement. However, neither RHCs nor FQHCs are able to bill Medicare for visits provided by center physicians for hospice attending physician services. This creates a disincentive for RHCs and FQHCs to provide these services, resulting in a greater burden for rural hospices.

Under hospice law, hospice-employed nurse practitioners (NPs) may continue to serve as a patient’s attending physician after a patient enters hospice and may also conduct the required hospice face-to-face encounter. Physician assistants (PAs) have no role in hospice care – they cannot serve as a hospice patient’s attending physician, nor may they conduct the hospice face-to-face. Neither NPs nor PAs may serve as the physician head of the hospice team or certify a patient as eligible for hospice services.

RECOMMENDATION: Congress should enact a five percent payment rate add-on for hospices located in and caring for patients in rural areas. Further, Congress should enact legislation that would allow RHCs and FQHCs to bill Medicare for attending physician services provided for hospice patients. Finally, Congress should enact legislation to allow PAs to serve as attending physicians for hospice patients and conduct the hospice face-to-face encounter.

RATIONALE: As is the case with other health care providers, hospices in rural areas have difficulty recruiting and retaining adequate staff to meet the full panoply of services required under the Medicare hospice benefit, as well as the increasing number of regulatory requirements (such as the face-to-face encounter requirement). Due to the generally lower patient census in rural areas, these hospices may run higher financial risk when admitting high need hospice patients. Additionally, hospice caregivers must drive greater distances to patients’ residences than in urban areas. There is no consideration of consistently more expensive fuel costs in hospice reimbursement rates. The hospice wage index is updated annually using the most currently available hospital wage data as well as any changes by the Office of Management and Budget in the core-based statistical areas followed by the budget neutrality adjustment. In most states, the rural wage index is lower, resulting in comparatively lower reimbursement rates.
Addressing the disincentives for RHC and FQHC physicians to provide attending physician services to hospice patients, as well as establishing a role for PAs in hospice, would help to support the delivery of high quality, individualized hospice care even in remote areas of the U.S.
OVERSEE HOSPICE PAYMENT REFORM; REJECT REBASING AND SITE-OF-SERVICE ADJUSTMENT FOR NF RESIDENTS

ISSUE: The Medicare hospice benefit (MHB) was created in 1982 to care for terminally ill cancer patients. The Medicare Payment Advisory Commission’s (MedPAC) June 2008 Report to the Congress stated that, although the benefit was created to care for terminally ill cancer patients, they are now a minority of MHB participants. Patients with diagnoses such as Alzheimer’s disease, nonspecific debility and congestive heart failure have made up the majority of Medicare’s hospice patients in recent years. Although the average length of stay (LoS) has been increasing, the more important median LoS remains at about 18 days, according to MedPAC. In 1983, 20 percent of patients received hospice services for seven days; this has increased to about 30 percent. The current reimbursement structure was created by estimating the original cost of delivering routine home care (96 percent of the care given) by analyzing data collected during the 1980-1982 Medicare Hospice Benefit Demonstration Project. Despite significant technological, pharmaceutical, and medical care delivery advances over the past 30 years, there has been no reimbursement adjustment to reflect the changes. The shorter LoS increases per diem costs for each patient.

In the intervening years, advances in technology have resulted in increased outpatient services such as palliative radiation therapy and chemotherapy with accompanying diagnostic procedures required to monitor responses and side effects; these have added to patient care costs.

MedPAC issued recommendations to the Congress for revising the hospice reimbursement system in its March 2009 Report to the Congress. MedPAC continues to recommend such changes, which include expansion of data collection and the creation of a new payment model that reflects the variation in costs over the patient’s length of hospice care.

The Centers for Medicare & Medicaid Services (CMS) expanded collection of data related to visits and costs in 2008 and 2010, and plans further expansion of data collection beginning as early as April 2014. In-depth analysis of these and other data are essential to establishing an appropriate method for reforming payments for Medicare hospice services, but the expanded collection will significantly increase burdens on providers.

The final 2010 health care reform legislation (Public Law 111-148) requires the development of payment system reforms and includes among the potential options a system designed along the lines of the MedPAC recommendations (Section 3132(a)). Payment system reforms are authorized by P.L. 111-148 to be put in place no earlier than October 1, 2013. While CMS has undertaken considerable analysis of hospice and, in April 2013 provided a glimpse of some options that it has under consideration for payment reform, a final payment reform proposal has not been made public. Of particular concern is CMS’ indication that, in addition to considering a tiered approach that would supply higher payment at the beginning of hospice care and just prior to a beneficiary’s death, it is also considering action to “rebase” routine home care rates (RHC) (which would reduce them by approximately 10 percent) and cut payments for hospice care provided to nursing
facility residents.

Public Law 111-148, the final health reform bill, also includes some interim payment changes, including the institution of a productivity adjustment to the annual market basket inflation update beginning in FY2013. In addition, the final reform bill reduces the market basket index by 0.3 points in FY2013 through 2019, but makes provision to eliminate the market basket cut in each of FY2014 – 2019 if growth in the health insurance-covered population does not exceed 5 percent in the previous year.

During 2013, Sen. Ron Wyden (D-OR) and Rep. Tom Reed (R-NY) introduced companion legislation (S. 1053/H.R. 2302) that includes a provision requiring that changes to the hospice payment system be studied through a 15-site demonstration project prior to nationwide implementation.

**RECOMMENDATION:** Congress must closely oversee CMS’ activities related to hospice payment reform to ensure that changes to the reimbursement system do not affect access to quality hospice services for terminally ill Medicare beneficiaries during the final stages of life. In particular, Congress must ensure that CMS does not overstep its charge to refine the hospice payment system by including changes like rebasing of RHC or reduced payments for care provided to NF residents that could go far beyond the payment refinement sought by the health reform bill. Congress should support changes along the lines of those recommended by Sen. Wyden and Rep. Reed to ensure that any revisions to hospice payment are tested in the “real world” to avoid unintended consequences.

In the meantime, Congress should oppose any reductions in the annual hospice 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 assure preservation of access to care, quality of care, and reasonably sufficient reimbursement rates to maintain a viable and stable delivery system.

**RATIONALE:** Regardless of the level of care taken when developing a new payment system, unintended consequences that have a dramatic impact on the population served may result. The impact of too many changes at one time could result in greater harm than what might come from failure to act altogether. These consequences frequently only come to light when the system is actually tested. For this reason, most payment reforms under Medicare have undergone a “demonstration” phase. S. 1053/H.R. 2302 would incorporate a “demonstration phase” into the hospice payment reform process to ensure that the new payment system will not have a negative impact on the delivery of high quality care in the hospice program. Congress must ensure this most humane service for America’s terminally ill patients and their families remains a benefit available at the hour of greatest need – the final stage of life.
OPPOSE DECREASING HOSPICE REIMBURSEMENT FOR DUALLY-ELIGIBLE PATIENTS RESIDING IN NURSING FACILITIES

ISSUE: Since 1989, terminally ill Medicare patients residing in nursing homes could elect the Medicare hospice benefit (P.L. 101-239). When a patient is entitled to both Medicare and Medicaid, the state Medicaid program must pay the hospice at least 95 percent of the nursing home rate for room and board services as set forth by each state’s Medicaid program. The hospice then reimburses the nursing home.

Hospice services provided to nursing facility residents as well as the contractual relationships that exist between hospice programs and nursing facilities have come under scrutiny by the Department of Health and Human Services Office of Inspector General (OIG). The OIG believes that some hospices actively pursue patients who reside in nursing facilities in order to reap financial gain, and has recommended that payments for hospice services provided in nursing facilities be reduced. During 2011, the Medicare Payment Advisory Commission (MedPAC) suggested that the OIG’s recommendation be considered as one means of helping to finance reform of the physician payment system under Medicare. Subsequent study by MedPAC has led to the conclusion that hospice beneficiaries in nursing facilities are actually receiving more aide services than their counterparts living at home. If this action is taken without further analysis of the nature and cost of hospice care provided in the nursing home, it could result in the complete lack of, or diminished access to, appropriate hospice services for these individuals.

The final 2010 health care reform legislation, Public Law 111-148, requires the development of payment reforms consistent with recommendations of the Medicare Payment Advisory Commission (H.R. 3560, Section 3132(a)). The new payment structure has not been predetermined; rather it is dependent on data development and analysis that is in process.

RECOMMENDATION: Congress should oppose any legislation that would decrease the reimbursement for hospice services for dually eligible patients residing in nursing facilities without appropriate data collection and analysis supporting such a change.

RATIONALE: Legislative changes to the hospice reimbursement and nursing home room and board reimbursement prior to an in-depth study and analysis of the services provided and the cost of those services could, in effect, deny access to humane and compassionate care for bona fide eligible terminally ill residents of nursing homes. Only after appropriate data collection and analysis is performed should any adjustments to Medicare or Medicaid payments be made, and such adjustments should be carefully targeted to cases where excessive profit can be demonstrated. A study, funded by the Agency of Healthcare Research and Quality, US Department of Health and Human Services and conducted by investigators from Brown University Medical School examined data from 183,742 nursing home residents in five states which showed strong evidence that nursing-home residents in hospice care have about half the chance of being admitted to a hospital in their last 30 days of life compared to peers not receiving hospice services. In March 2000, the Office
of Disability, Aging and Long-Term Care Policy, Department of Health and Human Services, and the Urban Institute released a study, “Outcomes and Utilization for Hospice and Non-Hospice Nursing Facility Decedents.”

The study showed that:

- Hospice patients in daily pain are twice as likely to receive level 3 analgesics as are non-hospice patients in daily pain.
- Hospice patients are less likely to be restrained, to receive tube or parenteral/IV feedings and to be given medications via intramuscular or intravenous routes.
- Hospice patients receive less occupational, speech and physical therapy.
- Hospice patients consistently have fewer hospitalizations, with the greatest differences observed 30 days prior to death (9.8 percent vs. 31.7 percent).
- A nursing facility’s hospice concentration appears to have a strong influence on the hospitalization patterns of non-hospice patients. Non-hospice patients in a nursing facility with no hospice involvement had a 30 percent probability of dying in a hospital. Where there was a .01 to 5 percent hospice concentration, non-hospice patients had a 24 percent probability of dying in a hospital. Patients of nursing facilities with a 5+ percent hospice concentration had a 21 percent probability of dying in a hospital.
PROVIDE FULL DISCLOSURE AND ENSURE SNF/NF MEDICARE BENEFICIARY RESIDENTS’ RIGHT TO CHOOSE A HOSPICE PROVIDER

ISSUE: In 1989, Public Law 101-239 mandated the ability of terminally ill Medicare beneficiaries residing in skilled nursing facilities/nursing facilities (SNF/NFs) to access services under the Medicare hospice benefit (MHB). As SNF/NF residents become aware of the MHB, more of them are seeking hospice services. However, the SNF/NF is not required to offer hospice services, nor is it required to disclose at admission if residents will be able to access hospice services without the need to transfer to another facility. Further, if the facility does have an arrangement to provide hospice, it is not required to disclose the hospice program with which it has a contract to provide services to residents. Finally, a resident does not have the right to choose the hospice program that he/she will receive hospice services from in the facility.

RECOMMENDATION: Congress should require that SNF/NFs disclose upon admission whether or not hospice services are available at the facility, and the name(s) of the hospice(s) with which the facility has contracted to provide hospice services on site. Additionally, Congress should mandate that eligible Medicare beneficiaries residing in SNF/NFs have the right to receive hospice services from the Medicare-certified hospice of their choice.

RATIONALE: SNF/NFs should provide full disclosure regarding the availability of hospice services through the facility at admission so that potential residents are fully aware of whether or not they will be able to access hospice services at some time during their stay if needed. Such disclosure could help to avoid the significant upheaval and trauma that could result from a resident’s transfer to a different facility in order to exercise his/her right to the hospice benefit. Potential residents should also be notified regarding the names of the program(s) through which hospice services would be provided if they elect the hospice benefit while in residence at the facility. Finally, Medicare beneficiaries eligible for the hospice benefit should have the right to choose which hospice will serve them. Currently, a terminally ill SNF/NF resident may only access the Medicare hospice benefit if the SNF/NF has a formal arrangement with a hospice program to provide services in the facility.
ENSURE ACCESS TO MEDICATIONS NECESSARY FOR PAIN CONTROL

ISSUE: Inadequate pain management has been identified by experts in the field as a national health concern. Recently proposed legislation states that controlled substances may be used legitimately for treating pain may inadvertently compromise the quality of palliative care because it empowers drug enforcement officials to prosecute physicians to determine their intent for prescribing medication. This could have the unintended consequence of discouraging or limiting physicians from adequately treating terminally ill patients. This type of legislation would create a negative impact on the basic needs and rights of terminally ill patients as well as their comfort, dignity and freedom from pain.

RECOMMENDATION: Congress should oppose any legislation that would directly or indirectly set limits or prohibit physicians from prescribing adequate and appropriate controlled substances for the management of pain related to terminal illness.

RATIONALE: Terminally ill patients should not suffer due to inadequate pain management and lack of access to appropriate medications. Creating laws and policies that impose arbitrary limitations on physicians who prescribe controlled substances could have the unintended consequences of discouraging or limiting adequate treatment of terminally ill patients.
ALLOW NPs TO CERTIFY PATIENTS FOR MEDICARE HOSPICE SERVICES

ISSUE: While a nurse practitioner (NP) is allowed to serve as a hospice patient’s attending physician, since inception of the hospice benefit the Medicare program has permitted only physicians (medical doctors or doctors of osteopathy) to certify a patient as terminally ill and eligible for hospice services. The 2010 health reform legislation (The Patient Protection and Affordable Care Act -- Public Law 111-148) allows either a hospice physician or hospice NP to gather clinical findings that support continuing eligibility for Medicare hospice care to satisfy the face-to-face encounter requirement for hospice patients expected to enter a third or later benefit period.

NPs are currently permitted under Medicare to order skilled nursing facility care if working in collaboration with a physician.

RECOMMENDATION: Congress should authorize NPs to certify eligibility for the Medicare hospice benefit.

RATIONALE: Given current concerns about the growing shortage of primary care health professionals and growing outlays in federal health care programs, full advantage should be taken of the significant clinical skills and capabilities that NPs could bring to the palliative and hospice care settings. The Institute of Medicine (IoM) of the National Academy of Sciences reported in October 2010 (The Future of Nursing: Leading Change, Advancing Health) that care provided by NPs and primary care physicians are similar in terms of their complexity, and advanced practice nurses are trained to provide many of the same services offered by physicians. In many areas NPs are helping to fill a growing gap. However, IoM noted that a number of regulatory and institutional obstacles still exist that prevent the health system from reaping “the full benefit of nurses’ training, skills, and knowledge in patient care.” Among these are prohibitions under the Medicare program that prevent NPs from practicing to the full extent of their training and experience, including prohibitions against NPs certifying beneficiaries eligible for hospice care. These limitations should be recognized and corrected.
MANDATE HOSPICE COVERAGE UNDER MEDICAID

ISSUE: In 1986, when Congress enacted legislation making the Medicare hospice benefit permanent, hospice care was made an optional benefit under Medicaid. Hospice care allows terminally ill patients to move out of acute care facilities into less expensive care arrangements, primarily their own homes. There, the hospice team of health care professionals and other specialists provide physical, emotional and spiritual care to make the remainder of a patient’s life as comfortable and meaningful as possible. As of 2011, 48 states had chosen to offer the hospice benefit to Medicaid beneficiaries. However, as states experience growing budget concerns, some are considering elimination of hospice coverage under their Medicaid programs or limiting the number of covered days, which would leave some of the country’s most vulnerable individuals without appropriate care at the end of life. South Carolina is one of the states that has, unfortunately, already announced its intent to eliminate the hospice benefit from its Medicaid program.

The 2010 health care reform measure greatly expanded the populations eligible for Medicaid. Additionally, as the result of a provision in the final health reform legislation, which became Public Law 111-148, states must now cover hospice and curative services concurrently for those children eligible for Medicaid or Medicaid-expansion Children's Health Insurance Program (CHIP) programs. However, hospice remains an optional benefit for adults.

RECOMMENDATION: Congress should mandate Medicaid hospice coverage for all populations served.

RATIONALE: States expanded their Medicaid programs to cover hospice care in an effort to provide a more cost-effective and compassionate manner of caring for terminally-ill adults and children, including indigent and disabled individuals. Mandating hospice under Medicaid would speed access to hospice services. Hospice, with its combination of inpatient and outpatient care and case management by an interdisciplinary team composed of doctors, nurses, social workers and counselors, can provide high quality, comprehensive end-of-life care for the terminally ill patient while saving taxpayer funds. But with the current financial strains on Medicaid programs, even some states that currently offer hospice are considering dropping their Medicaid hospice benefit.
PROTECT HOSPICE AGENCIES FROM THE IMPACT OF SEQUENTIAL BILLING

ISSUE: The Centers for Medicare & Medicaid Services (CMS) has imposed the longstanding hospital sequential billing policy on hospice agency claims. The policy prohibits providers from submitting claims for care to beneficiaries where previously submitted claims are pending. Claims processing can be delayed for weeks or months for many reasons -- including medical review activities, common working file problems, CMS or fiscal intermediary (FI) claims processing problems, and pending claims from other providers. Hospices have continued to serve patients even though Medicare payments have been delayed for months.

RECOMMENDATION: Congress should require CMS to process and pay all clean claims as submitted regardless of whether previous claims have been processed, and pay interest on claims that are not processed in a timely fashion.

RATIONALE: Many hospices are small businesses with little financial reserve, dependent on uninterrupted payment for services delivered. Interruption of payment for weeks or months, while requiring agencies to continue services to hospice patients, can result in severe financial hardships.
OPPOSE IMPOSITION OF PENALTIES FOR ERRONEOUS CERTIFICATION OF TERMINAL ILLNESS

ISSUE: Medicare regulation (42CFR §418.22) requires that, in order to be eligible to elect hospice services, an individual’s physician and the hospice medical director must certify, in writing, that the individual’s prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course. About 30 percent of persons use hospice for one week or less, up to 12 percent of patients receiving Medicare hospice survive longer than six months and the median length of stay is 16 days or less, according to a study “What length of hospice use maximizes reduction in medical expenditures near death in the US Medicare program?” from the Duke University Center for Palliative Care and Department of Medicine. It is often difficult to make the determination that a patient will live no longer than six months because the course of terminal illness is different for each patient. A recently-published study reported that the recommended clinical prediction criteria are not effective in a population with a survival prognosis of six months or less. This information demonstrates what is well known by those in the hospice community: that prognostication is an inexact science. In a letter to all Medicare-certified hospices in the country, the then-Centers for Medicare & Medicaid Services Administrator reiterated that “In no way are hospice beneficiaries restricted to six months of coverage.”

In the 2010 health care reform measures no new penalties were proposed for erroneous certification of a terminal illness by a physician. Instead, the final legislation required that continuing eligibility for patients entering their third or later benefit period be contingent upon certification by a hospice physician, but only after a hospice physician or nurse practitioner conducts a face-to-face encounter during which clinical information is gathered that is used to help support a six-month prognosis. The hospice physician or NP who conducts the encounter must also attest that the encounter has taken place. There is no separate payment by Medicare to cover the costs of the face-to-face encounter.

RECOMMENDATION: Congress should oppose imposition of civil monetary penalties upon physicians for erroneous certification of eligibility for hospice care. Congress should also ensure proper reimbursement is provided for visits to confirm continuing eligibility for hospice care.

RATIONALE: Physicians should not be punished for possible underestimation of a terminally ill patient’s life expectancy. The only ones to be punished by such a penalty will be those patients in need of hospice services whose physicians will avoid recommending this compassionate, humane, and patient-family-centered care due to fear of penalties for erroneously underestimating their prognosis.
ISSUE: People in the last phase of life need a different care system for many months or sometimes years before death. Eligibility for the Medicare hospice benefit is limited to people who have a terminal illness with a prognosis of six months or less. Most people die slowly of relentless but rather unpredictable chronic illness and disease. Studies show that about 75 percent of Americans die in institutions where they often receive futile high-tech interventions and are in pain. Currently, for a beneficiary in the last year of life Medicare spending is almost six times more than for those who are not in their final year of life. The last month expands to 20 times as high as average monthly expenditures for those not in their last year of life due to rapid acceleration of inpatient hospital spending. About 28 percent of Medicare funds are now spent on care in the last year of life, which is comprised, for the most part, of expensive, high-technological interventions and “rescue care.”

According to a recent study from the Duke University Center for Palliative Care and Department of Medicine, “What length of hospice use maximizes reduction in medical expenditures near death in the US Medicare program?” hospice saves the Medicare program an average of $2309 per hospice user. It further states that one-fourth of persons use hospice for one week or less, up to 12 percent of patients receiving Medicare hospice survive longer than six months and the mean length of stay is 16 days or less.

Children in the last phase of life need a different care system for many months or sometimes years before death, as well. With children having potentially life-threatening conditions, it is particularly hard to predict how many months or years a child has remaining. Often parents are reluctant to stop aggressive treatment until the very end.

Demonstration projects are needed to study special care needs and financial reimbursement for comprehensive services for end-of-life care for children and for Medicare beneficiaries who are seriously ill or who suffer from a medical condition that is likely to be fatal.

The health care reform bill (H.R.3590; P.L. 111-148) includes a three-year demonstration program that allows Medicare hospice patients to receive concurrently all other Medicare-covered services needed by the patient. (Section 3121(b)). The program is expected to be budget neutral by establishing that concurrent care is cost effective. This provision is complemented with a comparable Medicaid change on hospice for pediatric patients (Section 2302).

These health care reform proposals also include authorization to award grants for the development of projects to educate health care professionals in pain care (Senate bill Section 4305) and an Institute of Medicine (IoM) conference on pain research (House bill Sections 2561-3).

RECOMMENDATION: Congress should fund the “concurrent care” demonstration; it should also enact legislation that would provide for demonstration projects to study
special services and financing of end-of-life care in home care and hospice settings. These demonstrations should examine the needs of children as well as adults. The demonstration programs should support the delivery of concurrent non-hospice care.

**RATIONALE:** Demonstration projects that study special care needs and evaluate the practices and procedures that will improve patient outcomes and resource utilization for end-of-life care would contribute valuable information about care needs and costs at the end of life.
OVERSEE HOSPICE QUALITY REPORTING PROGRAM

ISSUE: The June 2008 hospice conditions of participation (CoP) require hospices to develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program. The Centers for Medicare & Medicaid Services (CMS) has directed hospices to either develop their own or use currently available systems of measures to track patient outcomes in such areas as pain management, quality of life, skin integrity, and patient satisfaction. The requirement will include retaining the information in a database that permits analysis over time. A CMS contractor completed one research and demonstration project to develop systems of measures for the hospice industry; CMS is looking to test the measures in a subsequent project. The National Association for Home Care & Hospice completed a quality assessment performance improvement (QAPI) collaborative project in 2007 that resulted in adapting and developing succinct data collection instruments to help hospices meet the need for data collection and contribute to the options CMS has to choose from.

The final 2010 health care reform legislation provides a strong start towards the development and implementation of a quality reporting program (the Hospice Quality Reporting Program – HQRP) by mandating that the Department of Health and Human Services (HHS) publish hospice quality measures covering all dimensions of hospice quality and care efficiency by October 1, 2012, and that hospices begin reporting these measures by FY2014. Failure to submit quality measures by a hospice would result in a 2 point reduction in the annual market basket index update (Section 3004). CMS initiated a voluntary quality measure collection and reporting program in late 2011 and early 2012; mandatory quality measure data collection began October through December 2012, with mandatory data reporting in January and April of 2013. Failure to report data in early 2013 resulted in a 2 percent payment reduction for FY2014. Starting January 2013 hospices were required to collect and report the first full year of data, which must be reported by April 1, 2014, or hospices will have their FY2015 payments reduced by 2 percentage points. Beginning in July 2014, the HQRP enters a new phase with the requirement that hospices collect and submit data for a patient-specific Hospice Item Set (HIS). Subsequently, beginning in Jan. 2015, hospices must contract with an outside vendor to collect responses to a hospice experience of care survey that will be completed by hospice patient family members.

RECOMMENDATION: Congress should monitor efforts by CMS to advance the HQRP and ensure the agency works with the hospice industry to select appropriate measures for reporting and establish a reasonable time frame for incorporating new measures. Congress should also ensure that sufficient funds are available to CMS to support these efforts.

The following conditions must be met in implementing any outcome measurement system:

- Reliable and valid indicators.
- Number of outcome measures limited to those that most accurately predict quality.
- Method for risk adjustment.
- Standard assessment limited to items needed for outcomes measurement and risk
adjustment.
- A simple system with clinical utility.
- A mechanism enabling CMS to validate agency data.
- Ongoing evaluation of the entire system.

**RATIONALE:** The ideal hospice quality reporting program would be based on what happens to patients; however, there currently are no standard outcome measures for hospice care. Research and demonstration projects are not factored into the current per diem reimbursement structure. Every effort must be made to keep data collection and the paperwork burden to a minimum to allow concentration of resources on patient care.
ENSURE THE PORTABILITY OF ADVANCE DIRECTIVES; SUPPORT ADVANCE CARE PLANNING CONSULTATIONS

ISSUE: Between 20 and 25 percent of Americans above the age of 18 have advance directives but are not assured that this legal document will be honored in any state other than the state in which it was executed. The law honoring advance directives from another state is unclear. An individual is burdened with the responsibility of having the advance directive meet the laws of any state in which he may be spending some time. There should be a nationwide policy on advance directives for individuals receiving items and services under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.), assuring that an advance directive validly executed outside of the state in which such advance directive is presented by an adult to a provider of services be given the same effect by that provider as an advance directive executed under the law of the state in which it is presented. This would assure that an individual’s decisions directing end-of-life care will be followed.

The final health care reform legislation (Public Law 111-148) did not address the need for portability of advance directives. However, the original legislation approved by the House (H.R.3962) provided for payment to physicians and other health care professionals to provide a voluntary advance care planning consultation (Section 1233); it also contained a provision regarding the dissemination of advance care planning information (Section 240). Legislation to authorize advance care planning consultations (H.R. 1173) and to support portability of advance directives was introduced by Rep. Earl Blumenauer (D-OR) during 2013.

RECOMMENDATION: Congress should support legislation that ensures the portability of an individual’s advance directive between health care facilities as well as between states. Congress should authorize voluntary advance care planning consultations under Medicare to educate beneficiaries on issues related to end-of-life care and end-of-life care planning.

RATIONALE: An advance directive belongs to the individual and should not be interfered with or interrupted by the laws of any particular state or health care facility. As an individual travels or relocates to a different state, his stated end-of-life-care choices should be honored based on the choices of the individual, not based on the location of the individual. Establishing a nationwide policy on advance directives that assures the portability of an individual’s end-of-life care choices strengthens patient self-determination efforts and could encourage more individuals to communicate with families, physicians and health care providers about their end-of-life-care choices.

Voluntary advance care planning consultations under Medicare would help to familiarize beneficiaries with end-of-life care choices and the availability of the Medicare hospice benefit and the services available under it so that a beneficiary is more aware of the options available to them if terminal illness should occur.
ENACT HOSPICE-SPECIFIC COMPLIANCE MEASURES

ISSUE: Hospice, like most other health care segments, is not immune to the presence of participants that engage in improper, unethical and possibly illegal schemes for the sake of profit. At the same time, health care providers that operate well within the law are unable to effectively compete in the market when faced with competitors that offer kickbacks for patient referrals, bill for services not provided, or charge costs that are not part of delivery of services.

The final health reform law (Public Law 111-148) allows the Department of Health and Human Services (HHS) to require compliance plans and background screening of owners and managers, as well as authorizes the Secretary of HHS to impose a moratorium on new providers (Section 6401). The law also extends the criminal background check pilot program at CMS (Section 6201).

RECOMMENDATION: Congress should continue its work to ensure compliance with federal requirements and to combat waste, fraud, and abuse in our nation’s health care system by passing a hospice-specific compliance package that would:

- Implement hospice-specific requirements enacted as part of the Patient Protection and Affordable Care Act (PPACA); take appropriate next steps related to PPACA reforms
- Strengthen admission standards for new Medicare hospice organizations through probationary initial enrollment, prepayment claims review, initial capitalization requirements, and early-intervention oversight by Medicare surveyors
- Mandate frequency of surveys for Medicare hospice providers (every three years)
- Require credentialing of hospice agency executives
- Require criminal background checks on hospice agency owners, significant financial investors, and management
- Require all Medicare participating hospice agencies to implement a comprehensive corporate compliance plan
- Enhance education and training of health care provider staff, regulators and their contractors to achieve uniform and consistent understanding and application of hospice program standards
- Implement a targeted, temporary moratorium on new hospice organizations
- Create a joint Hospice Benefit Program Integrity Council to provide a forum for partnering in program integrity improvements with Medicare, Medicaid, providers of services, and beneficiaries
- Require that curricula for residents and interns contain hospice and palliative care-related training and experience.

RATIONALE: A comprehensive compliance package that is specifically focused on hospice is good “preventive medicine” to help maintain compliance and ensure proper expenditures of limited health care dollars for appropriate hospice care. It is in the best interests of compliant hospice organizations to take steps to keep unscrupulous providers
from operating within federal and state programs. The health care reform proposals go a long way toward meeting the compliance measures needed to succeed.
MANDATE FREQUENCY OF SURVEYS FOR MEDICARE HOSPICE BENEFIT PROVIDERS

ISSUE: About 16.5 percent of Medicare hospice benefit providers are surveyed each year. There is no legislative requirement for the frequency of surveys for providers of the Medicare hospice benefit (MHB). The Centers for Medicare & Medicaid Services’ (CMS) failure to require that hospice providers be surveyed on a regular basis can result in lack of compliance with regulations and poor quality of care. CMS states they recognize the problem but do not have the funds necessary to conduct more frequent surveys. CMS currently has hospice providers on a six-year cycle for surveys but that sometimes extends to 10 years in some parts of the country. During 2013, Sen. Ron Wyden (D-OR) and Rep. Tom Reed (R-NY) introduced companion legislation (S. 1053/H.R. 2302) that would require that hospices be surveyed every three years.

RECOMMENDATION: Congress should mandate that CMS ensure that MHB providers are surveyed at least every three years and provide the funding to do so.

RATIONALE: When the MHB was created by the Congress, in order to assure quality of care and implement the benefit, CMS was given the responsibility of creating regulations to be followed by providers of hospice services. As the next step of this responsibility, there need to be regular surveys to ensure compliance with these regulations. Recipients of the MHB should be afforded the same protections provided to recipients of other Medicare benefits.
SECTION II: JOINT HOSPICE/HOME HEALTH ITEMS
ANY RESTRUCTURING OF MEDICARE COST SHARING SHOULD NOT LEAD TO BARRIERS TO HOME HEALTH SERVICES OR HOSPICE CARE

ISSUE: Proposals have been raised that would change the beneficiary cost-sharing structure of Medicare from its current system of premiums and deductibles, coinsurance, and copayments targeted to certain care. Among the proposals is one from President Obama’s National Commission on Fiscal Responsibility and Reform 2010 report that would essentially blend much of the service-specific cost sharing into a non-specific global deductible and copayment. If such a change is enacted, Medicare beneficiaries who now receive home health services and hospice care without cost sharing would face significant financial obligations to access this care.

The proposals also include imitations on coverage of cost sharing obligations by so-called Medi-gap supplemental insurance policies, prohibiting first dollar coverage.

The use of global cost sharing may have surface appeal, but it can act as a barrier to care that is less costly and clinically better than care in other settings. Over the years, Congress intentionally excluded home health services from cost sharing and allowed only very limited hospice cost sharing because it wanted to encourage the use of these services as better alternatives than costly institutional care or curative care at the end-of-life.

RECOMMENDATIONS: Congress should preserve the principle operative in Medicare that encourages the use of cost effective care alternatives such as home health services and hospice care in any restructuring of beneficiary cost sharing. Any proposals to revise the current cost sharing approaches through global deductibles and copayments (or their equivalents) should be rejected. Cost sharing standards should be designed to bring financial stability to Medicare through incentives to use high value services such as home health and hospice. Medicare beneficiaries should be able to purchase supplemental insurance to cover co-pays and deductibles without any limitation. Congress should reject any legislative proposals that establish limits on Medigap insurance.

RATIONALE: Studies have shown that Medicare beneficiaries will avoid lower cost, but clinically sufficient, services if it means also avoiding increased cost sharing. Any restructuring of Medicare beneficiary cost sharing should come about only with recognition of this fact. Medigap insurance should not be restricted as beneficiaries should have the right to protect themselves against the cost of health care.
ENSURE HOME CARE AND HOSPICE PARTICIPATION IN TRANSITIONS IN CARE, ACCOUNTABLE CARE ORGANIZATIONS, CHRONIC CARE MANAGEMENT, HEALTH INFORMATION EXCHANGES, AND OTHER HEALTH CARE DELIVERY REFORMS

ISSUE: The Patient Protection and Affordable Care Act of 2010 (PPACA) includes significant health care delivery system reforms in addition to expansion of Medicaid eligibility, health insurance reforms, and Medicare payment changes. These health care delivery reforms have the potential to radically alter how and where patients receive care. Overall, these reforms shift the focus of care from inpatient services and institutional care to the community setting. Further, these reforms provide a combination of incentives to clinically maintain patients in their own homes and penalties for excessive re-hospitalizations of patients. Importantly, these reforms also focus on individuals with chronic illnesses, providing support for health care that prevents acute exacerbations of their conditions and avoids both initial and repeat hospitalizations.

PPACA includes, among other health care reforms, new benefits, payment changes, pilot programs and demonstration projects such as Accountable Care Organizations, Transitions in Care penalties for re-hospitalizations, a Community Care Management benefit, and trials of integrated and bundled payment for post-acute care.

Home care and hospice services offer an opportunity for these new programs to work at their highest potential for efficiency and effectiveness of care. Home care and hospice bring decades of experience in managing chronically ill individuals with a community-based care approach, limiting the need for inpatient care and creating a comprehensive alternative to most institutional care.

If these health care delivery reforms are to fully succeed, the Centers for Medicare and Medicaid Services (CMS) must recognize the value of home care and hospice as part of the solution to out-of-control health care spending, particularly for patients with chronic illnesses. CMS should take all possible steps to ensure that any pilot programs or demonstration projects include home care and hospice as active participants and, where appropriate, as the qualified, controlling entity to manage post-acute care and patients with chronic illnesses.

Senators Ron Wyden (D-OR) and Johnny Isakson (R-GA) and Congressmen Eric Paulson (R-MN) and Peter Welch (D-OR) have introduced the Better Care, Lower Cost Act (S.1932/H.R.3890) that would encourage fully-integrated medical care through new “Better Care Plans” (BCPs) for people with chronic disease. The BCPs would include home care and hospice as critically important components in managing chronic illness and preventing institutionalization.

RECOMMENDATIONS: Congressional reforms of the health care delivery system recognize home care and hospice as key partners in securing high quality care in an efficient and efficacious manner. 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 and hospice 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 and hospice 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.

**RATIONALE:** Community-based care is a valuable, but under-utilized health care asset with respect to efforts to reduce hospitalizations and re-hospitalizations. Further, community-based chronic care management has long been provided effectively by home health agencies and hospices. However, the antiquated structure of Medicare benefits has prevented its application at full capacity. The reforms in PPACA present the opportunity to build a new care delivery model that is not handicapped by this out-of-date structure and to overcome longstanding weaknesses in health care delivery.
ENSURE APPROPRIATE MEDICAID RATES FOR HOME
CARE AND HOSPICE

ISSUE: Medicaid has taken on an increasing role in providing coverage of home care and hospice services to children, the disabled, and the elderly. In addition, the Patient Protection and Affordable Care Act of 2010 (PPACA) expands Medicaid funding for home care services by nearly $13 billion through 2019. Data already indicates that Medicaid expenditures for home care and hospice services now exceed Medicare expenditures. A significant part of the reason behind the Medicaid growth is the flexibility allowed states in the structuring of Medicaid coverage and the recognition that home care is a viable, cost-effective alternative to institutional care. However, as Medicaid expenditures for home care and hospice have increased along with general strains on state Medicaid budgets, reimbursement rates have failed to keep pace with increasing costs of care and, in some cases, they have been subject to reduction for purely budgetary savings purposes.

Federal Medicaid law establishes a broad and somewhat ambiguous standard for rate setting that merely requires the states to set rates at a level sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The “sufficient access” standard for rate setting operates in a manner that requires a demonstration that individuals in need of care cannot find it solely because of inadequate rates. This method fails to prevent the loss of services and only reacts when inaccessibility to services reaches a high enough level to gain political attention. In 2011, the Centers for Medicare and Medicaid Services proposed a new federal regulation that would establish rate setting standards. The proposed standards are not perfect, but go a long way to setting out a sensible framework that states must follow in rate setting. Further, with the initiation of the Medicaid Access and Payment Advisory Council (MACPAC) it is expected that Congress will be better advised on the shortcomings of existing Medicaid payment rates throughout the states. As of January 2014, CMS has not issued a final rule on payment rate standards.

Inadequate reimbursement for home care and hospice services has affected all populations served in the home and in all of the various home care programs available under Medicaid. Technology intensive home care services, personal care services, private duty nursing services, and basic home health services are often reimbursed at levels of payment equal to 60 to 75 percent of the cost of the provision of care. Transportation and mileage costs, along with staff travel time, are often not a reimbursable expense even though travel to and between patient’s homes is a necessary piece of providing home care and often hospice. The result is a very fragile Medicaid home care benefit structure that relies on payment subsidization by non-Medicaid sources, thereby jeopardizing continued access to care.

RECOMMENDATION: 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:
- Assure access to care comparable to the non-Medicaid patient population;
- Ensure reimbursement sufficient for providers to conform with quality and safety standards; and
- Guarantee payments sufficiently adequate to incentivize providers of care to operate efficiently while meeting the cost of care provision.

RATIONALE: Virtually all Medicaid home care reimbursement systems pay insufficient attention to the effect of payment rates on patients’ access to care or the cost of efficiently delivering services. Inadequate rates also severely impact the ability of the provider to meet quality and safety standards. Requiring states to engage in an annual analysis of the rate setting methodology and the adequacy of payment rates combined with federally mandated goals for a rate setting process will ensure that Medicaid recipients receive high quality care.
SUPPORT AN INCREASE IN THE FEDERAL MEDICAID MATCH (FMAP) AND OPPOSE CAPS ON FEDERAL PAYMENTS

ISSUE: The National Governors Association reports that the states are suffering severe shortfalls in their budgets and have begun, or are planning, to cutback their Medicaid programs. This will likely result in cuts in home and community based care and impede efforts to implement the Olmstead decision, which requires states to offer home care as an alternative to institutionalization.

As part of his FY 2004 budget, President Bush proposed sweeping financing and programmatic changes for Medicaid. Under the proposal, states would have two options: they could continue to run Medicaid under existing rules and receive the normal federal Medicaid matching payments, or they could opt to turn their Medicaid program into a block grant with broad flexibility to change program rules. The capped federal payments would be front-loaded over the 10-year life of the block grant to provide states some additional funds in the first few years, but these funds would be offset through reductions in federal payments to states in the later years. The National Governors Association did not endorse the proposal.

In 2003 Congress rejected President Bush’s approach and instead provided a $10 billion increase in Medicaid payments to the states for the period April 1, 2003 – June 30, 2004. Each state received a 2.95 percentage point increase in its federal Medicaid matching rate for this period. An additional $10 billion was allocated to state governments for health care and other social services.

Instead of proposing a cap on federal Medicaid spending, in 2006 the President proposed to cut Medicaid spending by $25 billion over five years through certain “reforms,” including restricting the ability of states to enhance federal matching payments and tightening restrictions on individuals transferring away assets to qualify for Medicaid.

In 2008 Medicaid advocates and governors campaigned for a temporary increase in the Federal Medicaid matching rate as part of a stimulus package to revive the economy. Congress took up a stimulus package early in 2009 that included a substantial increase in the Federal contribution to Medicaid over two years. Congress has extended the enhanced FMAP several times. However, with the expiration of the enhancement in 2011, Medicaid programs across the country are in financial jeopardy. The resulting actions include elimination or restrictions of home care programs, restricted eligibility criteria for home care programs, payment rate reductions, and a shift of fee-for-service program models to managed care where experiences indicate that home care will be difficult to secure for Medicaid patients. Congress should support further federal matching payment assistance to the states as the country’s economic difficulties have taken a great toll on state Medicaid budgets.

During deficit reduction discussions in 2011 and 2012, proposals surfaced to establish per beneficiary caps on Medicaid spending or, alternatively, to block grant all Medicaid spending to control the federal share of Medicaid costs.

RECOMMENDATION: 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.

**RATIONALE:** Many states have begun efforts to expand home and community-based alternatives to institutionalization in their Medicaid programs. The federal government, through such programs as the New Freedom Initiative, has sought to facilitate this development. Medicaid is one of the biggest items in state budgets, so it will certainly be a focus of state efforts to save money. States are required to balance their budgets, so federal assistance is essential to preserve and expand home and community-based care within the Medicaid program.
REQUIRE MEDICAL RESIDENTS AND INTERNS TO HAVE HOME CARE AND HOSPICE EXPERIENCE AS PART OF THEIR GRADUATE MEDICAL EDUCATION

ISSUE: Medicare pays for the education of medical residents and interns at virtually all hospitals in the United States. Much of the education is biased toward care provided in the hospital setting. However, a great deal of medical care is moving out of hospitals into the community. Several factors precipitated this shift. Advances in medical technology allow for treatments such as infusion therapy to be provided in the home setting. Existing financial incentives for hospitals to discharge patients quickly means that services such as rehabilitation are now being provided in the home rather than the acute care setting and special arrangements for intensive home therapy prior to hospitalization in the case of chemotherapy, for example, are increasingly commonplace.

In addition, the marked increase in lifespan has resulted in an increasingly elderly population with chronic illnesses which, while they limit functioning, are not life-threatening, and therefore are managed in non-acute settings, primarily the home. Medicare requires physicians to sign a plan of care for beneficiaries to receive home care services, but many physicians may have never practiced outside of a hospital. Often, doctors discharge patients to their home without considering the home environment, support system, and resources.

Physicians must learn to function effectively in “non-traditional” care sites, particularly the home setting. As few medical schools provide their students with comprehensive home care experiences, such education must take place at the residency level. A 1994 survey of US medical schools showed that only half of all medical schools afford the opportunity for home health and hospice education before graduation.

RECOMMENDATION: Congress should mandate that all residents and interns have home care and hospice experience included in their curriculum.

RATIONALE: Medicare pays for the direct costs of graduate medical education. The mandate that residents and interns spend time in the community does not add costs. Currently, Medicare will reimburse a hospital for residents’ time spent in education outside of the hospital as long as the resident spends his or her time in patient care activities.

In the community, residents will learn about the services available and will be better able to coordinate care between the hospital and the home setting. The importance of this increases as hospitals continue efforts to shorten lengths of stay. Indeed, it is now essential to prevent unnecessary hospitalization and long-term institutional care. Moreover, increased understanding of home health services will aid physicians in later determining appropriate levels of Medicare home health utilization for individual beneficiaries. At a minimum, education should include pain and symptom control and a requirement to make home visits.
PROVIDE SUFFICIENT HOME CARE AND HOSPICE PAYMENTS SO THAT AGENCIES CAN PROVIDE APPROPRIATE WAGES AND BENEFITS TO CLINICAL STAFF

ISSUE: The severe limitations on reimbursement under Medicare and Medicaid make it extremely difficult for agencies to comply with any requirements to increase wages, much less provide wages and benefits that reflect the worth of the care provided by nurses, paraprofessionals, and other caregiving staff. In fact, despite the public push to raise minimum wage to a rate that would allow for a “living wage”, current economic restrictions have resulted in many agencies cutting staff or seeking ways to save on patient care costs by limiting workers’ hours or reducing wages or benefits. Payment under Medicaid and under the prospective payment system for home health and payment rates for hospice care services must be adequate to allow for increased wages and benefits for nurses and home care aides.

RECOMMENDATION: Congress should provide that federal programs (Medicare/Medicaid) that finance home care and hospice services adjust reimbursement to allow for appropriate living wage and benefit levels, including health care and paid sick leave, for all clinical staff. Additionally, Congress should consider implementing a wage pass through for home care and hospice workers under Medicare and Medicaid.

RATIONALE: The U.S. Census estimates that nearly 20 percent of home care paraprofessionals and their families live in poverty, and 30 to 35 percent of those who are single parents receive food stamp assistance. Studies indicate that low wages affect an agency’s ability to recruit and retain direct care workers. Agencies throughout the nation have begun to experience severe hardships in recruiting and retaining clinical staff.

Increasingly, efforts are being made to document the relationship between wages and quality of care. Without sufficient reimbursement, financially strapped home care and hospice agencies are finding it extremely difficult to provide quality care, pay competitive wages, and foster job satisfaction.
ENSURE AVAILABILITY OF HOME CARE AND HOSPICE PERSONNEL TO MEET THE GROWING NEEDS OF THE BABY BOOM GENERATION, PARTICULARLY IN RURAL AND OTHER UNDERSERVED AREAS

ISSUE: There is an increasing need for home care and hospice services as a result of the aging of the population, clarification of Medicare coverage policies, continued earlier hospital discharges, and patient preferences for home care and hospice. While this trend has leveled off, home care and hospice providers continue to report shortages of nurses, home care aides, therapists and social workers, especially in rural areas. Periodic reductions or freezes in agencies’ market basket inflation updates, in addition to other cuts, have made it increasingly difficult for agencies to offer competitive wages and benefits. Increased regulatory burdens on home visiting staff have also discouraged workers from continuing in home care.

Home health agencies generally require that newly-hired staff have one year of prior work experience because home caregiving requires that professionals take on substantial responsibility; agencies also have financial difficulty providing the level of supervision new nurses and therapists need in the home setting. Reductions in the workforce in inpatient settings have greatly reduced the opportunities for nursing and physical and occupational therapy graduates to obtain on-the-job experience.

Recruitment and retention of home care and hospice personnel, including nurses and home care aides, is especially difficult in rural and other underserved areas. Providing health care in these areas requires special knowledge, education, and commitment on behalf of health care providers. Continuing education and training often are not readily available. Health care services can be particularly interdependent in rural communities: when a rural hospital closes, many affiliated health care personnel and services leave the area as well.

In 2009, the Office of Occupational Statistics and Employment Projections at the Bureau of Labor Statistics, within the U.S. Department of Labor, released employment projections for the American workforce for 2008-2018. The health care and social assistance sector is projected to grow substantially during this 10 year period. In fact, 17 of the 30 fastest growing occupations are related to health care and medical research. The projected job growth in the health care sector includes increases in the following occupations: home health aides, an increase of 50 percent; personal and home care aides, an increase of 46 percent; physical therapists aides, an increase of 36.3 percent; physical therapist assistants, an increase of 33.3 percent; occupational therapists aides, an increase of 30.7 percent; physical therapists, an increase of 30.3 percent; and occupational therapists assistants, an increase of 29.8 percent.

It is critically important to both increase the supply of qualified health care staff to maintain patient care access and to assure that these staff have the skills needed to provide high quality treatment and rehabilitation services in the home setting. Federal and state regulations should promote the use of nurse practitioners, physician assistants, and other qualified home health personnel.

Congress took legislative action in the 107th Congress to help alleviate the nurse shortage. Specifically, the Nurse Reinvestment Act (H.R. 3487, P.L. 107-205) would establish a National Nurse Service Corps to provide scholarships and loans to nursing
students who agree to serve in a public or private non-profit health facility, including home care agencies and hospices, determined to have a critical shortage of nurses. The legislation also establishes nurse retention and patient safety enhancement grants to assist health care facilities to retain nurses and improve patient care delivery by encouraging more collaboration between nurses and other health care professionals and more involvement by nurses in the decision-making process.

In addition, the bill establishes grants for comprehensive geriatric nurse training, establishes a faculty loan cancellation program, establishes a career ladder program that will assist individuals in the nursing workforce to obtain more education, and establishes partnerships between health care providers like home care agencies and schools of nursing for advanced training. Lastly, the bill establishes a fund for public service announcements that will advertise and promote the nursing profession and educate the public about the rewards of nursing.

RECOMMENDATIONS: Congress should fund grant programs for educating therapists, medical social workers, nurses, home care aides, and other home care and hospice personnel with a focus on home- and community-based practice in areas where shortages exist. The number of schools providing therapy programs must be increased and the number of slots available in these schools should be expanded. Special incentives such as loan-forgiveness programs to fund schooling and education should be developed to recruit students for practice in geographic areas with staff shortages, such as rural and inner city areas. Grants to educational facilities should be made available for innovative approaches to recruitment and education of home health care personnel, including consideration of job “ladders” and “classrooms without walls,” and for faculty development. Congress should fund home care internship demonstration projects for nurses and physical and occupational therapists to provide a year of on-the-job education for new graduates. Finally, Congress should provide incentives to ensure that a sufficient number of qualified faculty members are available to train the nation’s future health care workforce.

Congress should request Government Accountability Office and Medicare Payment Advisory Commission (MedPAC) studies on the shortage of personnel in the home care and hospice settings, with special attention to rural and inner-city areas, and with recommendations on what can be done to overcome this problem.

RATIONALE: The demand for home care and hospice services will continue to increase as the elderly and disabled population grows. More qualified personnel are necessary to meet the increased needs. These personnel should have skills that enable them to apply their services to home- and community-based care situations. Further, these qualified home care and hospice personnel should be encouraged to practice in rural and underserved areas. When professionals are scarce, the cost of providing care increases. Putting funds into education and other incentive programs will ultimately lower costs to consumers.
REQUIRE FEDERALLY FUNDED CRIMINAL BACKGROUND CHECKS AND ESTABLISH A NATIONAL REGISTRY SYSTEM

ISSUE: At times, media attention has focused on the unacceptable, but few, cases of abuse of home care clients, fueling consumer anxiety and industry concern about the need for better consumer protections. Although any fraud and abuse is unacceptable, it’s important to note that cases of consumer abuse in home care are rare, certainly the exception rather than the rule. The overwhelming majority of home care workers perform their duties with compassion and integrity; likewise, the vast majority of home care agencies provide reputable, legitimate, quality care. However, as in any industry, there are a few unscrupulous individuals who defraud and abuse the system and its patients.

In March 1997, the then-Health Care Financing Administration published proposed rules governing the conditions of participation (CoP) in the Medicare program which included a provision to require home health agencies to conduct a criminal background check of home health aides as a condition of employment. The new Hospice CoP require hospices to conduct a criminal background check on all hospice employees and contracted workers providing direct patient care or with access to patient records. Criminal background checks cannot be relied on as the sole method of keeping consumers safe. No matter how effective, the criminal background check should not substitute for the most basic and prudent personnel practices that any responsible employer would undertake to establish the appropriateness, safety and suitability of an applicant.

Under a provision in the fiscal year 1999 Omnibus Appropriations legislation, a home care agency or a nursing facility is permitted but not required to submit a request to the Attorney General (through the appropriate state agency) to conduct a criminal background check on applicants who would be involved in direct patient care. This provision, which does not mandate criminal background checks, is an important step toward making criminal history information more accessible. It is very likely that Congress will continue to consider mandatory criminal background check provisions as the capacity of federal systems to process such requests is improved.

In the 106th Congress, Senator Herb Kohl (D-WI) and Representative Pete Stark (D-CA) introduced “The Patient Abuse Prevention Act” (PAPA) to require criminal background checks for long term care workers. Senator Kohl renewed the effort by reintroducing the bill in the 107th and 108th Congresses, the latest version of which was S.958. Provisions of the bill were included as an amendment to S.1, the Senate version of the Medicare Prescription Drug, Improvement, and Modernization Act. The amendment was dropped in conference with the House and replaced by a pilot program before final passage of the legislation (Public Law 108-173).

Section 307 of P.L. 108-173 required the Secretary of HHS to establish pilot projects in no more than 10 states for the purpose of expanding background checks for workers with direct patient access who are employed by Medicare and Medicaid long term care providers. CMS selected seven states to participate in the Background Check Pilot Program: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. Long term care facilities or providers include nursing homes, home health agencies, hospices, long term care hospitals, and other entities that provide long term care services.
(except for those paid through a self-directed care arrangement). Separate funds were earmarked to conduct an independent evaluation of the background check pilot which has now been completed.

Senator Kohl introduced legislation in the 110th and 111th Congress to expand the pilot projects to make the program available to every state. His legislation was included in the Patient Protection and Affordable Care Act (H.R. 3590; Public Law 111-148) in March 2010.

**RECOMMENDATION:** Congress should support efforts to establish a national registry and background check system administered by the states for all health and long term care workers, including independent providers, who provide direct care to patients. Such a system should be voluntary until an efficient and accessible background check system is in place. Federal and state background check requirements should not be duplicative. Any new requirement should not impose burdensome supervisory requirements on home care agencies while a background check is pending and must protect providers from liability during a provisional period of employment. Further, it should mandate that agencies be adequately reimbursed for the cost of the background checks. A standard definition of abuse, neglect, or misappropriation of patient property should be used for purposes of establishing a national registry.

**RATIONALE:** As the demand for high quality home care and hospice increases, it is critical that all services are delivered with care and compassion by ethical providers. Fraud and abuse cannot be tolerated in any form. The care environment must be safe for patients and caregivers and free of abuse, exploitation and inappropriate care. Criminal background checks and a national registry are important components of ensuring consumer safety.

In state laws the trend is toward background check requirements for nursing and home care aides only; however, there is currently no consistent systematic mechanism through which other direct care staff are checked. It is in the best interest of consumers of home care and other health services for all direct care staff to be screened.
RECOGNIZE TELEHOMECARE INTERACTIONS AS BONA FIDE MEDICARE AND MEDICAID SERVICES

ISSUE: Telehomecare is the use of technologies for the collection and exchange of clinical information from a home residence to a home health agency, a secure monitoring site or another health care provider via electronic means. The scope of telehomecare includes, but is not limited to, the remote electronic monitoring of a patient’s health status and the capturing of clinical data using wireless technology and sensors to track and report the patient’s daily routines and irregularities to a healthcare professional; electronic medication supervision that monitors compliance with medication therapy; and two-way interactive audio/video communications between the provider and patient allowing for face-to-face patient assessment and self-care education.

With increasing expectations for quality care delivery, the use of technology to deliver home health and hospice care is increasingly being recognized as an invaluable tool for an industry challenged by diminished reimbursement formulas. For example, the Veterans Administration (VA) continues to expand their now ten-year-old Care Coordination/Home Telehealth (CCHT) program. In fiscal year 2012, 119,535 veterans were enrolled in home telehealth services and home monitoring of their conditions enabled 42,699 of these patients to live independently in their own homes, rather than going into nursing homes. In 2012, the VA also eliminated copayments for veterans receiving in-home care via telehealth technology. Home care agencies have also been readily adopting remote monitoring technologies. There has been measured growth in telehealth use by HHAs from 17.1% in 2007, to 22.9% in 2009, and to 31.2% in 2013 (2007 and 2009 data is from independent studies conducted by Fazzi Associates; Philips National Study on the Future of Technology and Telehealth in Home Care (2008); The BlackBerry Report: National State of the Homecare Industry Study (2009); and National State of the Homecare Industry Study (2013)).

Despite significant progress that has been made in the development and use of advanced telehomecare technologies, the absence of a uniform federal Medicaid and Medicare telehomecare guideline that provides for comprehensive reimbursement mechanisms and a uniform certification process for certifying telehealth providers, is creating barriers to more widespread adoption of telehomecare and the establishment of services employing telehomecare. Currently, the Centers for Medicare & Medicaid Services (CMS) does not recognize telehomecare as a distinctly covered benefit under Medicaid, nor does it allow for telehomecare technology costs to be reimbursed by Medicare.

Small inroads have been made under Medicaid as at least 18 state Medicaid programs have passed waivers that include the reimbursement of telehomecare services. Unfortunately, CMS maintains that telehealth visits do not meet the Social Security Act definition of home health services “provided on a visiting basis in a place of residence” under the Medicare program. CMS regulations (42 CFR 484.48(c)) defines a home health “visit” as “an episode of personal contact with the beneficiary by staff of the HHA [home health agency].”

Over the past few years, Congress has taken integral steps to expand the access of technology into the delivery of home health care. Most notably, telehomecare champions Senator John Thune (R-SD) and Amy Klobuchar (D-MN) have taken up the cause and introduced the “Fostering Independence Through Technology (FITT) Act” to mandate
that the Secretary of Health and Human Services (HHS) establish pilot projects under the Medicare program to provide monetary incentives for HHAs to utilize home monitoring and communications technologies. The FITT Act was included as an amendment to the Sustainable Growth Rate “Doc Fix” bill that will be considered by the 113th Congress. In 2008, and again in 2009, Representative Mike Thompson (D-CA) introduced “The Medicare Telehealth Enhancement Act” which provided a number of provisions that addressed the need for enhanced telehealth services including, for Medicare’s purposes, reimbursement for home health telehomecare visits by home health agencies, coverage of remote patient management services including home health remote monitoring, and establishment of a demonstration project to evaluate the impact and benefits of including remote patient management services for certain chronic health conditions. In 2012, Thompson introduced “The Telehealth Promotion Act of 2012” which removes arbitrary coverage restrictions on telehealth from federal health care programs and also increases the Medicare prospective payment rates to home health agencies to include remote monitoring services for three years. Lastly, in 2013 the “The Telehealth Promotion Act of 2013” was introduced to encourage the use of telehealth technologies in the certification of home care services and enable the home to be a telehealth site.

In 2013, Congressional allies from both the Senate and the House also sent a letter to CMS conveying their support for the Center for Medicare & Medicaid Innovation (CMMI) created by The Affordable Care Act and recommending the FITT remote monitoring model as one of the pilot projects the CMMI should adopt to effectively test in both rural and underserved urban areas by home health care providers.

**RECOMMENDATION:** Congress should: 1) establish telehomecare services as distinct benefits within the scope of Medicare and federal Medicaid coverage guided by the concepts embodied in the Fostering Independence Through Technology (FITT) Act; these benefits should include all present forms of telehealth services and allow for sufficient flexibility to include emerging technologies; 2) clarify that telehomecare qualifies as a covered service under the Medicare home health services and hospice benefits and provide appropriate reimbursement for technology costs; 3) eliminate the list of authorized originating sites for telehealth services by physicians under section §1834(m)(3)(C) so that the home residence would be a covered telehealth site; 4) 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 and 5) Include telehealth equipment and service delivery as allowable costs in home health and hospice.

**RATIONALE:** Telehomecare is a proven and important component of health care today and vital to reducing acute care episodes and the need for hospitalizations for a growing chronic care population. Establishing a basic federal structure for Medicare and Medicaid reimbursement and coverage of telehomecare services will permit states to more easily add this important service to the scope of Medicaid coverage and benefit the entire Medicare program.

Studies indicate that over half of all activities performed by a home health nurse could be done remotely through telehomecare. Evidence from these studies has shown that the total cost of providing service electronically is less than half the cost of on-site
nursing visits. Given the financial constraints on agencies under the prospective payment system (PPS), providers of care should be granted maximum flexibility to utilize cost-effective means for providing care, including non-traditional services such as telehomecare that have been proven to result in high-quality outcomes and patient satisfaction.
ESTABLISH STABILITY AND EQUITY AMONG
MEDICARE HEALTH CARE PROVIDERS IN
APPLICATION OF THE WAGE INDEX

ISSUE: Since the inception of the Medicare per visit cost limits, home health payment rates have been adjusted to reflect varying wage levels across the nation through the application of a wage index. This payment rate adjustment continues under the Medicare home health prospective payment system (PPS), which was implemented October 1, 2000. However, the wage index that has been utilized by the Centers for Medicare & Medicaid Services (CMS) has been based upon wages within hospitals across the nation. This index is derived from data that explicitly excludes any home health services costs. An attempt some years back to create and utilize a home health-specific wage index failed due to the unavailability of reliable wage data. The hospice wage index also is based upon hospital wage data.

While the home health payment rates are based upon the application of a hospital wage, the index utilized and its manner of application is significantly distinct from that utilized relative to hospital services payment rates. Of particular concern is the fact that a hospital may secure a geographic reclassification for application of the wage index by establishing that the hospital draws on an employment pool different from the geographical area to which it would otherwise be assigned for its wage index level. Home health agencies and hospices are not authorized to secure a wage index reclassification. As a result, a hospital may compete for the same health care employees as a hospice or home health agency but be approved for a relatively higher payment rate through the wage index reclassification. Additionally, Congress has established specific wage index criteria for certain geographic locations. However, these criteria apply only to hospitals. Hospitals also are provided extra protection against losses due to dramatic drops in their wage indices by a provision imposing a “rural floor” under which no hospital’s wage index can fall below the state-specific rural wage index.

Finally, home health agencies and hospices are not afforded any type of stop-loss protections. As a result, changes in area wage indices from year to year are sometimes dramatic, and always difficult to plan for. For example, in recent years one area of Texas underwent a 12 percent drop in its wage index value one year, and a 14 percent increase the next year.

On a related note, concerns are on the rise that the home health PPS case-mix adjuster has proven difficult to refine sufficiently so that agencies are appropriately reimbursed for care. Refinement to the home health wage index calculation method could help in this regard.

During 2007 the Medicare Payment Advisory Commission (MedPAC) recommended to Congress that it give authority to the Secretary of the Department of Health & Human Services to fashion a new system for calculating the wage index for hospitals as well as several other providers, including home health. MedPAC’s recommendation would base the wage indices for all providers on a different data set than the one currently in use by Medicare. In doing so, it also would eliminate any need for geographic reclassifications and the rural floor. MedPAC continues to support a new wage index model for all Medicare providers.
The Patient Protection and Affordable Care Act provides for comprehensive reform of the Medicare hospital wage index system that takes into account MedPAC’s 2007 recommendations (PPACA Section 3137). This provision requires that CMS submit a report to Congress by December 31, 2011, setting out a plan to reform the wage index consistent with the 2007 MedPAC recommendations.

CMS issued the report to Congress on April 11, 2012. The report recommends the use of Commuting Based Wage Index (CBWI) that sets wage index values using the commuting patterns of hospital workers. The consulting group on the report expressed that the CBWI could be adapted for non-hospital providers including home health agencies. It stated: “Medicare could implement one of three options to adapt the index for use in these settings. First, Medicare could adapt the CBWI methodology to develop wage indices specifically for each one of the providers that use the Medicare wage index to adjust their payments. The administrative burden and resource requirements associated with this approach might be considerable. Second, as long as a hospital is located in close proximity to one of these other providers, Medicare could use the hospital’s CBWI as the basis for the other healthcare provider’s wage index. Using hospital wages assumes that the relative wage differences between areas are similar for hospital workers and for other healthcare provider workers. Third, Medicare could base providers’ values on those of nearby hospitals using the nearest-neighbor method. For each healthcare provider, this method would approximate wage index values based on a weighted average of the wage index values for nearby hospitals.”

The report did recognize the complexities of using a CBWI in home health and hospice “given that the Hospice and Home Health payment methods use the beneficiary residence or place of service to adjust payments, the relevant commuting patterns would be from the employee residence to the beneficiary residence. This would add a new level of complexity to the collection of commuting data and is unlikely to be feasible.” As of January 2014, CMS has not moved forward with any wage index reforms.

**RECOMMENDATION:** Congress should authorize Medicare to implement and apply a wage index model in line with the system recommended by MedPAC no later than 2015. The CMS proposed CBWI model fails to provide home health agencies and hospices with a level playing field with other healthcare entities that employ comparable workers, including hospitals and nursing facilities. Otherwise, Congress should allow hospices and home health agencies to obtain a geographic reclassification for wage index purposes in a manner comparable to that available to the hospitals or to allow reclassifications automatically when a hospital in the geographic locale of the hospice or home health agency receives a reclassification. Additionally, Congress should enact legislation that limits a home health agency’s loss of income due to a dramatic shift in the agency’s wage index (for example, limit the drop in any agency’s wage index from one year to the next to 2 percent). Finally, Congress should extend to all providers protections that ensure that no entity’s wage index falls below the rural wage index value in that state.

**RATIONALE:** In today’s health care environment, health care providers of all types compete for employment of the same personnel. The adjustment of Medicare payment rates intended to reflect variations in wages across the nation should be consistent across all provider types. With increasing shortages of health care personnel, unequal wage index
adjustments for health care providers in the same geographic region results in an uneven and discriminatory distribution of the employment pool of personnel. Further, in recent years some agencies have experienced dramatic increases and drops in their wage indices. This degree of “swing” in reimbursement can have a significant impact on an agency’s financial viability.
ENACT MEDICARE HOME HEALTH AND HOSPICE PROGRAM INTEGRITY MEASURES

ISSUE: Home care and hospice, like all industries, is not immune to the presence of participants who engage in improper and illegal schemes for the sake of profit. At the same time, health care providers that operate well within the law are unable to effectively compete in the market when faced with competitors that offer kickbacks for patient referrals, bill for services not provided, or charge costs that are not part of the delivery of services.

The Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, contains a number of program integrity measures supported by NAHC that are home care and hospice specific. However, the home care and hospice communities believe that more can be done.

RECOMMENDATION: Congress should continue its work in combating waste, fraud, and abuse in our nation’s health care system by passing additional measures that include:

- The institution of mandatory corporate compliance plans by all home health agencies and hospices to ensure adherence to all federal and state laws with proper funding support.
- Strengthened admission standards for new Medicare home health agencies, including standards for capitalization, claims review, and experience.
- Expanded use of targeted, temporary moratoria on new Home Health Agencies where the number of providers exceeds the level appropriate to ensure access, quality and choice.
- Mandatory screening and federally-funded background checks on all individuals wishing to open a Medicare home health agency or hospice as well as all employees of home health agencies and establishment of a national registry of home care workers consistent with existing state laws.
- Strengthened program participation standards to include experience credentialing and competency testing of home health agency or hospice personnel responsible for maintaining compliance with Medicare standards; such as the Certified Home Care Executive (CHCE), credentialing available through the National Association for Home Care & Hospice (NAHC).
- The investment of sufficient government and industry resources to expedite refinements to the Medicare payment systems so that providers are appropriately reimbursed for the costs of providing services.
- Providing consumers and prospective consumers of Medicare home health services and hospice care with a summary of program coverage requirements. The consumer reporting hotline for suspected fraud, waste, and abuse also should be enhanced and made more accessible.
- Implementation and development of credentialing and competency testing standards for government contractors and federal regulators responsible for issuing Medicare determinations. A hotline should be developed for beneficiaries and providers to report inadequate enforcement action by those charged with protecting Medicare and Medicaid.
• Supplying adequate administrative financing to Medicare/Medicaid to enforce existing laws and regulations such as survey and certification standards, provider education, and claims reviews.

• Requiring federal enforcement authorities to prioritize oversight and enforcement on matters that have high dollar impact while establishing sensible corrective measures to address providers with minor errors and omissions.

• Enhancement of education and training of home health agency and hospice staff through joint efforts with regulators.

• Implementation of outcome-based compliance standards that provide operational flexibility and also eliminate structural requirements that are unrelated to the provision of high quality Medicare home health services or hospice care.

• Development and implementation of Medicare coverage and reimbursement standards in language that is understandable and accessible to providers and consumers through various means; for example, through the Internet, federal depository libraries, and fiscal intermediaries.

• The establishment of a Joint Program Integrity Advisory Council that works in partnership with federal and state programs to prevent and resolve systemic programmatic weaknesses that waste health care resources.

• Development and authorization of an industry-directed enforcement entity working in conjunction with federal and state authorities.

• Establishment of targeted payment safeguards that utilize modern techniques and tools, directed towards abusive utilization of services and payment as necessary and appropriate.

RATIONALE: It is particularly important to ensure that limited health care dollars go to the provision of patient care rather than being diverted into the pockets of unscrupulous providers. A comprehensive fraud and abuse package that includes home health and hospice specific provisions and provides adequate enforcement tools to punish those who willfully and knowingly defraud the system is needed. Moreover, any anti-fraud legislation must make a distinction between willful fraudulent activity and unintentional failure to comply with Medicare regulations. For example, the Office of the Inspector General often characterizes as fraud technical errors on claims or billing for services that the need for which is not documented sufficiently to demonstrate that it meets Medicare reimbursement requirements related to medical necessity. In such cases, provider education may be a more appropriate response than more punitive measures.