

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.

SUBJECTS COVERED

FY 2005 Budget
Medicare Rx "Fixes"
The "Fairness Act"
FamilyCare Act
Health Disparities
Judicial Nominations
Resources
Federal Factoids

FY 2005 BUDGET

On February 2, 2004, President Bush released his proposed FY 2005 budget (October 1, 2004 through September 30, 2005). Regarding Medicaid, the budget document states "the Secretary will work with Congress to pass an option for States to receive Medicaid and SCHIP funds in the form of flexible allotments." While no legislative language was provided, this statement suggests that the Administration will continue working with Congress to enact some form of Medicaid block grant.

Other Medicaid provisions in the budget include proposals to: allow states to offer presumptive eligibility for institutionally-qualified individuals who are discharged from hospitals into the community; extend for five years and simplify the transitional medical assistance program; extend the QI-1 program through FY 2005; revive the "New Freedom" initiative -- a series of demonstration projects and new service options to allow people with disabilities greater access to home and community-based care; and, extend eligibility for refugees and asylees for SSI from 7 years to 8 years.

Congress is expected to debate a budget resolution in early March. The budget resolution provides the spending blueprint for the Congressional appropriations process. As happened last year, it is possible that a joint resolution between the House and Senate may not be achieved, and each chamber would independently determine spending levels for the thirteen appropriations bills.

MEDICARE Rx "FIXES"

The President's budget predicted that implementing the Medicare Rx law enacted last year will cost \$534 billion, an increase of \$139 billion over the estimate from the Congressional Budget Office that Congress utilized in considering the legislation. The Secretary of HHS explained the differences as follows: \$50 billion for increased program enrollment expected by CMS; \$25 billion in additional drug usage by beneficiaries who previously lacked drug coverage, \$25 billion due to different assumptions used by the Administration; \$32 billion in additional payments to plans due to increased enrollment, and \$7 billion due to the "woodwork" effect although Secretary Thompson did not explain how the last factor differs from the first.

One concern about the higher cost expressed by some of those involved in negotiating the bill is that the Administration did not provide their figures to Congress during negotiations. Senator Baucus (D-MT), a member of the Conference Committee on the Medicare Rx bill, has indicated an intent to introduce legislation to ensure congressional access to HHS' actuaries to prevent these discrepancies in the future. While language was included in the 1997 Balanced Budget Act conference report to allow access to the actuaries, it proved insufficient in practice last year.

In part due to the higher cost estimates, Congress may consider revisions to the Medicare drug bill this year. A number of bills have already been introduced to amend the law. For example, H.R. 3707, a bi-partisan bill, would allow the Secretary of HHS to negotiate lower pharmaceutical prices on behalf of Medicare beneficiaries. Senators Snowe (R-ME) and Wyden (D-OR) introduced S. 2053, which, in addition to allowing the direct price negotiation by HHS, would offer special incentive payments to private plans that negotiate significant discounts, and would require that information about those discounts to be posted on Medicare's Web site so beneficiaries can compare prices.

Possible Action: Advocates wishing to do so could urge Members of Congress to support bills that would allow the Secretary to negotiate drug prices or other provisions to amend the Medicare law to enhance the affordability of the benefits offered.

THE "FAIRNESS ACT"

On February 12, 2004, Senator Kennedy, along with 18 co-sponsors, introduced S. 2088, the Fairness and Individual Rights Necessary to Ensure a Stronger Society: Civil Rights Act of 2004b. A companion bill, H.R.3809, was introduced by Representatives John Conyers (D- MI), John Lewis (D-GA), and George Miller (D-CA) with 88 co-sponsors. The bill would reinforce federal civil rights laws whose scope or enforceability have been limited by recent Supreme Court decisions. In part, the bill would reiterate the federal commitment to equal access to publicly funded services, protect older workers and workers returning from military service, provide viable remedies for on-the-job discrimination, and require equal pay for women in the workforce.

Possible Action: Advocates wishing to do so could urge Members of Congress to support S. 2088/H.R. 3809.

FAMILYCARE ACT

Representative Dingell (D-MI) is expected to introduce the FamilyCare Act of 2004 in late February. The bill would provide \$50 billion of new federal money to states to provide health insurance coverage to the parents of children enrolled in Medicaid and SCHIP.

To be eligible for FamilyCare funds, States would have to cover all children up to 200 percent of the federal poverty level (\$31,340 for a family of three in 2004), eliminate waiting lists or enrollment restrictions for children in SCHIP, and align application and renewal procedures for children in Medicaid and SCHIP. States would receive a 100 percent federal match rate for parental coverage for two years and continue to be eligible for an enhanced match in subsequent years. FamilyCare also

would provide new state options to expand coverage for legal immigrant children, pregnant women, children in Medicaid/SCHIP through age 20; and first-time pregnant women in SCHIP. In addition, it would provide automatic coverage of children born to SCHIP-enrolled parents. Other provisions in the bill would simplify and permanently authorized transitional medical assistance, offer increased matching funds for language services under Medicaid and SCHIP, and enhance enrollment and outreach activities.

Possible Action: Advocates wishing to do so could write a letter of support for the bill and/or urge Members of Congress to support the FamilyCare Act.

HEALTH DISPARITIES

On February 12, 2004, Senator Majority Leader Frist (R-TN) and Senator Landrieu (D-LA) introduced S. 2091, Closing the Health Care Gap Act of 2004. The bill includes provisions aimed at improving race, ethnicity and primary language data collection in Medicaid, SCHIP and Medicare; defining uniform measures of health quality; authorizing grants to provide access to care for the underserved; reauthorizing the Office of Minority Health within HHS; and boosting efforts to train minority health professionals. The bill also calls for development of a model cultural competency curriculum and establishment of an internet cultural competency clearinghouse.

The issue of racial and ethnic disparities in healthcare has garnered increasing attention in Congress recently. Last year, the Senate and House minority leadership, along with the Congressional Black, Hispanic, Asian Pacific American and Native American Caucuses introduced the Healthcare Equality and Accountability Access Act of 2003 (S.1833/H.R. 3459; see Capitol Communique, 12-19-03). This bill addresses additional issues such as improving language access, allowing states the option of covering legal immigrants in Medicaid/SCHIP, and funding to target specific diseases through research and education.

JUDICIAL NOMINATIONS

To date, the Senate has confirmed 171 judicial nominees for the federal bench. Currently, 5.5 percent of federal judgeships are vacant. While Congress was out of session in January, President Bush made a "recess appointment" of nominee Charles W. Pickering Sr. to the U.S. Court of Appeals for the Fifth Circuit. Judge Pickering had twice previously failed to win Senate approval. On February 20th, President Bush made a second recess appointment of Alabama Attorney General William Pryor to the 11th Circuit. The appointments allow Judges Pickering and Pryor to hold the seats until the next Congress takes office in January 2005. Also in January, President Bush renominated judge Claude Allen to the U.S. Court of Appeals for the Fourth Circuit.

RESOURCES:

Available from the HHS Office of Minority Health in draft form is "Assessment of State Laws, Regulations and Practices Affecting the Collection and Reporting of Racial and Ethnic Data by Health Insurers and Managed Care Plans," a report by the National Health Law Program. The report, which reviews every states laws and policies regarding the collection and reporting of racial, ethnic and primary language data by health insurers and managed care plans, is available at <http://www.omhrc.gov/omh/sidebar/datastats13.htm>. A report from the project's second phase, detailing results from site visits to 20 states, should be available some time this year.

FEDERAL FACTOID:

The Administration's budget proposed a 1.2 percent increase in HHS discretionary funding (5.8 percent for all HHS funding). The increase proposed for the Department of Defense is 7 percent and for Homeland Security it is almost 10 percent.

The projected deficit is \$521 billion for FY 2004, equaling 4.5 percent of the gross domestic product. According to CMS' actuaries, health are spending is expected to be approximately 15.5

percent of the GDP for FY 2004.