



Advocacy

ADVISORY

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HOT TOPICS FOR ADVOCACY IN THIS ISSUE

THIS ISSUE of the Advocacy Advisory will focus on topics of current interest within the 110th Congress – including an examination of the outlook for health care issues. The CHRISTUS position is consistent that federal health care dollars must be preserved in programs such as Medicare and Medicaid, as both of these programs these serve a vital function as part of the health care safety net for the uninsured and underserved population. Also under scrutiny at the federal level at this time are funding for stem cell research and renewed examinations of the Medicare prescription drug plan.

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BUSH URGES GOVERNORS TO SUPPORT TAX REFORMS

President Bush encouraged governors this week to support his call for changing the tax code to help more people buy private health care insurance, but did not address their pleas to increase funding for a health care program that insures millions of children of the working poor. Still, governors said they heard words of at least partial compromise from the administration on a budget dispute that dominated private discussions among governors on Sunday. At stake is coverage for 6 million people, overwhelmingly children, as well as the hopes of many governors in tackling the larger challenge of the uninsured. All governors rely on the State Children's Health Insurance Program, intended to aid uninsured working families. Bush, welcoming the governors after they met privately with several administration officials, did not offer any comments about the children's health program, talking rather about his larger proposals.

"I'm looking forward to working with Congress on health care. I firmly believe ... that states are often times the best place to reform systems and work on programs that meet needs," he said. But Health and Human Services Secretary Mike Leavitt "made it clear that the administration will work with Congress as far as" short-term shortfalls, said North Dakota Gov. John Hoeven, a Republican. Governors say 14 states could run out of cash before October.

Essentially, the governors want two things:

The first is enough money to keep the program afloat through October. That figure is estimated at \$745 million. They also want changes to Bush's budget. Analysts say his spending plan would shortchange the health program even if the number of people served did not grow. The long-term shortfall is put at \$10 billion to \$15 billion over the next five years. Gov. Jon Corzine, a New Jersey Democrat, warned that the administration's budget promised illusory savings. "You end up paying for this in other ways _ uncompensated care, emergency rooms," Corzine said. "This is pay me now or pay me later." Corzine said he still wanted more clarity from administration officials on support for the short-term funding, but said Leavitt had offered words of compromise. However, the long-term issues over the program remained in dispute, governors said.

Many governors said the administration's efforts to scale back the SCHIP program would undermine state efforts to craft universal health care plans. Many of these have started with a target of insuring all children. California, Massachusetts and Pennsylvania have developed some of the most ambitious proposals to try to get to universal health care coverage. Most states have just tried to strengthen their health care system to cover more people. At their private session Sunday, governors said there was bipartisan support for help on the immediate needs and a long-term commitment to the current program. Leavitt said that there is enough money among states to cover short-term shortfalls, if states with surpluses would share with those with deficits, an idea that has little support among governors. Bush wants SCHIP to remain focused on poor children, not all children and not adults, Leavitt said.

Source: Washington Post, Associated Press, 2/26/07.

SENATE IMMIGRATION BILLS NEARING COMPLETION

Senators and lobbyists are putting the final touches on a comprehensive immigration-reform bill that includes an easier citizenship path for illegal aliens and weaker enforcement provisions than were in the highly criticized legislation that the Senate approved last year. Sen. Edward M. Kennedy, (D-MA), who ardently supports citizenship rights for illegals, is introducing the bill, according to Senate sources knowledgeable about the negotiations. If the Senate Judiciary Committee can make quick work of the bill, it could be ready for floor action in April. Mr. Kennedy drafted this year's bill with help from Sen. John McCain, Arizona Republican, and outside lobbyists and consultants. Mr. McCain and the outside groups share Mr. Kennedy's support for increased immigration and leniency for illegals already in the country. Among the most active participants have been the Essential Worker Immigration Coalition (EWIC) and the U.S. Chamber of Commerce. Both groups support giving current illegals a path to citizenship and increasing the flow of foreign workers into the country.

In particular, EWIC and the chamber have taken a leading role in drafting the section of the bill dealing with work-site enforcement, Senate staffers say. Lobbyists in both organizations have shuttled around Capitol Hill drafts of those provisions, which are supposed to impose sanctions on businesses that hire illegal aliens. "That's putting the fox in charge of the henhouse," one Senate lawyer said about the pro-business chamber's involvement in drafting the punishment of employers.

Not included in that meeting or any of the early meetings, according to several Senate aides, were key Republican senators or their staff who crossed the aisle last year to support "comprehensive" immigration reform that most Republicans considered a form of amnesty. "We have been held out of any discussions," said Sen. Sam Brownback, one of those who supported last year's major immigration bill. "Our staffs have asked to be involved, but they were kept out." Even Sen. Arlen Specter, (R-PA) who as chairman of the Judiciary Committee last year ushered the immigration bill through the Senate, has been left out of the process of drafting the bill. Mr. Specter said that he and Mr. Kennedy have discussed the need to get a bill done this year but not any details.

Source: The Washington Times, 2/22/07.

CBO REPORT OUTLINES POTENTIAL SAVINGS IN MEDICARE

The Congressional Budget Office has released its biennial report on policy options that contains more than 250 proposals on federal spending and revenue, including several for Medicare. Some of CBO's Medicare savings options are similar to proposals that have been offered by President Bush, such as reduced payments to hospitals and home health care agencies, reduced rental periods for oxygen treatment and higher premiums for federal prescription drug plans. Proposals that might be "more palatable to Democrats" include eliminating subsidies to private insurers to encourage them to participate in Medicare in underserved regions, which CBO says could save \$3.5 billion over 10 years. According to CBO, \$64.8 billion could be saved between 2008 and 2012 by equalizing payments to Medicare Advantage plans and fee-for-service providers. The CBO report notes that that proposal "could lead many plans to limit the benefits they offer, raise their premiums or withdraw from the program." The CBO document also finds that between 2008 and 2012, the following savings could be obtained:

- \$21.6 billion by reducing Medicare payments for "indirect" medical education costs;
- \$17.8 billion by reducing payments to hospitals for inpatient care;
- \$8.5 billion by reducing payments to home health agencies;
- \$12.9 billion by charging co-payments for home health visits;
- \$11.2 billion by converting payments for "disproportionate share hospitals" into a block grant program;
- \$42.2 billion by increasing the share of Medicare Part B costs that beneficiaries must pay; and
- \$27.8 billion by revising other cost-sharing provisions while narrowing the scope of Medi-gap coverage.

Source: *Congress Daily*, 2/26/07.

HOSPITAL GROUP PUSHES NATIONAL HEALTH CARE PLAN

As expected, the Federation of American Hospitals has announced a proposal that would require all U.S. residents to obtain health insurance. Under the proposal, which FAH hopes will become part of federal legislation after the 2008 presidential election, residents would have to enroll in health plans offered by employers, purchase individual health insurance or obtain coverage through public programs. The proposal would expand eligibility for Medicaid and SCHIP. In addition, the proposal would provide subsidies, based on income, to help cover the cost of health insurance and allow those who purchase individual coverage to deduct the cost from their income taxes. According to FAH, the proposal would increase the \$900 billion that federal and state governments spend annually on health care by \$115.2 billion. FAH President Chip Kahn said that, under the proposal, 98% of residents would obtain health insurance "without turning the world upside down" in the current health care system. FAH estimated that the proposal would reduce the number of uninsured residents from 47 million to 6.6 million if adopted this year. Under the proposal, two out of every three residents who obtained health insurance would have private coverage, according to FAH. FAH also released the results of a poll that indicated strong public support for the proposal. In addition, 79% of respondents said that the positions presidential candidates take on the issue of the uninsured will influence their votes in the 2008 election, the poll found.

Source: Reuters News Service, 2/23/07.

MENTAL HEALTH LEGISLATIVE UPDATE

Last week, the Senate Health, Education, Labor and Pensions voted 18-3 for the Mental Health Parity Act of 2007 (S. 558). This legislation would require employer-sponsored group health plans to impose the same treatment limitations and financial requirements on their mental health and substance abuse coverage as they do

on their medical and surgical coverage. The full Senate is expected to take up the language by the beginning of March. The main Democratic sponsor Senator Kennedy (D-MA) have agreed that they may further amend the legislation to ensure that it does not preempt more comprehensive state mental health parity laws. The passage of this legislation in the Senate HELP committee puts mental health parity on track to be passed this year.

Representatives Patrick Kennedy (D-RI) and Jim Ramstad (R-MN) are drafting mental health parity legislation in the House, which will have some significant differences. Our sources have told us that House Speaker Nancy Pelosi has guaranteed a vote for mental health parity legislation in the House this year. In previous years, the House Republican leadership prevented prior bills from being voted on. Meanwhile, President Bush has previously signaled he would sign such legislation into law.

Source: Marwood Group, 2/17/07.

TREND ANALYSTS: WHO WILL PAY FOR LONG TERM CARE?

Who will care for the aging population of baby boomers? The question has begun to worry lawmakers and policy analysts from Austin and Washington, even if it hasn't dawned on many boomers. Ideas run from encouraging individuals to buy more private insurance to tightening rules for government-paid care to moving toward less expensive in-home services." If we don't get a handle on all this, it will eat us alive," said Jane Nelson, who chairs the Texas State Senate's Health and Human Services Committee. The Lewisville Republican has introduced legislation to give youthful-thinking boomers a financial incentive to start planning for the day when they check into Shady Acres. Like other policy-makers, Ms. Nelson is alarmed by the growing costs of an aging population. As a social safety net, Medicaid guarantees nursing home care for Americans who can't pay for it themselves. The federal-state program pays for about two-thirds of nursing home care nationally and in Texas. Medicaid spent \$94.5 billion on long-term care nationally and \$4.4 billion in Texas in 2005, a 38 percent increase in five years, the AARP Public Policy Institute says. Long-term care accounts for about a third of Medicaid's budget. Experts predict those numbers will at least double over the next 25 years as the massive baby boom generation begins to require nursing care. The system will collapse without reform, warns the National Commission for Quality Long-Term Care, an independent panel of experts. Several possible solutions are being discussed, all of which share a familiar theme: Shift more of the responsibility onto individuals and private insurers.

Texas is currently participating in a federal pilot project, Own Your Future, which included a mailing to hundreds of thousands of middle-age households. The letters invited boomers to order a free long-term care planning kit, which includes a guidebook on how to evaluate long-term care insurance plans. Only 10 percent of people 55 and older have that private coverage. Premiums can exceed \$2,000 a year for someone approaching retirement, and researchers have calculated that only one in six seniors will rack up more than \$100,000 in long-term care costs. Sen. Nelson wants to give people an extra financial incentive to buy the coverage. Her legislation would give policyholders preferential treatment in the qualification calculation for Medicaid. Currently, seniors typically must spend all but \$2,000 of their savings, excluding their home, before they qualify for Medicaid. Under the senator's bill, every dollar of insurance coverage would protect a dollar of assets.

Supporters say the laws have kept people off Medicaid and saved taxpayers money, while critics contend that the people who can afford the private insurance aren't the ones likely to end up on Medicaid anyway. "Policy-makers want to grab the latest, greatest idea to solve our long-term care problem, but only the Lone Ranger has silver bullets," said Charles Phillips, professor of health policy and management at Texas A&M Health Science Center. Even some supporters of private insurance doubt that many boomers will buy it as long as they think they can easily get help from Medicaid. Congress has done much to tighten the eligibility rules for Medicaid's long-term care in recent years by making it harder for someone to give away assets – often to family members – in order to qualify. A person's eligibility can now be hurt by gifts made over the previous five years, up from three years. To deter cash-poor but property-rich seniors from qualifying, the law also caps Medicaid recipients' home equity. They can now have no more than \$500,000 in equity or, if their state allows, up to \$750,000.

Texas also recently launched an estate recovery program to reclaim assets from Medicaid recipients once they die.

Estate recovery laws have had limited success in other states, usually collecting less than 1 percent of long-term care costs. Still, supporters argue, the laws put people on notice that Medicaid's help isn't open-ended. Texas has collected \$426,856 on 43 claims since launching the program last year, says the state's Department of Aging and Disability Services.

Source: *Dallas Morning News*, 2/24/07.

Of Physician Interest

CONGRESSIONAL ACTION URGED TO GIVE FDA OVERSIGHT OF TOBACCO PRODUCTS

The American Medical Association has lauded the efforts of U.S. Representatives Henry Waxman (D-CA) and Tom Davis (R-VA) and Senators Ted Kennedy (D-MA) and John Cornyn (R-TX) for their bipartisan leadership on the "Family Smoking Prevention and Tobacco Control Act." The AMA has urged this Congress to protect the health of Americans, especially children, by passing this legislation, which would give the FDA needed regulatory authority over tobacco products. "Each day, approximately 4,000 kids will try a cigarette for the first time, and another 1,000 will become new, regular, daily smokers. One-third of these kids will eventually die prematurely as a result. To discourage youth from taking up smoking, some of the provisions in the bill would stop illegal sales of tobacco products to children; restrict tobacco marketing, especially to children; ban fruit and candy flavorings in cigarettes; and require more informative health warnings. The AMA stated that doctors see the detrimental health effects of smoking daily. Patients suffer from many chronic and fatal diseases related to tobacco use such as cancer, heart disease, and emphysema. Smoking remains the number one preventable cause of death in the United States, killing roughly 1,200 Americans every day - many more than those who die from drugs, motor-vehicle crashes, fires, AIDS, homicides and suicides combined. "Given what we know about the health effects of smoking and the powerful addictive properties of nicotine, it is unconscionable that tobacco products are currently one of the least regulated products in our society."

Source: *American Medical Association*, 2/26/07.

Of Regional Interest

LOUISIANA

Sen. Vitter in Health Care Fight. U.S. Sen. David Vitter knows how to inject himself loudly into a political argument and get a lot of attention doing it. He's been a thorn in the side of many Louisiana officials over the years, firing off complaint letters to politicians and holding well-timed news conferences to air his disagreements. The attention has served him well as he's moved from the state House to the U.S. House to the U.S. Senate, becoming Louisiana's first Republican U.S. senator since Reconstruction. This time, he's inserted himself into a big-money argument that's raged for decades over care for the poor and uninsured, and he's managed to help at least partly derail Gov. Kathleen Blanco's push to build a new charity hospital in New Orleans. It's not the first public dispute between Vitter and Blanco, and she's not the first governor for which he's created high-profile havoc. For example, the Metairie Republican had a long-running disagreement with former GOP Gov. Mike Foster over Foster's negotiations with an Indian tribe seeking to build a casino.

The charity hospital clash, however, taps into an ongoing argument and affects hundreds of thousands of poor and uninsured residents who depend on the state for their health care. Hurricane Katrina seemed to give

LSU, which runs the state's public hospitals, a bigger toehold in its argument that it needs a new hospital in New Orleans, particularly since Katrina flooded its facilities. "This hospital is considered a vital part of our state's recovery," Blanco said. The hurricane also gave some leverage to foes of the charity hospital system, those who say Louisiana's system of care for the uninsured contributes to some of the state's myriad of health-care problems. Federal officials also stepped into the debate, with Health and Human Services Secretary Michael Leavitt suggesting Louisiana should redirect nearly all the money it funnels to the Charity system for uninsured care to a type of state-subsidized insurance plan. State health officials said that would leave 400,000 people uninsured and lacking a safety net for hospital care because the dollars would be stripped from the Charity system. Leavitt's plan appeared headed to a shelf to be filed away with other failed health-reform initiatives of previous years. A proposal to spend \$300 million in federal hurricane relief aid on the construction of a new charity hospital in New Orleans continued to advance, with Blanco and top Democrats in the Legislature urging support. Then, Vitter — who is supporting one of Blanco's opponents in the governor's race — waded into the discussions. "I think it needed stirring up," he said.

LSU officials said the new hospital would focus on medical training and research and would not be a rebuild of the old Charity model of care. But Vitter said the state needed more debate of Leavitt's proposal before deciding the size of an LSU teaching hospital in New Orleans. Vitter said state officials were rushing to rebuild a segregated health-care system that was failing the uninsured. On February 16, a week after Vitter began complaining loudly, the \$300 million charity hospital proposal stalled in the Legislature, failing to get the needed votes for passage in the House in a mailed ballot vote. Blanco and Vitter agreed on one central proposal: moving forward with a plan to give LSU \$74 million to buy land, hire the architects and design a new charity hospital. Lawmakers must vote on this second approach, and it still will need federal approval. If it wins support, the rest of the funding for an LSU hospital — along with the size and scope of the facility — remains undecided.

Source: The Advocate, 2/26/07.

TEXAS

Lawsuit Filed to Stop HPV Vaccine. A lawsuit was filed this past week in Travis County District Court, claiming that Gov. Rick Perry acted outside his constitutional authority by requiring that Texas girls be inoculated against the HPV virus. According to the lawsuit, Texas school-age girls "are not guinea pigs who may be subjected to medical procedures at the apparent whim of the Texas governor." The lawsuit alleges that Perry has unlawfully usurped powers that were given to other governmental authorities under statute, and that Perry does not have an open-ended right to issue Executive Orders. According to the lawsuit, Executive Orders are legal only when there is a state of imminent disaster. No disaster currently stands which "warrants, justifies, or authorizes the Governor's exercise of powers bestowed upon him" in such cases, and the suit further alleges that inoculation does not fall within the Communicable Disease Prevention and Control Act. The lawsuit calls for a temporary and permanent injunction against the vaccine.

Source: The Associated Press, 2/22/07.

UTAH

Small Firms May Obtain Health Care Credits. A legislative committee last week endorsed a bill that its sponsor says will be "a nice start" in helping small businesses address employee health-care costs. HB406, passed out by the House Business and Labor Committee by a 9-3 vote, would allow businesses with between two and 50 employees to receive a nonrefundable income tax credit of up to \$1,000 per worker for certain health insurance premiums. A company would be eligible for the credit if at least 80 percent of its employees were covered by health-care insurance offered by the company. The credit would be for either the insurance premium that the company paid for each eligible employee or \$1,000 for each insured employee, whichever is smaller. A fiscal note with the bill says its passage would cut the state's education fund by \$40 million in fiscal 2008 and \$41 million in fiscal 2009. "This is a tax credit to go to an incentivized business to provide health insurance for their employees. ... So, if you go through and provide the health insurance, it will reduce the drain on the state of Utah so that we don't have so much unpaid-for emergency care, charitable care, so many people on welfare. ... I think it's a good

incentive to assist businesses in providing health insurance to their employees," the bill's sponsor, Rep. Wayne Harper, R-West Jordan, told the committee. Questioned about the \$1,000 cap, Harper described the credit as "meager." "It costs a lot more (than \$1,000) to provide health insurance," he said. "This is just a meager tax credit that says you can get a little bit of money back. We recognize the fact it's going to cost the state millions of dollars, but it's also going to save the state tens of millions of dollars versus those who will be on charitable care if a business doesn't include them. Harper said the bill could be tweaked when it is heard by the full House, adding that becoming a deduction instead of a credit and redefining who is an eligible employee are possibilities. Rep. Gage Froerer, R-Huntsville, said he wondered how the bill would be applied to employees who are covered under their spouses' insurance policies. "I think it's a great bill, but I'm concerned you're going to exclude some companies from taking advantage of this tax credit by not excluding people who are going to opt out," he said. Rep. Jackie Biskupski, D-Salt Lake, voted against the bill, saying the matter should be part of interim committee study of business health-care issues.

Source: Deseret Morning News, 2/22/07.

ARKANSAS

State To Get \$1 Million in Drug Settlement. Attorney General Dustin McDaniel said Arkansas' share of a settlement with pharmaceutical manufacturer Schering-Plough Corp. of New Jersey will be \$986,902. The drug firm's total settlement in civil damages, fines and penalties for offenses against the Medicaid and Medicare programs was \$3.2 million, but most of that went to the federal government. The settlement resulted from illegal sales and marketing activities that defrauded the Arkansas Medicaid program and the federal Medicare program, according to a news release from the attorney general's office. Those activities included reporting fraudulent prices to the federal government to avoid paying Medicaid rebates, making illegal payments to physicians to induce them to prescribe Schering-Plough drugs and illegally promoting Schering drugs for "off-label" uses that had not been approved by the FDA. Nationally, Schering-Plough also paid a \$180 million criminal fine and a \$50 million civil recovery for private health plans and insurance companies that were also defrauded by Schering's illegal marketing activities. In addition to the monetary payment, a Schering-Plough subsidiary pleaded guilty to criminal charges and was permanently excluded from Medicare, Medicaid, and all other Federal health care programs. "Fraud in any form will not be tolerated by this office," said McDaniel. "I hope that as a result of this investigation, Arkansans will be safer and other companies will be deterred from attempting to defraud Arkansas."

Source: Arkansas Newslite, 2/19/07.

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