

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 Glenda Booth at booth@healthlaw.org with your comments.

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MEDICARE PRESCRIPTION DRUGS BILL

The U.S. Senate this week failed to pass legislation providing prescription drug coverage for Medicare beneficiaries. Several approaches were considered. The following is a brief summary of Senate action:

1. A comprehensive Medicare benefit approach, sponsored by Senators Bob Graham (D-FL), Zell Miller (D-GA) and Edward Kennedy (D-MA) failed 52 to 47 (60 votes were required for passage under the procedure the Senate used).
2. An alternative approach, sponsored by Senator Grassley (R-IA), would have provided some drug coverage through private insurance plans, an approach similar to the House-passed bill. It failed on a 48 to 51 vote.

3. A compromise amendment by Senators Bob Graham (D-FL) and Gordon Smith (R-OR) would have provided Medicare drug coverage for beneficiaries with annual incomes up to 200 percent of poverty (\$23,880 for couples); provided complete "catastrophic" drug coverage for all Medicare beneficiaries after annual out-of-pocket expenditures exceeding \$3,300; provided a 5 percent federal subsidy for Medicare beneficiaries who do not qualify for comprehensive coverage; and offered a pharmacy discount card. All beneficiaries would have paid a \$25 annual enrollment fee, but no monthly premiums or deductibles. This approach failed on a 49 to 50 vote.

As we reported on July 18, adding prescription drug coverage to Medicare has implications for Medicaid. The National Governors' Association has estimated that states could save up to \$45 billion over ten years by a Medicare prescription drug benefit. Seven million elderly people are eligible for both Medicare and Medicaid and their expenses account for 35 percent of the cost of Medicaid, says the NGA.

SENATE VOTES TO INCREASE MEDICAID FMAP

On July 25, the Senate approved on a 75 to 24 vote an amendment by Senators John D. Rockefeller IV (D-WVa), Susan Collins (R-ME) and Ben Nelson (D-NE) to increase Medicaid's federal matching (FMAP) rate for 18 months (April 2002 to September 2003), an amendment known as "state fiscal relief."

The FMAP provision has two components: (1) any state whose FMAP is lower than its FMAP for the prior fiscal year would be able to retain the higher rate (a "hold harmless"); and (2) all states' FMAP would be increased by 1.35 percentage points. This provision would provide \$6 billion to states. A second part of the amendment authorizes \$3 billion in grants through the existing Social Services Block Grant (Title XX) that could be used for a range of social services programs, through September 30, 2004.

The Bush Administration opposed the amendment. To find out how your Senator voted, see the end of this report.

There is no comparable provision in the House-passed Medicare prescription drug bill, but Rep. Peter King (R-NY), with 147 cosponsors, has introduced a similar bill, H.R. 3414, providing a temporary FMAP increase.

Next Steps and Possible Action: Advocates wishing to do so should thank Senators who voted for the amendment and urge them to work for enactment this year. Advocates can also urge their U. S. Representatives to do two things: (1) sign the "Dear Colleague" letter to Speaker Dennis Hastert initiated by Reps. John Shimkus, Sherrod

Brown and Peter King.

The letter urges the Speaker to pass legislation increasing FMAP as a "way to direct additional federal funding to state Medicaid programs and protect states' health care delivery systems"; and (2) cosponsor H. R. 3414.

ACTION ON OTHER HEALTH AMENDMENTS

- "Re-imported" Drugs: The Senate approved an amendment by Senator Byron Dorgan (D-ND) to allow the "re-importation" of drugs from Canada if the HHS Secretary determines that reimportation would not jeopardize safety and would reduce drug costs. The Food and Drug Administration opposed the Dorgan amendment. A similar provision became law in 2000, but both then HHS-Secretary Donna Shalala and current HHS-Secretary Tommy Thompson refused to implement it. Supporters argued that drugs from Canada are cheaper and Americans are going across borders to purchase them anyway.

- Accelerating Generic Drugs: The Senate on July 31 approved S. 812 (Senators Charles Schumer, D- NY, and John McCain, R-AZ), a bill to accelerate the introduction of generic drugs into the market and thus reduce costs to consumers.

- Drug Discounts: The Senate passed an amendment, offered by Senator Deborah Stabenow (D-MI) on July 18, on a 56 to 43 vote, to allow states to use the purchasing power of their Medicaid programs to negotiate prescription drug discounts for residents who would not

otherwise qualify for Medicaid. Under this approach, states could extend Medicaid drug rebates to those not eligible for Medicaid without a waiver from CMS.

- **Medical Malpractice:** The Senate defeated an amendment to, among other things, cap non-economic damages for pain and suffering at \$250,000, offered by Senator Mitch McConnell (R-KY). President Bush on July 26 urged Congress to impose a number of restrictions on medical malpractice cases, contending that large verdicts drive up health care costs and push doctors out of the profession.

FEDERAL APPOINTMENTS

The Senate on July 24 confirmed Dr. Richard Carmona, an Arizona trauma surgeon, as U. S. Surgeon General. . . Dr. Joseph O'Neill, currently acting director of HHS's Department of HIV/AIDS Policy, has been appointed by President Bush as director of the White House Office of National AIDS Policy. . . Richard M. Campanelli will be the new director of the HHS Office for Civil Rights. Most recently Mr. Campanelli has worked as an attorney at Gammon and Grange, PC, in McLean, VA and has served as adjunct professor at George Mason University, Fairfax, VA, teaching non-profit law, governance and ethics. . . Dr. Julie Gerberding is the new director of the Centers for Disease Control and Prevention. She is currently CDC's acting director for science and public health.

RESOURCES

- * **Children Underenrolled:** Nearly 5 million children eligible for Medicaid and S-CHIP are not enrolled, according to the Urban Institute (www.urban.org). Almost 2 million of these children live in just three states: California, Texas and Florida.

- * **Overcoming Disparities:** Some socioeconomic disparities in health care can be reduced or eliminated, according to the National Institutes of Health (www.nih.gov). NIH funded the RAND Corporation to conduct a study, which showed an association between a patient's level of education and adherence to treatment plans HIV and diabetes. The study found that educational differences could be overcome with, e.g., rigorous treatment plans, which improve compliance with treatment regimens and ultimately health outcomes.

* Tobacco Taxes A Double Win: Many states are raising tobacco taxes to meet state budget deficits. A national coalition of health care organizations found that in addition to raising as much as \$3 trillion for states next year, over \$1 trillion in health care costs can be saved by the increases. For a state-by-state list of current tobacco taxes and the impact of increases on health and revenues, visit www.tobaccofreekids.org. In a related development, the Kaiser Commission on Medicaid and the Uninsured on July 31 released a survey showing states' strategies for constraining Medicaid costs. Visit <http://www.kff.org/content/2002/20020730/>.

* Federal Factoid: The U.S. Department of Transportation has increased the value of a human life from \$2.7 million to \$3 million. This is the figure used by the Federal Aviation Administration when it conducts cost-benefit analyses in making safety rules.

FOLLOW-UP ON IMMIGRANTS AND HOSPITALS

We previously reported that eight Members of Congress have asked the General Accounting Office to study the financial impact of undocumented immigrants on U.S. hospitals. The GAO, the investigative arm of the U.S. Congress, announced on July 22 that they will conduct this study. Arizona hospital officials have estimated that the cost there for uncompensated care could be over \$50 million per year.

The U.S. House of Representatives is in recess until September 4.

The U.S. Senate is in recess and will reconvene on September 3.

ROLL CALL VOTE ON INCREASING FEDERAL MATCHING RATE

(FMAP) FOR MEDICAID,

U.S. Senate, Rockefeller Amendment #4316, July 25, 2002

Akaka (D-HI), Yea; Allard (R-CO), Yea; Allen (R-VA), Yea; Baucus (D-MT), Yea; Bayh (D-IN), Yea; Bennett (R-UT), Yea; Biden (D-DE), Yea; Bingaman (D-NM), Yea; Bond (R-MO), Nay; Boxer (D-CA), Yea; Breaux (D-LA), Yea; Brownback (R-KS), Nay; Bunning (R-KY), Yea; Burns (R-MT), Yea; Byrd (D-WV), Yea; Campbell (R-CO), Yea; Cantwell (D-WA), Yea; Carnahan (D-MO), Nay; Carper (D-DE), Nay; Chafee (R-RI), Yea; Cleland (D-GA), Yea; Clinton (D-NY), Yea; Cochran (R-MS), Yea; Collins (R-ME), Yea; Conrad (D-ND), Yea; Corzine (D-NJ), Yea; Craig (R-ID), Nay; Crapo (R-ID), Nay; Daschle (D-SD), Yea; Dayton (D-MN), Yea; DeWine (R-OH), Nay; Dodd (D-CT), Yea; Domenici (R-NM), Yea; Dorgan (D-ND), Yea; Durbin (D-IL), Yea; Edwards (D-NC), Yea; Ensign (R-NV), Nay; Enzi (R-WY), Yea; Feingold (D-WI), Nay; Feinstein (D-CA), Yea; Fitzgerald (R-IL), Yea; Frist (R-TN), Nay; Graham (D-FL), Yea; Gramm (R-TX), Nay; Grassley (R-IA), Nay; Gregg (R-NH), Nay; Hagel (R-NE), Yea; Harkin (D-IA), Yea; Hatch (R-UT), Yea; Helms (R-NC), No Vote; Hollings (D-SC), Yea; Hutchinson (R-AR), Yea; Hutchison (R-TX), Yea; Inhofe (R-OK), Nay; Inouye (D-HI), Yea; Jeffords (I-VT), Yea; Johnson (D-SD), Yea; Kennedy (D-MA), Yea; Kerry (D-MA), Yea; Kohl (D-WI), Yea; Kyl (R-AZ), Nay; Landrieu (D-LA), Yea; Leahy (D-VT), Yea; Levin (D-MI), Yea; Lieberman (D-CT), Yea; Lincoln (D-AR), Yea; Lott (R-MS), Nay; Lugar (R-IN), Yea; McCain (R-AZ), Yea; McConnell (R-KY), Yea; Mikulski (D-MD), Yea; Miller (D-GA), Yea; Murkowski (R-AK), Yea; Murray (D-WA), Yea; Nelson (D-FL), Yea; Nelson (D-NE), Yea; Nickles (R-OK), Nay; Reed (D-RI), Yea; Reid (D-NV), Yea; Roberts (R-KS), Nay; Rockefeller (D-WV), Yea; Santorum (R-PA), Nay; Sarbanes (D-MD), Yea; Schumer (D-NY), Yea; Sessions (R-AL), Yea; Shelby (R-AL), Yea; Smith (R-NH), Nay; Smith (R-OR), Yea; Snowe (R-ME), Yea; Specter (R-PA), Yea; Stabenow (D-MI), Yea; Stevens (R-AK), Yea; Thomas (R-WY), Nay; Thompson (R-TN), Nay; Thurmond (R-SC), Nay; Torricelli (D-NJ), Yea; Voinovich (R-OH), Nay; Warner (R-VA), Yea; Wellstone (D-MN), Yea; Wyden (D-OR), Yea.