



## **HCCI 2009 End of Session Report**

- *State of the State*
- *FY2010 Budget*
- *HCCI 2009 Substantive Agenda*
- *HCCI 2009 Opposition Agenda*
- *Going Forward*

## *2009 State of the State*

As we exited 2008, the coming legislative year held the promise of many big changes to come. Governor Rod Blagojevich had been indicted and impeached by the House of Representatives; the Senate Democrats had maintained their super majority status and the House Democrats left a contentious campaign season one short of the same mark; and both the Republican and Democrat Caucuses in the Senate were poised to elect new leaders.

When the new year arrived, newly elected Senate President John Cullerton, along with his Republican counterpart Senator Christine Radogno, let it be known that the first order of business was an impeachment conviction of the Governor. This effectively put on hold most legislative work typically accomplished in January. By the end of the month, Blagojevich was convicted, and Governor Pat Quinn had been sworn in.

The mood in the Capitol was one of compromise and togetherness. The stated goals of all the powers that be were election reform, a long overdue capital construction budget, a sound and sensible operating budget plan, and a General Assembly that wouldn't see month after grueling month of fruitless overtime sessions.

As the session unfolded, these hopeful themes were realized, with bipartisanship and compromise carrying the day in the first months of session. Little that was passed from either chamber was the focus of contention. More importantly, the cross-chamber bickering and Democratic Party infighting that has characterized the last few legislative sessions seemed to have totally disappeared.

When May rolled around on the calendar and session drew to a close, this cooperative spirit seemed to carry over onto the bigger issues facing the legislature. The capital construction budget plan received support from both caucuses in both chambers, and was overwhelmingly approved.

The fireworks re-appeared when it came time to decide how to fund that capital plan. While the revenue streams were eventually approved, this was essentially the beginning of the end of the spirit of compromise.

It was at this point which Governor Quinn announced he wouldn't even consider signing this plan until such time as the General Assembly made sure "all of the work is done." The legislature at this point still had to overcome the obstacles of an ethics/campaign reform plan, the creation of a balanced operating budget while the State faced an \$11 billion plus budget hole, and the specter of an income tax increase vote that loomed large.

As the last days of sessions unrolled, numerous budget and revenue proposals were floated, including various income tax increase proposals, and a number of partial and complete budget bills.

The saving grace for the long term care profession in this uncertain time period were restrictions on cuts and payment cycle made at the Federal level. Because of the requirements of the American Recovery and Reinvestment Act, reimbursement rates for long term care, among others, were to be held sacred, or the State faced the loss of billions of dollars in increased Federal funding.

As the gavel came down late in the night on May 31, some form all of the 'big ticket' items the leaders had committed themselves to were passed. The final budget plan was obviously inadequate to fund essential programs for a full 12-month period. And though the General Assembly has left Springfield, talks on the budget continue, and there are plans to bring back rank and file members later to pass a true budget.

## *FY2010 Budget*

While many view the legislative process and the legislature as predominantly a way in which law is created, a major focus of the General Assembly is the creation of the State Budget.

HCCI entered this year with four primary funding goals. Fourth year funding of the MDS, an update in the support rate from 2004 to 2006 cost report levels, full twelve month appropriation levels, and a predictable payment schedule. This amounts to \$90 million (\$36 million GRF) for the fourth installment of the MDS, and an additional \$75 million (\$30 million GRF) to complete the support update to the 2006 cost levels.

As the first year of the 96<sup>th</sup> General Assembly drew to a close, the legislature was faced with a projected budget deficit of approximately \$7 billion. A number of additional revenue streams were looked at in the attempt to close this hole. Fund sweeps, increased sales taxes, small gambling expansions and many others took on small portions of the enormous task. The largest additional revenue source was found in two income tax increase proposals. Neither of these proposals managed to pass muster in both chambers.

For example, HB174, sought to increase the personal income rate tax from the current 3% to 5% and the corporate rate from 4.8% to 5%. Additionally, the proposal would have applied the state sales tax to a number of other services not previously covered. The proposal was expected to raise \$5.6 billion for state coffers. This measure was approved in the Senate, but was not called for a vote in the House. The House took action on a second income tax increase initiative, SB2252. This legislation was Governor Quinn's proposal, which would increase personal income tax rate to 4.5% and the corporate tax rate to 7.2%, and would have generated an additional \$4.5 billion in new revenue. The bill failed to pass in that chamber.

HCCI actively supported the Governor's proposal. In addition, we took the position that increasing taxes was the best option for improving the financial viability of Illinois. Further, we argued that a tax increase would provide the funds to fully fund the MDS and institute an automatic update in the support rate.

Because the Legislature failed to approve a significant increase in new revenue, the final budget sent to the Governor included deep cuts in GRF spending. Saturday evening, the Senate approved several measures previously considered by the House to capture federal stimulus dollars, reduce the Medicaid provider payment cycle, and fund employee contracts.

Early this morning, SB1197, the final appropriations bill, was approved by both Chambers. The bill includes lump sum appropriations for all State agencies at 50% below the Governors introduced FY2010 levels. While cuts may be made throughout state government, it is expected that the funding will be used on a partial-year basis, and the Legislature will approve additional funding to cover projected shortfalls later in the fiscal year.

**At the passage of this budget bill last night, long term care did not receive any new dollars, however, our rate was also held harmless. Additionally, as the fiscal year begins, long term care facilities should see a drastically reduced payment cycle, as well as a predictable payment every month. These major victories were achieved through tireless work at the federal level. The strict requirements of the American Recovery and Reinvestment Act included provisions which called for no reduction of rates, and a 30 day payment cycle for a state to be eligible to receive the increased FMAP dollars.**

Though the legislature has left, the four legislative leaders and the Governor are meeting today, and will continue to meet, until they identify an additional revenue stream. When this is accomplished, it is expected that the General Assembly will reconvene to pass a full budget. We will continue to involve ourselves in this process as these talks go forward, and if additional revenue streams are identified, we will call upon you to help us make the case with your legislators for this vital funding.

## ***HCCI 2009 Substantive Agenda***

The following bills represent the substantive legislation introduced on behalf of HCCI in 2009. The 2008 legislative session was a bleak for everyone in the state in regards to substantive legislative work. The primary cause for this was inclusion of an amendment to almost all legislation introduced which stripped the Governors rule making ability. This became a point of contention between the House and the Senate and created an environment where the legislature passed a record low number of bills.

In stark contrast to last year's session, in which only two of our introduced bills made it through the process to ultimately be signed by the Governor, we enjoyed passage of all but one major issue in 2009.

### ***SB314 – Nursing Home Penalty Reallocation – Sen. Iris Martinez / Rep. Dan Beiser***

This legislation as introduced clarified that the review of the nursing home bed need formula and the inventory of facility based services as required by the Older Adult Services Act is the purview of the Health Facilities Planning Board. While this sort of clarification language is helpful to us as we navigate crowded legislative and regulatory waters, a greater issue arose which required us to retract the original language of this bill. The language as passed from the general Assembly was drafted around the penalty diversion issue addressed in SB321, sponsored by Sen. Dan Kotowski and Rep. Tom Holbrook. The final language in SB314 allows the Director of the Department of Public Health to use penalty monies assessed against facilities licensed under the Nursing Home Care Act to correct those problems which prompted the penalty being levied in the first place.

This issue was introduced last year as SB2506, but ultimately failed due to above mentioned Administrative Rules fiasco. In 2008, this language faced no opposition and was passed unanimously from both chambers. Upon introduction in 2009, many opponents surfaced, including Illinois Citizens for Better Care, the LTC Ombudsman, AARP, and SEIU.

After numerous lengthy negotiations with the opposition, a compromise was struck, and the bill passed both chambers of the General Assembly. It now awaits the Governor's signature.

### ***SB316 – Facility Medicaid Eligibility Notification – Sen. James Clayborne / Rep. Tom Holbrook***

Presently when an individual whose eligibility for Medicaid has not been determined enters into a long term care facility, the facility is reimbursed for care provided to the individual from the date that eligibility is determined. To offset expenses borne by the facility during the application process, facilities are able to receive reimbursement for care prior to approval for 3 months. Because of the lengthy application process, and re-application in cases of denial, this 3 month 'grace period' is often exceeded by months, requiring already financially-strapped facilities to absorb these costs. This legislation mandates that the facility hosting the applicant shall be informed of the determination of the resident's eligibility status.

This legislation has passed both chambers of the General Assembly and is awaiting the signature of the Governor.

***SB326 – Older Adult Services Act Reporting – Sen. William Delgado / Rep. Julie Hamos***  
***HB752 – Older Adult Services Act Reporting – Rep. Feigenholtz / Sen. Delgado***

HB752 and SB326, identical bills, clarify the involvement of the DHFS and DPH in the development of the plan for restructuring the long term services and care delivery system for Illinois' older adults, while retaining the Department on Aging as the lead agency. The language provides clarification that the plan must take into account personal service delivery preferences, but must not jeopardize the health, safety, or level of care of nursing home residents, which is contained in the Act's statement of purpose.

HB752 passed both chambers on a unanimous roll call and now awaits the Governor's signature. Due to the passage of HB752, SB326 was allowed to fall by the wayside.

***SB1905 - Certificate of Need / HFPB Task Force – Sen. Susan Garrett / Rep. Lisa Dugan***

Perhaps one of the most contentious health care provider initiatives run this session, this legislation was the end product of the work of the Health Facilities Planning Reform Task Force. The Task Force was charged with the rewrite of the structure and regulations of the Illinois Health Facilities Planning Board. This legislation redefined the scope of the activities of the board, as well as how the board is structured. The major victories for long term care in this language were an increase in the capital expenditure minimums, and creation of a requirement for separate and distinct rules and procedures for the board to follow in regards to long term care.

This bill was overwhelmingly approved by both chambers, and awaits the signature of the Governor. We will keep you informed as the relevant rules and regulations surrounding the HFPB progress.

***SB2100 – Liability Insurance & Financial Responsibility – Sen. Ira Silverstein***

The past three legislative sessions saw highly aggressive legislation promoted by the Illinois Trial Lawyers Association which would demand mandatory insurance for long term care facilities. In an attempt to present the profession as a good faith negotiator, and not obstructionists to the legislative process, HCCI introduced the language found in SB2100. The intent of this action was to make the Trial Lawyers come to the table on our terms, as well as assuring an end product that is fair and equitable to the long term care profession. The desired effect was reached in this matter, and the Senate Democrats opened talks between the long term care profession and the Illinois Trial Lawyers Association.

No legislation will be forwarded on this issue this session, but future talks are planned on the issue wherein HCCI will be afforded the position of equal negotiators.

***HB415 – Nursing Home Reporting Requirements – Rep. Lou Lang / Sen. Ira Silverstein***

HB415 as originally drafted required the DHFS to report annually to the General Assembly and the Governor the status of nursing home reimbursement. However, as this legislative session unfolded, two issues involving MDS reimbursement rates came to our attention which caused us to have drafted replacement language. One issue addressed in this new language is the fluctuation in rates experienced by many facilities due to the annual rate setting presently used by the Department. Going forward, the Department will establish rates on a quarterly basis, as well as when requested. This will result in rates being more representative of actual care. The second component addressed is establishment of a separate per diem rate for ventilators within the MDS rate. This also creates a realistic approach to paying for ventilators as they are actually used in facilities.

The new language was adopted and the bill has passed both chambers unanimously and awaits the Governor's signature.

### ***HB416 – Payment Predictability – Rep. Lou Lang / Sen. Ira Silverstein***

Nursing homes are taxed a flat rate for all licensed beds in a facility regardless of whether they are occupied or not. This tax is paid to the state on a quarterly basis and is due regardless of the state's payment cycle for services rendered, and facilities that fail to make payments on time are subject to penalties based on the amount of tax owed. While the law does permit the Director of the Department of Healthcare and Family Services to waive or reduce the penalty, this language adds another layer to the process by making length of payment cycle a consideration in determination of that action.

This legislation has passed both chambers of the General Assembly on unanimous roll calls and is awaiting the signature of the Governor.

### ***HB804 – Older Care Workers – Rep. Bob Rita / Sen. Gary Forby***

This bill establishes an annual awards program to recognize older direct care workers who care for other seniors in their homes or in nursing homes. Those eligible for recognition include workers in Older American Act Services, Home Health Services, Community Care Program Services, Nursing Homes, and programs providing housing with services licensed or certified by the State.

This legislation passed both chambers of the General Assembly unanimously and awaits the signature of the Governor.

### ***HB838 – Unlicensed Senior Living Facilities – Rep. Joe Lyons / Sen. William Delgado***

Both Board and Care Homes and facilities in the Comprehensive Care in Residential Settings Demonstration Project are currently required by law to be licensed under the Assisted Living and Shared Housing Act. Cross referencing the prohibitions contained in the Assisted Living and Shared Housing Act into the Act on Aging and the Board and Care Home Licensure Act is needed to eliminate confusion on the part of these facilities and agencies making referrals to them. Failure to comply with these licensure regulations is a violation of the Nursing Home Care Act, and this clarifying language helps to ensure proper enforcement.

This legislation has passed both chambers of the General Assembly and is awaiting the signature of the Governor.

### ***HB1188 – Certificate of Need Banking – Rep. Mike Smith / Sen. David Koehler***

This legislation was a product of discussions of the Nursing Home Conversion Subcommittee of the Older Adult Services Advisory Committee. The bill establishes a pilot program to convert multiple bed rooms in long term care facilities to single resident occupancy under the oversight of the Department of Public Health. A capital rate adjustment and bed buy back were included as incentives for participation. This legislation passed from the House on a unanimous roll call. However, members of the Senate Public Health Committee voiced opposition to the bill on a few fronts. The incentives for participation were questioned, as well as the tie to Certificate of Need requirements in the underlying Act. Because of these lines of questioning, the bill was held in committee.

This bill is, for all intents and purposes, dead for this year. The underlying issue is one we will continue to pursue, alone as a profession and as a participating member in the Older Adult Services process.

## ***HCCI 2009 Opposition Agenda***

While the initiatives introduced on our behalf are vitally important to maintaining a livable legislative and regulatory environment for the long term care profession, they are only half of the substantive picture. Of equal, if not greater importance, is the work we do to defeat or correct the legislation filed which has a negative impact on those we serve. The following bills represent the major opposition initiatives HCCI worked on this year.

### ***SB184 – Prejudgment Interest for Plaintiffs – Sen. William Haine***

This legislation would require that interest be paid on civil damage awards from the time a plaintiff serves cursory notice of a potential claim with reference only to the prejudgment statute. The language as written would not require any justification or explanation of the claimed liability or nature of the injuries within this notice. While this bill represents serious problems for all businesses in Illinois, long term care providers are especially at risk due to our exclusion from the Medical Malpractice Act and our total liability for attorney's fees.

HCCI participated as a member of a business coalition which was formed to fight this language, and due to their lobbying efforts, the bill was shelved while the Bar Association tried to work on an agreement. The issue was not revisited in this session.

### ***SB1838 – Veterans Affairs Homes Exemptions – Sen. Deanna Demuzio HB4237 – Veterans Affairs Homes Exemptions – Rep. Frank Mautino / Sen. Deanna Demuzio***

This legislation as introduced exempts facilities operated under the auspices of the Department of Veterans Affairs from specific rules and regulations of the Nursing Home Care Act and other associated rules and regulations. HCCI opposes this legislation on two main fronts. First, this language removes these facilities from regulatory requirements put in place to ensure resident safety and security. Ease of operation must *always* be of secondary concern to the overall welfare of residents. Secondly, exemption from certain regulations associated with the Nursing Home Care Act, including Federal Life Safety Codes, would preclude the State from capturing Medicaid matching funds, putting the entire burden of operational costs on the State's shoulders.

SB1838 was left in the Senate in favor of HB4237, which carried negotiated language which addressed HCCI's and the other opponent's concerns.

### ***SB1919 – Medication Flushing Prohibition – Senator Susan Garrett / Rep. Karen May***

As originally introduced, this language called for a total prohibition on the flushing of medications by health care providers. While most providers have the wherewithal to abide by this regulation, long term care facilities had no option, and are in fact directed to use the flushing method by the FDA and the DEA. After a number of negotiations, HCCI was able to secure an amendment granting facilities an exemption for the majority of medications we utilize.

The bill as amended was passed from both chambers and awaits the Governor's signature. In spite of this amendment, there will still be facility policy changes necessitated by this legislation. As the issue moves forward through the rulemaking process, HCCI staff will keep you informed of the impact to your facility's operation.

***SB2113 & SB2114 – Employee Costs Pass-Through – Sen. Don Harmon  
HB503 & HB504 – Employee Costs Pass-Through – Rep. Marlow Colvin***

Another bill that has seen introduction in many years past, these two bills represent SEIU's attempts at pass through of employee benefit costs.

While provision of support for employees is important, the language provided does not adequately provide for this while at the same time interjecting the State into what is traditionally an employer – employee relationship. Additionally, this bill would not allow pass through of all costs, rather reimbursement is based off of the Medicaid rate of a facility, meaning a facility with a 50% Medicaid population would have to swallow the cost of provision of these benefits to the remaining 50% completely. A union organization tool, the ultimate intent behind this language is the opening of facility records to inspection by outside sources.

These initiatives were left in their chambers of origin, and slated to be a piece of budget negotiations. In light of the dire fiscal situation the State faces, the issue was not included in the budget.

***HB149 – Nursing Home Licensure & Change of Ownership – Rep. Greg Harris***

The number one HCCI opposition initiative, HB149 was claimed to have been introduced as an attempt to forestall corporate buyouts of large long term care health facility companies in Illinois, with the genesis of the initiative being the 2008 Carlyle Group buyout of HCR - Manorcare.

HCCI opposes this legislation for a number of reasons.

First, the language broadly increases the scope of scrutiny under which providers operate, opening personal and financial records and documents of those involved to even a small extent in the operation and management of a long term care facility, including personal information such as Social Security Numbers. Additionally, the expanded reporting requirements present the potential for extensive delays in both the provision of information on the part of the facility, and in the final determination of licensure on the part of IDPH.

All changes in present regulations and rules are geared towards these two ends, with this bill representing an all encompassing attempt on the part of SEIU to allow for total veto power on sale, transfer, and licensure of all homes in Illinois. This bill is simply an ill concealed effort at unionization of long term care facilities.

After many negotiation sessions, compromise language was reached, but SEIU balked at the eleventh hour, attempting to reinsert the introduced language. Because of this, the legislation died for this legislative session.

***HB957 – Care Setting Re-Screening – Rep. Julie Hamos***

This legislation requires the Department on Aging to determine whether individuals who are in need of long term care may be satisfactorily cared for in their homes. The language as introduced would require that all people who are admitted and remain in a nursing facility for 90 or more days be re-screened at the end of the 90 day period to assess their continuing need for nursing facility care. At the same time, the residents would be informed of all other available options for care that may potentially be available to them.

At HCCI's request this legislation was placed into negotiation, but did not pass from the House. It is dead for this legislative session.

***HB2392 – Rapid Re-Integration – Rep. Esther Golar***

***HB746 – Rapid Re-Integration – Rep. Sara Feigenholtz / Sen. David Koehler***

As originally drafted, this bill called for re-screening of individuals residing in various long term care settings. The intent was to determine if care could be better provided for individuals in a home and community based setting. HCCI approached the sponsors of the language to attempt to negotiate language amenable to the long term care profession. After negotiations, the proponents agreed to our language, and amended the bill accordingly. In spite of this, the legislation failed to meet a deadline and died. However, the negotiated language soon landed on HB746, sponsored by Rep. Sara Feigenholtz.

HB746 was passed from both chambers, and awaits the signature of the Governor.

## ***Going Forward***

This session should certainly be viewed as a victory for the long term care profession in Illinois.

**In a budget year that saw devastating cuts across the board for many, our profession was one of few which saw a line held, and our rate protected. The HCCI Substantive Agenda met with great successes. Each and every item on the HCCI Opposition Agenda was either defeated out of hand, or amended to meet the demands of our profession.**

As we move into our summer's work, there are many, many issues still facing us. First among these is a continued program of education and advocacy on the importance of the continuation of funding for the MDS and the update of the long term care support rate, which is still reimbursed at 2004 costs.

In addition to these budgetary concerns, there are a number of looming substantive issues which we will certainly face in legislative sessions to come.

The SEIU push to expose our facilities to greater unionization efforts, defeated this year in HB149, will undoubtedly come to light next year. Though the Trial Lawyers did not advance a successful effort to impose unrealistic insurance requirements upon LTC facilities, they will assuredly forward this initiative again.

Another concern facing our profession is the greater philosophical debate on the 'rebalancing' of long term care. 2009 saw not only a continued push in this direction, but a tidal wave of new support for the concept in the form of the TAB Report, misdirection from some involved in the Older Adult Services work, and the release of the Lucas Report, which focused heavily on the reduction of long term care beds.

While there is much still facing us, we also accomplished much this year. HCCI staff looks forward to continuing to work with members of IHCA and the Council to further the goals of a profession. We thank all of our members for the work they do every day in facilities. You continue to play an absolutely critical role in the lives of the elderly and frail citizens of this State.

## ***HCCI Staff & Consultants***

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In addition to these individuals, HCCI would like to offer their thanks to all of the dedicated staff members of our two parent associations, the Illinois Health Care Association and the Illinois Council on Long Term Care. Without their expertise and guidance, the work that we do would not be possible. A special "thank you" is extended to the individuals below for all of their hard work and dedication to the HCCI agenda.

Terry Sullivan, Regulatory Coordinator for HCCI and ICLTC Executive Director  
Dave Voepel, Political Coordinator for HCCI and IHCA Executive Director  
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