

**American Health Care Association****National Center for Assisted Living**

As the nation's largest association representing dedicated, quality-driven, not for profit and proprietary facility-based long term care providers, the American Health Care Association and National Center for Assisted Living (AHCA/NCAL) advocate for quality long term care. More than three million Americans rely on the care provided in one of our nation's nearly 16,000 nursing facilities and millions more depend upon the care and services offered by assisted living communities or in their own homes.

In fact, the majority of us – because of social needs, disability, trauma, or illness – will require long term care services at some point in our lives. With the demand for long term care services expected to more than double by 2040 and with the challenges of caring for our patients and residents with increasingly complex medical needs and cognitive impairments, our long term care system is in dire need of reform on all fronts.

AHCA/NCAL is deeply concerned about a variety of issues ranging from stable and adequate funding, payment policy reforms, workforce development, and a fair and consistent survey system that recognizes and rewards providers of quality care. With long term care facilities directly employing 2.9 million individuals in America and contributing to the employment of an additional 5.2 million, a stable and well-trained workforce is paramount in delivering the high quality care and services required today and tomorrow. At a time when job creation is critical to our nation's economic state, our profession is an area of growth with nearly 110,000 vacancies in long term care facilities nation wide, which can be filled immediately.

Our sector represents 1.1 percent of the nation's Gross Domestic Productⁱ, \$144.3 billion annually, with substantial economic impact in nearly ever community nationwide. With 70 percent of costs being labor-related, we are acutely aware of the need for long term financing reform that encourages personal responsibility and considers the importance that Medicare cross-subsidization of Medicaid continues to play as states struggle with a \$50 billion shortfall in funding for their Medicaid programs.

AHCA/NCAL welcomes this opportunity to offer several high-level priorities and looks forward to working together to achieve person-centered, cost-effective, and sustainable long term care that is part of our nation's overall system to meet today's health care needs, and tomorrow's expectations.

AHCA/NCAL short term health policy priorities and goals:

1. Enhanced Quality of Care and Outcomes for Patients and Residents

- Develop new evidenced-based Quality Measures to be publicly reported on the Nursing Home Compare website that assess clinical outcomes and are easily understood by consumers. National implementation of the Nursing Home Value Based Purchasing should be delayed until these appropriate evidence-based measures are put into place (*Regulation and/or policy change*)
- As information technology enables long term care employees to work smarter and more effectively with fewer medical errors, it is important that long term care be included in any health information technology initiative. (*Regulation, guidelines, legislation and/or policy change*)

ⁱ See The Lewin Group's report, *Long Term Care Facilities' Impact on Economic Activity in the United States, 2008*.



2. **Stable and Adequate Funding to Ensure Quality Long Term Care**

- Provide sector stability through sensible Medicare payment policies including providing a full skilled nursing facility (SNF) Medicare Market Basket Update (cost of living increase) for fiscal year 2010, not implementing a SNF Prospective Payment System parity adjustment, and ensuring that aggregate spending for SNFs remains the same pre- and post- significant payment policy changes including Minimum Data Set 3.0 and the STRIVE project. *(Regulation, legislation, and/or policy change)*
- Protect patient access and choice to appropriate long term care services including both home-and-community-based services and long term care facility services by ensuring adequate Medicaid funding and sensible payment policies impacting quality by providing a temporary increase in states' federal medical assistance percentage (FMAP), and mandating prompt Medicaid and managed care payments for care and services provided. *(Regulation, guidelines, and/or policy change)*
- Foster transparency in Medicaid waivers. Since states have the opportunity to depart significantly from federal standards and to significantly erode statutory protections for beneficiaries, more transparency is needed to improve the development process through strengthening requirements for public input and participation in the waiver development process in addition to requiring that waivers are based on a reasonable hypothesis that will be fully and effectively evaluated. *(Regulation, guidelines, and/or policy change)*

3. **Fair, Objective, Consistent Survey and Regulatory Environment**

- The Five Star Quality Rating System draws on outdated, subjective, and inaccurate survey data and fails to give the consumer a complete representation of the quality care our profession provides daily so until improved and more complete consumer information is available, the system should be discontinued. *(Executive order and/or regulation)*
- The Centers for Medicare and Medicaid Services should establish and conduct joint training for nursing facility-based providers and surveyors on regulations, guidelines, and policy changes in order to establish a common understanding of the comprehensive and complex Survey & Certification process. *(Regulations, guidelines, and/or policy change)*

AHCA/NCAL long term health policy priorities and goals:

1. **Enhanced Quality Care and Outcomes for Patients and Residents**

- Ensure that long term care and post-acute care are included in any health care financing reform policies and proposals. Currently, Medicaid and Medicare together fund nearly 70 percent of the nation's post-acute and long term care costs and as our population ages, this situation is not sustainable. AHCA, NCAL and the Alliance for Quality Nursing Home Care have developed a sustainable long term care financing system proposal that infuses private funding into the system, by providing new incentives for individuals to save and plan for future long term care expenses. The proposed federal financing would replace the current patchwork and inconsistent Medicaid system and provide reforms to the entire post-acute care payment system which would reimburse care based upon the condition, needs and characteristics of the patient, as opposed to the current system of basing payment on care setting. *(Legislation, regulations and/or policy change)*
- It is important that long term care be included in any long range health information technology initiatives. *(Regulation, guidelines, legislation and/or policy change)*



2. Stable and Adequate Funding to Ensure Quality Long Term Care

- With Medicaid projected in 2008 to underfund the care provided in nursing facilities by more than \$4.2 billion, and with states cutting Medicaid reimbursements in this troubled economy, Medicare is increasingly relied upon to makeup the difference – a reality which is ignored by the Medicare Payment Advisory Commission. Changes in payment policies must be enacted that appropriately funds both Medicare and Medicaid for the care and services delivered. *(Legislation, regulations, guidelines, and/or policy change)*
- Preserve choices in care options, which also ensure the appropriate level of care to meet the medical and cognitive needs of all individuals, along the entire spectrum of long term care settings including nursing facilities, assisted living communities, intermediate care facilities for individuals with mental retardation, or home and community based care. *(Regulations, guidelines, and/or policy change)*
- Maintain the existing statutorily provided SNF Medicare market basket increase in future fiscal years. *(Regulations and/or policy change)*
- Preserve the current Medicare bad debt reimbursement structure. *(Regulations and/or policy change)*
- Establish a SNF-specific wage index, or in lieu of such action, provide SNFs the ability to reclassify as hospitals do currently. *(Regulations and/or policy change)*

3. Fair, Objective, Consistent Survey and Regulatory Environment

- Implement a survey system that is fair, consistent, objective, and reports survey findings as a percentage of compliance, as well as recognizes and rewards quality outcomes. We propose a streamlined survey system that incentivizes quality by rewarding outstanding performers and enables surveyors to work more closely with facilities that have compliance issues to seek to improve care. This reform can be accomplished by redistributing current resources. *(Regulations and/or policy change)*

4. Develop a Sufficient and Stable Workforce

- Develop additional federal initiatives and provide increased funding for existing workforce development efforts in order to facilitate the recruitment and retention of health care workers – particularly for those with training in elder care - to meet the demand for long term care services which will more than double by 2040. With a smaller potential workforce, and with limitations on training opportunities for new caregivers, it will be progressively more difficult for our profession to recruit employees. *(Legislation, regulations and/or policy change)*
- AHCA/NCAL is also concerned that further barriers to workforce stability may be implemented through vehicles including the Employee Free Choice Act and the Fairness in Nursing Home Arbitration Act. *(Legislation, regulations and/or policy change)*
 - We are opposed to passage of the Employee Free Choice Act as it will eliminate certain employee rights and protections currently provided as part of the union organizing process, including the secret ballot.
 - AHCA/NCAL supports the use of arbitration agreements in the admission process as they are less adversarial than traditional litigation, produce quicker results, have been determined to be fair and appropriate by the courts, and most importantly enable patients and their families to retain a greater proportion of any financial settlement than with traditional litigation.



Other HHS related issues:

1. Part D Copay Equity Alignment

- The Medicare Modernization Act exempted dually-eligible beneficiaries from Medicare Part D cost-sharing in nursing facilities, intermediate care facilities for individuals with mental retardation, and inpatient psychiatric hospitals; however assisted living and residential care facilities are not included, even though these residents are nursing home-eligible and share similar needs and vulnerabilities. *(Regulations and/or policy change)*

2. Temporarily Address Health Care Workforce Shortage through Immigration

- Allow for the recapture of previously unused HB-1 temporary worker visas and permanent employment based visas from prior fiscal years for use by registered nurses and physical therapists in order to temporarily address the nation's current significant healthcare workforce shortages. *(Regulations and/or policy change)*

3. Better Address the Needs of Long Term Care and Post Acute Care Facilities During Disasters

- Allow for proprietary health care facilities to be able to receive Stafford Act resources so that all vulnerable patients and residents have access to critical resources during disasters. *(Legislation, Regulations and/or policy change)*
- Provide a consistent method for reimbursing long term care providers for extraordinary costs assumed in order to evacuate facilities under a mandatory order or appropriately shelter in place. *(Regulations and/or policy change)*

4. Fully Enforce Executive Order 12866

- Executive Order 13422 significantly amended Executive Order 12866 from 1993. These Executive Orders affect the Regulatory Planning and Review process used by OMB's Office of Information and Regulatory Affairs before items are published in the Federal Register. *(Policy change)*