

This issue is part of a series of periodic reports from the National Health Law Program's Washington office, reporting briefly on recent and forthcoming developments in federal policy of interest to NHeLP advocates and friends. We always appreciate your feedback and comments.

Please send them to Deborah Reid at [reid@healthlaw.org](mailto:reid@healthlaw.org). For updates and information on NHeLP publications, go to <http://www.healthlaw.org>

## **SUBJECTS COVERED** CHIP Reauthorization

Bills of Interest

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**CHIP REAUTHORIZATION** On February 4, President Obama signed the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009" (Public Law 111-3) into law.

Previously, the House had passed the bill on January 14 by a vote of 289 – 139, while the Senate approved the legislation by a vote of 66 – 32 on January 29.

The new law will provide health coverage to an additional 4 million uninsured but eligible children and retains CHIP coverage for 7 million more. Moreover, the law reauthorizes the CHIP program until FY 2013 at increased funding levels (an estimated \$32 billion in new spending over 4.5 years); provides grants for specialized outreach initiatives to eligible but uninsured Native American children; provides states with a new option to cover pregnant women; offers grants to entities that conduct outreach to increase enrollment in CHIP for eligible and uninsured children, with priority given to initiatives targeted to children in rural areas or those proposed to address racial and ethnic health disparities and cultural and linguistic barriers; permits states to cover legal immigrant children and pregnant women who have been in the country for less than five years; provides dental coverage for low-income children, and increases money available for interpreters and translations for persons who do not speak or understand English well. The law, unfortunately, applies the citizenship documentation requirement to CHIP for the first time, but does allow states the option of having applicants for CHIP and Medicaid meet the requirement by having their names and Social Security numbers matched by the Social Security Administration. It also provides that people must get Medicaid

or CHIP benefits for a reasonable time while they are trying to acquire documents to prove their citizenship.

**BILLS OF INTEREST** *American Recovery and Reinvestment Act of 2009:*

On January 28, the House approved its version of the economic recovery bill, the “American Recovery and Reinvestment Act (ARRA) of 2009” (H.R. 1) by a vote of 244 –188, without the support of a single House Republican. The \$819 billion package contains several provisions that would assist low-income individuals and the uninsured. ARRA provides state Medicaid programs with the temporary option of covering any of the following uninsured individuals (as well as their uninsured spouses and dependents): those receiving unemployment benefits and those who are no longer eligible to receive them; individuals ineligible for Medicaid, but eligible for food stamps; and individuals in families with gross incomes below 200 percent of the federal poverty level (FPL). No income or resources tests are required for any of these individuals, except for the last group, where states can impose an optional resource test. The federal government would be responsible for the full cost of these Medicaid benefits through December 31, 2010. Second, ARRA includes state fiscal relief in the form of a temporary \$87 billion increase in the federal medical assistance percentage (or FMAP) to state Medicaid programs that would apply from October 1, 2008 through December 31, 2010. States that would otherwise experience declines in their FMAPs under the usual formula would be held harmless. Also, all states would receive at least a 4.9 percent increase in their FMAPs, while states with significant unemployment rates would receive a proportionally higher increase. The Senate is currently considering its version of the recovery package (S.1), but it is expected to differ from the House version and require the two chambers reconcile their differences.

*Possible action:*

Those wishing to do so could contact their elected officials in the House and Senate respectively, to express their views on those provisions in H.R.1 that improve the health of low-income and uninsured individuals (such as temporary increases in FMAP to the states).

**FOCUS ON WOMEN'S HEALTH**

The new administration has taken two steps forward and one back on issues impacting the health status of women: *Rescinding “Global Gag” Rule:* President Obama rescinded the “Global Gag” Rule (the Mexico City Policy) on January 23. This rule denied U.S. international family planning assistance to international non-governmental organizations that use their own funds to provide advice, counseling, referral to or information about safe abortions in their countries. In his directive, the President stated, “by restoring funding to the U.N. Population Fund, the U.S. will be joining 180 other donor nations working collaboratively to reduce poverty, improve the health of women and children, prevent HIV/AIDS and provide family planning assistance to women in 154 countries.”

*Statement on the 36th Anniversary of Roe v. Wade:*

On January 22, the President issued a statement that recognized the 36th anniversary of the landmark Supreme Court decision, *Roe v. Wade*. He acknowledged the continued importance of protecting women's health and reproductive freedom, as well as individual privacy by restricting governmental intrusion, while reducing unintended pregnancies.

*Medicaid Family Planning Option in the ARRA:*

President Obama missed an opportunity to provide low-income women with the same opportunity for access to family planning services as more affluent women currently experience, when he requested that his colleagues in the House remove a provision from the American Recovery and Reinvestment Act of 2009 that would have given states the option of amending their state Medicaid plans to provide family planning services and supplies to low-income women who are otherwise ineligible for the program. Advocates remain hopeful that the need for expanded family planning services and supplies will be addressed in future legislation.

**PRESIDENTIAL DIRECTIVES** *August 17 CHIP Directives Rescinded:*

On February 4, the President issued a directive to the incoming Secretary of HHS to rescind the August 17, 2007 Centers for Medicare & Medicaid Services (CMS) ("crowd-out") memorandum that restricted a state's ability to expand the CHIP program by imposing burdensome requirements on any effort to do so. (See the November 2007, May 2008, and August 2008 issues of the *Capital Communique* for details). President Obama noted that the CMS August 17, 2007 and May 7, 2008 follow-up memoranda had limited coverage under several proposed state plans that would have provided health care to a significant number of uninsured children. *Freedom of Information Act:*

On January 21, President Obama issued a memorandum that directs all members of his administration to operate under principles of openness and transparency based on the Freedom of Information Act. He further directed the creation of an open government directive and guidelines that will provide additional details and reflect these ideals.

*Regulatory Review:*

On January 20, Rahm Emanuel, Assistant to the President and Chief of Staff, issued a memorandum to the heads of executive departments and agencies that prevents proposed or final regulations from being sent to the Office of the Federal Register for publication, unless they have been approved by a department or agency head that was appointed by President Obama. Similarly, all proposed or final regulations that have not been published in the *Federal Register* must be approved by an Obama appointed or designated department or agency head. The directive also indicates that executive department and agency heads can consider extending for 60 days the effective date of regulations that have been published in the *Federal Register*, but not yet taken effect.

However, President Obama's new directive would not apply to the HHS "conscience clause" regulation, since the Centers for Medicare & Medicaid (CMS) issued the regulation's final rule on December 19, 2008, with an effective date of January 20, 2009. This regulation, which allows health care providers to refuse to supply, give accurate information about, or refer patients for any procedures or services they oppose on the basis of personal beliefs, will negatively impact the quality and scope of health care that individuals receive for as long as it remain in effect.

**STATUS OF PRESIDENTIAL APPOINTEES**

On February 3, former Senator Majority Leader Tom Daschle withdrew from consideration for appointment as Secretary of the Department of Health and Human Services. On February 2, the Senate confirmed Eric Holder, Jr. as the next Attorney General of the Department of Justice by a vote of 75 - 21. He was sworn-in the next day.

### **SENATE UPDATE**

On January 27, Kirsten Gillibrand became New York's junior Democratic senator, to complete the term of former Senator Hillary Rodham Clinton, who has become Secretary of State. New York Governor David Paterson appointed Senator Gillibrand, who will have to defend her seat in a 2010 special election to complete the remaining two years of former Senator Clinton's term.

Similarly, on January 15, Roland Burris was sworn-in as Illinois' junior Democratic senator, to fill the seat of former Senator Barack Obama. Embattled Illinois ex-Governor Rod R. Blagojevich appointed Senator Burris to the position. The Minnesota senatorial race between incumbent Senator Norm Coleman (R-MN) and the Democratic candidate Al Franken remains undecided, with the Minnesota courts hearing a challenge by Coleman to Franken's current narrow lead in the vote count.

### **RESOURCES**

The National Health Law Program recently released a new study entitled, "Fact Sheet: Developments Affecting Medicaid Cases Filed under 42 U.S.C. §1983." The analysis offers useful information and legal strategies for advocates representing Medicaid recipients and applicants who encounter difficulties when state Medicaid programs do not comply with mandatory requirements of the federal Medicaid Act. The publication can be found on: [www.healthlaw.org](http://www.healthlaw.org)

The Kaiser Family Foundation issued an updated report, "Challenges of Providing Health Coverage for Children and Parents in A Recession: A 50 State Update of Eligibility Rules, Enrollment and Renewal Procedures, and Cost-sharing Practices in Medicaid and SCHIP in 2009." For further information, go to: <http://www.kff.org/medicaid/upload/7855.pdf>

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To subscribe to the Capital Communique, please e-mail Patti Riippa at [riippa@healthlaw.org](mailto:riippa@healthlaw.org) .