

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. For updates and information on NHeLP publications, go to <http://www.healthlaw.org>.

SUBJECTS COVERED

F.Y. 2009 Budget
Bills of Interest
Medicaid Moratorium
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F.Y. 2009 BUDGET

On June 5, the House voted to approve the F.Y. 2009 budget resolution (S. Con. Res. 70) by a vote of 214-210. The budget resolution provides guidelines for the upcoming fiscal year's tax and spending bills. Of perhaps particular note is the fact that the budget creates a reserve fund of \$50M to be used for reauthorization of the State Children's Health Insurance Program (SCHIP), to cover fiscal years 2008 through 2013.

BILLS OF INTEREST

Medicaid Moratorium

The House of Representatives on June 19 passed legislation that would impose a moratorium until April 2009 on six of seven Medicaid regulations issued by the Centers for Medicare &

Medicaid Services (CMS) in 2007 that, if allowed to take effect, would result in less federal spending on Medicaid services and providers. The CMS regulations would have limited or prevented Medicaid reimbursements for public and teaching hospitals; restricted the scope of allowable Medicaid coverage for school-based administrative and transportation costs, and services related to rehabilitation and case management; and limited how states can structure the state share of Medicaid expenses. The House version of the moratorium, which is contained in the Supplemental Appropriations Act of 2008 (H.R. 2642), does not cover a seventh regulation relating to hospital outpatient services or the CMS guidance of August 17, 2007 (restricting the enrollment process in SCHIP), both of which were included in the Senate's version of the moratoria. The Senate has indicated that it is willing to accept the House bill, which was the product of negotiations between the House leadership and the administration, and may attempt to act on it by June 27.

Possible Action: Those wishing to do so could inform their Senators of the need to address hospital outpatient services and the April 17 CMS SCHIP directive in as they consider the supplemental appropriations bill passed by the House.

Medicare Physician Fee Fix

On June 6, Senator Max Baucus (D-MT), Chairperson of the Senate Finance Committee, introduced the "Medicare Improvements for Patients and Providers Act of 2008" (S. 3101). Senators Jeff Bingaman (D-NM), John Rockefeller (D-WV), Gordon Smith (R-OR), and Olympia Snowe (R-ME) co-sponsored the bill.

The legislation is designed to prevent an upcoming cut in Medicare payments to physicians for 18 months, and replace it with a 1.1 percent payment increase for physicians in 2009. Originally, CMS authorized the reduction in Medicare payments for physicians in a November 2007 final rule that impacts the 2008 Medicare Physician Fee Schedule Database, as of July 1, 2008.

S. 3101 would also: eliminate co-payment requirements for Medicare outpatient mental health services; provide an incentive payment program for primary care services in physician scarcity areas; eliminate application barriers to enrollment in the Medicare Savings Program and Low-Income Subsidy Program; eliminate Medicare Part D late enrollment penalties for Low-Income Subsidy eligible individuals selecting a Medicare Advantage or Part D plan that covers prescription drugs; require the Secretary of the Department of Health and Human Services to evaluate data collection approaches on health care disparities based on race, ethnicity, and gender (but not primary language); link Medicare reimbursement to the use of electronic prescribing systems; extend the Qualifying Individual (QI) Program from June 2008 until December 2009; and establish incentives for electronic prescribing for the Medicare Part D program.

On June 11, Senator Charles Grassley (R-IA), Ranking Member of the Senate Finance

Committee also introduced a bill addressing Medicare physician payments, the “Preserving Access to Medicare Act of 2008” (S. 3118). Like Senator Baucus’ bill, the legislation delays the Medicare physician pay cut for 18 months and provides a 1.1 percent increase for physicians in 2009, restricts abusive marketing practices of Medicare Advantage insurance plans, and provides incentives for electronic prescribing. The Grassley bill, however, does not expand eligibility assistance for low-income Medicare beneficiaries, or require the Secretary to evaluate data collection approaches to addressing health care disparities based on race, ethnicity, and gender. However, S. 3118 does provide certain improvements in Medicare reimbursement for low volume rural hospitals, clarifies Medicare payment policies for clinical laboratory tests in critical care hospitals, and gives the Secretary the authority to provide grants to increase outreach to encourage Medicaid enrollment.

On June 20, Representative Charles Rangel (D-NY), Chairperson of the House Ways and Means Committee, introduced the House bill (H.R. 6331) addressing the physician fee fix and other Medicare matters. Four days later, the House then voted to approve the legislation by a veto-proof margin of 355. The provisions of H.R. 6331 largely reflect those in Senator Baucus’ bill (S. 3101).

Health Information Technology

On June 24, Representatives John Dingell (D-MI), Chairman of the House Committee on Energy and Commerce, and Joe Barton (R-TX), Ranking Member of the Committee, introduced their health information technology bill, the “Protecting Records, Optimizing Treatment, and Easing Communication through Healthcare Technology Act of 2008 (PRO(TECH)T Act of 2008). The updated bill incorporates comments from stakeholders and members of Congress who responded to the release of the draft legislation in May (see Capital Communique, May 30, 2008). Provisions in the PRO(TECH)T Act require eligible health care providers who have received grants to purchase health information technology to provide notice to individuals in the event of a breach of their identifiable health information; strengthen the enforcement of privacy requirements in the Health Insurance Portability and Accountability Act (HIPAA) by explaining that criminal penalties for disclosing protected health information can be applied to individuals as well as covered entities as defined in HIPAA; and requires health providers to obtain patients’ consent to use or disclose their protected health information for health related activities, such as manually or electronically sending the information to others for quality review purposes.

LITIGATION UPDATE

A proposed settlement agreement in *Situ v. Leavitt*, N.D. Cal., No. 3:06-cv-02841, filed in

federal district court on June 19, will address the plight of 6.2 million low-income Part D beneficiaries, both the elderly and individuals with disabilities, who were either overcharged for prescription drugs or experienced pharmacy refusals due to delays in the process of applying for Part D and the Low-Income Subsidy available to people eligible for both Medicare and Medicaid ("dual eligibles").

As part of the settlement, CMS agreed to speed up the enrollment process for new dual eligibles by processing their files within one business day of receipt from the states. The agency will also require plans and CMS regional offices to provide additional assistance to beneficiaries whose names are inadvertently missing from pharmacy or plan computer systems. Also, new protocols will be used to shift the burden of proof away from beneficiaries to health care providers when eligibility is in question. Finally, CMS will educate pharmacy organizations about new policies intended to increase protections for dual eligibles who are not automatically enrolled in a plan and, therefore, are unable to obtain medications.

The National Senior Citizens Law Center, the Center for Medicare Advocacy, and other advocates represented the interests of the plaintiffs. It is anticipated that the federal district court will approve the settlement agreement.

RESOURCES

The National Health Law Program (NHeLP) recently released two new publications in conjunction with hosting a language access conference, the "Policy Briefing: Addressing Language Barriers That Impact Health Care for Millions." The reports, entitled, *Serving Patients with Limited English Proficiency: Results of a Community Health Center Survey* and *Language Access: Understanding the Barriers and Challenges in Primary Care Settings: Perspectives from the Field*, address the characteristics of and the steps being taken to serve limited English proficient patients in the nation's community health centers and clinics. They can be found at: <http://www.healthlaw.org/library/folder.198370>

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Trust for America's Health (TFAH) has published a study entitled, *Healthy Women, Healthy Babies* that attributed the lack of gains in infant health to worsening health conditions of pregnant women, due to hypertension, diabetes, and obesity, which lead to significant infant mortality rates of low-income, urban, African American newborns. Among other recommendations, the report supported allowing state Medicaid programs to cover women without a waiver and permitting benefits for women for two years after giving birth, as well as expanding programs that provide primary care to

women of childbearing age (e.g., Title X Family Planning Program, community health centers, and the Healthy Start Infant Mortality Reduction Program). The TFAH study was released in conjunction with the Annie E. Casey Foundation's 2008 Kids Count report. For further details, see:

<http://healthyamericans.org/reports/files/BirthOutcomesShort0608.pdf>

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