

This is one of a series of periodic reports from NHeLP's Washington office, reporting briefly on recent and forthcoming developments relating to federal policy of interest to NHeLP advocates and friends.

We always appreciate your feedback and comments, which can be sent to Mara Youdelman at [youdelman@healthlaw.org](mailto:youdelman@healthlaw.org).

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#### MEDICAID - 2005 AND BEYOND

It is thought that the President's budget and/or Congress' budget resolution may include proposals to block grant Medicaid directly or mandate severe cuts that could only be accomplished by restructuring Medicaid.

When the President releases his budget in early February; it may include a Medicaid block grant proposal, as it has the past two years. Then Congress will begin negotiating a budget resolution, which sets out funding levels for discretionary spending and targets for revenue and entitlement program cuts. Medicaid and Medicare are examples of entitlement programs. The budget resolution may also include ?reconciliation? instructions, which would require authorizing committees to make specific cuts in programs under their purview.

Reconciliation instructions, which are binding, specify which committees must cut specific amounts (likely over a 5 year time period) and provide a deadline to report legislation containing the cuts. In the Senate, legislation making the reconciliation cuts may not be filibustered, needs only a majority vote to proceed, and is extremely difficult to amend during debate on the Senate floor.

If significant cuts are mandated by the reconciliation instructions, committees - such as the Senate Finance and the House Energy and Commerce Committees which oversee Medicaid and SCHIP -

may have little choice but to make dramatic structural changes to meet the target amounts. This could, for example, cause the committee to consider a Medicaid block grant as a way to achieve mandated savings. Thus, reconciliation may offer a back door alternative for restructuring Medicaid in a way that could not be achieved with stand-alone legislation (which would require at least 60 supporting votes in the Senate to overcome a filibuster).

POSSIBLE ACTION: Those wishing to do so could send letters to the White House and Members of Congress expressing opposition to: 1. block granting the Medicaid program; or 2. including reconciliation instructions that would require large scale Medicaid cuts or restructuring.

## NEW CONGRESS, NEW HHS SECRETARY

The election brought new members and larger Republican majorities to Congress. In the Senate, Republicans now control 55 seats and have increased their majority on committees from 1 seat to 2. With the defeat of Senator Tom Daschle (D-SD), Senator Reid (D-NV) has taken over as Senate Minority Leader. The Finance Committee leadership remains the same: Senator Grassley (R-IA) as Chair and Senator Baucus (D-MT) as Ranking Member. Senator Gregg (R-NH) is moving from chair of the Health, Education, Labor and Pensions Committee (HELP) to take the reins at the Budget Committee. Senator Enzi (R-WY) is expected to become Chair of the HELP Committee. As

a member of the HELP Committee, Senator Enzi has focused more on labor issues than healthcare, but sponsored legislation to limit medical malpractice liability for physicians, cosponsored a drug re- importation bill, and co-sponsored legislation aimed at improving patient safety by allowing confidential reporting of medical errors (which passed each chamber but was not finalized before Congress adjourned). Senator Kennedy (D-MA) remains the Ranking

Member of HELP.

On the House side, the Republicans increased their majority to 232-203. Leadership on the Energy & Commerce and Ways & Means Committees remains the same.

In the Administration, HHS Secretary Tommy Thompson resigned and President Bush has nominated Mike Leavitt, current EPA Administrator and former governor of Utah, to replace him. While governor, Leavitt supported the concept of block granting Medicaid and implemented a Medicaid waiver that limited services and increased cost-sharing for low-income individuals in exchange for providing a very limited Medicaid benefit (no specialist care or hospital coverage) to a fixed number of childless individuals, many of whom were already receiving benefits financed entirely by the state. Senate hearings on his nomination are expected early in January, 2005.

#### OMNIBUS APPROPRIATIONS BILL

When Congress returned for a lame duck session after the November elections, it rolled 9 appropriations bills into one large "omnibus" bill. The bill was signed into law by the President as Public Law No. 108-447. The Omnibus provides \$143.09 billion for the Departments of Labor, Health and Human Services, Education and Related Agencies, nearly a 3 percent increase over FY2004.

For specific HHS programs, the following funding amounts were approved:

- \* Community Health Centers: \$1.75 billion, a \$131 million increase over FY2004.
- \* Maternal and Child Health Block Grant: Level-funded at \$729.8 million.
- \* Ryan White CARE Act: \$2.08 billion in FY2005, a \$45 million increase.
- \* Family Planning/Title X: \$288 million, a \$10 million increase.
- \* Social Services Block Grant (SSBG): Level-funded at \$1.7 billion
- \* Office of Minority Health: \$51 million to the Office of Minority Health, a \$4.2 million decrease from FY2004 and \$3.78 million more than the administration's budget request.

A provision included in the Omnibus was the "Weldon amendment" (sponsored by Rep. Weldon (R-FL)). This provision, modeled after the Abortion Non-Discrimination Act (introduced in 2002 but not enacted), permits healthcare centers to refuse to provide, cover or refer people for abortions if they disagree with the practice on moral or religious grounds. The amendment is inconsistent with a regulatory requirement for Title X-funded family planning programs that pregnant women who request abortion referrals must be given that information. It also allows a health care entity to refuse to comply with existing federal, state, and local laws and regulations pertaining to abortion services.

In response to opposition from pro-choice Senators who opposed the last minute inclusion of the amendment in the Omnibus bill, Senate Majority Leader Frist (R- TN) promised to hold a vote, by March 1, 2005, on a bill to be introduced by Senator Boxer (D-CA) to repeal the provision. In addition, the National Family Planning and Reproductive Health Association has sued to block enforcement of this provision. The California Attorney General's Office has also indicated it will shortly file suit challenging the provision.

**POSSIBLE ACTION:** Those wishing to do so could contact Members of Congress and ask them to support a repeal of the Weldon amendment.

## IDEA

Congress reauthorized the Individuals with Disabilities Education Act through FY2010. One addition is that parents and special education students received limited protection against coercion by the schools to take certain psychiatric medications that are often used to treat children thought to have Attention Deficit Hyperactivity Disorder. The protection was not extended to antidepressant or anti-psychotic medications used to treat children labeled as bipolar.

The bill also provides \$20 million to implement recommendations of the New Freedom Commission, including universal mental health screening and treatment. However, a provision requiring parental

consent prior to screening was dropped from the final bill, which means that children screened without parental consent may be required to take medications. The bill also provides \$2 million for grants to local educational systems or non-profit entities to identify and test evidence-based practices to treat teenagers suffering from mental, emotional or behavioral disorders, and makes available \$7 million for grants and cooperative agreements to develop early intervention and prevention strategies to address the growing problem of youth suicide. Also, new provisions make it easier for schools to discipline children with disabilities, requiring proof of a closer connection between the child's disability and conduct subject to discipline.

## SCHIP EXPIRING FUNDS

On September 30, \$1.07 billion in SCHIP funds expired and returned to the federal treasury. While both Congress and the Administration have expressed their desire to keep the money in the program, no action was taken before Congress adjourned. Thus, any efforts to extend these funds will have to occur after the new Congress convenes in January.

**POSSIBLE ACTION:** Those wishing to do so could contact their Members of Congress to urge them to include \$1.07 in the budget resolution to extend the expired funds.

## QI-1 AND TRANSITIONAL MEDICAL ASSISTANCE

QI-1 was extended through September 30, 2005 in S. 2618, which was enacted as Public Law 108-448.

Transitional Medical Assistance was extended, along with TANF, through March 31, 2005. This was included in P.L. 108-308, the Welfare Reform Extension Act, Part VIII.

## JUDICIAL NOMINATIONS

President Bush may soon have an opportunity to nominate a new Supreme Court chief justice if Chief Justice Rehnquist retires, an event expected at any time due to his diagnosed thyroid cancer. This could set up a showdown in the Senate and invocation of the so-called "nuclear option" by Republicans. Republicans, who contend that Democrats have abused the filibuster by blocking 10 of the president's 229 judicial nominees in his first term, may ask for a ruling by the presiding officer of the Senate, Vice President Cheney, that a filibuster of executive nominees is unconstitutional. Such a ruling would need only 50 votes to be upheld (assuming Vice President Cheney would then cast the deciding vote in the case of a tie). Invoking this option avoids having to overcome the 60 votes needed to end a filibuster or the 67 votes needed to change the Senate rules under normal procedures. This situation would result in an inability of the minority party, in this case Democrats, to filibuster any judicial nominees, including Supreme Court nominees.

Currently, 29 vacancies exist on the federal bench.

## FEDERAL FACTOID & RESOURCE

According to a report issued by the non-partisan General Accounting Office, serious problems exist at the 1-800-MEDICARE hotline established to help answer beneficiaries' questions about Medicare.

GAO's investigation- which was mandated by the Medicare law- involved placing 420 calls to the hotline, asking questions related to the drug card program, supplemental Medigap policies and coverage issues. According to GAO, callers received inaccurate answers about 29 percent of the time. Regarding the low-income subsidy, operators answered incorrectly 55 times out of 70. In addition, GAO investigators found that they were unable to obtain any answers to questions 10 percent of the time because they were transferred to other Medicare contractors that were closed, or because calls were inadvertently disconnected. The report, GAO-15-130, is available at

<http://www.gao.gov/new.items/d05130.pdf>.

## SUPPORTING THE CAPITAL COMMUNIQUE

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You can also send a check directly to our Los Angeles office (payable to NHeLP) at 2639 S. La Cienega Blvd, Los Angeles, CA 90034 or give us a call at 310-204-6010 to make a donation via credit card. Or you can just contact me (Brendan McTaggart) and I'd be happy to mail you a donor reply envelope.

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