



# GOVERNMENT AFFAIRS WEEKLY

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AAFP Division of Government Relations — 2021 Massachusetts Avenue, NW — Washington, DC 20036

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## 1. HOUSE PASSES CHILDREN'S HEALTH BILL THAT INCLUDES PHYSICIAN PAYMENT RELIEF

Despite a Presidential veto threat, the House passed HR 3162, the Children's Health and Medicare Protection Act (CHAMP Act) on Wednesday by a vote of 225 to 204 after a fractious debate. The Republican motion to recommit the bill and provide a one-year extension of SCHIP and a one-year "fix" to the physician fee schedule failed on a vote of 202 to 226.

The CHAMP Act reauthorizes the State Children's Health Insurance Program (SCHIP) and replaces projected Medicare physician payment cuts of 10% in 2008 and 5% in 2009 with positive payment updates of 0.5% in both years.

In order to comply with budget rules, the House Democratic leaders scaled back the long-term cost of the bill to stay within the offsetting revenue enhancing and cost-cutting provisions. Although Democratic staff expect to revisit the new payment formula during the next two years, the Congressional Budget Office (CBO) estimates that the payment rate would be minus 9 percent in 2010 for primary care and preventive services and minus 7 percent in 2011, with a positive update in 2012 and 2013. All physician groups would have a positive update by 2013 in the current formula.

Under the CHAMP Act, physician payments would be broken into six service-specific targets beginning in 2010. The target for primary care and prevention services would be GDP + 2.5%. The conversion factors for all six categories would be frozen at the 2012 rate through 2017.

In other physician related provisions, the revised CHAMP Act:

- Expanded a three-year medical home demonstration project from eight states this year to 500 practices nationwide. CBO scores this provision at \$300 million over five years.
- Retained policy to gradually equalize cost sharing for mental health services.
- Retained policy to prospectively remove drugs from the payment formula in 2010.
- Retained a panel external to RUC to look at "over-valued" services.
- Retained a provision allowing HHS to cut payments for services that grow by 10 percentage points more than overall growth in MD spending.

- Retained a specialty hospital ban (with grandfather provisions).
- Retained cuts in payments for imaging services and certification requirements.

Regarding the Part D Medicare Drug benefit, the bill allows participants to change plans if their formulary is altered and would reduce coverage or boost cost-sharing; limits plans' use of prior authorization and step therapy and allows coverage of benzodiazepines, which previously been excluded.

In addition, the CHAMP Act sets up a Center for Comparative Effectiveness Research within the Agency for Healthcare Research and Quality.

The revenue offsets for the CHAMP Act include a tobacco tax increase of 45-cents-per-pack (to 84-cents-per pack) and \$50 billion in cuts to Medicare Advantage over 5 years so that payments are equal to traditional Medicare.

The White House issued a Statement of Administrative Policy describing the CHAMP Act as "a wholesale, unapologetic move to government-run health care" and indicating that the President would veto the bill.

### **SENATE PASSES SCHIP BILL THAT IS SILENT ON PHYSICIAN PAYMENT RELIEF**

On Thursday, the Senate passed a more modest, \$35 billion SCHIP bill (S 1893) by a vote of 68 to 31. The legislation relies heavily on a 61-cents-per-pack increase in the cigarette tax to offset its costs and does not address Medicare physician payment reform. All of the Senate's Democrats voted for the bill. Although no one in the Senate GOP leadership supported the legislation, 17 Republicans voted yes. The Statement of Administration Policy on S 1893 threatens a veto and describes it as "inconsistent with the principle of choice for American consumers and instead goes too far in federalizing health care." Nevertheless, Finance Committee Ranking Member Chuck Grassley (R-IA) said he would try to convince President Bush not to veto the bill.

#### Amendments

Senator John Kerry's (D-MA) amendment to add \$15 billion to the bill to bring the total to \$50 billion failed 36 to 60. Senators rejected a Republican substitute offered by Minority Leader Mitch McConnell (R-KY) 35 to 61. The Senate also rejected an amendment by Senator Jim Bunning (R-KY) to limit SCHIP eligibility by a vote 43 to 53. The amendment offered by Senator John Ensign (R-NV) to dedicate the bill's tobacco tax revenue to research at the National Institutes of Health, instead of to expansion of SCHIP, failed by 26 to 58. Senator Judd Gregg's (R-NH) amendment to end coverage of adults under SCHIP immediately, except for pregnant women, was defeated, 42 to 53. Senators also defeated Senator Elizabeth Dole's (R-NC) amendment to create a new budget point of order if the Senate raised taxes on low-income people by a vote of 32 to 64.

#### Conference Committee

The House-Senate Conference will convene after the August recess. The impending deadline of the SCHIP's September 30 expiration will drive action although both the House and the Senate are expected to be in recess until after Labor Day. Serious challenges to the enactment of the SCHIP reauthorization and physician payment reforms include but are not limited to: the pending veto threats, weeks shortened by religious holidays, another war supplemental funding request and action around the report on the Iraq war, as well as strenuous pushback from the insurance industry on Medicare Advantage cuts. Nevertheless, negotiations among Congressional staff, the White House and physician groups are expected to continue in the coming weeks.

## 2. House Small Business Hears About Need for Prompt Payment of Providers

Wednesday, Congressman Charles Gonzalez, (D-TX) convened a hearing of the Small Business Committee Subcommittee on Regulation, Healthcare and Trade entitled, "Ensuring Prompt Payment for Small Health Care Providers." Physician representatives from the AMA, College of American Pathologists, as well as a dentist and an orthodontist from the home districts of the chairman and ranking member Lynn Westmoreland (R-GA) were among those testifying.

Specifically, the hearing examined the problem of insurance companies failing to comply with prompt pay requirements at the federal and state level and how this is harming small health care providers. The subcommittee heard testimony from medical providers on the prompt payment of claims and how delays (and sometimes denials) of payment by insurers impact their ability to operate.

Most of the testimony focused on individual experiences with slow pay or no pay behaviors of large insurance companies. Witnesses also emphasized that there is a convenient dispute over whether ERISA plans are exempt from state insurance law and regulation requiring prompt pay of clean claims. In sum, all of the witnesses urged Congress to set a federal uniform standard that would require the prompt payment of clean claims, as required already by 48 states. Ranking member Westmoreland agreed that there was a role for the federal government in this regard.

The Managed Care Reform and Improvement Act (HR 979) has been introduced and may address issues raised by the hearing witnesses on prompt payment. Government Relations staff currently is reviewing and analyzing this legislation.

## 3. Grassroots Program Continues to Grow

As of August 3, there is at least one AAFP Key Contact for 419 of the 536 federal legislators. That is, 78 percent of the U.S. Senators and Representatives have a family physician serving as a Key Contact.

House	323/436 (74%)
House Committees & Leadership	139/174 (79%)
Senate	96/100 (96%)
Senate Committees & Leadership	62/66 (93%)

## 4. FamMedPAC

Staff from the Washington, D.C. office attended a healthcare fundraising event this week for Senate Republican Minority Leader Mitch McConnell (R-KY). Approximately 15 Healthcare Specialty Societies attended the event.

Sen. McConnell spoke briefly about the SCHIP bill and the Medicare physician payment issue. He indicated that the SCHIP bill was too large and was, in reality, the first attempt by the Democrats to create a government-run healthcare system for all Americans. He based this comment on the increasing income levels that allow children to remain covered by the program.

On the Medicare payment formula, Sen. McConnell said the cuts would be stopped before the end of the year. However, he was not sure if there would be a separate bill to address this issue, or if it would be rolled into a year-end omnibus spending bill. He did not think the Senate would agree to allow the Medicare payment "fix" to remain in the SCHIP bill during negotiations with the House in conference committee.

## **5. Scope of Practice Partnership Approves Financial Support for Missouri Lawsuit**

The Missouri Academy of Family Physicians joined with other medical associations in the state as a co-defendant in a petition challenging the constitutionality of a new state law that legalizes the unregulated practice of lay midwifery in Missouri. The lawsuit seeks an injunction against implementation of the legislation based on constitutional validity. A temporary restraining order was issued on July 3 and will remain in effect until a preliminary injunction hearing is held on August 2. The Missouri State Medical Association approached the Scope of Practice Partnership (SOPP) seeking financial support for this effort. The SOPP Steering Committee approved this request, which will lessen the financial obligation of the Missouri AFP.

## **6. Of Interest to Family Physicians:**

- **Tobacco Regulation Bill Approved by Senate Panel**

On Wednesday, the Senate Health, Education, Labor and Pensions Committee approved a bill to allow the federal Food and Drug Administration to regulate tobacco products (S 625) by a 13 to 8 vote. The regulatory operations would be funded with a user fee paid by tobacco manufacturers of approximately 2.5 cents per pack. The bill's sponsor, HELP Committee Chairman Edward M. Kennedy (D-MA), has said that the bill will be considered by the full Senate after the August recess. The House has not scheduled Committee action on its companion bill (HR 1108), which has 163 Democratic and 31 GOP cosponsors.