

NHeLP's Capital Communique
August 18, 2004

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. For more information about NHeLP, go to <http://www.healthlaw.org>.

SUBJECTS COVERED

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A SEPTEMBER TO REMEMBER?

September 30 marks the end of the 108th Congress. Because bills not acted upon prior to that date will expire and have to be reintroduced when the 109th Congress convenes in January, there is likely to be a flurry of activity when Congress returns from its August recess.

Congress is entering September without having enacted the majority of the appropriations bills.

Only the Defense appropriation has been signed into law. Of the remaining 12 bills, three have been voted out of committee and await a full vote in the House (including Labor-HHS-Education), six have been voted on by the full House and sent to the Senate, and three are ready for votes by the full Senate. It is therefore likely there will be an omnibus appropriations bill, probably finalized during a lame-duck session after the elections. Information on the status of appropriations bills is available at <http://thomas.loc.gov/home/approp/app05.html> .

SCHIP EXPIRING FUNDS

Also on September 30, \$1.07 billion in SCHIP funds are set to expire and return to the federal treasury. On July 22, House Energy and Commerce Chairman Barton (R-TX) and Ranking Member Dingell (D-MI) introduced H.R. 4936, the "Children's Health Protection and Improvement Act." H.R. 4936 would extend the expiring SCHIP funds and allow states more time to spend the money. This bill is a companion to S. 2759, introduced by Senators Rockefeller (D-WV), Chafee (R-RI), Kennedy (D-MA), and Snowe (R-ME).

POSSIBLE ACTION: Those wishing to do so could write letters of support for the bill and ask their representatives to co-sponsor it.

STATE FISCAL RELIEF

Fiscal relief bills have been introduced in both houses of Congress. On July 15, Senators Rockefeller (D-WV) and Smith (R-OR) introduced "The State Fiscal Relief Act of 2004" (S.2671). This bill would provide \$4.8 billion over 15 months (July 1, 2004 - September 30, 2005) in fiscal relief for Medicaid (extending the fiscal relief enacted last year that expired on June 30th). The bill would allow any state with an FMAP (the Federal Medical Assistance

Percentage, the share the federal government contributes to states' Medicaid expenses) lower than its FMAP for the prior fiscal year to retain the higher rate.

In addition, all states would have their FMAP increased by 1.26 percent. States would be eligible for this increase only if they maintain their Medicaid eligibility levels at least at the level in effect on September 2, 2003. Finally, the bill would reimburse states for the expected \$1.2 billion they will have to spend to implement the new Medicare drug bill (primarily arising from requirements to screen individuals for eligibility for the low-income subsidy).

On July 22, Representatives King (R-NY) and Brown (D-OH) introduced H.R. 4961, "The Medicaid Act of 2004." This bill would offer states \$6 billion in fiscal relief for Medicaid, including the same "hold harmless" provision as the Rockefeller-Smith bill and a 1.6 percent across-the-board FMAP increase. H.R. 4961 does not specifically allocate funds for implementation of the Medicare drug bill.

POSSIBLE ACTION: Those wishing to do so could urge their Senators and Representatives to support state fiscal relief.

PRESCRIPTION DRUG REIMPORTATION

Two competing drug reimportation bills have been introduced in the Senate: S. 2328 (introduced by Senators Dorgan (D-ND) and Snowe (R-ME)) and S. 2493 (introduced by Senator Gregg (R-NH)). The Senate Judiciary Committee held hearings on the bills in July.

The Dorgan-Snowe bill would allow the importation of drugs by individuals and wholesalers from Canada and other industrialized nations and would ensure that such drugs would be available within about a year. The bill would preclude pharmaceutical companies from limiting supplies to nations that

sell lower-cost prescription drugs to Americans. The Gregg bill would allow the government three years to decide whether to allow importation from nations other than Canada, and the FDA could decline to expand the list of countries from which reimportation would be permitted.

JUDICIAL NOMINATIONS

To date, the Senate has confirmed 173 judicial nominees for the federal bench.

On July 6, after six hours of floor debate, the Senate confirmed (51 to 46) judicial nominee James Leon Holmes to the U.S. District Court for the Eastern District of Arkansas. Holmes cleared the Senate Judiciary Committee along party lines in May 2003, but his confirmation was delayed for fourteen months due to controversy over his record on issues concerning women and minorities.

On July 22, the Senate held cloture votes on three nominees to the U.S. Court of Appeals for the Sixth Circuit: Henry Saad, David McKeague and Richard Griffin. All of the cloture votes, which require the assent of 60 Senators to proceed to a vote on the nomination, failed and these nominations thus remain subject to filibuster.

Claude Allen, a Virginian nominated to a Fourth Circuit seat that has traditionally been held by a Marylander, will likely be voted on in the Judiciary Committee this fall. His confirmation would leave Maryland underrepresented on the Court of Appeals. While Senator Hatch (R-UT), chair of the Judiciary Committee, has acknowledged the legitimate concerns of Maryland's Senators, who oppose Allen's confirmation, he continues to push for a vote on the nomination.

RESOURCES:

"Sick and In Debt: Improper Practices that Cause Medical Debt for Low-Income Californians" from The Health Consumer Alliance (Summer 2004), available at www.healthlaw.org after Labor Day.

"Getting Care But Paying the Price: How Medical Debt Leaves Many in Massachusetts Facing Tough Choices, The Access Project" (February 2004), available at <http://www.accessproject.org/med.html> .

FEDERAL FACTOID:

According to a report released by the National Association of Community Health Centers, the number of visits to hospital emergency departments (EDs) increased to 110.2 million in 2002 from 89.8 million in 1998, while the number of operational EDs decreased by 15 percent. Between 10 and 50 percent of all ED visits are for non-urgent and avoidable conditions. In addition, the number of uninsured patients at community health centers grew by 11 percent during 2003. Some health centers are experiencing an increase of uninsured patients as high as 73 percent. The report is available at <http://www.nachc.com/press/pdf/NationsHealthIISTIB7.pdf>