2021 Legislative Session Report

Iowa Health Care Association
Iowa Center for Assisted Living
Iowa Center for Home Care

The Iowa Legislature adjourned sine die on May 19, wrapping up a historic session for the long-term care (LTC) profession, which included policy improvements to support access to long-term care for Iowans and other positive outcomes for our members, their employees, and the residents they serve. The 2021 legislative session came off the heels of an unprecedented second session to the 88th General Assembly that was interrupted by the COVID-19 outbreak. In March, the 2020 legislative session came to an abrupt halt and was, eventually, divided into two short legislative sessions to mitigate the spread of the illness across Iowa.

The following report summarizes the outcomes for each legislative priority set forth by the Iowa Health Care Association (IHCA), Iowa Center for Assisted Living (ICAL) and Iowa Center for Home Care (ICHC) boards and legislative committee for the 2021 session.

Key Highlights: Major IHCA Accomplishments

FUNDING

- ✓ **Record-breaking $60 million in total state/federal rate funding for skilled nursing facilities (SNF), assisted living (AL) facilities and home health (HH) agencies.**
  - **SNF: $19.0 million** state appropriation for Medicaid rate increases
  - **AL/HH: Estimated $1.57 million** increase for Home- and Community- Based Services
  - **HH: $2.0 million** increase for Low Utilization Payment Adjustment (LUPA) rates
- ✓ **SNF Medicaid rebasing delay** – to accommodate for extraordinary cost fluctuations
- ✓ **85% occupancy penalty reduced to 70% for 2023-25** - worth an estimated $13 million in averted penalties
- ✓ **$800,000 Rebuild Iowa Infrastructure Fund (RIIF) appropriation –** the largest ever from this fund
- ✓ **Medicaid Fiscal Accountability Regulation withdrawn –** posed existential risk to more than $250 million in federal Medicaid funding
- ✓ **Case mix study created** – to avert potentially negative MCO payment rate cadence changes
- ✓ **Telehealth mental health payment parity achieved**
- ✓ **Tax exemption for Paycheck Protection Program (PPP)**
- ✓ **Expanded tax credits for elderly property**

REGULATORY RELIEF

- ✓ **Forced visitation legislation defeated**
- ✓ **Vaccine and vaccination passport ban rule exemptions for long-term care secured**
- ✓ **Invasive nursing facility video camera legislation defeated**
- ✓ **Certificate of Need (CON) elimination legislation defeated**
- ✓ **AHCA TNA training approved by DIA for PHE**

State of the Budget

Following an unconventional 2020 budgeting year that called for adjustments to revenue numbers due to the impact of COVID-19 on Iowa's economy, Iowa's Revenue Estimating Conference (REC) met in March of 2021 to release Fiscal Year (FY) 2021 and FY 2022 budget estimates. The changes to the FY revenue projections were as follows:

- FY 2021: The March estimate of $7.969 billion was increased by about $109 million to $8.078 billion (approx. 1.9% increase).

- FY 2022: The March estimate of $8.265 billion increased by approximately $120 million to $8.385 billion (approx. 3.8% increase).

Skilled Nursing Facilities (SNFs)

Nursing Facility Reimbursement

Per Iowa law, the Legislature is tasked with appropriating funding to ensure Medicaid rates are adjusted as costs rise over time. Nursing facility rates are rebased every other year utilizing Iowa Medicaid calculations that consider inflation, cost, and number of resident days. This results in a change to the per diem rate (daily rate) that each nursing facility receives from Medicaid. Over the last several years, the system has not been adequately funded, creating a significant shortfall in the rates nursing facility providers are receiving from Medicaid.

In 2019, the Iowa Legislature included $23.4 million in its Health and Human Services (HHS) budget, which included approximately $15 million in new appropriations and $8.4 million in Quality Assurance Assessment Fee (QAAF) provider return. Nursing facilities faced a $54.9 million shortfall at the time of the appropriation, leaving $31.5 million remaining to be addressed during the 2020 legislative session.

Due to the statewide COVID-19 pandemic in early 2020, and COVID-19 related expenses and revenue losses, the 2020 Iowa Legislature was unable to appropriate funding to nursing facilities in the HHS budget**.** The FY21 budget was funded at FY20 levels, with exception of a small number of line items that were reduced. IHCA was successful in working with legislative leadership to ensure that nursing facilities were *not* reduced and, in 2021, IHCA aggressively continued efforts to prevent reductions and secure funding for nursing facility providers to deliver the quality health care Iowans deserve.

SOLUTION: In 2021, IHCA asked the Iowa Legislature to appropriate $31.5 million for cost coverage of services provided prior to July 1, 2019, to ensure providers can continue to serve Iowa's most vulnerable residents. This is the remainder of the state share of the 2019 NF Medicaid funding shortfall.

OUTCOME: The Iowa Legislature included **$19.0 million** in its Health and Human Services (HHS) budget for SNF Medicaid funding (Division V, Section 31 of **HF891**). This is the single largest state appropriation for SNF Medicaid funding in the state's history, and the largest increase for any Medicaid provider in 2021.

Nursing Facility Rebase Delay

Achievement of the rebase delay for one cycle was necessary due to extraordinary fluctuations in costs incurred by providers in 2020. Factoring in the varying fiscal years providers use, this would have disproportionately distributed Medicaid funds. 2020 was also a year where unprecedented amounts of federal funds were given to providers to aid in the COVID-19 recovery.

SOLUTION: Due to varying levels of cost exposure from COVID-19 that would create volatile swings in Medicaid rates, IHCA proposed a delay to the next cycle beginning July 1, 2023, to maintain the stability of the profession.

OUTCOME: Per IHCA's request, a rebase delay for once cycle was achieved, and the SNF Medicaid increase will be paid in a flat rate increase.

Because of the delay in rebase, funds will be distributed through an inflationary increase. This means all SNF Medicaid providers will see a percentage (yet to be determined) increase to their Medicaid rates. IHCA estimates indicate this will be around $13-14 per day on average.

IHCA expects the timeline for receipt of these funds to follow previous reimbursement timelines. DHS must submit a State Plan Amendment (SPA), CMS will need to approve the SPA, and the rates will then be given to the Managed Care Organizations (MCOs) likely in early 2022. One factor that is new to this process is that because current cost reports are not being used for this rate setting cycle, it is possible for DHS to submit this SPA more quickly. IHCA will be advocating for a timely submission of this SPA to reduce the number of months where retroactive claim adjustments will need to be made.

Nursing Facility 85% Rule

As per Iowa Administrative Code section 81.6(16), the 85% Occupancy Limitation functions as a reimbursement penalty to reduce provider payments if the average annual occupancy for the provider falls below 85% as reported on the annual cost report. The rule imposes an artificial increase in the census upwards to 85% for any facility that is currently occupied below that number. This spreads non-direct care costs across an artificially inflated patient day count, which reduces their total per patient day Medicaid payments. A common misconception is that empty nursing facility beds in Iowa are reimbursed at 85% of the facility's Medicaid rate. Empty nursing facility beds in Iowa do not receive any Medicaid funding.

In the most recent rebasing cycle, the 85% rule applied to 281 of the 429 nursing facilities when establishing the limits. This rule directly impacted 167 facilities and reduced the annual Medicaid reimbursement by $-10.9 million. The average penalty applied to providers was approximately $-7.56 per Medicaid patient day – and the annual impact averaged $-65,820 per facility.

The COVID-19 Public Health Emergency (PHE) and widespread outbreaks in SNFs resulted in significant reductions in occupancy. Fewer admissions, shortened rehabilitation stays, and deaths contributed to the incredible decline in number of SNF patients. Prior to the PHE, approximately 22,900 patients resided in SNFs. There were approximately 4,000 admissions and discharges per month, and nearly

60% of discharges went home or to their previous living arrangement. At the end of November 2020, the SNF statewide occupancy estimate was approximately 19,400, or an overall decline of -15.2%. It is estimated that when operations are restored to "normal" in late 2021, overall occupancy will have declined -28.8%. IHCA estimated that with these declines, more than 95% of the providers will have average occupancy BELOW 85%. Recovery and growth in overall patients will be slow (2-5 years) and will not likely begin until the majority of the general population has received vaccinations.

SOLUTION: To address this potential crisis, IHCA proposed to reduce the occupancy limitation from 85% to 70% for the next rebasing cycle (proposed for cost reports with years ending in 2022). Data suggests if the 85% rule is applied, the overall impact would exceed $-21.2 million (an increase of 93%) and directly impact 234 providers (an increase of 40%). The average penalty would be approximately $-10.23 per Medicaid patient day with an average annual effect of $-90,984 per facility. Providers would have to consider reducing licensed capacity by nearly -3,411 beds prior to the beginning of their 2022 cost report year. Forcing the accelerated reductions in capacity would de-stabilize operations across the state and could limit access to nursing facility services in many areas.

With this relief, the penalties from occupancy limitations would continue at a similar rate as today. The change from 85% to 70% would only be applied in one rebasing cycle. It was critical for providers to have this knowledge in their operations planning during the recovery, as it adjusts a key planning date for most providers to Dec. 1, 2023, to apply for licensed bed reductions for their 2022 cost report year.

OUTCOME: IHCA legislation to reduce the 85% rule to 70% beginning July 1, 2023, was passed. In the meantime, occupancy penalties will be based on what was used for July 1, 2019, rate setting. This creates a hold harmless for the next two years before a reduction to 70% on July 1, 2023.

Nursing Facility Renovation Funding

The General Assembly has historically appropriated Rebuilding Iowa Infrastructure Funding (RIIF) for renovation of older nursing facilities and those caring for high numbers of Iowans on Medicaid. These facilities typically have limited access to capital and renovation of aging facilities, which is vital to meeting evolving regulatory and quality improvement requirements. Since its inception, this funding has leveraged over $100 million in capital investment in Iowa nursing homes.

SOLUTION: To help rural and high-Medicaid nursing homes remain compliant with state and federal regulations and continue providing quality care to residents, IHCA requested an $800,000 appropriation from the RIIF.

OUTCOME: The Iowa Senate Appropriations Committee put $500,000 in the Transportation, Infrastructure, and Capitals (RIIF) Budget bill (SF600) for facility renovations. The House included $800,000 for the same purposes but elected to include the appropriation in the HHS budget bill (HF891) instead of the House RIIF bill. In the end, the two chambers agreed on a $800,000 appropriation for infrastructure funds to go towards nursing facility improvement projects from the HHS budget.

Medicaid Fiscal Accountability Regulation (MFAR)/Quality Assurance Assessment Fee (QAAF)

The Medicaid Fiscal Accountability Regulation (MFAR) is a proposed rule at the federal level that, if made final, would completely transform Iowa's Quality Assurance Assessment Fee (QAAF) program. This change would have required existing provider tax programs with alternate waiver classifications to modify their programs to create a uniform tax. Programs that would not make this modification would be in jeopardy of losing them. Losing a program of this magnitude in Iowa would leave over $100 million in federal funds on the table and drastically reduce nursing facility provide rates.

SOLUTION: IHCA worked closely with the Iowa Legislature, DHS, and Governor Reynolds to encourage Centers for Medicare & Medicaid Services (CMS) to make only necessary changes to the program by removing waiver classes and modifying the tax rate. That would allow for a program that is compliant with federal requirements and ensure continued federal support.

OUTCOME: CMS announced that the agency would withdraw the MFAR rule intended to overhaul Medicaid supplemental payments. This was a major win for the sector, as the rule could have put as much as $50 billion nationally, and approximately $100 million of federal dollars for Iowa nursing facility providers in jeopardy.

Certificate of Need (CON) - Nursing Facilities

Iowa's Health Facilities Council, the five-panel council that votes to approve or deny applications for expansion or new institutional health care facilities, has historically prevented over-construction of expensive health care facilities (hospitals and nursing facilities) by applying an objective test to each application it reviews. This has helped keep health care cost increases in check by reducing duplication in services across the state. However, each year the legislature is presented with proposals that would weaken Iowa's current Certificate of Need (CON) system. Weakening the requirements for a CON, especially the project cost threshold, would allow new classes of providers to "cherry-pick" patients/residents from higher reimbursement categories, and would tilt the playing field against providers required to seek CON approval.

SOLUTION: IHCA opposes any legislative measures that would weaken or eliminate the CON process for SNFs.

OUTCOME: IHCA defeated two bills proposing the end of CON for SNFs, including one introduced by a committee chair.

Assisted Living (AL) Programs

Assisted Living Medicaid Funding

Iowa's Medicaid-eligible seniors and disabled persons have the option under the Home- and Community- Based Services (HCBS) elderly waiver to receive care outside of a nursing facility. Services can be delivered in the place these individuals call home, be it assisted living, residential care, adult day care services or their house.

The last increase for HCBS occurred in 2016, with a 1% increase in service rates. As a result of these low rates, less than 10% of assisted living units are currently occupied by Medicaid-eligible Iowans receiving services through the HCBS elderly waiver, making it difficult to rebalance long-term care support and services. To contrast, nationally, about 17% of assisted living units are occupied by Medicaid elderly waiver recipients**.** As a result, low-income seniors, and disabled persons on the HCBS elderly waiver, have limited access to assisted living services because the low reimbursement limits the provider's ability to accept elderly waiver tenants. Providing HCBS is very labor intensive, with significant cost increases due to wage competition amongst health care workers. Increased administrative burden due to documentation for these services, in addition to new requirements associated with the Electronic Visit Verification (EVV) system make it more difficult for assisted living providers to opt-in to accepting elderly waiver patients.

SOLUTION: To stimulate elderly waiver utilization in assisted living programs, ICAL requested a $3.1 million increase in specific HCBS elderly waiver service rates. This will help cover true costs of care and promote patients receiving services in least restrictive settings. Additionally, it will move Iowa to a higher percentage of assisted living units utilizing the elderly waiver, and closer to the national average.

OUTCOME: The legislature continued their work from 2020 when it approved ICAL proposed legislation to remove the elderly waiver cap, and in 2021 appropriated $1.57 million to support elderly waiver services for care received outside of a nursing facility, such as in assisted living facilities and home care. This marks the first increase these providers have received for this program in many years.

Certificate of Need (CON) - Assisted Living

ICAL supports continuation of free market opportunities allowing assisted living program construction unfettered by additional state oversight and opposes the establishment of a Certificate of Need (CON) process for assisted living development. Unlike nursing facilities, assisted living programs in Iowa are predominately private market driven. Ninety percent of assisted living residents are private pay, meaning they are unsupported by state and federal waiver programs. Since the assisted living sector exists today as a primarily free market part of the health care continuum, ICAL opposes the establishment of a CON process for assisted living development.

SOLUTION: ICAL asked the legislature to oppose any legislative measures that would create a CON process for assisted living programs.

OUTCOME: No proposals to develop a CON law for assisted living programs were introduced to the legislature this session.

Home Health Agencies

Home Health Agency Funding

Home health care is one of the most efficient and cost-effective health care delivery models that exist in Iowa. Unlike traditional health care settings, home health overhead costs are low, as money is not spent on "brick and mortar." Iowa's demand for home health services continues to grow as many older adults prefer to receive care in their homes for as long as their medical needs allow for it.

Medicaid-eligible seniors in need of nursing facility level of care are given the option to receive services in their home through home health agencies. Although demand for these services is increasing, low Medicaid reimbursement has resulted in underutilization of this cost-effective care option. Iowa providers cannot cover their costs through the current Medicaid reimbursement rates, and therefore, are unable to meet market demands, pushing Medicaid patients to more costly care settings.

Home health Low Utilization Payment Adjustment (LUPA) rates provide a Medicare low utilization payment adjustment. When calculating LUPA rates, CMS sets national per-visit payment rates annually, which are adjusted by the CMS wage index for each of the Metropolitan Statistical Areas (MSA) and rural areas. These rates vary based on the different values calculated for the wage index.

Iowa law provides that home health rates should be updated every two years to reflect the adjusted Medicare LUPA amounts. Budget restraints in past years have resulted in gaps to fully fund home health rates, reducing the amount of money home health providers need to offer services to Medicaid patients. Providers have been forced to cap the number of Medicaid patients they can serve, which has created access issues, especially for individuals in rural Iowa. Home health providers face certain challenges that institutional care providers do not, including scheduling hurdles associated with meeting unique client needs that are often spread out, and the travel costs associated.

SOLUTION: ICHC requested that the state appropriate $3.65 million to increase the home health LUPA rates to 100% (from 85.2%). This funding will ensure providers are able to meet the demands of Iowans seeking home health care and increase access for Medicaid patients throughout the state.

OUTCOME: ICHC achieved a $2.0 million increase for home health LUPA rates. This is the largest increase in LUPA rates in the state's history and is crucial for providing home care to low-income elderly and disabled Iowans.

Elderly Property Tax Credits

Elderly property tax credits provide an important means for providing affordable housing to Iowa's elderly residents and helping Iowans who choose to receive care in their homes to stay at home.

SOLUTION: The Elderly Property Tax Credit Bill expands the existing Homestead Property Tax Credit for Elderly and Disabled to create a homestead adjustment property tax credit to offset increases in property tax levies of homesteads owned by persons who are at least 70 years of age and whose annual household income is not more than 250.0% of federal poverty guidelines published by the U.S. Department of Health and Human Services.

OUTCOME: This legislation will apply to claims filed on or after Jan. 1, 2022, for assessment years beginning on or after Jan. 1, 2021.

All Provider Issues

Legal Liability Immunity Protection

COVID-19 produced an unprecedented environment that healthcare professionals had to navigate to provide critical care for vulnerable Iowans. As a result, care providers faced an extraordinary threat of legal action from aggressive trial attorneys seeking profit by exploiting the pandemic. Time and resources spent defending against such lawsuits would have diverted critical resources from patient care when it is needed most and will jeopardize our ability to provide care.

SOLUTION: In June 2020, the Iowa Legislature passed, and the Governor signed SF 2338 (The COVID-19 Response and Back to Business Limited Liability Act) relating to COVID-19 liability. This legislation specifically addresses health care provider liability. It provides that health care providers shall not be liable for civil damages while providing or arranging health care in support of the state's response to COVID-19 and gives specific situations in which it applies. The bill addresses liability for COVID-19 patients specifically and indicates it applies to a suit for "Injury or death resulting from screening, assessing, diagnosing, caring for or treating individuals with a suspected or confirmed case of COVID-19".

The bill also applies to certain non-COVID-19 related cases. Specifically, it applies to "acts or omissions while providing health care to individuals unrelated to COVID-19 when those acts or omissions support the state's response to COVID-19." The bill thus provides protections to facilities relating to their care of residents who do not contract COVID-19. The bill then specifically delineates certain things that are covered. The most relevant provisions for LTC providers are: "Acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies or other resources attributable to COVID-19 that renders the health care provider unable to provide the level or manner of care to any person that otherwise would have been required in the absence of COVID-19" and "Acts or omissions undertaken by a health care provider relating to use or nonuse of personal protective equipment."

This legislation was a significant step for LTC providers and offers much needed protection.

OUTCOME: IHCA ensured that rock-solid legal liability immunity for providers responding to COVID-19 while complying with federal or state regulations, orders and guidance, remained in place this session. This resulted in an estimated $220 million in savings from frivolous lawsuits in 2021 alone. Crucially, the protections IHCA secured do not sunset, unlike most liability protections in other states.

Medicaid Managed Care

Currently, Iowa has contracts with two Managed Care Organizations (MCOs). These insurance companies are meant to assist with the impact of increased enrollment on the state's budget and create greater predictability of Medicaid costs. Five years post implementation, multiple changes have occurred, yet the need remains for providers to have the capability to access managed care networks and sustain predictability in claims timeliness and accuracy.

Access to the MCO network as well as timely and accurate payment of Medicaid claims by the MCOs are essential to providing long-term care services to Iowans who depend upon the Medicaid system. Oftentimes MCO system errors cause providers to go without timely reimbursement for weeks causing problems for providers operating on such thin margins.

SOLUTION: IHCA, ICAL and ICHC support the following Medicaid managed care reform options, which would allow Medicaid-enrolled providers to be a network provider with the MCOs they choose and create MCO accountability requirements that support prompt and accurate claims payment.

Managed Care Reform Options:

- ***Medicaid Streamlined Processes and Oversight***- MCOs shall process and pay claims according to the following timeframes: 90% of clean claims, individually for each provider group, shall be accurately paid or denied within 14 calendar days; 95% of clean claims, individually for each provider group, shall be accurately paid or denied within 21 calendar days; and 100% of clean claims, individually for each provider group, shall be accurately paid or denied within 30 calendar days. As updates to provider rates become transmitted to the MCOs, they have 30 calendar days from receipt to accurately input the new rate into their systems and reprocess and pay those affected claims to providers.

  MCOs shall provide Medicaid participating providers with the functionality to submit and track all claims, claim disputes, claim reconsiderations, and appeals on the MCO's website to facilitate participation in an open and shared provider record.

- ***Medicaid Credentialing Provisions***- Use of uniform authorization criteria and single credentialing verification organization. Any provider enrolled as an Iowa Medicaid provider can participate as a network provider with all MCO's the provider chooses to contract and credential with.

OUTCOME: Early in the legislative session, IHCA worked with the House and Senate Commerce Chairs to sponsor HSB169/SSB1164, which proposed the above managed care reform options. The bill gained traction in both chambers but proved controversial with the MCOs and DHS. Through discussions with legislative leadership, IHCA was placed in a position to choose between receiving an appropriation for the sectors and moving this bill forward. The association, in consultation with the Legislative and Payment Committee, made the decision to pull the bill from consideration and revisit the issue for the 2022 session.

The IHCA did achieve the creation of a case-mix study to avert MCO efforts to negatively impact payment cadence to long-term care providers. This study, led by the DHS, also included the IHCA and researched the efficacy of moving the rate adjustment cadence from quarterly to annual. IHCA requested this study to avert an attempt by the MCOs to change the rate adjustment cadence this year, which would have likely negatively impacted care providers.

Medical Malpractice

Current Iowa law related to medical malpractice claims establishes $250,000 "soft" caps for non-economic damages, while still allowing plaintiffs to recover punitive and economic damages. These caps, however, are subject to exceptions for particular injuries, scheduled increases, and inflation adjustments, and therefore claims still often result in exorbitant malpractice judgements against facilities.

SOLUTION: IHCA supports legislation that places hard caps that are not subject to exceptions and do not adjust over time on non-economic damages in medical malpractice claims.

OUTCOME: Over the past two years, IHCA and the health care provider community have worked on legislation that would set a hard cap on noneconomic damages in medical malpractice suits. In 2021, HF592/SF557 proposed the cap be set at $1 million. Each year these bills have proven difficult to move in the Republican-controlled House, as a group of Republican attorney legislators continually lock up in opposition to the legislation due to concerns with the concept of a cap in all cases for this type of damage calculation. This year was no exception, and the bill failed to clear the House of Representatives. The topic may be revisited in future sessions if the Iowa House Republicans pick up additional seats. However, if the House flips to Democratic control, the bill would be a nonstarter with Democrats.

Workforce

As Iowa's population continues to age, the need for long-term care professionals has never been greater. Workforce is a critical component to providing long-term care to Iowans. The quality of care provided is intrinsically linked to the quality of the profession's workforce. At the same time, there has never been a more challenging time for recruiting and retaining a skilled workforce. Already low unemployment rates in Iowa, coupled with new and unique challenges related to the COVID-19 pandemic, have further restricted health care providers from filling open positions with adequately trained health care professionals.

Nursing Facility Workforce **-** Prior to the COVID-19 pandemic, nursing facilities faced significant workforce challenges, but as COVID-related conditions worsened in nursing facilities, staff numbers rapidly depleted. The small pool of qualified candidates dwindled even further due to illness, fatigue, and higher paying jobs in an already competitive market.

SOLUTION: IHCA, ICAL and ICHC support public policies that promote workforce development and retention to Iowa's health care field. The Temporary Nursing Assistant (TNA) transition to Certified Nursing Assistant (CNA) is an important solution to help retain highly skilled staff post pandemic.

OUTCOME: The American Health Care Association's (AHCA's) Temporary Nurse Aide (TNA) status was approved by the Iowa Department of Inspections and Appeals (DIA) for the duration of Governor Reynold's proclaimed Public Health Emergency (PHE). Nearly 160,000 individuals registered for AHCA/NCAL's 8- and 16-hour TNA training courses, with more than 120,000 successful completions as of December 2020, and the number continued to grow steadily. The launch of the program was made possible by CMS's 1135 waiver of certain requirements for training and certification of nurse aides to address staffing shortages seen with the COVID-19 pandemic.

As Iowa's COVID-19 rates declined, it became clear that a direct path must be developed for current TNAs working in Iowa nursing facilities to transition to CNAs listed on the federal CNA registry.

IHCA took immediate action and was successful in working with the DIA and Iowa's community colleges to develop a solution that would establish a process for the transition of TNAs to long-term roles as CNAs. The community colleges increased the availability of written and skills testing time slots, expedited the testing process and gave TNAs priority testing status so the transition of 1,500 TNAs to CNA certification could be achieved before the end of the PHE.

Nursing facilities using TNAs were encouraged to immediately begin preparations to ensure that these individuals could be certified as quickly as possible using one of the following options.

1. **Take the challenge test.** Iowa administrative rules allow CNA candidates to become eligible for CNA registry status if the individual can successfully pass the CNA written examination and skills testing competency evaluation by "challenge testing" without taking an approved course. Many individuals provided care for facility residents for months after taking the DIA-approved AHCA TNA course and exam, and gained practical experience that may help pass the exams needed without additional classroom time.
2. **Take the community college CNA course.** The TNA could enroll in a current community college 75-hour CNA course or a previously approved facility CNA training program and complete the written and skills testing.
3. **Become approved to run a CNA class.** A facility could apply to become an approved provider of Academic Platform's Online CNA Curriculum. This process could take up to 90 days to receive approval and still required written and skills testing at a community college.

IHCA developed a number of study tools and resources to help facilities prepare TNAs to complete the two-part competency testing, including: skills checklists, practice tests, study guides and flashcards. Resources also included registration links to all Iowa community colleges offering CNA courses, making

them easier to find and to register and a webinar with tips on scheduling community college testing and using IHCA tools.

Reimbursement

Telehealth Payment Parity for Mental Health Services

Payment inequity for mental health services provided via telehealth created unnecessary obstacles to receiving much needed care.

SOLUTION: IHCA supports payment equity for mental health services provided to a covered person, regardless of whether services were provided in person or via telehealth.

OUTCOME: Approved this session was a new provision that will provide the same reimbursement rate for mental health care services provided to a covered person, regardless of whether the services were provided in person or via telehealth. Coverage will be retroactive to Jan. 1, 2021.

Paycheck Protection Program (PPP) Income Tax Exemption

The speed at which the Paycheck Protection Program (PPP) was implemented made it difficult for providers meet deadlines for associated expense deductions.

SOLUTION: Existing Iowa law provides an income tax exemption and associated expense deduction for forgiven federal PPP loans for tax years (TY) beginning on or after Jan. 1, 2020 (TY 2020). IHCA supported solutions to extend that deduction deadline.

OUTCOME: The deadline was extended to provide the same benefit to taxpayers whose tax year is not the calendar year and who received PPP income in TY 2019.

IHCA Defense

Nursing Facility and Assisted Living Program Visitation Legislation

Throughout the pandemic, nursing facilities and assisted living programs were targets of criticism regarding visitation policies and practices. Facilities took precautionary measures to protect residents and staff from COVID-19 and mitigate risk. However, this meant restricting residents from seeing visitors. Family members and friends were eager to see their loved ones, but federal regulations put in place during the pandemic prevented facilities from allowing visitation under these circumstances. Angry constituents went to local legislators to express their concerns, which resulted in multiple bills that address visitation concerns introduced by high-ranking legislative officials:

- **SCR5-** The president of the Iowa Senate proposed this Senate concurrent resolution that encourages the United States Congress to provide flexibility to states in determining visitation practices in nursing facilities.

- **SF507-** Also proposed by the Iowa Senate President, this bill states that during a public health emergency or disaster, a private pay nursing facility may implement in-person, indoor visitation policies that are less restrictive than the policies applicable to facilities accepting public sources of payment (Medicare/Medicaid).
- **HF190**- The House Health and Human Services Joint Appropriations Subcommittee Chair proposed this bill that prevents visitation restrictions in situations where an individual resides in an assisted living unit and their partner resides in a nursing facility on a shared campus in the event of a pandemic.
- **HF191**- This bill originated in the House and would require the long-term care ombudsmen to investigate and work to resolve complaints relating to resident visitation restrictions in a Public Health Emergency. Additionally, it gives DIA the option to consult with the ombudsmen when making decisions about resident visitation. IHCA was asked to work with the sponsor of this bill to ensure it posed a reasonable solution for providers, residents, and their families.
- **HF571**- This bill aimed to prevent nursing facilities from instituting any policy that limits the ability of a resident to receive visitors designated by the patient or resident, including during a public health emergency.
- **SF502-** The language in this bill aimed to incentivize providers with a nursing home visitation shelter tax credit available against the individual and corporate income taxes.

OUTCOME: IHCA worked with legislative leadership and directors of government agencies to communicate nursing facility policies and practices in relation to state and federal regulations and guidance. As a result, IHCA successfully defeated bills that would have placed providers in a position to choose between complying with state and federal regulations.

Camera Legislation

In recent years, IHCA has had to defend nursing facilities against legislation regarding use of authorized electronic monitoring systems (cameras) in residents' rooms. In 2021, visitation restrictions in facilities due to federal COVID regulations prevented many families from seeing loved ones and observing cares performed. This imposed absence heightened concerns among families and served as the impetus behind several aggressive pieces of legislation that aimed to permit monitoring of daily resident/staff interactions through authorized electronic monitoring in various forms (HF268, SF378).

Throughout session, IHCA conducted meetings with legislators who expressed personal concern and on behalf of constituents who were unable to see loved ones and desired to implement a method of surveilling their resident. IHCA indicated there are multiple issues related to electronic monitoring, including privacy and rights concerns, as cameras impose several significant issues regarding the privacy and rights of residents, their visitors and staff; as well as liability risks that could jeopardize future care access; and provisions that, in practice, would prove extremely difficult to administer and detract from providing direct care to residents.

SOLUTION: IHCA is opposed to legislation that implements electronic monitoring in facilities as it threatens the privacy and rights of long-term care residents and creates liability risks and administrative barriers to providing patient care.

OUTCOME: IHCA was successful in working with legislative leadership in both chambers to prevent bills allowing electronic monitoring devices in nursing facilities. However, the issue is expected to continue to come up in future legislative sessions.

Vaccination Legislation

IHCA saw multiple vaccination-related bills introduced during the 2021 session, primarily due to the ongoing COVID-19 pandemic. Legislation was proposed in each chamber to address issues such as qualifiers and exemptions from immunization, vaccination practices for long-term care residents and employees, proof of vaccination status, and reporting processes. IHCA was active in ongoing conversations with legislators who aggressively promoted these bills and worked with targeted legislators to identify and kill bills that would negatively impact residents, providers and staff.

- **SF555/HF330**- This bill prohibits employers from discriminating against, firing or refusing to hire someone who will not get the COVID-19 vaccine (does not include other vaccines). It allows the employee to sue if violated. The bill prohibits vaccination status from being included on a drivers' license or ID or issued an ID card.
- **HF329**- This bill provides that notwithstanding any other provision to the contrary regarding required immunization, a person who is required to receive an immunization for any purpose, including as a condition of employment, enrollment in any licensed childcare center or elementary or secondary school, or licensure, is exempt from the immunization requirement unless certain conditions are met.
- **HF769-** This bill requires vaccine administrators to report adverse events to Vaccine Adverse Event Reporting System (VAERS), register with IRIS and report administration of vaccines.
- **HF889**- This bill prohibits the mandatory disclosure of whether a person has received a vaccination for COVID-19, disqualifying certain entities from receiving state grants or contracts. Nursing facilities were exempted from this bill.
- **SF296/HF794**- This bill relates to the practice of pharmacy, including the prescription and administration of vaccines and collaborative pharmacy practice.

OUTCOME: IHCA prevented all vaccination bills from passing that would negatively impact nursing facilities and was successful in preserving facilities' rights to ask residents, staff, and visitors of their vaccination status and require Personal Protective Equipment (PPE) and social distancing measures for individuals who are not vaccinated.

Dependent Adult Abuse

To protect the well-being of those residing and working in long-term care, the definition of dependent adult abuse needs to be clear and concise in scope and penalties.

SOLUTION: SF450 is an act relating to the definition of dependent adult abuse. The bill adds the death of a dependent adult that occurs due to certain acts or omissions by a caretaker to the definition of dependent adult abuse for purposes of the dependent adult abuse registry.

OUTCOME: IHCA registered for the SF450, which was signed by the governor on April 30.

Financial Exploitation of Eligible Adults

To protect the well-being of those residing and working in long-term care, the definition of financial exploitation of designated eligible adults needs to be clear and concise in scope and penalties.

SOLUTION: HF839 is an act relating to the financial exploitation of designated eligible adults.

OUTCOME: IHCA registered for HF 839, which was signed by the governor on May 20.