

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

Budget Resolution Finalized

Tax Cuts

Governors' Medicaid Task Force

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Federal Factoid

BUDGET RESOLUTION FINALIZED

On April 11, the House voted 216-211, largely along party lines (with all the Democrats and 7 Republicans voting no) to approve a \$2.27 trillion FY 2004 budget (H.Con.Res. 95). On the same day, the Senate passed the budget (S.Con.Res. 23) when Vice President Cheney broke a 50-50 tie (Republican Senators Chaffee (RI) and McCain (AZ) voted with the Democrats and Democratic Senator Miller (GA) voted with the Republicans). The budget resolution sets general limits on spending and revenue but does not address specifics and does not, because it is a resolution, have the force of law.

The budget does not include an earlier considered provision that would have mandated \$265 billion in spending reductions for social and health programs, including \$93 billion to Medicaid and \$2 billion to SCHIP. The budget assumes that transitional medical assistance and the QI 1 program will be extended for 5 years.

Also, the budget has 5 "reserve" funds containing:

- 1). \$400 billion for Medicare reform, including a prescription drug benefit;

- 2). \$161 million for the uninsured in FY 2004 (and \$50 billion over 10 years);
- 3). Restoration of expiring SCHIP funds for FY 1998-2000;
- 4). \$43 million for the Family Opportunity Act; and,
- 5). \$3.3 billion in 2004 (and \$12.7 billion over 10 years) for the Administration's Medicaid block grant proposal (see Governor's Medicaid Task Force, below).

A reserve fund allows a committee to pass legislation even though the cost exceeds the committee's FY 2004 allocation; the overall cost of the new legislation is expected to be budget neutral either through tax increases or cost savings in the affected or other programs. For example, the Medicaid reserve fund assumes savings from enactment of medical liability reform.

Finally, the budget includes a section that orders authorizing Committees (e.g., the House Energy and Commerce and the Senate Finance committees, which oversee Medicaid) to report to the Budget Committee findings of "waste, fraud, and abuse" in their programs, sufficient to reduce spending in an amount to be specified by the Budget Committees. Any findings, however, will not result in mandatory cuts, but will be used for future budget development. Over the next several months, the framework from the budget resolution will form the basis for the 13 annual appropriations bills; whether and how the issues mentioned above are included in these bills remains an open question.

TAX CUTS

One of the thorniest issues for the House and Senate was the size of any tax cut that may be enacted. The budget resolution therefore includes highly unusual reconciliation instructions that contain two different tax cut numbers – \$550 billion for the House and \$350 billion for the Senate (for FY 2004-2013). Normally, under Senate rules, a Senator could raise a "point-of-order" and require 60 votes to pass any Senate-drafted tax bill higher than \$350 billion. But the budget resolution was designed to exempt any House-Senate agreed upon tax proposal from such a "point-of-order", so that the final negotiated tax bill could be more than \$350 billion (up to the House limit of \$550 billion), with only 51 votes needed for it to pass the Senate.

However, to gain support for the budget resolution from certain Republican Senators opposed tax cuts as large as the House envisions, Senator Grassley (R-IA), chairman

of the Senate Finance Committee, promised on the Senate floor that he would not permit, under any circumstances, a law this year that reduces taxes by more than \$350 billion over 10 years. Consequently, the ultimate outcome of this debate remains unclear.

GOVERNORS' MEDICAID TASK FORCE

The budget resolution includes authority for Medicaid restructuring, including funding requested by the President to implement his block grant proposal — \$3.3 billion in 2004 and \$12.7 billion over 7 years. However, any Medicaid proposal must be budget neutral over 10 years, so that state spending could be severely curtailed after year seven. (See Capitol Communique, March 10th, 2003 and <http://www.healthlaw.org/pubs/200302.medicaidqanda.html>.)

In response to the Administration's proposal, the National Governor's Association (NGA) established a Medicaid Task Force to develop its own proposals for reform. The members of the Task Force are the governors from Connecticut, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Missouri, New Mexico and North Dakota. The NGA has expressed concern about six issues: spending on "dual-eligibles" (low-income enrollees receiving both Medicare and Medicaid who have their Medicare premiums paid by Medicaid); long term care costs; financing issues (including the current federal-state partnership and alternative proposals); increased flexibility; private partnerships (including using "premium assistance" and other mechanisms using Medicaid funding to subsidize the enrollment of individuals in private insurance); and prescription drugs (including co-pays, benefit design, and eligibility). For more information on the Task Force, see NGA's website: <http://www.nga.org/nga/newsRoom/>)

It is expected that if the governors reach an agreement with the Administration, legislation on this issue might be introduced as early as May 15th in the House Energy and Commerce Committee by its chairman, Representative Billy Tauzin (R-LA).

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 a federal cap on funding or eliminates the federal-state partnership in Medicaid. Advocates, and especially providers, may wish to identify the

financial and public health consequences that a cap could have in terms of limiting the flexibility and staff needed to respond to newly developing diseases, such as SARS, or other currently unforeseen events.

JUDICIAL NOMINATIONS

The nomination of Miguel Estrada for the U.S. Court of Appeal, D.C. Circuit, continues to be on hold under a filibuster. Meanwhile, the Senate Judiciary Committee has favorably reported to the full Senate two other nominations that have proven every bit as controversial as Mr. Estrada's. Priscilla Owen has been nominated again by the President for a seat on the 5th Circuit Court of Appeals. Last year, the Senate Judiciary Committee rejected Judge Owen's nomination, due largely to its perception that her views on important legal issues, including reproductive rights, were well outside both the American mainstream and established judicial precedent.

Jeffrey Sutton has been nominated for the 6th Circuit Court of Appeals. Mr. Sutton has sought out cases in which to argue that Congress has very limited power to require states to follow the same laws that apply to everyone else, with the result being severe limitations on the ability of people to gain redress against states that have discriminated against them on the basis of, e.g., their disabilities or national origin. As a result of his efforts in this area, 70 national groups and over 375 regional, state and local organizations to oppose his confirmation.

The Senate's debate on these nominees began on April 11th and is expected to conclude after the Senate returns from recess on April 28th.

Possible Action: Those who believe that the views of these nominees are extreme and would not well serve either the federal judiciary or the rule of law could urge their Senators to oppose the nominations of Priscilla Owen and Jeffrey Sutton.

RESOURCES:

NARAL Pro-Choice America's Proactive Policy Institute has published "Breaking Barriers: A Policy Action Kit Promoting the Reproductive Health of Women of Color and

Low-Income Women. The kit contains policy initiatives aimed at promoting reproductive health equity. For more information and/or to obtain a copy of Breaking Barriers, contact NARAL Pro-Choice America's Proactive Policy Institute at proactive@ProChoiceAmerica.org or 202-973-3011. You can also access the "Breaking Barriers" policy action kit on-line at <http://www.ProChoiceAmerica.org>.

FEDERAL FACTOID: The President's request of \$75 billion to pay for the initial costs of the war in Iraq included funding to "facilitate rapid, UNIVERSAL HEALTH SERVICE delivery to the Iraqi population." (Dana Milbank, "Bush Administration Using War to Justify Its Tax Cut," The Washington Post, March 26, 2003) at A4. This will on average cost each American family \$625. Meanwhile, in the U.S., approximately 41 million people continue to have no health insurance at all.