



**To:** State Medicaid Directors

**Fr:** Martha Roherty, Director, NASMD  
Andrea Maresca, Senior Health Policy Associate, NASMD

**Date:** May 30, 2007

**Re:** Congressional Update

We thought it would be useful to provide you with this Congressional update on key health pieces of the supplemental appropriations bill for federal fiscal year (FY) 2007 and the budget resolution for FY 2008.

White House and Congressional negotiators agreed on language for supplemental spending for FY 2007. On May 24, 2007, the House and Senate approved \$120 billion in supplemental appropriations for FY 2007 for Iraq related spending (H.R. 2206). The measure would provide \$22.2 billion for nonmilitary programs, including funding to address shortfalls in the State Children's Health Insurance Program (SCHIP). The President signed the bill into law on May 25.

Congress also has adopted a budget resolution for FY 2008 (S. Con. Res. 21). The resolution is used to set entitlement and discretionary spending levels for the next fiscal year. The resolution is not sent to the President for signature since it is not a law. The budget plan does not include any of the cuts to Medicaid proposed by the administration earlier this year. Congress approved several reserve funds, including a reserve fund of \$50 billion for SCHIP which is scheduled to be reauthorized this year.

In addition, Congress is preparing to reauthorize the SCHIP program before it expires on September 30, 2007. Leaders of the Senate Finance and House Energy and Commerce committees have stated that this is among their top priorities for the year. They have held several hearings on SCHIP-related issues and indicated that markups will be scheduled for sometime this summer and as early as mid-June in the Senate. They are likely to increase funding for SCHIP, but it is not yet clear how they will offset these increases.

We will continue to keep you apprised of key developments as Congress considers the appropriations measures and SCHIP reauthorization legislation.

## FISCAL YEAR 2007 SUPPLEMENTAL APPROPRIATIONS LEGISLATION

### U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 and Agricultural Disaster Assistance and Western States Emergency Unfinished Business Appropriations Act, 2007 (HR 2206)

**STATUS:** On May 24, the House considered supplemental appropriations for FY 2007 in two measures: a war related and a non-war spending bill addressing domestic programs. The \$22.2 billion domestic spending bill was overwhelmingly adopted by a vote of 348-73. The Senate approved a combined war-related and domestic spending measure on May 24, by a vote of 80-14. The President signed the bill into law on May 25, 2007.

**SCHIP Provision.** The supplemental appropriations bill makes available up to \$650 million for states experiencing a shortfall in federal funds for their State Children's Health Insurance Program (SCHIP) for the remainder of FY 2007. According to the most recent report from the Congressional Budget Office (CBO), 35 states have projected spending in 2007 above their allotment for the year, and 11 of those states will exhaust their available funds.<sup>1</sup> The CBO reported that those states would require \$646 million in 2007 to maintain their existing programs. The bill retains the enhanced match rate for all currently covered populations.

#### **Medicaid-related Provisions.**

- *Cost Rule Moratorium.* The bill includes a one year moratorium that prohibits the Centers for Medicare and Medicaid Services (CMS) from finalizing or otherwise implementing the proposed Medicaid rule that would limit payment to public providers (CMS 2258-P). Subsequent to Congress passing this bill, CMS issued the final regulation on May 29 with a 60 day comment period on one specific section. CMS staff has stated that they are still soliciting comments on the provision of the rule related to the definition of governmental entities. Even though the President signed the moratorium into law after the final rule was issued, the moratorium will still prevent the final rule from taking effect until one year from enactment of the spending bill (HR 2206). The federal savings was estimated to be \$3.87 billion over five years.
- *GME:* The bill language prohibits for one year any regulatory or administrative action from being taken to limit Medicaid reimbursement for graduate medical education (GME). This would prevent CMS from taking further action on the proposed rule on GME that the agency issued on May 23, 2007 (CMS 2279-P). Congress also clarified that the moratorium on CMS rulemaking does not undermine the agency's authority to enforce other program integrity requirements. The cost of the provision is estimated to be \$1.8 billion over five years.

---

<sup>1</sup> Congressional Budget Office. "A CBO Paper: The State Children's Health Insurance Program (SCHIP)," May 2007. URL available at: <http://www.cbo.gov/ftpdocs/80xx/doc8092/05-10-SCHIP.pdf>

- *Offsets:* Congress included a Medicaid provision that would result in \$133 million in savings to pay for the moratorium provision. This provision requires states to have Medicaid-reimbursed providers use tamper-resistant prescription drug pads in their prescribing, starting in FY 2008.
- The bill also includes language that would allow Wisconsin's SeniorCare prescription drug program to be extended through December 31, 2009, thereby producing savings of \$27 million. CMS had said it would end June 30, 2007 because Medicare Part D is now available to provide prescription drug coverage.

**Ryan White Care Act Waiver Authority.** The supplemental legislation includes language permitting the Secretary of Health and Human Services to grant waivers modifying provisions of the Ryan White State HIV/AIDS grants for four states affected by the 2005 Gulf Coast hurricanes.

**SSBG.** The measure allows funds made available to the states through the Social Services Block Grant (SSBG) provided by the emergency supplemental appropriation provisions of the FY 2006 Defense Appropriations Act (PL 109-148) to remain available through FY 2009. The law provided \$550 million for such assistance, which is set to expire on September 30, 2007.

**Minimum Wage Increase and Extension of the Work Opportunity Tax Credit.** The conference committee bill increases the minimum wage to \$7.25 over two years. The agreement also applies the federal minimum wage to the Northern Mariana Islands and to American Samoa. This increase would occur in three increments of 70 cents each. The bill extends for 44 months, through August 2011, the Work Opportunity Tax Credit (WOTC) provided to businesses that hire certain disadvantaged workers, and it expands the eligibility criteria for certain targeted groups. Under the measure, businesses could qualify for the credit for targeted employees hired after Dec. 31, 2007, and before Sept. 1, 2011.

**Changes.** This supplemental spending measure drops several domestic spending provisions that Congress approved in its first supplemental measure which the President vetoed. The dropped provisions include additional funding for pandemic flu related initiatives and supplemental funding for the Low Income Heating Energy Assistance Program (LIHEAP).

### **FISCAL YEAR 2008 BUDGET RESOLUTION (S. Concurrent Resolution 21, House Report 110-153)**

On Thursday, May 17, the House adopted the FY 2008 Budget Resolution (BR) by a vote of 214-209 and it was approved by the Senate by a vote of 52-40. Congress uses the resolution to set entitlement and discretionary spending levels for the next fiscal year. The BR is not sent to the President for signature since it is not a law. The chambers' respective appropriations committee will determine the spending authority for each of their subcommittees.

The overall spending cap for non-defense discretionary spending is set at \$954.1 billion, \$23 billion higher than the budget request submitted by President Bush earlier this year. Congress did not include any reductions to entitlement programs, including Medicaid. The administration has stated that the President would veto any FY 2008 appropriations bills that call for spending above the level requested in the administration's budget. However, the House Appropriations subcommittees already have begun the process of considering their respective spending bills without regard to the administration's statement. It is unclear at this time what impact the President's threat will have on spending measures that traditionally are not considered until later in the year, including the appropriations bill for the departments of Health and Human Services, Education and Labor.

The components of the Budget Resolution are discussed below. The text can be found at: [http://budget.house.gov/analyses/08budget\\_conference\\_final\\_text.pdf](http://budget.house.gov/analyses/08budget_conference_final_text.pdf)

**Paygo.** The budget resolution includes "pay-as-you-go," or "paygo," rules. According to the paygo provisions adopted by this Congress, spending increases for entitlements and tax cuts must be paid for, either by reducing other spending or raising offsetting revenues.

**Entitlement Spending.** The budget resolution does not include any of the cuts to Medicaid, Medicare or Social Security proposed in the administration's budget plan. The conference report accompanying the budget resolution addresses the Administration's FY 2008 budget proposal to issue regulations that would cut \$12.7 billion over five years from several Medicaid programs. However, report language is non-binding. Still, the report language and the Medicaid-related language approved in the FY 2007 supplemental spending bill demonstrate Congress' interest in CMS' regulatory agenda.

**SCHIP.** The budget resolution makes expansion of the State Children's Health Insurance Program (SCHIP) a priority. It includes a \$50 billion deficit-neutral reserve fund (Section 301) for SCHIP outlays from FY 2007 through FY 2012. Congress did not specify any offsets that should be used to pay for it. The budget plan does not include the Senate provision to increase the federal tobacco tax by 61 cents per pack to raise \$35 billion for SCHIP.

**Additional Provisions.** The House and Senate made increased funding for public health programs a priority. The resolution provides for increases in funding for community health centers.

In addition to SCHIP, Congress included several other deficit-neutral reserve funds for health related programs. These deficit-neutral reserve funds would permit Congress to revise allocations from other programs or identify cost-savings and use these funds to:

- Cover the costs of delaying implementation of a proposed rule published January 18, 2007, or any other rule that would affect the Medicaid or SCHIP programs in a similar manner or place restrictions on coverage of or payment for graduate medical education (GME), rehabilitation, or school-based administration,

transportation or medical services (Section 320). [*Note: See information on FY 2007 supplemental appropriations bill above.*]

- Provide funding for a Medicaid demonstration project on covering low-income HIV-infected individuals, or that extends the availability of transitional medical assistance for those leaving welfare (Section 320).
- Extend funding for transitional medical assistance (TMA) (Section 320).
- Provide funding to improve health care, and provide quality health insurance for the uninsured and underinsured, and protect individuals with current health coverage. This provision also would allow funding to be used to make health insurance coverage more affordable or available to small businesses and their employees, through pooling arrangements that provide consumer protections (Section 314).
- Make improvements to the Medicare program for beneficiaries and protecting access to care, through measures such as increasing the reimbursement rate for physicians while protecting beneficiaries from associated premium increases and making improvements to the prescription drug program. The Senate would allow up to \$5 billion over five years to be used for improving the prescription drug program (Section 304).

### **SCHIP REAUTHORIZATION UPDATE**

**Senate Outlook.** On May 24, Senate Finance Committee Chairman Max Baucus (D-Mont.) indicated that the committee's goal is to hold a markup of legislation to reauthorize SCHIP on June 7. The bill would then be scheduled for consideration on the Senate floor the following week. Sen. Baucus also has indicated privately that he is committed to passing a bipartisan committee bill. He stated that there will be offsets but he has not provided additional details.

However, NASMD has received reports from Senate staff that although committee staff for Chairman Baucus and Ranking Member Charles Grassley (R-Iowa) continue to hold meetings on SCHIP, there are still many significant unresolved issues. Sen. Baucus' staff members have remained noncommittal to using the bipartisan legislation introduced by Sens. Rockefeller (D-W.Va.) and Snow (R-Maine) as the starting point for the bill the committee will markup. Largely due to the Medicaid provisions, the score for this bill reportedly is well above the funding that is likely to be available. As a result, there is increasing speculation that the Senate may delay its aggressive timeframe.

**House Outlook.** In the House, Energy and Commerce Committee Chairman John Dingell (D-Mich.) introduced a broad bill that would expand health insurance coverage to all uninsured children. The Chairman's staff members have held informal meetings with the staff for the committee's ranking member, Cong. Joe Barton (D-Tx.) and reported that they are very far from agreement on a number of fundamental issues. Committee staff indicated that they will likely markup SCHIP legislation sometime in July and only after the Senate Finance Committee acts.

**Key Controversial Issues.** There are a number of controversial issues on which Members of Congress need additional state input. Some of these issues are addressed in the policies of APhSA/NASMD, the National Governors Association and the National Conference of State Legislatures (NCSL). It will be critical for the Members and their staff to understand the structure and important issues for their respective state's program.

The most controversial issues that congressional staff members are negotiating include:

- Reform of the allocation formula.
- Reform of the redistribution process.
- Establishing the income eligibility limit and whether and under what circumstances it can be set above 200 percent of the FPL.
- Permitting coverage for parents, childless adults and other optional populations.
- Mandating benefits in the SCHIP service package, including EPSDT, mental health and substance abuse parity, and dental services

**Advocacy/Stakeholder Community Update.** A range of stakeholders have been weighing in with Congress on various issues. They have been steadfast and consistent in their support for:

- Providing \$50 billion in funding for SCHIP in the reauthorization and supporting an increase in the tobacco tax to offset this cost.
- Allowing states to cover optional populations including immigrant children and pregnant women.
- Strengthening the benefit package, specifically by requiring mental and dental services.

Please feel free to contact either Andrea Maresca at [amaresca@aphsa.org](mailto:amaresca@aphsa.org) or Martha Roherty at [mroherty@aphsa.org](mailto:mroherty@aphsa.org) should you have any questions.