Home Health

BUSINESS REPORT

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A WEEKLY REPORT ON NEWS, TRENDS & STRATEGIES FOR THE HOME HEALTHCARE EXECUTIVE

HCFA grossly exceeding its charter, say critics

By MATTHEW HAY
***HHBR* Washington Correspondent**

WASHINGTON – The **Health Care Financing Administration** (HCFA; Baltimore) is increasingly bypassing the federal rulemaking process in a range of areas and interpreting its own authority well beyond Congressional intent. That is the view of home care representatives, many healthcare industry observers, and a growing segment of Congress. In the wake of major changes in the Medicare home health benefit, the home care industry is now increasingly seeking relief in federal courts in addition to its legislative efforts in an attempt to rein in the agency.

The scope of HCFA's extraordinary end-run around established rulemaking processes includes the surety bond regulations it implemented last year, which were later thrown out by Congress, and the implementation of major provisions of the interim payment system (IPS) mandated by the Balanced Budget Act of 1997 (BBA). It also includes the way in which HCFA has sought to employ its inherent reasonableness authority, which was significantly expanded by the BBA, as well as the process it has pursued in implementing the competitive bidding demonstration project for durable medical equipment, prosthetics, orthotics, and supplies (see story, page 9).

For better or worse, HCFA's perceived power grab is not confined to the home care industry either. At a House Appropriations Subcommittee on Labor, Health and Human Services, and Education hearing Feb. 10, several subcommittee members told Secretary of **Health and Human Services** (HHS; Washington) Donna Shalala and HCFA Administrator Nancy-Ann Min DeParle, in so many words, that "HCFA is starting to make the IRS look good."

"I think it's a natural consequence to perhaps an overly aggressive anti-fraud compliance effort by HCFA," said Bill Dombi, director of the **National Association for Home Care**'s (NAHC; Washington) Center for Health Care Law (CHCL). The center has several lawsuits against the Medicare program currently underway in areas where it

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Three NAHC lawsuits target Medicare rulemaking process

By MATTHEW HAY
***HHBR* Washington Correspondent**

The **National Association for Home Care**'s (NAHC; Washington) **Center for Health Care Law** (CHCL) has several lawsuits underway that challenge the Medicare program's implementation of the interim payment system (IPS) and other matters that it says could extend beyond the specific issues they address and have a far-reaching impact on the Medicare program's policy making process. NAHC believes that if it can prove the **Health Care Financing Administration** (HCFA; Baltimore) violated established rulemaking process in these cases, challenges could also be brought against the OASIS regulation as it applies to non-Medicare patients and any other regulatory action by HCFA that places an "unreasonable and unnecessary" burden on home care agencies.

Taken together, the suits reveal NAHC's firm belief that

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HHCA files for bankruptcy

By KAREN PIHL-CAREY
***HHBR* Staff Writer**

Home Health Corp. of America (HHCA; King of Prussia, PA) filed for bankruptcy last week, one day after announcing an anticipated 2Q99 loss of between $40 million and $60 million dollars.

The company, which includes 44 locations in nine states, filed voluntary petitions for reorganization with the Delaware district bankruptcy court under Chapter 11. Business will continue as usual while officials develop a plan to reduce debt and strengthen the company's financial position.

The bankruptcy will put about 300 employees – 10% of the total – out of work. Most of the dismissals have already occurred in Florida and Texas. While services to most patients will continue, a total of 28 children in the Philadelphia area will lose their home care services, reported *The Philadelphia Inquirer*.

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INSIDE:

Memphis area loses provider

An *HHBR* Staff Report

Mid-South Home Health (Memphis, TN) closed its doors last week after its lender pulled the financing for payroll.

Not only do the company's 70 Memphis-area employees lose their jobs, but they will most likely lose any pay due to them for days worked since the last week in January. The neighboring **Medshares** (Memphis, TN) has agreed to offer the employees a one-time signing bonus in case it needs more staff to cover the flood of patients expected as a result of the shutdown at Mid-South.

Mid-South is a subsidiary of **Hospital Staffing Services** (HSS; Fort Lauderdale, FL), which has operated under Chapter 11 bankruptcy since last March. At that time, the company reported a loss of $5.1 million for the first nine months of the fiscal year. That was caused, the company said, by Medicare withholding payments in order to recoup its loss from overpaying HSS's New England home care unit in 1993 and 1994. HSS was scheduled to appear at a court hearing on Friday to determine whether it must liquidate or if a Chapter 11 trustee should take over its management.

In December, Mid-South managers told *The Commercial Appeal* that the company was emerging stronger and with more services, despite the bankruptcy filing. "Anytime the word bankruptcy is used in the same sentence with your company, you're going to lose some referral sources," Mid-South Regional Director Annette Scott told the *Appeal*. " ... On the positive side, through the bankruptcy, we were able to restructure a company that was financially struggling. We were given a second chance. People are going to be convinced by our persistence that we're going to be here." The company had developed a reorganization plan that would fully repay creditors over five years.

But on Feb. 12, **Union Planters Bank** (Miami), formerly **Capital Factors**, suddenly pulled its financing that allowed HSS to continue daily operations. The money expected that day was going to pay employees for two weeks of work for the period ending Feb. 5. Instead, Mid-South discharged all patients and laid off all employees last week. ■

IHS looks at options for RoTech

An *HHBR* Staff Report

Integrated Health Services (IHS; Owings Mills, MD) said its board has authorized the company to explore options for its **RoTech** division. IHS says it has seen a sudden drop in demand for its therapy services. Alternatives being considered include an initial public offering for all or part of RoTech or a sale of the division to a financial or strategic purchaser. IHS has confirmed that there have been discussions with financial organizations interested in a leveraged buyout, and these discussions, the company said, are ongoing.

IHS, citing a sudden decline in demand for rehabilitation services and increased expenses from the new Medicare reimbursement system, said it expects to report sharply lower 4Q98 operating earnings, reported *The Wall Street Journal*. The company said that, without including additional costs it is incurring for cutting jobs, it expects to report operating earnings of between 35 cents and 45 cents per share for 4Q98 ended Dec. 31 and of $2.69 to $2.79 per share for FY98. The projection, reported the *Journal*, is sharply lower than a **First Call** consensus estimate of 75 cents per share for 4Q98 and $3.02 per share for FY98.

IHS posted a loss in 4Q97 of $61.9 million, $1.59 per share. In FY97, the company recorded a net loss of $33.5 million, $1.19 per share. IHS said it already has cut 1,000 jobs to counter a slowdown in demand for therapy and expects to eliminate more, the *Journal* reported.

IHS said 4Q98 was also hurt by Medicare-related severance and transition expenses. The company said Medicare charges for the year could total about $15 million. Usage of the company's Symphony rehabilitation services in smaller operations decreased by a greater level than expected in December, while labor costs weren't cut fast enough to match the fall-off. IHS said Medicare's transition to a prospective payment system, which will effect its 1Q99 results, reduced demand for therapy services. Customers of the company's contract rehabilitation division are admit-

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COMPANIES IN THE NEWS

Government to consolidate Columbia suits

The **U.S. Justice Department** (Washington) has filed a motion to consolidate all outstanding whistle-blower cases against **Columbia/HCA Healthcare** (Nashville, TN), reported *The Wall Street Journal*. The move, the paper reports, might edge the government closer to a settlement of its fraud investigation of the company that started almost two years ago. In papers filed with a judicial panel, government officials stated their desire to complete the probe of Columbia, which is considered to be the largest Medicare fraud inquiry ever launched, and said they wanted to do so without unnecessary litigation, reported the *Journal*. The Justice Department is asking for six whistle-blower suits against Columbia to be consolidated and transferred to a single venue, the U.S. District Court in Washington, DC. Several other whistle-blower suits that remain under seal would be included in this consolidation. The suits allege a host of improper practices on the part of Columbia, including Medicare billing practices at some of the home health agencies the company formerly owned. Industry experts, reported the *Journal*, believe Columbia will end up having to pay a massive settlement, maybe as high as $1 billion, to resolve the cases outstanding.

CCSE chooses financial advisor

Community Care Services (CCSE; Mt. Vernon, NY) said last week it has engaged **Pinnacle Partners** (Miami, FL) to act as its exclusive financial advisor to, among other things, explore the company's strategic alternatives to enhance shareholder value. CCSE also said its annual meeting for shareholders has been rescheduled for March 23.

Fox Payne, Byram team up

Fox Payne & Company (Foster City, CA), the manager of a $500 million investment fund focused on investing equity capital in growth-oriented management buyouts, start-ups, and restructurings, and the management team of **Byram Healthcare Centers** announced last week the completion of a growth-oriented investment in privately held Byram, a leader in the medical supplies distribution industry for home healthcare patients. Terms of the investment were not disclosed. Jeremy Jones, former chairman/CEO of **Apria Healthcare Group** (Costa Mesa, CA), has been appointed Byram's chairman, and Raymond Noeker, Apria's former vice president of planning and development, has been appointed Byram's CEO. Frank Zarka, also formerly at Apria, has been named COO for Byram. Joining the former Apria executives to head the Byram team are Lawrence Janes and Peter Phillips, who were Byram's principal shareholders prior to Fox Paine's investment. They will continue as CFO and senior vice president of acquisitions, respectively.

HFP reports increase in FY98 revenues

Healthcare Financial Partners (HFP; Chevy Chase, MD), which provides financing to home healthcare companies, reported FY98 revenues of $57.7 million, a jump of 108% from FY97 revenues of $27.7 million. The company recorded a net income in FY98 of $19.8 million, $1.52 per share, up from a FY97 net income of $8 million, 96 cents per share.

The company's total revenues for 4Q98 were $15.1 million, compared to revenues totaling $9.8 million in 4Q97. HFP reported a net income for the quarter of $5.8 million, 42 cents per share, up from $3 million, 30 cents per share, in 4Q97. In addition, HFP ended FY98 with $437 million in finance receivables, up from $390 million at the end of 3Q98. During the year, the company formed a real estate investment trust, **HealthCare Financial Partners REIT**.

Help At Home reaches record 2Q99 revs

Help At Home (Chicago) said last week it reached record levels of net revenue in 2Q99 ended Dec. 31. Net revenue increased 20% in the quarter, reaching $7 million, compared to revenues of $5.8 million in 2Q98. The company recorded a net income in 2Q99 of $136,000, 7 cents per share, compared to a 2Q98 net loss of $207,000, 11 cents per share. Chairman/CEO Lou Goldstein said the results show the company focused during the quarter on its "strategic plan of streamlining operations, reducing expenses, and emphasizing core business services."

Invacare declares cash dividend

Invacare's (Elyria, OH) board of directors have declared a cash dividend of $.0125 per share on its common shares and $.011364 per share on its Class B common shares payable April 15 to shareholders of record on April 1.

In other news, the company just received 501k clearance for the Invacare Top End Terminator SS suspension wheelchair, which features front suspension casters designed for a smooth ride. Its base price is $2,595.

Mallincrodt terminates rights plan

Mallinckrodt (St. Louis, MO) decided to terminate its rights plan, giving shareholders a redemption payment of 5 cents a share. The company also declared a dividend of 11 cents to reflect the rights redemption. Both are payable March 31 to shareholders of record March 15. The company will recommend to the board to continue paying the regular quarterly dividend of 16.5 cents in future quarters. Facing stockholder criticism of the takeover-defense plan, Mallinckrodt promised last summer to either cancel it or put it to a shareholder vote by the 1999 annual meeting. They decided to terminate it to avoid the "distraction and expense" of a shareholder vote, reported *The Wall Street Journal*. Some stockholders consider the plans "poison pills" used to entrench management, rather than protect their interests.

The company has also restated its results for FY98 and 1Q99 to reflect restated charges for research and development in the 1997 $1.9 billion acquisition of **Nellcor Puritan Bennett**. The **Securities and Exchange Commission** (Washington) last month recommended that the company recalculate and restate the research and development charge. The SEC is concerned that many companies are "managing" earnings to meet analyst expectations and to avoid a drop in stock price, reported *Dow Jones Business News*. For FY98, the company reported a net loss of $2.81 per share. Its restated results are: 4Q98 earnings of 13 cents per share; 3Q98 earnings of 38 cents per share; 2Q98 losses of 7 cents per share; and 1Q98 losses of $4.13 a share. Results for 1Q99 ended Sept. 30 are earnings of 43 cents per share.

McKesson sells 60 systems

McKesson HBOC (San Francisco) sold more than 60 Practice 2000 systems during 1998. The product is the company's family of applications designed for large medical group practices, clinics, and physician organizations.

In other news, more than 70 members of McKesson's senior management group for healthcare information technology and supply management have agreed to purchase about 1.2 million shares of common stock for a total of $76 million based on the closing share price on Feb. 5. Five-year interest-bearing loans will fund their purchases. President/CEO Mark Pulido purchased 150,000 shares, bringing his total holdings to 450,000 shares, and Chairman Charles McCall bought 155,400 shares, increasing his holdings to 1.7 million shares. With the purchases, employees will hold about 20% of the company's outstanding stock. Also, as part of an incentive and retention program, the company has granted a significant number of non-qualified stock options at $73 per share.

MiniMed seeks approval of sensor

MiniMed (Sylmar, CA) is scheduled to go before a **Food and Drug Administration** (Washington) advisory panel to gain approval to sell a sensor that continuously measures glucose in the blood. The system should be less painful for diabetics who now must prick their finger and draw blood several times a day, reported *The New York Times*. Eventually, the company may sell a mechanical pancreas in which a pump would automatically dispense insulin in response to glucose levels detected by the sensor. Minimed sales in FY98 were $138.6 million, compared to FY97 sales of $99.5 million. Net income was $13 million, 92 cents a share, compared to $6.7 million, 49 cents a share, in the previous year. In 4Q98 ended Jan. 1, net income was $4.8 million, 33 cents a share, on revenues of $45.6 million, compared to 4Q97 net income of $2.2 million, 16 cents a share, on revenues of $32.4 million. The 1997 figures include a $1 million, 5 cents a share, merger charge. The company expects to have funding in March to begin construction of its Northridge, CA, headquarters.

PSA holds 3rd annual meeting

Pediatric Services of America (Norcross, GA) has had quite a time getting enough shareholder votes to do anything at its annual meeting. During the Jan. 20 meeting, executives realized that too few votes had been cast to constitute a quorum. They blamed northeastern U.S. ice storms on delaying the delivery of proxy materials to shareholders, reported *The Wall Street Journal*. The company tried again on Feb. 2, but still didn't have enough votes to reappoint directors whose terms expired that day. The company scheduled a third annual meeting on Feb. 19.

Gulf South acquires two distributors

PSS World Medical's (Jacksonville, FL) **Gulf South Medical Supply** subsidiary recently made two strategic acquisitions of privately held nursing home distributors totaling $20 million in additional revenues. The company acquired **National Med Supply** (Dayton, OH) and **Medical Specialized Systems** (Birmingham, AL). Terms of the transaction were not released. Both companies will become part of the Gulf South Medical Supply division, the company said.

The transactions, officials said, will add $20 million to the company's revenue base and 15 sales representatives.

Respironics Y2K compliance to cost $11M

Respironics (Pittsburgh) expects its Year 2000 compliance efforts will cost about $11 million, according to a company report filed with the **Securities and Exchange Commission** (Washington). The company said that "a program management office is in place consisting of full time staff resources from the company and a consulting firm." A preliminary review showed the company will have no major problems relating to the compliance. The majority of the costs are due to the ERP system installations and upgrades. The costs will be capitalized and charged to expense over the estimated life of the software and hardware.

Transworld breaks even in 1Q99

Transworld Healthcare (Clark, NJ) reported a 6% increase in its 1Q99 revenues of $40.1 million, compared with 1Q98 revenues of $37.8 million. The increase is mostly due to the company's growth and strong performance in its United Kingdom home care subsidiary, the company said. Net income for 1Q99 was $4,000, compared to $347,000 1Q99. The company broke even on its earnings per share, compared to a net income of 2 cents per share in 1Q98. The decrease in net income is the result of the company's sale of its domestic nursing operation, **Transworld Home Healthcare**, during 3Q98, as well as higher costs for increased sales efforts. ■

CORPORATE LADDER

• **Help At Home** (Chicago) named COO Joel Davis to the additional position of president, currently a vacant post. In addition to his responsibilities of president, Davis will continue to serve as COO.

• **Kelly Services** (Troy, MI) appointed Thomas Suter director of European operations of **Kelly Scientific Resources** (KSR), Kelly's scientific business unit. In this position, Suter will be responsible for all European KSR operations and for expanding KSR business throughout Europe.

• **South Central Community Health**'s (York, PA) board has appointed its senior management team. Bruce Bartels will serve as president of the new, not-for-profit health system, which was formed by the affiliation of **Gettysburg Health Care Corp**. and **York Health System** last month. Michael O'Conner will serve as senior vice president of finance/CFO.

• **Community Care Services** (CCSE; Mt. Vernon, NY) has named Elia Guarneri CFO. Guarneri has been serving the company as acting CFO since October. He joined CCSE in February 1998.

• **Olsten** (Melville, NY) President/COO Edward Blechschmidt will become the company's new CEO, while retaining his title as president. He will replace Frank Liguori who worked for 28 years in senior management with the company. Olsten Vice Chairman Stuart Olsten will become chairman of the board. The company has also appointed Carlton Schowe to the position of senior vice president and corporate officer. Schowe has worked for **IMI Systems**, an Olsten subsidary, since 1988, most recently as president.

• **Respironics** (Pittsburgh) has appointed James Liken and J. Paul Yokubinas to its board, expanding it to 11 members. Liken is founder and former president of **Liken Home Medical** (Pittsburgh.) Yokubinas is a retired president/CEO of **Healthdyne** (Marietta, GA), a company acquired by Respironics last year. Liken will serve through 2000 and Yokubinas will serve through 1999.

• Cynthia Patton has assumed the position of corporate counsel for **SCAN** (Long Beach, CA), a senior health plan that provides home healthcare.

• **Sunrise Medical** (Carlsbad, CA) has appointed Geoffrey Cooper corporate vice president /CIO in addition to his current job as vice president of information technology at Sunrise's Home Healthcare Group (Longmont, CO).

• Michael Azzara has left his position as president/CEO of The Valley Hospital (Ridgewood, NJ) to head the **Valley Health System**. Audrey Meyers will move from her job as senior vice president/COO and take Azzara's place. Since Valley Health System was founded in 1997, Azzara has overseen both the hospital and health system by helping manage the system's non-hospital components, including **Valley Home & Community Health Care**. ■

WHAT THEY'RE SAYING

• Healthcare provisions in the Balanced Budget Act of 1997 may help Medicare stamp out fraud, but it is also causing healthcare providers to chip away at vital services, said a report in *The Indianapolis Star and News*. The government has argued that under the old system, nursing homes had no incentive to keep track of therapy charges and were billing the government $100 an hour for physical therapy when the average therapist makes $15 an hour. Nursing home administrators don't deny that abuses took place, but the pendulum has swung back too far, they told the *Star*. "It's not just nursing homes, but the whole healthcare spectrum that's just been cut and cut and cut," said Keith Lauter, director of finance for **St. Francis Hospital and Health Centers** (Beech Grove, IN). "After a while, you get to a point where you get what you pay for."

• President Clinton's recent five-year $6.2 billion long term care plan was recently called by an article in the *Chicago Tribune* "the first major government recognition of the substantial strains – economic, social, and emotional – associated with caregiving." If put into effect, 1.2 million older Americans, 250,000 children, and more than 500,000 disabled adults would qualify for the program. ■

IHS

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ting fewer Medicare patients. IHS said it expects its rehabilitation service business to rebound over the next six to 12 months.

IHS acquired RoTech Medical in July 1997 for $915 million. The company said at that time that the merger would create one of the largest post-acute care companies. With the acquisition, IHS added RoTech's home respiratory services, home infusion services, and home medical equipment products to its business lines. At the time of the RoTech acquisition, Erik Wiberg, a consultant with securities firm **UBS Securities** (New York) said the acquisition "will give IHS complete home care agency services. Getting into respiratory therapy and infusion services really fills out their home care offering."

But recently, IHS decided to get out of the home health nursing business. IHS said last fall that it would sell its home health nursing division, and just three weeks ago, the company announced that it will sell the division to **Medshares** (Memphis, TN) for an undisclosed price. Marc Levin, IHS executive vice president, at the time of the announcement, said the company decided to sell "because of the change in the (Medicare) reimbursement system." ■

REGIONAL DIGEST

• **Ascend Health Care** plans to close a Superior, WI, nursing home, partly because home healthcare reduces the need for nursing home beds, company officials said. When **St. Francis Home South** closes, the home's 85 residents and 117 workers will move to **St. Francis Home in the Park**. As many as 21 people may be laid off, and 19 residents with developmental disabilities will have to find other housing, reported the *Duluth News-Tribune* of Duluth, MN.

• **Masonicare** (Wallingford, CN) has acquired **Omni Home Health Services** (Wallingford, CN) for an undisclosed price. As part of the agreement Masonicare and an affiliate of **William W. Backus Hospital** (Norwich, CN) have become partners in **Omni Home Health Services of Eastern Connecticut**. Omni has about 900 employees and seven patient service offices around the state. No layoffs should result from the acquisition, Masonicare said, but there will be some job shifts and the consolidation of corporate headquarters. Since 1997, Masonicare has also added **Community Care Services** (Cheshire, CN) and **East Hartford VNA** to its health system.

• The Medicaid Fraud and Abuse Detection System identified 1,400 suspected cases of fraud by healthcare providers in Texas. About $2.2 million in fraudulent payments were collected by August 31, the end of FY98. Officials with the state **Health and Human Services Commission** say the smart technology system was able to spot suspect payments that other methods would have missed. The system has been particularly useful in cracking down on overbilling by providers, reported *The Wall Street Journal*, such as home healthcare agencies that submit bills for several nurses treating the same patient.

• The **Massachusetts Nurses Association and Certified Nursing Services** (Worcester, MA) have settled a contract negotiation agreement that extends the bargaining period for six months. It also requires the agency to provide information sought by the union and to rescind policies the union charged were unlawful, reported the *Telegram & Gazette* of Worcester, MA. One policy changed the way nurses would get paid, from a per-visit rate to an hourly rate, which was considerably less.

• The **VNA of Rhode Island**, a division of **Lifespan**, will reduce its staff by one-fifth to offset losses caused by changes in reimbursement policies. The layoffs will save about $3 million a year and include the jobs of 82 nurses. The nurses may apply for 30 new jobs that will involve different and possibly fewer hours. Despite the layoffs, the agency expects a $5.1 million operating loss this year. Several agencies in the area laid off dozens of nurses last year, and the **Visiting Nurse Association of Pawtucket-Central Falls** closed its doors. Although the number of patients in managed care health plans has increased by 10% to 15%, managed care plans pay less, causing nursing visits to drop by 25% and home health aide visits by 50%, reported the *Providence Journal-Bulletin*.

• A Kansas City, MO, business started in 1992 by two registered home health nurses has turned out to be just what the home health industry needed, reported *The Kansas City Star*. The nurses opened the medical specialties store, **Restored Images**, so people had a confidential setting to buy personal medical supplies and learn how to use them. "The most glaring thing we saw in home health nursing was that people would have equipment in their homes, and they didn't know what to do with it," said Rebecca Wills, who founded the business with Jody O'Malley.

• **Community Hospitals Indianapolis**, which employs 7,500 people in a network that includes four hospitals, surgery centers, a home healthcare agency, and retail pharmacies, plans to reorganize its units – a move that could affect 500 employees. The reorganization should eliminate duplicated work at the administrative level and reduce costs by 10%, reported *The Indianapolis Star and News*. It is unclear how many workers will be laid off because some will be reassigned to other duties.

• A 96-year-old Brooklyn, NY, woman has filed a lawsuit in the State Supreme Court in Manhattan to keep the government from forcing her into a nursing home. She currently receives 24-hour home care services, covered under Medicaid. The case became a class-action effort when two other disabled New York residents joined it. A State Supreme Court justice granted a temporary restraining order preventing the city and state from discontinuing home healthcare for the three plaintiffs, reported *The New York Times*. The order is the first serious legal challenge of the fiscal assessment law that requires Medicaid patients receiving 24-hour home care to prove they have activities that can not be met in a nursing home, such as caring for a child or going to school.

• Commissioners in Conejos County, CO, are negotiating with Conejos County Hospital to takeover home healthcare from the county government. Conejos is one of two Colorado counties that offers home healthcare. If the hospital administers the service, nurses can do hospital work when home health work is at a minimum, reported *The Pueblo Chieftain*.

• **Providence Home Health and Hospice** (Seattle) has formed an agreement with **Visiting Nurses Services of the Northwest** to swap some services, effective March 31. Providence will assume the hospice business, while Visiting Nurses will take responsibility for all home health patients in King County. Currently, each business offers both services. "The exchange of services allows each organization to focus its staffing and resources to provide the healthcare it is best equipped to provide," said Bob Ogden, Providence administrator. ■

PPM/MSO NEWS

• Nasdaq halted trading in shares of **BMJ Medical Management** (Boca Raton, FL) in order to request additional information from the company. Trading will remain halted until the company provides the information. Its shares last traded at 5/32. The company filed for bankruptcy protection in December and has announced it won't complete its quarterly report on time.

• **Complete Management** (New York) failed to pay interest on its 8% convertible subordinated debentures, saying it has a 30-day grace period before it defaults. The payment was due Feb. 15. The company trades its shares on the over-the-counter bulletin board and is exploring funding alternatives to pay the interest, reported *Dow Jones News Service*.

• **IntegraMed America** (Purchase, NY) has reported a net loss for FY98 of $4.7 million, 94 cents per share, on revenues of about $38.6 million, compared to a net income for FY97 of $374,000, 8 cents per share, on revenues of $20.6 million. The results include restructuring and other charges incurred in 2Q. Revenues for 4Q98 ended Dec. 31 were $10.7 million, compared to $7.2 million the previous year. Net income was $434,000, 8 cents per share, compared to $217,000, 4 cents per share, in 4Q97.

• Under the scrutiny of auditors, **Pediatrix Medical Group** (Fort Lauderdale, FL) watched its shares fall 5.8% to $26.375, then another 75 cents to $25.625, reported *The Wall Street Journal*. When the company warned that it might need to restate its earnings, shares sank another 48%. Auditors asked the company for more information on accounts receivable and questioned why the company capitalized bonuses to its acquisition team, rather than treated them as expenses. In 1998, Pediatrix stock climbed about 40% while the stocks of other PPM companies dropped.

• **Response Oncology** (Memphis, TN) terminated its physician practice management contract with **Knoxville Hematology/Oncology Associates**, taking a $28- $32 million pre-tax charge for write-off costs and accounts receivable. The company expects the write-off of this contract and others will reduce FY99 amortization expenses by $1.4 million, as well as enhance future earnings. Analysts estimate the company will earn 8 cents a share in 4Q98.

• Using hardball tactics, some medical providers in Orange County, CA, are threatening to terminate contracts with health maintenance organizations if reimbursement for patient care isn't increased, reported *The Orange County Register*. Officials of **St. Joseph Health System**, which controls some 550 primary care and specialty doctors who treat 385,000 HMO patients, said that at least two HMOs tried to cut reimbursement rates, then agreed to increases after the system threatened to terminate the contract, the *Register* reported. ■

HHCA

Continued from Page 1

"The major cause of this Chapter 11 really was two factors," President/CEO Bruce Feldman told *HHBR*. "One was the exposure we had to the interim payment system (IPS), which was a lot worse than we expected it to be. But the real problem was the slow payment or the no payment of managed care (business). We were able to dodge one bullet, but not two."

The company said it will no longer take new patients from managed care companies that owe money, such as **Aetna U.S. Healthcare** and **Keystone Health Plan East**.

"We have made a strategical position to exit most managed care business; not all of it, but most of it," Feldman said. "We will take extreme measures to collect the money owed." The company wrote off about $30 million of receivables.

Nasdaq halted trading on Feb. 18, the same day the company filed bankruptcy, in order to request additional information. HHCA stock closed at 25 cents that day.

In addition to IPS and the denial of payments from managed care companies, the company is making retroactive adjustments to Medicare for overpayments made in previous years.

Losses in 1Q99 ended Sept. 30 amounted to $22 million. In November, the company suspended interest payments on its senior credit facility.

HHCA is currently reimbursing Medicare for overpayments under a three- to 12-month plan. A charge of $4.1 million for retroactive cost report adjustments has contributed to the 2Q99 loss estimates. The loss is also comprised of a writedown of goodwill related to a previous acquisition, the amount of which has not been determined, and an aggregate pre-tax operating loss of $3.6 million generated by the company's Medicare cost-reimbursed nursing agencies during the quarter.

With the resignation of **PricewaterhouseCoopers** (Atlanta) as HHCA's independent accountants, the company filed a form 8-K on Feb. 9. It said last week that it would delay the filing of its form 10-Q because the company had not hired a new independent accountant.

A report filed with the **Securities and Exchange Commission** (Washington) this month showed that HHCA had disagreed with Pricewaterhouse about its ability to renegotiate $83 million in long-term debt, reported *The Philadelphia Inquirer*. The company said it was notified in November that it was in default on $4.4 million in debt. In a separate SEC filing, the company said that its board of directors did not recommend or approve the accountants' resignation. Pricewaterhouse told the *Inquirer* that policy forbids it from commenting.

Feldman said that HHCA owes $85 million to its largest creditor, **First Union Corp**. The company has about $85 million in assets and $125 million in liabilities, CFO David Gelman said. The company took on heavy debt to finance recent acquisitions, not anticipating the big cuts in Medicare payments. ■

MANAGED CARE REPORT

• **Cigna** (Philadelphia) has named Terry Kendall president of the company's international employee benefits and life insurance operations. Cigna reported 4Q98 revenues of $5.5 billion, about the same as 4Q97 revenues of $5.5 billion. The company reported a net income of $238 million, $1.14 per share, compared to a net income in 4Q97 of $240 million, $1.09 per share.

• **Blue Cross and Blue Shield of South Carolina** (BCBSSC; Columbia, SC) has introduced a new policy specifically designed to help seniors have an alternative way to pay for long term care. Blue Secure is a tax-qualified plan that offers coverage for nursing home, assisted living, professional home healthcare, adult day care, respite care and community care. The program lets the policyholder choose a daily benefit amount from $40 to $200 a day, the length of time they think they will need the benefit and other features.

• **United Wisconsin Services** (Milwaukee) and its 38% shareholder, **Blue Cross and Blue Shield United of Wisconsin** (BCBSUW; Milwaukee), said they have begun negotiations for the purchase by BCBSUW from United Wisconsin of 2.8 million shares of United Wisconsin common stock to be issued in a privately negotiated transaction. In a related matter, BCBSUW said the BCBSUW and United Wisconsin pension plan is planning to acquire up to 700,000 shares of United Wisconsin common stock on the open market. These transactions are part of the previously disclosed plan for BCBSUW to increase its ownership in United Wisconsin to qualify United Wisconsin's Compcare HMO subsidiary to use the Blue brand on its products.

• **PacifiCare Health Systems** (Santa Ana, CA), recognizing consumer demand for reliable health information, is providing its members free access to in-depth health information via its web sites, *www.pacificare.com* and *www.securehorizons.com*. PacifiCare's future plans call for access at doctor's offices and work sites for both members and non-members. The new program, Taking Charge of Your Health, provides comprehensive information on topics, including medications, diagnosed conditions, medical tests, treatments, self-care options, and advice on when to see a physician.

• **Trigon Healthcare** (Richmond, VA) reported FY98 total revenues of $2 billion, a 7.3% jump from FY97 revenues of $1.9 billion. The company recorded a FY98 net income of $123.6 million, compared to a FY97 net income of $95.1 million, an increase of 30%.

For 4Q98, the company reported revenues of $597.3 million, 15.4% higher than 4Q97 revenues of $517.7 million. The company reported a 4Q98 net income of $48.6 million, $1.13 per share, compared to a 4Q97 net income of $22.5 million, 53 cents per share. ■

TECH UPDATE

• **ProxyMed** (Fort Lauderdale, FL) is broadening its offerings to include Internet-based financial and clinical EDI services. The services will be embedded in a web-based physician office suite of applications for the origination and management of ProxyMed's financial and clinical transactions. The first two applications that will be available as part of the web-based suite will be Laboratory Results Reporting and Pharmacy Refill Authorization. In other news, the company said it expects to beat analysts' 4Q98 earnings estimates and that its revenues in 4Q98 will almost triple those of the same period last year to more than $11 million. ProxyMed is expected to record a 4Q98 loss of 29 cents per share, according to **First Call** estimates. That compares with a net loss of 30 cents per share a year ago. The company also plans to announce an Internet strategy in the next two weeks.

• **MCS** (Pittsburgh), a software and systems provider for the home care industry, has appointed Don DeCorte director of product management. In addition, Frank Marr has been appointed product manager for the company's home infusion products. Andrew Klein has joined MCS as senior sales representative in the Pacific District, based in Las Vegas. Additionally, the company named Towanda Jones and Diane Holohan support analysts.

• **The Visiting Nurse Association of Houston**, the home healthcare division of **Methodist Health Care System** (Houston), will be the first organization to implement **CareCentric Solutions**' (Atlanta) comprehensive integrated clinical/financial IS solution. The solution, unique among home care IS systems, combines modules of CareCentric's point of care clinical information system, the Smart ClipBoard Home Care System, with modules of Infosys' HomeSys, a powerful tool for automating complex, multi-resource scheduling, billing, and accounting. The components are being integrated using Microsoft's ActiveX technology.

• **Fastrack Healthcare Systems** (Plainview, NY) recently expanded its sales force and opened new offices. The company, which sells software packages that help the home care industry track patient data, handle billing, and manage administrative information, opened satellite offices in six cities, including Los Angeles, Chicago, and Boston. The expansion created 20 new jobs, 13 of which are on Long Island. The company also expended its Plainview, NY, headquarters in November to 15,000 square feet from 10,000 square feet.

• **Simione Central Holdings** (Atlanta) has named Jim Hall senior vice president of sales and marketing. Prior to joining Simione, Hall served as senior vice president of sales for **Imnet Systems** (Atlanta). ■

HCFA

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believes HCFA has overstepped its authority (see story, page 1).

"We have pursued a lot of litigation over the years," said Dombi. However, while it is not unusual to have three lawsuits underway at the same time, Dombi said it is unusual to have three simultaneous suits against the Medicare program. "Is this an indication of our dissatisfaction with the way the Medicare program is being administered?" said Dombi. "The answer is yes."

The Center was formed in 1987 because NAHC believed HCFA's method of operation at the time required legal remedies, Dombi explained. "They were not discussing manners and making decisions in an open and public way through rulemaking," said Dombi.

The need for this type of litigation ebbed in the mid-1990s, he said, as HCFA became more open and responsive. "Now it's not that the doors are necessarily closed, it's just that HCFA just doesn't seem to hear anything we say to them, so we found ourselves required to get into litigation again."

HCFA is "increasingly cutting corners," concurred Jim Pyles, a veteran attorney with **Pyles, Power, Sutter & Verville** in Washington, who represents the **Home Health Staffing & Services Association**. But it is not entirely the agency's fault, he added. "The real problem is that Congress has shifted too much responsibility for developing policy to HCFA," Pyles reasoned. "That has never been HCFA's role, and they are not very good at it."

As a result, Pyles said, HCFA is under "tremendous pressure" to implement complex legislative proposals and is being granted discretion by Congress that is "far too broad" to accomplish this. For example, he said, "there is no discernible public policy basis for the interim payment system. It just doesn't exist." But Congress did not spend enough time figuring out what it wanted or how it was to be used, according to Pyles, and instead ceded that role largely to HCFA.

"When you do that, what you wind up with is an arbitrary and inequitable system," said Pyles. "HCFA has proven they are immensely capable of making gross mistakes. Right now we have a home health industry in a total meltdown due to a bill based on inaccurate information from HCFA. It's a disaster."

Likewise, said Pyles, HCFA has been granted "almost blanket discretion" to implement the prospective payment system. "Then [HCFA] turns around and says they don't enough time, which is probably true because they are being asked to do way too much," he added.

While not every regulatory excess by HCFA is being challenged in court, there are several other major HCFA initiatives coming under fire:

• In the wake of major opposition from Congress, including a resolution joined by half the Senate, HCFA announced last spring that it was indefinitely suspending the effective date for the regulations for its surety bond regulations which had been scheduled to go into effect July 31, 1998. In the meantime, the **General Accounting Office** (Washington) is performing an independent analysis of the surety bond requirement. Many observers are skeptical that HCFA will yield to many of the outstanding Congressional and industry concerns.

• The country's Part B medical suppliers are waging an aggressive campaign against HCFA's reimbursement cuts for Category I enteral nutrition formulas, home blood glucose monitors, and five other items under the agency's expanded inherent reasonableness authority granted by the BBA. Under this expanded authority, HCFA can bypass the notice and comment process if the reduction is 15% or less. The agency has responded in some instances by making payment cuts in successive years that never exceed 15% per year. ■

FAMED effort to halt bidding project is moving forward

By MATTHEW HAY
***HHBR* Washington Correspondent**

POLK COUNTY, FL – The **Florida Association of Medical Equipment Dealers** (FAMED) is awaiting a response from a preliminary hearing last week where it asked the court for a temporary injunction to halt implementation of the **Health Care Financing Administration**'s (HCFA; Baltimore) Medicare Part B competitive bidding demonstration project in Polk County, FL.

FAMED President Brian Seeley told *HHBR* that while no injunction was issued at the hearing, the court requested more information from both sides after hearing their arguments and should make a decision later this week. "It's not a win," said Seeley, "but it's certainly a positive development."

FAMED and several Florida companies filed the lawsuit Feb. 4 contending that HCFA established and utilized an Advisory Committee – National Technical Expert Panel – in violation of the Federal Advisory Committee Act (FACA) which requires that all advisory committees be subject to uniform procedural standards including providing advance public notice of meetings.

FAMED maintains it was denied an opportunity to provide advice and was thereby denied the procedural safeguards established by Congress. The Polk County demonstration project is expected to have broad repercussions on the home medical equipment industry. This week's decision will be watched closely. ■

Lawsuits

Continued from Page 1

HCFA is increasingly overstepping its rulemaking authority and bypassing established rulemaking requirements (see story, page 1). "We think the best solution to IPS problems lies with Congress," said NAHC President Val Halamandaris. "However, we also believe that HCFA has gone beyond the powers provided by Congress with these arbitrary regulations."

NAHC's first lawsuit targets HCFA's implementation of IPS mandated by the Balanced Budget Act of 1997. On Jan. 26, 1999, attorneys for NAHC filed a motion for summary judgment seeking a court order invalidating HCFA's IPS regulations as "arbitrary and capricious" interpretations of Congressional intent. If successful, HCFA will be required to modify the limitations on reimbursement established by the BBA.

In its motion, NAHC charged HCFA with failing to fulfill its responsibilities under the Regulatory Flexibility Act (RFA), the Administrative Procedures Act, and Medicare law. Specifically, NAHC said that while Congress intended IPS to slow the growth of the home health benefit, HCFA's regulations actually reduce expenditures from previous levels and severely restrict beneficiary access to home health services. According to NAHC, "HCFA's own analysis indicates that home health agencies will be forced to subsidize the Medicare program by more than $3 billion in 1998 and 1999 as the result of the IPS payment limitations."

The motion for summary judgment is based largely on the claim that HCFA violated the RFA by failing to consider alternative regulatory options before publishing its regulations for IPS. The RFA requires agencies to undertake a comprehensive impact analysis before implementing new regulations and pursue alternative regulatory options that would reduce the burden on small entities such as home health agencies. NAHC argues that HCFA failed to consider several such alternatives including the restriction on inflation updates to both the per-visit limits and the per-beneficiary limits and refused to allow for legitimate exceptions to the per-beneficiary limits.

The government's reply on this lawsuit is due this week, according to CHCL's Bill Dombi, the lead counsel on the lawsuit.

Recoupments also targeted

CHCL is also preparing a national class action lawsuit challenging HCFA's recoupment of overpayments resulting from implementation of the IPS. That claim points to a longstanding provision of Medicare law that allows recoupment of an overpayment to be waived if the provider is without fault in receipt of the overpayment. "That suit hasn't been filed yet," Dombi told *HHBR*. "We are gathering the plaintiff's facts right now." That suit will likely be filed in the U.S. District Court in Washington, DC.

In this lawsuit, NAHC is acting as a representative plaintiff on behalf of individual home health agencies acting as plaintiffs. Among the criteria established by CHCL for consideration as a plaintiff are the following: the agency received late notice of the per-beneficiary limits (The notice should be at least six months into the agency's first fiscal year subject to the limits. NAHC says some home health agencies have yet to receive their limits for their first complete IPS year); the agency can demonstrate it took significant effort to reduce costs by managing both the per-visit cost of services as well as case managing clinical services to patients; and the agency is below its per-visit cost limit.

Homebound requirement also under challenge

On Dec. 18, 1998, CHCL also moved for summary judgment in its lawsuit challenging HCFA's administration of the homebound requirement for the home health benefit. The center said it filed the lawsuit in response to the increasing frequency of homebound coverage denials issued by Medicare intermediaries. The plaintiffs in that lawsuit are Medicare beneficiaries with disabilities who have been or will be denied Medicare home health coverage on the basis that absences from the home disqualify them from meeting Medicare's homebound requirement.

The center argued that HCFA's application and interpretation of the homebound requirement denied Medicare beneficiaries access to healthcare services that they cannot "reasonably or appropriately" receive outside the home and that in the absence of these services the plaintiffs are bedbound. CHCL also argued that HCFA's interpretation of the homebound requirement violates the law in that it leads to the assessment of eligibility after the provision of necessary home health services that are otherwise unavailable.

"The lawsuit itself is going after the timing of the homebound decision," Dombi explained. "We argue that you can't take into consideration the services that would be covered under the program in determining whether the person is homebound before they even get the services. In other words, you can't use post-qualification services to determine a pre-qualification condition.

"Right now, the case is pending cross-motions for summary judgments," Dombi reported. There was a slight delay because the government's counsel became ill and had to be replaced. As a result, the time for HCFA's reply brief was extended. "Hopefully, that will be done soon," said Dombi, "because it was overdue as of Jan. 15." Once that briefing is complete, there will be a hearing before the court. "I am hoping we can have a hearing and open argument on the motions sometime in April," he said. ■

Home Health Business Report company survey form

Home Health Business Report is compiling a company survey of the nation's major home health suppliers for your reference. To help us, please take a moment to fill out this form and fax it back to the number at the bottom of the page.

Directions:
Please answer *all* of the questions below:

Company Name_____

Your Name/Title_____

Phone Number _____

FY98 net income/loss as a percentage of revenues_____

Revenues for FY98 and FY97 _____

Net income/loss for FY98 and FY97 _____

EPS for FY98 and FY97 _____

Fiscal year-end date_____

Percentage of revenues generated by home health_____

Types, and percent of each type, of home health businesses _____
_____

Number of home health offices, co-owned or licensed franchise _____

Thank you for your participation.
Please fax this survey to:

(800) 850-1232 or (404) 814-0759