

This is a special edition of the Capital Communique, 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.

SUBJECT COVERED

MEDICARE PRESCRIPTION DRUG CONFERENCE:

Conference Committee Discussions Threaten Fundamental Changes to MEDICAID for the Low-Income Elderly and People with Disabilities

According to a story in yesterday's New York Times (attached), the Medicare prescription drug conference committee has seventeen members, "but only 12 do any work" and their deliberations are being conducted almost entirely in secret. Just as troubling, however, is the fact that NHeLP has learned that the Conference Committee is proposing fundamental changes to the MEDICAID program. Among these changes, the conference managers would:

- * Require states to count certain income and assets that many of them now disregard for purposes of determining Medicaid eligibility. The proposal would prohibit states from disregarding any more income or assets than the federal government does for the very restrictive SSI cash assistance program. For example, while the SSI asset limit for eligibility is currently \$2000 for a couple, many states have set their Medicaid asset limit at a higher level to include more low-income people. This proposed change would probably result in low-income elders and people with disabilities losing Medicaid coverage in over twenty states, including: Alabama, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, South Carolina, Tennessee, Utah, Vermont, and Washington.

- * Prohibit state Medicaid programs from taking into account the large out-of-pocket costs that low-income elderly and disabled Medicare beneficiaries will face in any Medicare drug benefit

now being considered. Currently, people are responsible for paying some of these expenses in order to qualify for Medicaid, and any remaining costs during the month are then paid by Medicaid. This proposal is inconsistent with the principle of state flexibility that is currently built into the Medicaid Act. It would, for the first time, prevent Medicaid from acting as the insurer of last resort for these individuals who are so poor that they would, without this provision, qualify for both Medicare and Medicaid. In the absence of such coverage, it is difficult to imagine just how low-income Medicare recipients will be able to meet both those expenses and their other basic necessities of daily living.

POSSIBLE ACTION: Those wishing to do so could contact the members of the Conference Committee and urge them not to balance the Medicare prescription drug budget on the backs of low-income and disabled Medicare beneficiaries by cutting off their current access to the Medicaid program.

The members of the Conference Committee are listed below. Those who are actively involved in shaping the emerging legislation are marked with an asterisk. According to the New York Times, the others have been largely shut out of the deliberations.

HOUSE

- * Bill Thomas (R-CA; Ways and Means Committee Chairman), 202-225-2915
- * Billy Tauzin (R-LA, Energy and Commerce Committee Chairman), 202-225-4031
- * Mike Bilirakis (R-FL, Energy and Commerce Health Subcommittee Chairman), 202-225-5755
- * Tom DeLay (R-TX, House Majority Leader), 202-225-5951
- * Nancy Johnson (R-CT, Ways and Means Subcommittee on Health Chair), 202-225-4476
- John Dingell (D-MI, Energy and Commerce Committee Ranking Member), 202-225-4071
- Charles Rangel (D-NY, Ways and Means Ranking Member), 202-225-4365
- Marion Berry (D-AK), 202-225-4076

SENATE

- * Bill Frist (R-TN, Senate Majority Leader), 202-224-3344
- * Charles Grassley (R-IA, Finance Committee Chairman), 202-224-3744
- * Orrin Hatch (R-UT, Judiciary Committee Chairman), 202-224-5251
- * Don Nickles (R-OK, Budget Committee Chair), 202-224-5754
- * Jon Kyl (R-AZ), 202-224-4521
- Tom Daschle (D-SD, Senate Minority Leader), 202-224-2321
- * Max Baucus (D-MT, Finance Committee Ranking Member), 202-224-2651
- Jay Rockefeller (D-WV), 202-224-6472

* John Breau (D-LA), 202-224-4623

<http://www.nytimes.com/2003/10/26/politics/26CONG.html>

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[Rewriting Top Legislation](#)

By ROBERT PEAR and CARL HULSE

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WASHINGTON, Oct. 25 □ As the fine print is written for Medicare and energy bills that will touch virtually every American, many of this city's mightiest lawmakers and lobbyists find themselves on the wrong side of closed doors, forced to forage for scraps of information and frustrated in efforts to influence the measures.

In small rooms scattered around the Capitol, exclusive groups of lawmakers, mostly Republicans, and their aides are writing those bills, as well as one to provide \$87 billion in emergency spending for Iraq and Afghanistan. They toil out of sight of their colleagues and the public.

Republican leaders increasingly use such conference committees to shape legislation to their taste, removing some provisions passed by the full House and the Senate while adding a few of their own.

Seventeen lawmakers □ nine from the Senate, eight from the House □ have been appointed to the committee trying to reconcile Medicare bills passed by the two chambers. But only 12 do any work. Most of the Democrats, including Tom Daschle of South Dakota, the Senate minority leader, have been excluded.

Even fewer people are directly involved in writing a final version of the energy bill, which gained new importance after the August blackout. Although the formal conference committee numbers 58, most of the emerging bill was written by Senator Pete V. Domenici of New Mexico and

Representative Billy Tauzin of Louisiana, both Republicans.

Conference committees have their roots in England, where they were used to resolve differences between the House of Commons and the House of Lords. Thomas Jefferson codified their practices

in a manual that guides Congress to this day. Such committees are an integral part of the legislative process. But they have often been criticized for their back-room operations and unstructured format.

The late Daniel Patrick Moynihan, the senator from New York, once described them as a sort of "bastard" legislature.

When Democrats ran Congress, they convened tightly controlled conference committees as well. But the current Republican majority has made no secret of preferring to write legislation in conference and to send it back to each chamber for an up-or-down vote, without the prospect of amendments.

In July, Senate Republican leaders resurrected an old Democratic energy bill and got the Senate to pass it again, just so they could go to a conference with the House. "I will rewrite this bill," Mr.

Domenici said gleefully at the time.

Mr. Daschle said this week that he had "grave reservations about the way" Republicans were using conference committees. Democrats said they would start using parliamentary tools to stall the appointment of conferees, as they did this week with a bill on charitable giving, and have proposed other ways to resolve disagreements between the two houses.

Representative Nancy Pelosi of California, the House Democratic leader, said Republicans were ignoring "regular order" by trying to use a conference to restore money that the House and Senate had eliminated from the emergency spending bill.

In the Medicare conference, Representative Bill Thomas, Republican of California, the chairman of the Ways and Means Committee, presides over the negotiations in his office, about 15 feet from the

office of the doctor who cares for members of Congress, and just five doors away from the pharmacy that fills their prescriptions.

The negotiators flit from one emotional issue to another, sizing up sentiment, probing for agreement, making tentative decisions. At first lawmakers said the process seemed dysfunctional, but now they say a consensus has begun to form.

"The process is working," Mr. Tauzin said. "The process of allowing members to vent, to express opinions and to get challenged if their opinions are right or wrong, and to see how each idea fits into the whole before you make any final choices, is probably a good one."

In effect, a dozen lawmakers are deciding the future of Medicare, but few rules control their deliberations.

A report by Stanley Bach and Elizabeth Rybicki of the Congressional Research Service says: "There are almost no rules governing procedure in conference. Conferences are negotiating forums, and the two chambers allow conferees to decide for themselves how best to conduct the negotiations."

In theory, conferees may not change language that is identical in the House and Senate versions of a bill. But in practice, lawmakers can often get around that restriction.

On a Federal Aviation Administration measure, negotiators deleted House- and Senate-passed limits on privatizing air traffic control, and that led to an impasse over the bill.

The House and Senate Medicare bills include provisions to give consumers swifter access to less costly generic versions of brand-name drugs. But with help from a member of the conference committee, brand-name drug makers have persuaded the panel to re-examine the issue. Eli Lilly & Company contends that one proposal to speed the marketing of generic drugs will have the opposite effect and should be dropped.

Debra Barrett, a lobbyist for the Generic Pharmaceutical Association, whose members are continually jousting with brand-name drug makers, said the secretive nature of conference committees provided "a perfect opportunity for special interests to come in behind closed doors and say, 'Help me here.' "

Republicans limited Democratic participation because they thought it would be easier to make law that way. But negotiations on the Medicare and energy bills have been contentious. Disagreements between House and Senate Republicans are sometimes just as deep as the differences between Republicans and Democrats, demonstrating that even one-party domination is no guarantee of quick success.

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