

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 would appreciate your feedback. Please email Mara Youdelman at youdelman@healthlaw.org with your comments.

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Congress – To End or Not To End

The end game for the 107th Congress is still unclear. Congress has yet to pass 11 of the 13 mandatory appropriations bills that fund the government (only Defense and Military Construction have been enacted; the House has passed two others with no Senate action). As a result, since the fiscal year began on October 1st, Congress has enacted a series of – continuing resolutions – (CRs) that fund the government at FY 2002 levels through November 22, except for TANF and Transitional Medical Assistance, which have been authorized through December 31st. The House anticipates returning on November 12, but House Majority Leader Arney does not anticipate more than a week of work at that time. The question remains whether they will return in December or enact a longer CR that will put off work on the FY 2003 appropriations bills until next year.

Depending on election outcomes, a lame duck session in the Senate has the potential for political theater. If Senator Carnahan (D-MO) does not win reelection, the new Senator may be

able to take his seat immediately because Senator Carnahan was appointed to serve an interim term. If this were to happen, the Republicans might control of the gavel but Democrats would be unlikely to approve a new organizing agenda to transfer actual power and control of committee chairmanships.

Other issues awaiting action before the 107th Congress adjourns remain in flux. It seems likely that TANF (the federal welfare block grant) will be reauthorized for three years. It might include a restoration of benefits for pregnant immigrant women and children in Medicaid through the Immigrant Children's Health Improvement Act (ICHIA). Senators Daschle (Senate Majority Leader) and Grassley (Ranking member of the Senate Finance Committee) are currently negotiating a reauthorization package and Senator Daschle has indicated that ICHIA is a top priority. There has also been recent discussion on a compromise to move forward the Family Opportunity Act, which would allow parents of children with disabilities whose incomes are above Medicaid limits to buy into Medicaid.

Passage of a provider "givebacks" bill is also possible in the lame duck session. The most likely provisions to pass include action on state fiscal relief (FMAP or a possible block grant) and expiring SCHIP funds. Under current law, states must use their SCHIP allotments within three years or the funds revert to the U.S. Treasury. Since many states were unable to use their entire allotments while starting their SCHIP programs, Congress may allow states more time to use the expiring funds and/or reallocate some of those funds to states that have spent their entire allotments. The Senate has failed twice to pass a \$44 billion givebacks package crafted by Senators Baucus (Chair of the Senate Finance Committee) and Grassley. For a summary of the health issues before for the 107th Congress, see "Capital Communique," Sept. 26. [Back issues of the "Capital Communique" can be found at <http://www.healthlaw.org/federal.shtml>]

Impact of a Long-Term CR

The health implications of a long-term CR are just beginning to be discussed. Because the White House has stated it will only sign "clean" CRs without any add-ons, attempts to address particular funding needs through a CR have so far not succeeded. A long-term CR probably would not fund some of the issues resolved this year — e.g., bioterrorism measures, authorization of FDA user fees for medical devices (through which companies seeking

approvals of medical devices subsidize the review process), and reauthorization of the FDA's user fee program for drug approvals (without which the FDA will be forced to lay off workers). It would also forestall increased funding of \$4 billion to the National Institutes of Health, the final amount needed to complete a five-year plan to double NIH's funding. Finally, a long-term CR would affect implementation of a new user fee program for medical devices and reauthorization of the community health centers.

Community Health Centers

After months of inaction on the measure, the House reauthorized community health centers for five years. The bill also reauthorizes the National Health Service Corps. The bill had been stalled by House Majority Leader Dick Armey, who sought to amend the bill with a controversial "conscience clause" that would allow hospitals, insurers and other healthcare entities to decline to provide, pay or make referrals for abortions. His amendment passed the House as a separate bill and thus cleared the way for action on the community health centers reauthorization.

Coming Attractions – Medicaid Reforms?

The House Republican Policy Committee recently released a paper summarizing a briefing series it held on Medicaid reform. The Committee met with Administration officials from CMS and HRSA (the Health Resources and Services Administration) to discuss innovative approaches to Medicaid reform. Among other observations, the paper opines that Medicaid is unsustainable in its current form and that Medicaid reform can be the Welfare reform of this decade. A hearing on these issues is expected in front of the House Energy and Commerce Committee as early as November. The paper is available at http://policy.house.gov/health/assets/medicaidon_letterhead.pdf.

□ Health Care That Works□

On October 7, Senators Wyden (D-OR) and Hatch (R-UT) introduced the "Health Care that Works for All Americans Act", S. 3063. Its goal is to facilitate a nationwide public debate on improving the health care system to provide every American with the ability to obtain quality, affordable health care coverage. Congress would then have to vote on the recommendations that result from the debate. The bill would establish a Citizens' Health Care Working Group to hold hearings, prepare and distribute a "Health Report to the American People", hold community meetings to obtain public input on issues of coverage and develop recommendations. The idea is modeled in part on how Oregon created its Oregon Health Plan by having community meetings and fostering consensus. The full text of the bill is available at <http://thomas.loc.gov/>

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SCHIP □ Fetuses versus Pregnant Women

The Administration recently issued a final SCHIP rule that allows states to provide services to a "child" from conception to age 19, thereby making fetuses eligible SCHIP recipients. (See 67 Federal Register 61955, October 2, 2002, http://www.access.gpo.gov/su_docs/aces/aces140.html). The rule would allow states to offer coverage to the fetuses of currently ineligible pregnant immigrant women. However, since the recipient will be the fetus, post-partum care for the mother will not be covered. After issuing this rule, the Administration withdrew its support for S. 724, the Mothers and Newborns Health Insurance Act of 2001, which would allow states to cover pregnant women in SCHIP, thereby providing a much broader range of care than do the new regulations, but not covering currently ineligible immigrant women. In response to the Administration's change of heart, Senator Bingaman (D-N.M.), one of the sponsors of S. 724, put a "hold" on the nomination of Mark McClellan, nominee for head of the Food and Drug Administration, and asked the Administration to clarify why it withdrew support for S. 724. Secretary Thompson replied that making fetuses rather than women eligible for the program is a better approach. While unsatisfied with this response, Senator Bingaman lifted his hold on Mr. McClellan's nomination (which was then approved), but has scheduled a hearing on S. 724 for October 24, 2002.

Resources:

Crisis in the Mental Health System: The U.S. mental health system is unable to provide basic services and supports to people with psychiatric disabilities, reported the National Council on Disability on September 17. The fundamental flaw in the system, according to this federal panel, is the over-emphasis on medicating people, rather than helping them to become more productive. The panel recommended that Medicaid eligibility and services be expanded to improve the system. The report concluded that children in the public mental health system are underserved and have greater dependency as adults later in life. To read the report, "The Well Being of Our Nation: An Inter-Generational Vision of Effective Mental Health Services and Supports," visit <http://www.ncd.gov/newsroom/publications/mentalhealth.html>

Cancer & Disparities: Cancer affects people of all races and ethnicities, but statistics show significant differences in the incidence, prevalence, mortality and burden of cancer among specific population groups. A fact sheet compiled by the National Cancer Institute outlines some of the disparities among several groups. For example, African American females have the highest death rates for breast cancer. To obtain the fact sheet, visit <http://www.cancer.gov/newscenter/>

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Vaccine Shortage; States Are Rationing: The General Accounting Office on September 17 issued, "Childhood Vaccines: Ensuring an Adequate Supply Poses Continuing Challenges." The report found that least 40 states have started to ration children's vaccines because of shortages in supply. GAO-02-98. <http://www.gao.gov/cgi-bin/getrpt?GAO-02-987>

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Federal Factoid: The federal government will spend \$147 billion on Medicaid in fiscal year 2002 and \$5 billion on the State Children's Health Insurance Program (SCHIP). Federal expenditures for defense are approximately \$350 billion per year. For fiscal year 2002, the U.S. spent \$10 billion on the security of Afghanistan. Estimates of the cost of waging war on Iraq, as is being considered by the current administration, range from \$50 billion to \$200 billion.