



# Legislative Bulletin

August 6, 2013

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## State Legislative Session Wrap-Up

### The Biennial Budget

When Governor Maggie Hassan introduced her budget proposal in February, her goals included full adoption of Medicaid expansion, implementation of Medicaid care management, partial restoration of uncompensated care funds to hospitals, and a commitment to revive the state's mental health system. Her intent was to pay for these initiatives with one high-end casino and increased tobacco taxes.

As with any ambitious budget, funding a "wish list" depends on revenues. While the Senate was supportive of casino gambling, the House stuck with its historical position and voted down a gambling proposal. The House was willing to beef up tobacco taxes, but the Senate was not, limiting the increase to an automatic restoration of last session's 10-cent cut. The compromise \$10.7 billion biennial budget passed the Senate by a vote of 24-0 and passed the House with a vote of 337- 18. The budget **provides \$28 million in additional funding for mental health** and **restores \$40 million in uncompensated funds to hospitals** in the first year. In order to receive uncompensated care payments, hospitals had to agree to participate in **Medicaid care management**. That carrot seemed to do the trick, with most hospitals finally agreeing to join Medicaid provider networks. The budget leaves a lot of unanswered questions in the second year, however. The hope is that service delivery will be transformed and additional federal funds will be leveraged under an 1115 waiver from CMS so that the need for state funding for uncompensated care payments to hospitals will be significantly reduced.

The budget *did not include* adoption of **Medicaid expansion** because the 13 Senate Republicans expressed concern about whether the federal government will fulfill its commitment to fund Medicaid by 100% in the first three years and then 90% thereafter. Instead, the budget compromise included an 11-member Medicaid Expansion Commission. That group has been meeting weekly and must make a recommendation in October.

The Granite State Home Health Association paid close attention to funding for Medicaid home health services and Choices for Independence home services. In testimony at budget hearings in the both the House and Senate, we expressed concern about inadequate rates, conservative caseload estimates and increasing costs due to the ACA employer insurance mandate. The good news is that rates for these services were *not* on the chopping block. The bad news is that the reimbursement rates stay the same and budgeted CFI caseloads may be lower than the need for services. GSHHA asks members to let us know if clients are experiencing long delays or denials for eligibility.

### **Major Changes to Home Care Clients' Bill of Rights**

**GSHHA's top priority bill, [SB 87](#), successfully made its way through the Senate and the House and was signed into law by Governor Hassan.** This bill, which was introduced at GSHHA's request by Sen. Peg Gilmour, clarifies the health facilities licensing statute as it applies to home care agencies. It also revises the home care clients' bill of rights and creates a new section of law on home health discharges that includes consumer protections and agency protections, most notably in situations where caregivers are threatened.

**Passage of SB 87 was a team effort** that included **Sen. Gilmour**, co-sponsor **Rep. Mary Nelson**, GSHHA staff, our lobbyist **Valerie Acres** of Sheehan Phinney Capitol Group, and a core group of Association members. They included **Margaret Franckhauser** from Central NH VNA, **Rick Petersen** and **Sandra Poleatewich** from Interim Healthcare, **Rebecca Hutchinson** from Lutheran Social Services, **Elaine Bussey** from North Country Home Health and Hospice, **Sandy Ruka** from VNHH of Carroll County and **GSHHA's Legislative Committee**. These individuals and others spent countless hours reviewing drafts, presenting testimony, meeting with stakeholders and talking with legislators. GSHHA would also like to thank advocates at the **Disabilities Rights Center**, **Granite State Independent Living**, **Child and Family Services** and independent health policy analyst **Michelle Winchester** for their willingness to work with GSHHA to finalize a bill that addresses the needs of consumers and caregivers.

SB 87 will take effect on January 1, 2014. The Association will provide a thorough review of the bill's provisions at a Membership Meeting this fall.

### **Other Noteworthy Bills**

The Association actively tracked over 40 bills during the Legislative Session. Here is a recap of the most important bills:

**[SB 170](#), relative to the advance directives pertaining to life-sustaining treatment**, simplifies New Hampshire's advance directive statute by including "artificial nutrition and hydration" in the definition of "life-sustaining treatment" and eliminating questions specific to artificial nutrition and hydration that frequently confuse people as they complete their advance directives. The advance directive statute will still require a section on the form for additional instructions and the bill states that instructions

regarding nutrition and hydration may be included there. *Supported by GSHHA. Effective 1/1/14*

**[SB 17](#)**, **establishing a commission to study palliative care and associated quality of life initiatives.** SB 17 was introduced at the request of the American Cancer Society and supported by GSHHA. It creates a 16-member commission to study public awareness of palliative care, access, provider education, and reimbursement and make recommendations to the Legislature by next June. The commission includes a seat for an appointee of the Home Care Association. The HCANH Executive Committee appointed **Carla Braveman**, VP of Home and Community Services at the VNA of Manchester and Southern NH, as the Association's designee. *Supported by GSHHA.*

**[HB 597](#)**, **relative to mandatory drug testing of health care workers.** This bill was an attempt to prevent future situations similar to the Exeter Hospital incident. The bill was retained in the House HHS committee in order to study alternatives to mandatory drug testing. The committee has been meeting regularly and will likely recommend language that requires licensed health care facilities to have drug-free workplace policies and procedures. The committee will recommend final language in late 2013 for a House vote in January. If the bill passes the House in January, it will proceed through the Senate in 2014. GSHHA will continue to monitor this bill and provide input to legislators. *Opposed in its original version by GSHHA.*

**[HB 556](#)**, **establishing a committee to study the resolution of barriers to the use of telehealth technology in New Hampshire.** This bill creates a committee of 6 legislators to study internet and videoconferencing access, provider education, licensing issues and reimbursement barriers. A report is due November 1, 2013. *Supported by GSHHA.*

**[HB 127](#)**, **[HB 241](#)**, **[HB 501](#)** and **[SB 77](#)**, **all pertained to establishing a state hourly minimum wage.** All the bills were killed. *Opposed by GSHHA.*

**[HB 461](#)**, **relative to long-term care services**, would lift the aggregate spending caps on home and community-based long term care services. It would instead establish an individual right to receive services in the least restrictive setting if such services are available and would not result in greater Medicaid costs than if the individual was in a nursing facility. This bill was retained in the House HHS Committee. *GSHHA took no position on this bill, but offered testimony on the effectiveness of home health services and raised questions about reimbursement, work-force availability and telemonitoring.*

## **Federal Issues**

### **Medicare Rebasing**

CMS's proposal to rebase the home health prospective payment system (HHPPS) rates is the top federal priority for GSHHA, NAHC and VNAA. The CMS proposal will reduce Medicare home health reimbursement by 14% over the next four years. As a result, two-thirds of New Hampshire's home health agencies are expected to have negative Medicare margins by 2017. An action alert and [NH Impact Brief](#) was sent to Medicare-certified

member agencies last week. CEOs and CFOs were urged to complete the agency-specific margin calculator, send 2012 Medicare cost report data to NAHC and express concerns to our federal delegation.

The Association is reaching out to Senators Shaheen and Ayotte and Congresswomen Shea-Porter and Kuster. We're asking them to sign-on to House and Senate letters to CMS Administrator Marilyn Tavenner asking CMS to revise its proposal (which is based on an incomplete sampling of 2011 home health cost reports.)

### **Home Health Planning Improvement Act of 2013**

Two identical bills have been introduced in the House and Senate to **allow Nurse Practitioners to authorize and oversee home health services** for Medicare beneficiaries. **HR 2504, the Home Health Planning Improvement Act of 2013**, is sponsored by Rep. Greg Walden (R-CO) and Rep. Alison Schwartz (D-PA). Sen. Susan Collins (R-ME) and Sen. Chuck Schumer (D-NY) have introduced **S. 1332** in the Senate. GSHHA is asking all members of our delegation to co-sponsor these bills. So far, **Congresswoman Anne Kuster** has agreed to co-sponsor HR 2504.

### **Forty Hours is Full Time**

Senator Collins of Maine has also introduced **S. 1188, the Forty Hours is Full Time Act of 2013**. The bill changes the 30-hour a week threshold for employer insurance coverage under the Affordable Care Act to 40 hours a week. GSHHA and national home health organizations support this bill because home health agencies are particularly hard-hit by the employer mandate. With most home health revenue coming from fixed Medicare and Medicaid payments, agencies have nowhere to shift new insurance costs. Many agencies will be forced to reduce work hours under the 30-hour threshold. GSHHA has voiced our concerns to our Congressional delegation about the insurance mandate. So far, **Sen. Kelly Ayotte** has agreed to co-sponsor S.1181.

### **Face-to-Face Letter**

A bi-partisan [“Dear Colleague” letter](#) from members of the New York and New Jersey Congressional delegation asks fellow House members to sign on to a letter to CMS Administrator Marilyn Tavenner. The letter **requests that CMS consider the administrative burdens of Medicare’s F2F rule and redundancy with the Form 485**. GSHHA has contacted Congresswomen Shea-Porter and Kuster to encourage them to co-sign the letter.

**If you have questions about state or federal legislative issues, call GSHHA at 603-225-5597 or email [Gina Balkus](#).**