



To: State Human Services Administrators

From: Larry Goolsby, Director Legislative Affairs

Date: August 8, 2008

Re: Congressional and Policy Update

On August 1, the Senate and House adjourned for the August congressional recess. Lawmakers are scheduled to return on September 8, and currently plan only to be in session for a few weeks and then adjourn for the year. Below is a summary of the status of key health and human services issues at the time of adjournment.

APHSA will continue to monitor key developments as Congress considers the health and human service issues in the remainder of this session.

If you have any questions about these or other policy issues, please contact:

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Medicaid/SCHIP

Legislation

Medicaid Regulations Moratoria

The National Association of State Medicaid Directors, an APHSA affiliate, worked closely with Congressional staff and other national associations to secure inclusion of moratoria on six regulations issued by the Centers for Medicare and Medicaid Services in the emergency war spending bill that was signed into law on June 30. The bill, H.R. 2642, mandated moratoria on the following CMS rules: Optional Case Management, Rehabilitation Option, School-based Services, Public Provider Cost Limit, Graduate Medical Education, and Provider Tax. The delayed regulations did not include two other CMS actions, an outpatient regulation and the so-called “crowd-out” letter of August 17, 2007, that greatly restricted states’ ability to expand the State Children’s Health Insurance Program.

Medicare Physician Payment Fix

APHSA and NASMD supported the Medicare Improvements for Patients and Providers Act of 2008 (H.R. 6331) that was vetoed by President Bush on July 15. Later that day, the House voted to

override the veto 384-41, and the Senate followed by a vote of 70-26. The new law will replace a 10.6 percent pay cut to doctors who participate in the Medicare program with 18 months of stable payments, and a 1.1 percent pay increase in 2009. In 2010, physicians will now face a 20 percent pay cut that will be more difficult to reverse. These cuts were written into earlier Medicare legislation, but Congress has prevented these cuts almost every year since they began in 2002, with no consensus on a permanent fix. Due to H.R. 6331, CMS delayed the cuts that had been scheduled to go into effect on July 1. The legislation would have blocked the implementation.

The measure also extends the Qualifying Individuals program until December 2009 and the Transitional Medical Assistance program until June 30, 2009. The bill codifies the Departmental Appeals Boards by establishing new timelines and procedures for the administrative review of disallowances of federal financial participation under Medicaid and codifies a state's right to request reconsideration of disallowance of federal financial participation or appeal disallowances or unfavorable reconsideration determinations to the DAB. The language also codifies that the DAB decision is the final decision of the secretary of Health and Human Services. The bill also includes a delay for the establishment of Medicaid payment limits using Average Manufacturer Price for generic drugs and a delay for the publication of AMP data through September 30, 2009. Further, the bill delayed the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Competitive Bidding Program, which affects only Medicare beneficiaries in traditional fee-for-service in 10 competitive bidding areas.

FMAP Increase

On July 24, NASMD Executive Committee Chair and Alabama Medicaid Director Carol Hermann-Steckel and APHSA Executive Director Jerry Friedman met with House Majority Leader Steny Hoyer (D-Md.) and Rep. Artur Davis (D-Ala.). The meeting focused on the need for states to receive a temporary increase in the Federal Medical Assistance Percentage, similar to the one given to states in 2003. The 2003 FMAP increase was tied to a requirement that states not restrict eligibility. Because of the counter-cyclical nature of Medicaid, states are currently facing enrollment and cost increases at exactly the same time that state revenues are decreasing because of the economic downturn. During the last downturn, one state had already created stricter eligibility requirements but chose not to implement those cost-saving cuts because of the congressional FMAP increase and requirement. Representatives Hoyer and Davis supported the new FMAP increase proposal; Congress is considering including the FMAP increase in the stimulus package being proposed for debate in September.

SCHIP reauthorization

This proposal is in the Administration's FY 2009 budget, funded at \$19.7 billion through fiscal year 2013. The proposal includes adults phased out, defined income (with a hard cap at 250 percent of poverty), and crowd-out provisions. Congress attempted a final override last January of the President's veto of SCHIP reauthorization with expanded coverage. Recent speculation has suggested that SCHIP reauthorization may be addressed in September.

Regulatory/Administrative

Regulations

It is anticipated that CMS will issue several final regulations between the end of July and the end of November. There are also a few additional proposed regulations that will likely be introduced in the next few months.

Legal Action

A District of Columbia circuit court judge ruled that the Public Provider Cost Limit regulation was improperly released; therefore, the regulation was remanded back to CMS. There are currently lawsuits pending on three of CMS' recent actions, including the Medicaid Pharmacy Pricing and Optional Case Management regulations and the August 17, 2007, directive on SCHIP crowd-out.

More information on the status of Medicaid regulations is available on the NASMD web site at http://www.nasmd.org/Home/home_news.asp.

Child Welfare

Legislation

Adoption Assistance and Relative Guardianship Support Act

The Senate Finance Committee is poised to mark up the Improved Adoption Assistance and Relative Guardianship Support Act (S. 3038) in September 2008. The measure's supporters were hopeful that the bill would move out of the committee prior to the August congressional recess, but this did not occur. The act, sponsored by Sen. Charles Grassley (R-Iowa) draws heavily from the Fostering Connections to Success Act (H.R. 6307), which passed the House last June. The act's momentum has built steadily over the introduction of several pieces of legislation, including the Kinship Caregiver Support Act (H.R. 2188/S. 661), the Tribal Foster Care and Adoption Access Act (S. 1956), and Foster Care Continuing Opportunities Act (S. 1512).

The chairman's mark for S. 3038 reauthorizes the Adoption Incentives Program through 2013, with \$43 million in funding authorization. It also raises the award amounts for older and special needs. The child adoption rate would be determined by dividing the number of foster adoptions finalized in a fiscal year by the number of children in foster care on the last day of the previous year. A state earns incentive payments if it exceeds its highest-ever foster child adoption rate. The baseline year would change from fiscal year 2002 to 2007.

The measure also:

- Eliminates the Aid to Families with Dependent Children "look-back" criteria for all adoption assistance benefits.
- Under Guardianship Assistance, allows state option for relative guardianship assistance through Title IV-E as a reimbursable expense; requires sibling placement in the guardianship home, unless deemed inappropriate; and establishes Guardianship Placement State Incentives at \$1,000 for each placement over the established baseline.
- Provides for demonstration projects around flexible licensure of immediate relative foster parents' homes.
- Provides Kinship Navigator Program Grants at \$5 million for FYs 2009-2013 that will (a) establish kinship navigator programs in states and (b) promote effective partnerships among public and private agencies to more effectively serve kinship families.
- Under tribal foster care and adoption access, provides direct IV-E access to tribes for foster care and adoption assistance, and appropriates \$5 million for FYs 2010-2014 to make grants available to states that successfully collaborate with tribes to improve services and permanency outcomes for Native American children.
- For support of older youth in foster care, provides IV-E maintenance payments, adoption assistance payments, and/or relative guardianship payments to age 19, 20, or 21 by state option. To be eligible, after reaching age 18, the individual must be: (a) completing high school; (b) enrolled in college (or equivalent vocational education); (c) participating in a

- program or activity designed to promote employment or remove barriers to employment; (d) employed at least 80 hours a month; or (e) determined to be “particularly vulnerable” or a “high-risk individual.” The effective date for this provision is October 1, 2010.
- Under educational stability, requires coordination with local educational agencies to ensure that foster children remain in the school they are enrolled at the time of placement in foster care, or, if remaining in that school is not in the child’s best interests, immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to that school. The measure also amends the HHS definition of foster care maintenance payment to permit states to claim reimbursement at the state FMAP rate for the cost of “reasonable” travel for the child to remain in the school of origin.

Congressional hearings on child welfare

The House Ways and Means Subcommittee on Income Security and Family Support continues to hold hearings on a variety of child welfare issues. In the 110th Congress, the panel has held hearings on disconnected youth, youth aging out, health care and foster care, child welfare finance reform, psychotropic medication and foster care, and disproportionality. On May 8, the subcommittee held a hearing on the use of psychotropic medication among children in foster care. Dr. Tricia Lea, director of medical and behavioral services for the Tennessee Department of Children’s Services, testified on behalf of APHSA and its affiliate, the National Association of Public Child Welfare Administrators.

On July 31, the subcommittee held a hearing to examine disproportionality within the child welfare system. APHSA and NAPCWA provided a witness, Dr. Terry A. Solomon, who also spoke on behalf of the Illinois African American Family Commission and the Illinois Department of Children and Family Services. There was an energetic question and answer period following the panel’s testimony, and Dr. Solomon’s participation provided the members an important window on states’ perspectives and challenges.

Other recent and pending legislative developments relevant to child welfare

- The Healthy Transition Act (H.R. 6375/S. 3195), introduced on June 25, would provide additional resources to states to aid children in the mental health system to smoothly transition into the adult mental health system, including youth in the child welfare system.
- The Stop Child Abuse in Residential Programs for Teens Act of 2008 (H.R. 6358) passed the House on June 25, and calls for new monitoring and standards requirements for residential psychiatric treatment facilities and group homes that serve children with emotional, behavioral, or mental health problems or disorders, or substance abuse problems.
- The Juvenile Justice and Delinquency Prevention Act is up for reauthorization; NAPCWA has worked to highlight the needs of children in families involved in both the juvenile justice and child welfare systems. The act passed the Senate Judiciary Committee on July 31.
- NAPCWA is working to develop policy positions since the Child Abuse Treatment and Prevention Act is due to be reauthorized by the 111th Congress. The House has begun holding hearings on CAPTA.
- NAPCWA remains active in the Partnership to Protect Children and Families, a coalition of organizations that seeks finance reform through de-linking Title IV-E eligibility to the 1996 AFDC income requirements and reinvesting state dollars in prevention.

Regulatory/Administrative

On March 3, APHSA commented on the proposed Adoption and Foster Care Analysis and Reporting System rule and submitted a detailed analysis showing the rule would require extensive automated system upgrades, add significant costs, and result in the potential for new penalties on states. Other specific concerns cited included:

- The large expansion of the reporting population and the necessity of dependence on state human service systems other than child welfare to collect these data, such as juvenile justice and mental health;
- The reduction of the state data reporting window from 45 to 15 days;
- The large amount of data that states are required to submit; and
- Significantly expanded and newly required data elements.

The letter is posted on the APHSA web site.

Child Care

Regulatory/Administrative

States are moving into the third tier of first-time implementation of a national Child Care and Development Fund error rate methodology. APHSA and its affiliate, the National Association of State Child Care Administrators, submitted formal comments and recommendations to ACF around the error rate methodology in July 2008.

New regulations are pending for the Head Start program, which was reauthorized at the end of last year.

Child Support

Legislation

APHSA, in partnership with other organizations, has continued to remain highly involved with its support of the Child Support Protection Act of 2007 (S. 803 and H.R. 1386). With 38 cosponsors signed on to the Senate bill and 88 cosponsors in the House, there is a considerable amount of support among members of both chambers to restore, at least in some capacity, the federal match to the child support incentive funding. Currently, APHSA is closely monitoring a second stimulus package or domestic supplemental spending initiative as potential vehicles for either a complete reversal (or at least a temporary patch) of the Deficit Reduction Act provision that ended this match.

Another piece of legislation that could affect child support programs was recently introduced in the House. The New Employee Verification Act (NEVA, H.R. 5515) would establish a new system that would replace the existing Basic Pilot Program, also known as E-Verify, and include the National Directory of New Hires as a key component of a verification program that would determine citizenship status of potential new hires. There are concerns regarding the high cost, questionable efficiency, and negative long-term implications of implementing the NDNH in a national citizenship verification framework. The E-Verify program in its present form expires in November.

Regulatory/Administrative

This past spring APHSA commented on a Notice of Proposed Rule Making issued by the Administration for Children and Families that would make a number of changes to the Advance Planning Document process. The comment letter is posted on the APHSA web site.

A final regulation regarding the establishment of medical support criteria for the child support program was published in the *Federal Register* on July 21, 2008, and is effective immediately. The changes covered in the regulation include a requirement for all support orders in the IV-D program to address medical support; a redefinition of reasonable-cost health insurance; a requirement for health insurance to be accessible, as defined by the state; and the inclusion of conforming changes to the federal interstate substantial compliance audit as well as the state self-assessment requirements.

TANF

Legislation

APHSA continues to press for legislation that would include a package of fixes to several problems faced by the Temporary Assistance for Needy Families program. These issues include eliminating the 90 percent two-parent work rate; removal of substance abuse and mental health from the job readiness category; one to two years of penalty relief for states that have not met the work participation rates; and increasing flexibility in maintenance-of-effort spending.

Regulatory/Administrative

APHSA and its affiliate, the National Association of State TANF Administrators, have raised strong concerns about a proposed rule, announced in the *Federal Register* but not yet published, that would eliminate states' ability to apply excess MOE spending toward their work participation rates. Presently, the regulation is scheduled to be published in August 2008, but no proposed rule has yet appeared. APHSA and NASTA have issued a letter HHS with a detailed statement of opposition to such a regulation. The letter has also been sent to relevant Congressional leaders and committees, urging their intervention to prevent issuance of the regulation.

APHSA and NASTA are also monitoring the intensive TANF audits that eight states have undergone in 2007 and 2008. The HHS Office of Inspector General cites the Improper Payments Information Act of 2002 as authority for these audits, which attempt to establish state TANF error rates. APHSA and NASTA have objected strongly to the audits and to the specific procedures they have utilized.

LIHEAP

Legislation

Prior to adjournment, the Senate failed to reach cloture on legislation sponsored by Sen. Bernard Sanders (I-Vt.) that would provide a \$2.5 billion increase to the Low-Income Home Energy Assistance Program. The \$2.5 billion increase would almost double the FY 2008 appropriation for the program. While the increase would be the largest since 2000, emergency appropriations for LIHEAP are not uncommon; additional funds have been put toward the program every year since 1994.

The White House had threatened to veto the legislation, arguing that the money would not be needed in the current fiscal year, which ends September 30. Senate Majority Leader Harry Reid (D-Nev.) can bring the measure up for another vote, but is not expected to do so.

Food Stamp Program

Legislation

Food Stamp Program Reauthorization Enacted

On May 22, Congress enacted the Food, Conservation and Energy Act of 2008 (commonly known as the farm bill) over President Bush's veto. (Because of a technical omission, the measure was passed and vetoed again, and the veto was overridden a second time on June 18.) The law (P.L. 110-246) reauthorized the Food Stamp Program through FY 2012 and renamed it the Supplemental Nutrition Assistance Program or SNAP. The act includes benefit increases that APHSA supported throughout the reauthorization process. However, it also includes several administrative provisions that APHSA strongly opposed, but not a broad mandate on the use of merit system employees. Most provisions of the law are effective October 1, 2008.

The benefit changes include increases in the minimum benefit and the standard deduction, additional exclusions from resources, and indexing of the resource limit among others. The law also has a number of important administrative provisions, including a state option allowing "telephonic signatures" for phone interviews and expansion of the simplified reporting and transitional benefit options. The final legislation dropped several proposed administrative changes APHSA had strongly opposed, including a mandate that states would have had to use merit system employees for nearly every aspect of the FSP application and certification process, and a provision that would have effectively ended states' ability to use biometric technology in applications. However, the legislation retained several other mandates that APHSA opposed, including one making states liable for the full amount of overissued benefits due to widespread systemic failures and an extension of the cost-allocation federal match reductions that affect all but seven states.

The Food and Nutrition Service issued guidance for implementing the act on July 3. This guidance indicated that regulations would have to be issued prior to enforcement of the problematic administrative provisions. The full text of the bill is available at <http://thomas.loc.gov>. The text of the SNAP provisions is at http://www.fns.usda.gov/fsp/rules/Legislation/pdfs/PL_110-246.pdf.

FY 2009 Budget and Appropriations

"Stimulus Supplemental"

Senate Appropriations Committee Chair Robert C. Byrd (D-W.Va.) has indicated that his committee continues to plan on a second "stimulus supplemental" in the amount of \$24.1 billion, less than half of the \$50 billion that House Speaker Nancy Pelosi (D-Calif.) has proposed. Senator Byrd had hoped at one time to move the measure prior to the August break, but Democratic leaders in the House and Senate now plan to complete work on the package in September. Current plans for the second stimulus measure include funding for government programs rather than payments to taxpayers. The plans include \$10 billion for infrastructure, including \$1.5 billion for energy initiatives, and \$10.1 billion for disaster relief. An additional \$4 billion would go for other programs and initiatives such as the Low-Income Home Energy Assistance Program.

On July 28, the White House released its midyear budget review numbers and projected the FY 2009 deficit at \$482 billion. The figure is \$75 billion more than the FY 2009 deficit projection included in the president's February budget proposal. According to the Administration, the difference between the President's February proposal and this week's budget review is the way in which the \$151 billion economic stimulus package enacted in February is being accounted for in the budget. A document released by the White House along with the deficit figure concludes that excluding the tax rebates that were included in the stimulus package would reduce the deficit, and that the deficit was temporary and manageable.

Continuing Resolution Likely

Congressional leaders do not plan to pass all 12 separate FY 2009 appropriations bills this year, in order to avoid a protracted fight with the White House. President Bush has threatened to veto the bills if Congress cannot find a way to reduce their total to under the \$991.6 billion cap established in the FY 2009 budget request. Instead, the leaders plan to pass a continuing resolution to fund federal agencies after September 30 until a new president takes office; however, it is not certain that President Bush will sign such a resolution.

Meanwhile, Congress has continued to move forward on a handful of appropriations measures and may use one as the vehicle for the CR. On August 1, the House completed its work on the \$118.7 billion Military Construction appropriations bill, H.R. 6599. Another bill, for defense authorizations (S. 3001), will be brought to the Senate floor in September. Prior to adjournment on August 1, the Senate voted on amendments to the bill. The full Senate has not voted on any appropriations legislation.

Human service appropriations action includes approval on June 26 by the Senate Appropriations Committee of the FY 2009 Labor, Health and Human Services, and Education measure, S. 3230; see the chart below for details. On July 21, the Senate Appropriations Committee reported out S. 3289, the FY 2009 Agriculture Appropriations bill. The committee's Agriculture Subcommittee recommends an appropriation of \$43.44 billion for the Supplemental Nutrition Assistance Program, including \$3 billion as a contingency reserve. The recommendation is approximately \$3.6 billion over 2008. S. 3289 also funds the Special Supplemental Nutrition Program for Women, Infants, and Children at \$6.75 billion (\$730 million above the FY 2008 level) and provides \$155 million for the Commodity Supplemental Food Program. In addition, the committee recommends \$19.8 million for the Farmers' Market Nutrition Program. More details are available at <http://thomas.loc.gov/>.

The following chart has appropriations details that Congress has determined to date.

Funding for Selected Health and Human Services Programs, FY 2009 (in millions)			
Program	President's Budget Request for FY 2009	House Action to date	Senate Action to date
HUMAN SERVICE PROGRAMS			
Child Support Enforcement	3,866		2,759
LIHEAP STATE grant program	1,700		1,980
Social Services Block Grant (Title XX)	1,200		1,700

CHILD WELFARE			
Child Welfare Services (IV-B, Subpart 1)	282		
Promoting Safe and Stable Families (PSSF) Program (Title IV-B, Subpart 2) – State Grants	386		
PSSF – Research, Training, and TA	9		
PSSF – State Court Improvement	33		
PSSF – Discretionary	63		
CAPTA Child Protective Services State Grant Program	26		
CAPTA Discretionary Grants	37		
CAPTA Community-Based Grants for Prevention of Child Abuse and Neglect	42		
OUT-OF-HOME CARE SERVICES			
Foster Care Program (Title IV-E)	4,449		
ADOPTION ASSISTANCE PROGRAM (TITLE IV-E)			
Adoption Incentive Payments	20		
Adoption Opportunities	26		
Interstate Placement Incentive Payments			
Youth Services			
INDEPENDENT LIVING PROGRAM (TITLE IV-E)			
Education and Training Vouchers	45		
Runaway and Homeless Youth Act	53		
Adoption Assistance Program (Title IV-E)	2.2		
WORKFORCE INVESTMENT ACT			
Adults	0		864.2
Career Advancement Accounts	2,826.0		
Dislocated Workers	0		1,199.8
Youth	0		930.5
CHILD CARE SERVICES			
Child Care and Development Block Grant (Discretionary Fund)	2,062		2,137 ¹
Child Care and Development Block Grant (Mandatory Fund)	2,966		
Head Start	7,000		7,100
HEALTH RESOURCES AND SERVICES ADMINISTRATION PROGRAMS			
Community Health Centers	2,091.8		2,215
National Health Service Corps	121		
Maternal and Child Health Block Grant	666		

¹ Does not differentiate between mandatory and discretionary

Ryan White AIDS programs (program level)	2,200		
Rural Health Programs	25		
CENTERS FOR DISEASE CONTROL			
Health Promotion	932		
Health Information and Service (program level)	284		
Bioterrorism Preparedness	1419		
Preventive Health and Health Services Block Grant			
CDC TOTAL			6,507
SAMHSA			
Center for Mental Health (program level)	784		930
Center for Substance Abuse Treatment	337		2,100
Center for Substance Abuse Prevention	158		191
CMS			
CMS – State High Risk Pools (new program)	0		0
Grants to States for Medicaid	141,335		149,335
Health Care Fraud and Abuse Control	198		198
NUTRITION			
SNAP	43,349		43,437
WIC	6,100		6,750
Child nutrition programs	14,456		14,455.6