

NHeLP's Capital Communique
August 11, 2006

This issue is part of a series of periodic reports from the National Health Law Program's Washington office, reporting briefly on recent and forthcoming developments in federal policy of interest to NHeLP advocates and friends. We always appreciate your feedback and comments. Please send them to Deborah Reid at reid@healthlaw.org. For updates and information on NHeLP publications, go to <http://www.healthlaw.org>.

SUBJECTS COVERED

Deficit Reduction Act - Citizenship Verification

Immigration - "English Only"

Legislative Developments

 "Stop Over Spending Act of 2006"

 "Legislative 'Line Item Veto' Acts"

 Sunset Bills

Citizens' Health Care Working Group

Judicial Developments

Resources

Announcements

DEFICIT REDUCTION ACT - CITIZENSHIP VERIFICATION:

A provision of the "Deficit Reduction Act of 2005" (DRA) requires for the first time that citizens applying for or receiving Medicaid provide certain documents to verify their United States citizenship. Health advocates believe that this requirement, especially as interpreted by the Centers for Medicare & Medicaid Services (CMS), will be a significant burden on many of those seeking access to health benefits.

As of July 1, states must obtain "satisfactory documentation of a declaration of citizenship" from prospective and current beneficiaries to continue receiving federal Medicaid funding for those beneficiaries. As interpreted by CMS, originals or certified copies of certain specified documents must be produced to meet the new requirements. In addition, the agency in its original guidance applied the new documentation provisions to some Medicaid recipients, such as SSI recipients and foster children, not seemingly covered by the amendment to the DRA. Individuals who do not make a "good faith effort" to present these documents, or who fail to present the documents after having a "reasonable opportunity" to do so, will be found ineligible for Medicaid.

As a result of the unnecessarily harsh CMS interpretation of the new documentation requirements, NHeLP and other advocates in early July filed a nationwide class action lawsuit (*Bell v. Leavitt*) in Chicago against the Department of Health and Human Services. The case challenges those

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citizenship documentation requirements that are most likely to prevent eligible Medicaid beneficiaries from receiving or keeping coverage.

On July 6, the night before a hearing was scheduled in the *Bell* case, CMS issued interim final regulations on citizenship documentation. For the first time, the proposed regulations exempt most SSI recipients and all Medicare beneficiaries from the new documentation requirements. Also for the first time, the regulations allow documentation of citizenship and identity through various matches with some government records. In addition, states are obligated to assist certain “special populations” in documenting citizenship or identities. Nevertheless, the rules still threaten the benefits of millions of Medicaid beneficiaries and applicants, so the suit against Secretary Leavitt continues. The court is expected to issue a decision sometime in September on the plaintiffs’ request to halt temporarily the documentation requirements nationwide.

IMMIGRATION – ‘ENGLISH ONLY’:

On May 18, the Senate approved an amendment by Senator James Inhofe’s (R-OK) to the “Comprehensive Immigration Reform Act of 2006,” S. 2611, to enhance English as “the national language.” The Inhofe amendment would eliminate the right of any person to require the federal government to provide services or materials in any language other than English. The amendment was approved by vote of 62 - 35. All Republican senators, with the exception of Pete Domenici (NM), and 11 Democrats voted to support the Inhofe amendment.

Shortly after the vote on the Inhofe amendment, the Senate also approved Senator Ken Salazar’s (D-CO) amendment to the same bill by a vote of 58 - 39. The Salazar amendment seeks to preserve and enhance English as “the common and unifying language of America.” Both amendments remain in the Senate bill, which is now awaiting a conference to reconcile differences with a House immigration bill passed earlier.

Possible action: Those wishing to do so could contact their elected representatives and educate them about the harm that ‘English as the national language’ provisions would be likely to cause in the health care arena. This perspective almost certainly was not considered by anyone voting on the Inhofe or Salazar provisions, given the highly charged immigration context within which they were considered.

LEGISLATIVE DEVELOPMENTS:

“Stop Over Spending Act of 2006:”

On June 15, Senate Budget Committee Chairman Judd Gregg (R-NH) introduced the “Stop Over Spending Act of 2006” (S.O.S. Act), S. 3521. The bill contains several provisions that will impact discretionary and entitlement programs. It establishes spending caps on discretionary funding programs for the next three years (discretionary programs include, for example, services for abused and neglected children, Head Start, WIC, and the low-income home energy assistance program). S. 3521 also establishes targets for cuts in all entitlement programs, such as Medicaid, Medicare, State Children’s Health Insurance Program (SCHIP), the Earned Income Tax Credit, and Food Stamps (with the exception of Social Security).

The bill would create a National Commission on Entitlement Solvency that would be responsible for sending a report to Congress and various administrative officials. This report must include detailed findings and recommendations and proposed legislation to address any perceived actuarial financial health problems in the programs. Additionally, the report must contain long-term program ‘solvency’ solutions through funding cuts and consolidating programs into less funded block grants.

S. 3521 would also allow the President up to four opportunities per calendar year (but within a year of a bill’s enactment) to request the rescission of specific items of spending. The President could “temporarily” cancel enacted provisions of legislation, as well as withhold funds for discretionary budget authority, for 45 calendar days after submitting a rescission request to Congress.

The bill would also establish a Commission on Congressional Budgetary Accountability and Review of Federal Agencies, comprised of 9 Republican and 6 Democratic appointees. This commission would be responsible for developing plans to terminate and reconfigure entitlement and discretionary programs, requiring a simple majority vote for approval. S. 3521 includes an expedited procedure to restrict debate in the House or the Senate to 10 hours on any Commission plan, with no opportunities to offer amendments or to postpone consideration of the plan. The House or Senate would then have to immediately vote on the plan at the conclusion of debate.

“Legislative ‘Line Item Veto’ Acts:”

Another Senate bill, the “Legislative ‘Line Item Veto’ Act of 2006,” S.2381, would also give the President the authority to “temporarily” withhold or suspend any amount of appropriated funding, here for up to 180 calendar days. In addition, the bill includes an expedited procedure to consider the President’s proposed rescissions that limits congressional debate to no more than four hours in the House and ten hours in the Senate.

On June 22, by a vote of 247 – 172, the House passed a related bill, the “Legislative ‘Line Item Veto’ Act of 2006,” H.R. 4890, which is similar to the S.O.S. Act (S. 3521). Fifteen Republicans opposed H.R. 4890, while 35 Democrats voted in favor of it. Similar to the Senate bill, H.R. 4890 gives the President the power to “temporarily” withhold or suspend any amount of appropriated funding for up to 45 calendar days once he has sent a request to Congress for rescission of specific items of spending. The bill does not restrict the president from repeatedly directing that funding be withheld or suspended for subsequent 45 calendar-day periods, so that funding for some programs could lapse entirely before any of it is ever spent.

Sunset Bills:

On July 19, the House Government Reform Committee approved companion bills, H.R. 3282 and H.R. 5766, which would impact the future existence of federal agencies. Originally introduced by Rep. Kevin Brady, (R-TX), the Committee voted 16 – 15 along party lines to approve the “Abolishment of Obsolete Agencies and Federal Sunset Act of 2005,” H.R. 3282. The bill establishes a permanent Federal Agency Sunset Commission to evaluate the public need for all federal agencies every 12 years. The sunset commission would submit recommendations to Congress, including whether certain agencies should be abolished or reorganized, and establishes sunset dates for groups of agencies.

The Committee also voted 15 – 12, in favor of an act introduced by Rep. Todd Tiahrt (R-KS). The “Government Efficiency Act of 2006,” H.R. 5766, allows the President (through an executive order) or Congress (by a joint resolution of both the House and Senate) to create one or more one-year Federal Review Commissions. Among other mandates, the commissions would be charged with determining if fraud and abuse exists in federal agencies, examining whether agencies are efficiently fulfilling their missions, determining the constitutionality of operations in federal agencies or programs, and identifying agencies for reorganization or elimination. The commissions would report their findings to the appropriate congressional committees, who would then be required to act upon the commissions’ recommendations within 30 days. The House Committee on Government Reform voted to report both bills, H.R. 3282 and H.R. 5766, to the House for further action on July 20 and July 24, respectively.

Possible action: Those wishing to do so could contact their elected representatives and urge them to oppose the “Stop Over Spending Act,” S. 3521; the “Legislative ‘Line Item Veto’ Act,” S.2381; the “Abolishment of Obsolete Agencies and Federal Sunset Act of 2005,” H.R. 3282; and the “Government Efficiency Act of 2006,” H.R. 5766.

CITIZENS’ HEALTH CARE WORKING GROUP:

The Citizens Health Care Working Group (CHCWG) was established by the Medicare Modernization Act of 2003. The two-fold mission of the 14-member CHCWG is to provide a national public debate on improving the American health care system to provide quality and affordable health care coverage, as well as submit recommendations to Congress and the President for methods of doing so.

On June 1, the CHCWG released its interim recommendations. (Additional revised materials were released during the week of July 17.) The CHCWG based its recommendations on perspectives from participants in 31 community meetings throughout the country and an on-line poll seeking input related to health care reform issues. The recommendations address affordable health care; core benefit packages; financial protections against high health care costs; efforts to improve quality of care and efficiency; support for integration of community health networks; and access to palliative, hospice, and end-of-life care.

Possible action: Those wishing to do so should review and comment on the CHCWG’s interim recommendations by August 31. See http://www.citizenshealthcare.gov/speak_out/comment.php.

JUDICIAL DEVELOPMENTS:

On May 26, the Senate confirmed Brett Kavanaugh as a judge of the U.S. Court of Appeals for the District of Columbia Circuit, by a vote of 57 - 36. Previously, he served as Associate Counsel and Senior Associate Counsel to the President, as well as Staff Secretary. During the confirmation hearing, several Democrats questioned the nominee’s lack of judicial experience, while Senator Lindsay Graham (R-SC) later observed that Judge Kavanaugh is a “solid conservative with a deep understanding of our legal system.”

RESOURCES:

NHeLP and the National Association of Community Health Centers have completed an analysis of state laws on family planning Medicaid benefits, as a companion to the state-by-state analysis of state statutory and regulatory requirements for modifying each state's Medicaid program. To view the results, go to: <http://www.healthlaw.org/link.cfm?5600>.

NHeLP has released a complete analysis of the health related provisions of the Deficit Reduction Act of 2005, which includes background information and the impact of this law on low-income populations and individuals with disabilities. For further information see "Deficit Reduction Act of 2005: Congress Targets Beneficiaries for Cuts," at <http://www.healthlaw.org/link.cfm?6194>.

NHeLP's HealthCareCoach.com (<http://www.healthcarecoach.com>) provides consumers with information about our constantly changing health care system. The website offers facts and do-it-yourself tips on topics from health insurance to patient care. Recent articles include: "What Is Medically Necessary Care?," "What Do Insurers Mean by "Cosmetic?," "When You Have No Insurance: Keeping Costs Down," "Would a Consumer-Directed Health Plan Work for Me?," "Fighting and Avoiding Medical Bills When You Have Insurance," and "Can't Afford Your Prescription Drugs? Maybe You Can Get Them for Free." Go to <http://www.healthcarecoach.com> for these and other articles on Medicaid, Medicare, prescription drugs, privacy, and end-of-life care.

The Annie E. Casey Foundation recently released its annual Kids Count report that measures states' progress in health and income measures for U.S. children. The report examined 10 factors, such as infants born with low birth-weights, infant mortality, poverty rates, and single-parent families. For a free copy of Kids Count, see <http://www.aecf.org/kidscount/sld/databook.jsp>

ANNOUNCEMENTS

2006 Covering Kids & Families:

NHeLP is a national supporter of the 2006 Covering Kids & Families Back-to-School Campaign. The campaign encourages parents to include enrolling their eligible, uninsured children in Medicaid or SCHIP as an important part of getting them ready for the new school year. The campaign kicks off on August 9, 2006 and continues throughout August and September. Thousands of outreach and enrollment events will take place across the country. To get involved, go to <http://coveringkidsandfamilies.org>.

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