

## FEDERAL LONG TERM CARE LEGISLATION - 2009

### **Nursing Home Transparency and Improvement Act 2009 (S. 647)**

- This bill amends parts of the Social Security Act in order to improve the transparency and accountability of nursing home facilities.<sup>1</sup>
- The purpose of the bill is to provide consumers with accurate information regarding staffing levels, money spent on nursing care (including wages and benefits), inspection results and number of complaints, as well as the types of penalties the facility received over a three year period.
- The bill is intended to make it easier for families to file and resolve complaints,<sup>2</sup> as the bill directs the Secretary of Health and Human Services (HHS) to develop a standardized complaint form and a complaint resolution process.
- The bill outlines accountability for institutions and requires the following:
  - Pre-employment training in dementia care and abuse prevention.
  - Establishment (by the Secretary) of a program for nursing facilities to report staffing information based on payroll data (or other auditable data).
  - Additional information to be reported on the HHS Nursing Home Compare Medicare website (such as turnover and retention rates, as well as staffing levels as determined by payroll data).
  - Directs Secretary to establish Quality Assurance Program (QAP) for institutions and conduct culture change projects
- It was reintroduced in March 2009 and sponsored by Senator Chuck Grassley and Senator Herb Kohl.
- Congressional findings: CMS provides over 75 billion dollars per year to nursing home facilities but often doesn't know who the actual entities are that own and operate facilities. "Greater transparency and accountability in the nursing home industry can be achieved by simply requiring publicly and privately owned nursing homes to disclose corporate entities that own individual nursing homes, and other entities with which individual nursing homes have key financial, operational, and management relationships."<sup>3</sup>
- Implications of the bill: Quality of care and quality of life are expected to improve due to 1) providing dementia management and abuse prevention training would be beneficial for consumers.<sup>4</sup> 2) governments having tools to hold the providers accountable due to ownership disclosure 3) internal QAPs so nursing homes constantly will be improving quality of care. Family members will be empowered and able to make better decisions as

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<sup>1</sup> The Library of Congress: Bill S.647, text of legislation (available at <http://thomas.loc.gov/cgi-bin/query/z?c111:S.647>).

<sup>2</sup> NCCNHR: The National Consumer Voice for Quality Long-Term Care: Transparency and Improvement Bill Reintroduced, retrieved from: <http://www.nccnhr.org/>.

<sup>3</sup> The Library of Congress: Bill S.647, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>4</sup> United States Senate: Special Committee on Aging, retrieved from: [http://aging.senate.gov/hearing\\_detail.cfm?id=310113&](http://aging.senate.gov/hearing_detail.cfm?id=310113&).

well, by having access to nursing home track records and access to better data on the Nursing Home Compare website.<sup>5</sup>

### **Fairness in Nursing Home Arbitration Act 2009 (S.512/ HR.1237)**

- This bill is a response to the current widespread practice of providers inserting pre-dispute mandatory arbitration clauses into facility residency agreements. Some states prohibit these agreements at least in the nursing home setting. Many do not. Because assisted living is not federally regulated, and is unevenly regulated by the states, there is growing concern about their use in assisted living agreements.
- Issues for consumers in pre-dispute mandatory arbitration agreements: In signing a mandatory pre-dispute arbitration agreement, or a contract that contains such a clause, an individual is signing away his or her right to have access to the justice system should anything happen to the resident in the future. This means that if a resident receives poor care in the future – even if that results in serious pain or harm to the resident, or even death – the resident and family cannot sue the facility, even if the poor care was due to neglect or abuse of the resident. The clauses are usually buried within a contract that the resident or his or her family member has to sign at a difficult time, and it may not be well communicated that by signing, the resident is waiving their rights to court hearings.<sup>6</sup> These agreements have the net effect of taking away rights of the resident and family and protecting a facility against civil claims when there are instances of abuse or neglect. [NOTE: There are times when a resident or family may want to choose to go to arbitration, but this is a decision that should be made based on specific circumstances, not signed away prospectively, for anything a facility or its employee might do to a resident in the future.]
- Purpose of the bill: Prohibits facilities from imposing pre-dispute mandatory arbitration agreements. The bill does not outlaw arbitration as long as it is arranged after a dispute.<sup>7</sup>
- The Senate bill is sponsored by Senator Mel Martinez and the House of Representative bill is sponsored by Rep. Linda Sanchez.<sup>8</sup>

### **Resolution on improving access to long-term care in the home and community (H Res.271)**

- This resolution recognizes that long term care is a growing issue and concern and that a well developed strategy is necessary to solve cost problems, quality problems and access problems in the realm of long term care.
- The purpose of this resolution is for Congress to commit to developing and enforcing a national strategy that will address the geographic limitations that exist in long term care as well as the financial limitations of individuals in need of long term care, in order to improve access to care. In addition, the bill intends to reform long term care, so that there

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<sup>5</sup> Injury Board: Provisions of the Nursing Home Transparency and Improvement Act, retrieved from: <http://mobile.injuryboard.com/nursing-home-and-elder-abuse/provisions-of-the-nursing-home-transparency-and-improvement-act-.aspx?googleid=259844>.

<sup>6</sup> John R. Gillespie Jr. and Andrew Ulloa, "The Nuts and Bolts of Nursing Home Arbitration Agreements" Retrieved from <http://www.broadandcassel.com/articles/SFLGGillespie.pdf>.

<sup>7</sup> Injury board: Fairness in Nursing Home Arbitration Act of 2009, Retrieved from: <http://louisville.injuryboard.com/nursing-home-and-elder-abuse/fairness-in-nursing-home-arbitration-act-of-2009.aspx?googleid=260706>.

<sup>8</sup> The Library of Congress: Bill S.512, text of legislation, retrieved from: <http://thomas.loc.gov>.

is a greater place for home and community based services. The bill recognizes that coordination between local, state and federal health care is necessary. Unfortunately, this is just a resolution to recognize the importance of this issue and, in and of itself, the bill cannot produce concrete change.

- The resolution<sup>9</sup> is sponsored by Rep. Alcee L. Hastings.

### **Patient Safety and Abuse Prevention Act (S.631/HR 2223)**

- This bill establishes program requirements for long term care facility providers to conduct background checks on direct care workers or any employee with one-on-one contact with residents.
- The purpose of the bill is to prevent individuals with criminal or abuse records from caring for individuals with long term care needs.
- The bill directs the Secretary of HHS to develop a program and procedures for long term care facilities to conduct background checks. The bill states that a coordinated system exists that provides access to other state registries to effectively and efficiently conduct background checks.
- The bill establishes that the Inspector General will evaluate the nationwide program.
- The Senate bill is sponsored by Sen Herb Kohl and the House of Representatives bill is sponsored by Rep Joe Sestak.
- Motivation for the bill: Residents of long term care facilities are particularly vulnerable to abuse due to chronic conditions and frailties. Not all states require criminal background checks for CNAs (41 states do).
- Implications of the bill: This bill builds on a pilot program that was established under the Medicare Prescription Drug Improvement and Modernization Act of 2003. It is believed that with thorough background checks, cases of abuse in long term care facilities will be reduced. The bill requires not only long term care providers, but also designated agents of providers (such as those providing agency staff) to conduct criminal history background checks. This bill adds a federal component to background checks, which would make them more complete and harder for anyone with a criminal history to go undetected.<sup>10</sup>

### **Caring for an Aging America Act of 2009 (S.750)**

- This bill is an amendment to the Public Health Service Act.
- The purpose of the bill is to attract and retain trained health care professionals and direct care workers, which is especially necessary given that the population is aging.
- The bill requires that a loan repayment program be established for physicians or physician assistants, nurse practitioners or clinical nurses and social workers or psychiatrists. To be eligible, they must have geriatric training, have obtained a loan for their education costs and provide long term care services for at least two years. The Secretary can also provide education grants for those who wish to specialize in long term care training.
- A loan council will be created and members will serve for three years.
- The bill is sponsored by Sen. Barbara Boxer.

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<sup>9</sup>The Library of Congress: Bill H Res. 271, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>10</sup>The Library of Congress: Bill S.631, text of legislation, retrieved from: <http://thomas.loc.gov>.

- Motivation for the bill: Work force shortages are plaguing the health care system, especially in the realm of long term care.<sup>11</sup>
- Implications of the bill: As mentioned above, caregivers are an essential component to ensure quality of care. The system is currently struggling to retain qualified workers to provide long term care, which is why it is necessary to develop policies that will increase the long term care workforce and ensure their retention.

#### **Empowered at Home Act of 2009 (S.434)**

- This bill amends part of the Social Security Act so that income eligibility to receive home and community based services is revised.
- The purpose of the amendment is to provide states with more tools to expand home and community based services. It is believed that individuals' need for institutionalized care will be delayed or obviated due to receiving home and community based services (HCBS).<sup>12</sup>
- The bill would allow states to provide HCBS under a waiver to individuals whose income is less than 300% of the SSI benefit rate.
- The bill is sponsored by Sen. John F. Kerry in the Senate and Reps. Frank Pallone, D-N.J., and Diana DeGette, D-Colo., in the House.<sup>13</sup>
- The bill also implements spousal impoverishment protection.
- Motivation for the bill: To overcome the bias toward institutional care in Medicaid. The majority of Medicaid funds are spent on institutional care, which is generally more expensive to provide than HCBS and which is contrary to the desire of most consumers to receive long term care services in their home or community.<sup>14</sup>
- For more information on reasons to include HCBS in healthcare reform, see the AARP fact sheet, *Providing More Long-term Support and Services at Home: Why It's Critical for Health Reform*.<sup>15</sup>

#### **Retooling the Health Care Workforce for an Aging America Act of 2009 (S.245)**

- This bill amends the Older Americans Act of 1965. It requires the Secretary of HHS to expand training for geriatric, long term care and chronic care management for health care professionals.
- It requires the Secretary of Aging to develop training manuals and materials for family caregivers as well as promote partnerships between long term care institutions and education institutions.
- The Secretary is charged with developing core training competencies for home care aides and directed to award grants to geriatric training centers. Institutions that receive grants are required to use the funds for geriatric, chronic care management or long term care training courses. In addition, they are required to engage in other activities, such as offering low cost courses to family caregivers.

<sup>11</sup>The Library of Congress: Bill S.750, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>12</sup>The Library of Congress: Bill S.434, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>13</sup>The Library of Congress: Bill S.434, text of legislation, retrieved from: <http://thomas.loc.gov>

<sup>14</sup>Home Care: Kerry, Grassley Introduce 'Empowered at Home Act', retrieved from <http://homecaremag.com/news/kerry-grassley-introduce-empowered-0807/>.

<sup>15</sup>[http://www.aarp.org/research/housing-mobility/homecare/fs\\_hcbs\\_hcr.html](http://www.aarp.org/research/housing-mobility/homecare/fs_hcbs_hcr.html) (June 2009).

- The bill also requires an analysis of the long term care workforce and the capacity for the workforce to meet consumer needs.
- The Senate bill is Sponsored by Sen. Herb Kohl and the House of Representatives bill is sponsored by Rep. Janice D. Schakowsky.
- Motivation for the bill: It has been found that long term care needs in America will not be adequately met without a better trained workforce.
- Implementations of the bill: Inadequate training has been shown to lead to high turnover rates,<sup>16</sup> which decreases quality of care. In addition, it is important that the direct care staff is adequately trained to meet all of the consumer's psychosocial needs. Improving staff competencies is therefore an important step in the direction of improving quality of care. In addition, the healthcare workforce is currently too small to care for the current population and the fact that the aging population is increasing means drastic problems in the future. It is extremely important to expand the healthcare workforce to address current shortages and future problems.<sup>17</sup>

### **Promoting Small House Nursing Homes Act (S.776)**

- This bill requires the Secretary to create small house nursing home loan programs.
- The purpose of the loan program is to promote culture change in nursing homes by providing money for the construction and renovation of nursing homes that comply with the culture change requirements.
- Under this bill, the Secretary is required to establish an advisory panel to evaluate applications for loans and to establish an evaluation tool.
- In addition, at least 30% of the residents need to be covered by Medicaid, the facility must be state approved and must share operating and financial data with researchers and federal agencies.
- The bill also requires that if a nursing home receives a loan under this program, they must establish a model of self directed care for consumers, provide consistent staff assignments, provide a home-like environment, provide private bathrooms in each bedroom and staff training is required to communicate the philosophy of the small house nursing home as well as the concept of non institutionalized and self directed care.
- This bill is Sponsored by Sen. Robert P. Casey Jr.<sup>18</sup>
- Motivation for the bill: Residents report low levels of satisfaction in nursing homes and there are concerns about maltreatment, abuse and neglect. Everyone should have the fundamental right of aging with dignity, comfort, respect and autonomy.<sup>19</sup>
- Implication of the bill: This bill encompasses important aspects that are currently lacking but necessary in long term care. It acknowledges the importance of empowering consumers by allowing them to direct their own care and it requires staff to be trained to understand self directed care as well. In addition, it establishes the need to recreate a

<sup>16</sup> The Library of Congress: Bill S.245, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>17</sup> The American Geriatrics Society: American Geriatrics Society Applauds Bicameral "Retooling the Health Care Workforce for an Aging America Act," Retrieved from <http://www.americangeriatrics.org/news/retooling011609.shtml>.

<sup>18</sup> The Library of Congress: Bill S.776, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>19</sup> Robert P. Casey Jr.: 'Casey Bill Would Improve the Lives of Older Citizens and Direct Care Workers', Retrieved from <http://casey.senate.gov/newsroom/press/release/?id=69BBE1E8-A9D6-4B48-9FC6-9EBCD7543C7E>.

home-like setting and allow consumers the dignity they deserve, rather than forcing them to live in an institutional setting.

### **Health Access and Health Professions Supply Act of 2009 (S.790)**

- The purpose of this bill is to address the need to improve access to health care services in underserved areas of the United States.
- It aims to expand the health care professional workforce and build an infrastructure for community health professional training.
- This bill requires a permanent national health workforce commission to be developed. The commission will submit to the Secretary and congress a report with a review of current training and adequacy of supply and distribution of health professional education programs. The commission will also need to develop guiding principles and standards for federal, state and private education centers. The Secretary will be responsible for developing regulations to address shortages of health professionals and access to programs.
- This bill directs the Secretary to establish a demonstration program, which will give grants to states to improve health care professionals' training, deployment and retention. The Secretary will also assess health care professional need and capacity and provide grants and loans to facilities for training purposes as well as incentives to individuals such as debt reimbursement.
- Grants would also be provided to middle schools and high schools to create a "pipeline" of students interested in the health care profession.
- This bill is sponsored by Sen. Jeff Bingaman.
- Motivation for the bill: Currently, there is no coordinated approach to dealing with workforce shortages, or problems of access to quality and affordable health care. Health professionals are generally educated in urban areas and rural areas lack workers as well as other resources.<sup>20</sup>
- Implications of the bill: Currently, many consumers of long term care are forced into institutional settings, especially in rural areas, due to lack of resources. If there are policies that provide more incentives for educational and health care facilities to train more health workers, long term care consumers can benefit. This bill is especially important because it specifically targets health care and educational facilities that are in rural areas.

### **CLASS (Community Living Assistance Services and Supports) Act 2007 (S. 697/ HR 1721)**

- This bill will introduce a voluntary national health insurance program for adults who become functionally disabled.
- The purpose of this bill is to help individuals with physical and functional impairments to pay for services.<sup>21</sup>
- The national health insurance will be financed through payroll tax (\$30/month), which will create a large risk pool and it will be placed in a "National Independence Fund", which will be managed by the HHS.
- Working individuals who are 18 and over will be automatically enrolled, but can opt out.

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<sup>20</sup>The Library of Congress: Bill S.790, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>21</sup>The Library of Congress: Bill HR.1721, text of legislation, retrieved from: <http://thomas.loc.gov>.

- The bill requires that individuals be enrolled in the program for at least five years before receiving benefits and state disability determination centers will determine eligibility.
- The insurance is limited to individuals who either have a cognitive impairment that calls for assistance (such as Alzheimer's) or they require assistance with two or more Activities of daily living (ADLs).
- The bill limits the funds to \$50/day for those who need assistance with two or more ADLs and \$100/day for those who need assistance with four or more ADLs. Benefits will cease if the individual improves but payments and eligibility are independent of SSDI.<sup>22</sup>
- The Senate bill is sponsored by Sen. Edward M. Kennedy and the House of Representatives bill is sponsored by Rep. Frank Pallone.<sup>23</sup>
- Motivation for the bill: Individuals requiring long term care are often forced into institutional settings or are forced to spend down in order to be eligible for Medicaid. This bill attempts to address these problems by providing individuals with an option to remain at home and avoid poverty, while retaining a role for private insurance, as this national insurance is not meant to replace private long term care insurance.<sup>24</sup>
- Implication of bill: The bill is based on principles of independence, empowerment and choice. The CLASS Act is considered to be a way to relieve the pressures from the Medicaid system and still have a system that provides individuals with services and supports.<sup>25</sup> The issue is, however that not very much money is provided, given the high costs of long term care. In addition, the money provided is not meant to replace private insurance, the bill attempts to create a public-private long term care option. Thus, it is not guaranteed that all individuals could benefit from this. Some individuals may not be able to afford private long term care insurance and may struggle to get the help they require with the funds provided.

### **Elder Justice Act (S.795/HR2006)**

- This bill introduces the importance of a comprehensive approach to solve the problem of elder abuse.
- The purpose of the bill is to ensure the existence of a way to prevent, detect and intervene in cases of elder abuse, by setting into motion a comprehensive approach at the federal, state and local level.
- The bill also intends to ensure workers (and ombudsmen) are properly trained (Secretary will provide facilities with grants to do so) and that data is collected in order to understand the causes of elder abuse, so that a strategic plan to eradicate it can be developed.
- An Elder Justice Council (EJCC) will be established within the HHS and an advisory board on Elder Abuse, Neglect and Exploitation will also be established.
- The Senate bill is sponsored by Sen. Orrin G. Hatch and the House of Representatives bill is sponsored by Rep. Peter T. King.

<sup>22</sup>Senator Edward Kennedy: Press Release, retrieved from:

[http://kenedy.senate.gov/newsroom/press\\_release.cfm?id=ff644903-1844-4478-b53a-5cfb712a5850](http://kenedy.senate.gov/newsroom/press_release.cfm?id=ff644903-1844-4478-b53a-5cfb712a5850).

<sup>23</sup> The Library of Congress: Bill HR.1721, text of legislation Retrieved from: <http://thomas.loc.gov>.

<sup>24</sup> Senator Edward Kennedy: Press Release, retrieved from:

[http://kenedy.senate.gov/newsroom/press\\_release.cfm?id=ff644903-1844-4478-b53a-5cfb712a5850](http://kenedy.senate.gov/newsroom/press_release.cfm?id=ff644903-1844-4478-b53a-5cfb712a5850).

<sup>25</sup> The Arc: 'Community Living Assistance Services and Supports Act (Class Act)', retrieved from:

[www.thearc.org/NetCommunity/Document.Doc?id=827](http://www.thearc.org/NetCommunity/Document.Doc?id=827).

- Motivation for the bill: The population is aging and every year, between 500,000 and 5,000,000 elderly individuals nationwide are abused, neglected or exploited. These victims are three times more likely to die at an earlier age than those who were not abused or neglected. It is recognized that better data collection about elder abuse is necessary because currently it is suspected that not all cases of elder abuse or neglect are reported.<sup>26</sup>
- Implications of the bill: Better elder abuse reporting, better program and worker training and a better system to prevent, detect and intervene in elder abuse will allow individuals receiving long term care to hold onto their dignity, and live a better life. It is especially crucial that elder abuse becomes a priority, since the aging population is rapidly increasing.

### **Direct Support Professionals Fairness and Security Act of 2009 (HR868)**

- This bill recognizes the importance of the direct care workforce.
- The purpose is to provide states with more funds to increase the wages of the direct care workforce who provide services to individuals in Medicaid funded programs.
- In order to get funding, the state needs to provide a wage enhancement plan and it must be submitted to the Secretary.
- The plan must describe how the funds will be used to increase the hourly wage rate, the economic impact of current wage differentials (between employees of private vs. state facilities) the impact on workforce shortages, a five year performance goal plan to increase the wages and each year the state will need to assess their plan and report to the Secretary.
- This bill is sponsored by Rep. Lois Capps.
- Motivation for the bill: Direct care workers are at the frontlines of long term care and are often the primary source of care. The majority are women, and they are typically the sole earners for their families. Despite their hard work and long hours, they often remain impoverished. There is also a nationwide shortage of direct care workers and high turnover rates.<sup>27</sup>
- Implication of the bill: Long term care recipients depend on direct care workers. If the workers have better working conditions and salaries, there would be greater incentives to become trained in the direct care field, which will lead to a more stable workforce. Ultimately, consumers will benefit from this. In addition, other factors that may be related to over worked and under paid direct care workers, such as abuse and neglect, may diminish as well.

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<sup>26</sup> The Library of Congress: Bill S.795, text of legislation, retrieved from: <http://thomas.loc.gov>.

<sup>27</sup> The Library of Congress: Bill HR 868, text of legislation, retrieved from: <http://thomas.loc.gov>.