

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).

## SUBJECTS COVERED

Medicare Prescription Drug Debate

Medicaid Hearings

SCHIP Reallocations

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## MEDICARE PRESCRIPTION DRUGS

On October 1, the House and Senate Conference Committee members tentatively agreed that all Medicare-Medicaid "dual-eligibles" would be included in any new Medicare prescription drug plan. The House bill had included dual-eligibles in the new benefit but the Senate bill, which had the support of the White House, did not. Since inclusion of the dual-eligibles could cost up to \$40 billion over ten years, it is likely to affect upcoming coverage and subsidy decisions for low-income individuals. Under the original House proposal, the cost of including dual-eligibles was in part addressed through a "claw-back" provision pursuant to which states would have partial responsibility for paying the prescription drug costs for this population for a limited, but by no means short, period of time.

In addition, a tentative deal has been struck on drug "discount cards" that would provide limited assistance until the Medicare prescription benefit becomes operational in 2006. The discount cards would provide Medicare beneficiaries with discounts on drugs and offer approximately \$600 to low-income beneficiaries to help with drug costs. The primary issue still to be resolved is the size of the copay that low-income beneficiaries will be expected to meet.

Congressional leadership recently outlined a timeline to resolve differences by October 17, and the Administration has weighed in by reiterating its support for completing work on a bill this year. Given the significant number of issues remaining to be decided, some feel that timeline may not be realistic.

## MEDICAID HEARINGS

In October, the House Energy and Commerce Committee is scheduled to hold at least two hearings on the future of Medicaid. On October 8th, the first hearing will focus on "Challenges to the Medicaid program." Set in conjunction with an ongoing inquiry into waste and abuse in the current of operation of the program by the states, the hearing nonetheless may serve as a platform for resurrecting discussion of a Medicaid block grant, which would afford the federal government even less oversight of how its money is being spent. The second hearing, scheduled for October 15th, will examine disease management and Medicaid managed care.

Possible action: Advocates wishing to do so could call their members to express their support for Medicaid and opposition to block granting the program. Written testimony may also be submitted for the hearing.

## SCHIP REALLOCATIONS

Last year, \$1.2 billion in unspent SCHIP funds (appropriated for FY 1998 and 1999) expired and reverted to the U.S. Treasury. On July 25th, the last day before its August recess, the House passed under unanimous consent HR 2854, a bill sponsored by Energy and Commerce Chairman Tauzin. This legislation would extend the availability of the expired FY 1998-99 and soon-to-expire FY 2000-01 funds — a total of \$2.7 billion. States could retain all unspent FY 1998-9 funds and fifty percent of unspent FY 2000-1 funds; the remaining FY 2000 funds would be redistributed to those states that have already spent their allocations. All funds — those retained and reallocated — will have to be spent by the end of FY 2004.

This legislation also would allow those states that had Medicaid expansions for children that

predated SCHIP (up to at least 185 percent of Federal Poverty Level (FPL)) to use 20 percent of their original SCHIP allocations on these beneficiaries – reimbursing the state for the difference between their Medicaid FMAP and the enhanced SCHIP rate. But New Mexico, whose preexisting program covered only up to 184 percent FPL, was not included – leaving it the only state with a preexisting program not to benefit. S.1547, which will ensure New Mexico's inclusion by changing the definition of a qualifying state from – at least 185 percent FPL – to – at least 184 percent FPL, – passed the Senate by unanimous consent. According to the American Academy of Pediatrics, the House is expected to accept this change, although no action has been taken to date.

## TRANSITIONAL MEDICAL ASSISTANCE & QI-1's

As part of a temporary extension to the federal cash assistance program (Temporary Assistance to Needy Families), H.R. 3146, enacted on September 30, included a provision to extend TMA and the Medicare QI-1 program until March 31, 2004.

## JUDICIAL NOMINATIONS:

To date, the Senate has confirmed 151 judicial nominees for the federal bench. On May 8, 2003, the Senate Judiciary Committee reported out the nomination of Carolyn Kuhl (U.S. Court of Appeals, 9th Circuit) by a vote of 10-9 along party lines. The nominations of Judge Kuhl, Priscilla Owen (U.S. Court of Appeals, 5th Circuit) and William Pryor (U.S. Court of Appeals, 11th Circuit) continue to be the subject of a filibuster.

On September 4, 2003, Miguel Estrada (U.S. Court of Appeals, D.C. Circuit) withdrew his nomination from consideration. While a hearing on his confirmation had occurred on September 26, 2002, Democrats had filibustered a vote by the full Senate.

On October 2nd, the Senate Judiciary Committee voted, along party lines, to submit the nomination of Judge Charles Pickering (U.S. Court of Appeals, 5th Circuit) to the entire Senate. The Judiciary Committee had rejected Judge Pickering's nomination in March 2002. In January

2003, President Bush re-nominated him. Democrats have stated they have enough support to sustain a filibuster of Judge Pickering's nomination.

## RESOURCES

The National Health Law Program has released a new revision to its 1998 publication, "Ensuring Linguistic Access in Health Care Settings: Legal Rights and Responsibilities." This is a comprehensive overview of federal and state laws and policies regarding language access, and also contains statistical information, Medicaid and SCHIP managed care contracts, accrediting organizations, and a wealth of other information.

Copies may be ordered from NHeLP's Los Angeles office by calling 310-204-6010. There is a \$100 charge (discounted to \$65 for nonprofit advocacy organizations) to offset our printing costs for this very thick manual. For more information, go to [www.healthlaw.org/pubs/2003.linguisticaccess.html](http://www.healthlaw.org/pubs/2003.linguisticaccess.html).

The Kaiser Family Foundation recently posted a number of new resources on immigrant health care and linguistic access. Included in these publications is a legal issue brief written by NHeLP entitled "Ensuring Linguistic Access in Health Care Settings: An Overview of Current Legal Rights and Responsibilities." The materials are available at <http://www.kff.org/content/2003/20030821/>.

## FEDERAL FACTOIDS

According to the Census Bureau, since 2002, the number of Americans who live in poverty has risen for the second year in a row to 34.6 million, an increase of nearly 3 million people since 2000. This amounts to 12.1 percent of the entire population, up from 11.7 percent in 2001. At the same time, as documented by a recent study released by the Kaiser Family Foundation, all 50 states and the District of Columbia have planned or implemented Medicaid cost containment actions for fiscal year 2004. In 2003, Medicaid spending growth slowed for first time in 7 years, to 9.3 percent, down from 12.8 percent in 2002.

According to a report conducted by Mathematica Policy Research for the Commonwealth Fund, Seniors who enrolled in private sector Medicare+Choice programs instead of staying in the traditional Medicare program have seen their premiums and other out-of-pocket costs rise 10 percent this year to \$1,964 -- more than double the out-of-pocket spending level in 1999.

## NOTICE OF NEED TO CLAIM DAMAGES IN TWO PRESCRIPTION DRUG CASES

The deadline for consumers to file claims in two pharmacy lawsuits associated with the Prescription Access Litigation (PAL) project, in which NHeLP is a partner, is just around the corner. These are the BuSpar and Taxol cases. The deadline for filing a BuSpar claim is OCTOBER 10, 2003. The deadline for filing a Taxol claim is NOVEMBER 14, 2003. Please share this information with anyone you believe may meet the criteria described below. Questions may be brought to the attention of Carey Toran at Community Catalyst, 617-275-2810.

### BuSpar®

BuSpar® is a brand-name prescription drug used for treating patients suffering from generalized anxiety disorder. BuSpar was the subject of the first lawsuit that PAL ever brought. This case charged that the manufacturer of BuSpar, Bristol Meyers Squibb (BMS), used a variety of illegal tactics to keep a generic form of the drug off the market.

In March 2003, the parties reached a comprehensive settlement that includes both far-reaching restrictions on BMS' future behavior as well as solid monetary relief for BuSpar consumers that have been overcharged. Under an agreement with the state Attorneys General, who also brought suit against BMS, the PAL settlement helped to create an approximately \$42 million nationwide consumer settlement fund. Individual BuSpar consumers can apply to the fund for reimbursement of their overcharges. Consumers that purchased BuSpar between January 1, 1998, and January 31, 2003, are potentially eligible for a refund. In addition, to be eligible for a refund, a consumer must have:

(1) paid the full purchase price for BuSpar or its generic version (buspirone HCl) and received no reimbursement for those purchases, or (2) paid for the drugs up to an annual dollar maximum before his/her insurance began paying prescription costs, or (3) paid for drugs after a maximum annual dollar prescription coverage amount was paid by his/her insurer, or (4) had prescription drug insurance that paid for his/her BuSpar, but the amount of the copay depended on whether he/she purchased a brand name or generic version of the drug.

For more information about this fund, including claims forms, please go to <http://www.busparsettlement.com/> or call 1-800- 678-9587. The deadline for filing claims is October 10, 2003.

#### Taxol®

Taxol® is a drug used quite often in the treatment of breast or ovarian cancers. The drug is administered at a hospital or clinic. It is NOT purchased over the counter. A lawsuit brought by Attorneys General from around the country against Bristol- Meyers Squibb ("BMS") alleged that BMS illegally obtained patents on Taxol in order to delay the marketing of a lower-priced generic version of the drug. Under the recent settlement, a \$12.5 million consumer settlement fund has been established to compensate consumers who overpaid for the drug. Those eligible for reimbursement must have:

- (1) Been treated with the cancer drug Taxol, or its generic version, paclitaxel;
- (2) Had treatments at any time from January 1, 1999 through February 28, 2003; and
- (3) Paid all or a part of the costs of drug treatment out-of-pocket.

Consumers who had insurance that covered part of the cost of the drug can expect to receive a lump-sum reimbursement of approximately \$500. Consumers who paid completely out-of-pocket can expect to recover several thousand dollars, depending on the number of treatments.

For more information about this fund, including claims forms, please go to <http://www.taxolsettlement.com/>

[ement.com](http://ement.com)

or call

1-800-659- 7609. The deadline for filing claims is November 14, 2003.