

This is one 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 Mara Youdelman at youdelman@healthlaw.org.

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

SUBJECTS COVERED

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- Medicare Prescription Drugs/Low-Income Beneficiaries
- Judicial Nominations
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THE BUDGET AND MEDICAID

Two hearings are being planned to set the stage for legislation making changes in Medicaid that could cut Medicaid expenditures and services. On June 15, the Senate Finance Committee will hold a hearing on options for changing Medicaid. On June 28 and 29, the House Energy and Commerce Subcommittee on Oversight and Investigations will have a hearing to examine "fraud and abuse" in Medicaid.

As part of the FY 2006 budget compromise with the Congress, the Bush administration is establishing a Medicaid Commission to re-examine the program. On May 24, the Department of Health and Human Services (HHS) published the commission's charter to "provide high-quality health care to its [Medicaid's] beneficiaries in a financially sustainable way." (At <http://www.cms.hhs.gov/faca/mc/default.asp>

.) The Commission will consider the future of Medicaid under three budget "scenarios": the "current baseline"; a scenario with a lower rate of growth; and a scenario that may increase spending for coverage. It will submit two reports to the Secretary and the Congress: (1) by

September 1, 2005, recommendations to make \$10 billion in Medicaid cuts over five years [1] while at the same time make progress toward meaningful longer-term program changes to better serve beneficiaries [2]; and (2) by December 31, 2006, [3] longer-term recommendations on the future of the Medicaid program that ensures the long-term sustainability of the program.[4]

Under the charter, HHS Secretary Michael Leavitt is to appoint to the Commission 15 voting members, up to 15 non-voting advisors and eight non-voting current members of the Senate and House of Representatives.

Leavitt envisioned that Democratic and Republican Congressional leaders would each select four non-voting members. Congressional Democrats, however, declined to participate. Senate Minority Leader Harry Reid (D-NV) and House Minority Leader Nancy Pelosi (D-CA) objected to the non-voting status of the Congressional members, and opined that [5] we should not make cuts affecting the most vulnerable Americans in order to finance more tax cuts for the wealthy.[6]

On June 1, the National Governors Association (NGA) announced that it too would not participate, noting that its Medicaid Workgroup had already developed proposals that they would promote in the Congress and that their efforts would be duplicated on the Commission.

Meanwhile, Congress is developing its own proposals. The budget resolution directed the House Energy and Commerce Committee and Senate Finance Committee to find \$10 billion in cuts in programs under the committees' jurisdiction. Although the focus has thus far been on Medicaid, other programs within the committees' purview could also be changed to achieve the \$10 billion in cuts. Nonetheless, Rep. Nathan Deal (R-GA), Chairman of the House Energy and Commerce Health Subcommittee, said that his subcommittee's Medicaid bill would inject more [7] personal responsibility[8] into Medicaid by, for example, imposing more co-payments, discouraging the use of emergency rooms, and tightening transfer-of-assets rules for becoming eligible for nursing home care. Rep. Deal did not address recent studies showing that Medicaid recipients on average already pay a high and increasing percentage of their income for health care.

JUDICIAL NOMINATIONS

On June 7, the U.S. Senate voted 65 to 32 to stop debate and proceed to a vote on the nomination of Janice Rogers Brown to the U. S. Court of Appeals for the District of Columbia. The next day, Brown was confirmed for that post by a vote of 67-32.

On June 9, the Senate confirmed William H. Pryor, Jr., for the 11th Circuit Court of Appeals, on a 53-45 vote, and Richard A Griffin (95-0) and David W. McKeague (96-0), both for the 6th Circuit. Earlier, the Senate confirmed Priscilla Owen as a judge for the U.S. Circuit Court of Appeals for the 5th Circuit on a party-line 55-43 vote.

This spate of Senate activity followed a bipartisan agreement among 14 senators seeking to avoid a confrontation that threatened to change the Senate's operating rules by eliminating use of the filibuster, at least for judicial nominations. (See the May 2005 Capital Communique.) Because there are 55 Republicans, 44 Democrats and one Independent in the Senate, by voting as a bloc, the 14 lawmakers could have prevented the Democrats from filibustering and the Republicans from altering Senate rules. The compromise guaranteed a vote on the nominations of Owen, Brown, and Pryor, but not on those of William Myers III and Henry Saad. The agreement also stated that filibusters would be used in the future only in "extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist." While "extraordinary circumstances" is not defined, some senators said they wanted to preserve the option to filibuster any future nominees to the U.S. Supreme Court.

For a table showing the status of judicial nominations, go to <http://judiciary.senate.gov/nominations.cfm>

MEDICARE DRUG COVERAGE

The U. S. Department of Health and Human Services and the Social Security Administration have started mailing applications to low-income beneficiaries for the low-income subsidy that will help them with their premiums, deductibles and copayments under the new Medicare Part D drug benefit, which becomes effective on January 1, 2006. An estimated 14 to 15 million beneficiaries may be eligible for assistance. About six million of those are eligible for both Medicare and Medicaid (dual eligibles) and will be automatically enrolled in the new drug benefit. Part D benefits will be provided by private plans, which can start marketing to beneficiaries on October 1 and enrolling them November 15, 2005.

Advocates and others are concerned that some Medicaid beneficiaries may be confused by the switch from Medicaid to Medicare and may find themselves unable to navigate the new system. Apparently sharing these concerns, Senator Jay Rockefeller (D-WVA) and Representative Tom Allen (D-ME) have introduced legislation (S. 566 and H. R. 1144) to continue Medicaid coverage for dual eligibles until June 30, 2006.

You can find a schedule and other materials on the drug benefit at <http://www.cms.hhs.gov/medicarereform/lir.asp> . HHS has posted a strategy for transitioning dual eligibles at www.cms.hhs.gov/medicarereform/strategyforduals.pdf

POSSIBLE ACTION: Those wishing to do so could urge their members of Congress to cosponsor and otherwise support the Rockefeller or Allen bills.

CONSENT DECREE BILLS

The House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property will hold a hearing on H. R. 1229 (Blunt, R-MO), the Federal Consent Decree Fairness Act on June 21, a bill that would impact the use consent decrees to insure state and local compliance with federal law. The subcommittee chair is Representative Lamar Smith (R-TX); the ranking minority member is Representative Howard Berman (D-CA).

In March, Senator Lamar Alexander (R-TN) introduced S. 489 and Rep. Roy Blunt introduced H. R. 1229, identical bills except that S. 489 would apply to a broader range of cases than would H.R. 1229.

Consent decrees are voluntary agreements between the parties to a lawsuit to resolve the dispute. Once the agreement is reached, it is presented to the judge, who usually holds a hearing to determine if the agreement is fair to the parties and the public. If it is, the agreement is signed by the judge and becomes an enforceable order of the court.

Both bills would authorize state and local governments and officials to modify or vacate a consent decree either (1) four years after the consent decree is entered into, (2) upon expiration of the term of office of the highest elected state official, or (3) upon expiration of the term of the highest elected local official (if the state is not also a party). The bills would require the party that filed the suit to prove that the decree is still needed and would afford the plaintiff only 90 days to do so.

Supporters of the legislation argue that consent decrees stay in place far longer than necessary and unduly tie the hands of governments, especially newly-elected officials. Opponents maintain that consent decrees are a relative speedy and efficient dispute resolution mechanism that is less expensive and time-consuming than litigation and that these bills would render such decrees next to useless in complicated cases.

Both bills have gained some cosponsors since they were introduced. Currently, S. 489 has 24 cosponsors and H.R. 1229 has 23. The cosponsors are listed at www.thomas.loc.gov . Enter the bill number, click on "Bill Summary & Status," then click on "Cosponsors."

POSSIBLE ACTION: Those wishing to do so could urge members of Congress not to cosponsor or otherwise support these bills.

APPROPRIATIONS BILLS

June and July are "appropriations season" in the U. S. Congress, as the Appropriations Committees of both houses write and send to the House and Senate, bills to fund the government for the coming fiscal year, which begins on October 1, 2005. In past years, appropriations bills have become vehicles for legislative riders on issues such as unintended pregnancies, and some riders are routinely continued year after year.

OTHER BILLS OF NOTE

* Medicaid and SCHIP Enrollment -- Senators Bill Frist (R-TN) and Jeff Bingaman (D-NM) have introduced S. 1049, a bill to provide \$100 million in 2006 and 2007 to states, schools and organizations to help enroll children in Medicaid and SCHIP. The bill gives priority to areas with high rates of eligible but unenrolled children, minority and "health disparity" populations.

POSSIBLE ACTION: Those wishing to do so could urge members of Congress to cosponsor or otherwise support the bills.

* Patient Navigator -- Companion bills to facilitate access to health care services by underserved people have been approved by House and Senate committees. The Patient Navigator, Outreach and Chronic Disease Prevention Act (H.R. 1812), authored by Representatives Menendez (D-NJ) and Pryce (R-OH), would provide a five-year, \$25 million demonstration program to evaluate the use of trained "patient navigators" to help people with or at risk of chronic diseases, gain access to health care. Funds could also be used to coordinate services, conduct outreach to the uninsured and medically underserved populations and expand the use of ombudsman programs to improve health care outcomes. The Senate bill is S. 898, introduced by Senator Kay Bailey Hutchison (R-TX) and was reported from the Committee on Health, Education, Labor and Pensions on May 25.

POSSIBLE ACTION: Those wishing to do so could urge members of Congress to cosponsor or otherwise support the bill.

FEDERAL FACTOID

Three million children become uninsured every year when their parents lose employer-based insurance. Of the three million, over 2 million are not able to replace the lost insurance, reports the American Academy of Pediatrics. In 2003, 60 percent of all children had employer-based insurance, according to the U.S. Census Bureau, but this percentage has been declining at an average of one percent a year over the last decade.

RESOURCES

□ Out-of-Pocket Medical Expenses for Medicaid Beneficiaries are Substantial and Growing,□ from the Center on Budget and Policy Priorities (May 2005), is a new report, free and available at <http://www.cbpp.org/5-31-05health.htm> .

The Community Tool Box is a clearinghouse of resources for promoting community health and development. The Tool Box provides practical skill-building information on more than 250 topics, including strategic planning, leadership development, and evaluation. Visit <http://ctb.ku.edu/> .

NEW, IMPROVED NHeLP WEBSITE

NHeLP has just launched a new and improved version of its award-winning website: <http://www.healthlaw.org>

. We encourage you to come take a look, then sign up to become a member of the site.

As a member of NHeLP's healthlaw.org website, you□ll receive notices on key website postings and new publications, as well as our periodic Washington update, NHeLP's Capital Communique. Plus new, interactive features for members are just around the corner. It's well worth the few minutes it takes to register.

On the healthlaw.org site, you will find a number of valuable resources, including a news page with daily news links and alerts and an online library with thousands of resources covering a wide range of low-income health law issues. Topics include Medicaid, children's health, language and cultural access to health care, and reproductive health rights. Use the advanced search function to find resources dating from this week all the way back to 1996.

If you have any questions about the website, send an email to brendan@healthlaw.org . To check out the site, use this URL:

<http://www.healthlaw.org>

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