

May 23, 2003

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

Tax Cuts
Governors Medicaid Task Force
House Commerce Committee Medicaid Task Force
Racial and Ethnic Disparities in Health Care
Judicial Nominations
Resources

TAX CUTS

The House and Senate passed significantly different tax cuts but, with Administration urging, sent a reconciled bill to the President prior to leaving for the Memorial Day recess. The budget resolution limited the Senate tax cut to \$350 billion while the House limit was \$550 billion; the ultimate agreement was for \$350 billion although the actual cost will likely rise above this amount because of the use of "sunset provisions." Sunset provisions are tax cuts that expire after a few years (e.g. the reduction of personal income tax rates would be in effect for FY 2003 and 2004 but would expire in FY 2005), thereby decreasing the projected cost of any tax package that contains them. Past history, however, indicates that such tax cuts are rarely allowed to sunset, but instead are renewed by Congress. If these renewals are factored in, the tax cut will cost at least \$800 billion over 10 years.

One positive aspect of the bill for Medicaid recipients is the inclusion of \$20 billion in state "fiscal relief" (including \$10 billion to temporarily increase the federal share of Medicaid costs (FMAP); and \$10 billion in general state assistance). This provision was included despite the last minute objections of Representative Tauzin (R-LA), Chair of the House Energy and Commerce Committee, who said that increasing the FMAP would decapitate the Medicaid

reform efforts in his Committee (see story below). Efforts by the Senate to include increased payments for rural hospitals was not included in the final package although, in a letter to Senate Finance Committee Chair Grassley (R-IA), President Bush indicated his support to include this funding in the Medicare bills likely to be debated next month.

GOVERNORS' MEDICAID TASK FORCE

The National Governors Association's (NGA) Medicaid Task Force has not yet any ideas it may have for restructuring Medicaid (for background, see Capital Communique, April 14). Recent meetings of the Task Force have engendered discussion on financing issues as well as the overall structure of the program. While it seems that the Task Force will not support a global cap (i.e. block grant) for all Medicaid funding, many Task Force members are believed willing to consider caps on particular aspects of federal funding for Medicaid, although it is not clear what types of caps on particular services or eligibility groups are being considered. A cap would accomplish the Administration's goal of reducing federal funding on Medicaid but, by limiting the federal contribution, caps would impede Medicaid's ability to act as a counter-cyclical program available to offer health care during economic downturns.

Possible Action: Advocates wishing to do so could contact their Governors (especially those on the Medicaid Task Force, but also others) and urge them to oppose any NGA proposal that supports global or targeted federal caps on funding or eliminates the federal-state partnership in Medicaid.

HOUSE COMMERCE COMMITTEE MEDICAID TASK FORCE

On May 21, the House Energy and Commerce Committee announced the formation of a Medicaid Task Force. Task Force members are Heather Wilson (Chair; R-NM), Nathan Deal (R-GA), Ed Whitfield (R-KY), Mary Bono (R-CA) and Ernie Fletcher (R-KY).

According to a press release from Rep. Wilson's office, the Medicaid task force will: identify reforms that would improve the health of low income Americans; make recommendations for changes so that dollars spent on Medicaid are not wasted and fraud is deterred or detected; and seek to ensure long-term fiscal viability of the program. Hearings may begin as early as June. In part, the Task Force may address a requirement in the joint budget resolution to identify "waste, fraud, and abuse" sufficient to reduce spending in an amount to be specified by the Budget Committee.

While no Democrats were included on the Task Force, Rep. Dingell, Ranking Member of the House Commerce Committee (D-MI), and 14 co-sponsors recently introduced a bill to give states additional flexibility in the Medicaid program. The Strengthening Our States Act of 2003 (HR 2000; companion bill S.1012, introduced by Sen. Bingaman (D-NM)) would require the federal government to subsidize the full cost of Medicare-Medicaid "dual-eligibles," thereby addressing a population that currently accounts for about 30 percent of all state Medicaid costs, a percentage that will only increase as aging baby boomers require more health care and become eligible for both programs. States would receive greater flexibility to cover childless adults without a waiver and to obtain an enhanced match for parental coverage. In addition, states would have the option of enrolling lawfully present immigrants in Medicaid, would receive higher Medicaid/SCHIP reimbursement for language interpretation and translation services, and receive an enhanced match for emergency services provided to undocumented individuals who meet Medicaid's eligibility requirements but for their immigration status.

Possible Action: Advocates wishing to do so should consider talking to these members while they are in their home districts for the Memorial Day recess regarding the importance of Medicaid and continuation of the federal-state partnership. They could also urge their Congressional representatives to cosponsor the Strengthening Our States Act.

RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE

As part of his commencement address at Morehouse College School of Medicine, Senate Majority Leader Frist (R-TN) announced plans to introduce a bill, "Closing the Health Care Gap Act of 2003," to increase access to health care and boost funding for research and programs to combat health disparities for minority and low-income populations. Senator Frist would expand health coverage to the uninsured through tax credits and other measures; provide grants to promote broad local health awareness and prevention programs; and both reauthorize and expand the mission of HHS'

Office of Minority Health. The legislation also would raise federal funding for programs that increase the number of minority health providers, increase funding for historically black colleges and universities, direct more funding to researching and eliminating health disparities and launch programs to directly target health conditions that disproportionately affect minority and low-income populations. At this time, a timeline for introduction and debate on the bill is unknown.

JUDICIAL NOMINATIONS

To date, the Senate has confirmed 124 judicial nominees for the federal bench. The nominations of Miguel Estrada (U.S. Court of Appeals, D.C. Circuit) and Priscilla Owen (U.S. Court of Appeals, 5th Circuit) continue to be on hold under a filibuster. The Senate recently confirmed Jeffrey Sutton, nominated for the 6th Circuit Court of Appeals. 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. In a change to longstanding Senate policy, Senator Hatch, chair of the Judiciary Committee, proceeded to a hearing and vote on Judge Kuhl's nomination without the support of her home state Senators.

Various Senators have proposed revisions to the judicial nomination process to preclude future filibusters. Senate Majority Leader Frist proposes to allow a simple majority to end debate after 13 days. Senator Frist's proposal would gradually reduce the 60-vote requirement to end a filibuster debate, known as cloture, over four consecutive votes. Changing the current Senate rules regarding filibusters would require a 2/3 majority in support. A proposal put forth by Senator Schumer (D-NY) would set up bipartisan nomination commissions in each state to recommend a judicial candidate to the president for each empty judgeship. In an attempt to use the courts as an arbiter of the nominations process, Judicial Watch filed a lawsuit against the Senate in the U.S. District Court for the District of Columbia, seeking a ruling that filibusters on judicial nominees are unconstitutional.

Meanwhile, the Senate Judiciary Committee recently approved, by a vote of 18-0, a measure creating 50 new judgeships. A provision by Senator Feinstein (D-CA) added a total of 14 new judgeships in Alabama, Arizona, California, Idaho, Iowa, New York, South Carolina and Utah. An amendment by Senator Biden (D-DE) was approved to create 36 new permanent bankruptcy judges in New York, Delaware, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Virginia, Michigan, Tennessee, Arkansas, Nevada, Utah, Florida and

Georgia. The amendment would also add one temporary judgeship each in Puerto Rico, New York, Pennsylvania, Maryland, Mississippi and Georgia.

RESOURCES:

The Economic and Social Research Institute recently released "Covering America: Real Remedies for the Uninsured, Volume 2." This report expands on a 2001 report and adds three new proposals to the original 10 for extending health care coverage to the uninsured. The report is available at

http://www.esresearch.org/covering_america.php .

"State News Quarterly," a new email newsletter from The Alan Guttmacher Institute, is designed to inform advocates working in the states to advance sexual and reproductive health and rights about research and policy developments. Topics covered in recent editions include: state-by-state fact sheets on abortion services and availability; state-level data on the need for publicly funded family planning services; the status of state laws and policies on key reproductive health issues, such as emergency contraception, contraceptive coverage and "partial birth" abortion; abortion in the United States before *Roe v. Wade*; and state laws and policies on fetal homicide. You may subscribe by visiting AGI's website at <http://www.guttmacher.org/listserv/asnq.html>

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