

# asap! update

GRASSROOTS ACTION FOR HEALTH & LONG TERM CARE

March 2001, Vol. 17, No. 1

*Democrats Make Gains, but Republicans Still Have Edge*

## Outlook for Health Care in the 107th Congress

The 107th Congress convened in January, with Democrats wielding far more power than in recent years. The fifty-fifty split in the Senate gives Senate Democrats more influence, but, with Vice President Dick Cheney casting the tie-breaking votes, the Republican agenda will have a significant advantage. Senate committees will reflect this unprecedented balance of power, with Democrats and Republicans getting equal representation. Republicans fared better in the House, where they managed to retain a slim majority. With both chambers so closely divided, we're hopeful that health legislation will be enacted.

### Bush Puts Medicaid/CHIP Regulations on Hold

Wasting no time, President George W. Bush issued an Executive Order within hours of taking office that put a 60-day hold on all regulations that the Clinton Administration had issued in its last 60 days.

This hold will affect recently issued regulations governing all aspects of the CHIP program; Medic-

aid managed care protections released on January 19, 2001 that implemented the Balanced Budget Act of 1997; possibly, new rules restricting the so-called Medicaid Upper Payment Limit; rules easing the eligibility restrictions in the Medicaid 1902 (r)(2) category; and new rules regarding limits on the use of restraints for psychiatric patients.

It is not clear exactly what will happen when the hold expires. Some or all of the regulations may go into effect unchallenged. The Bush Administration may then turn to Congress to overturn some of the features of the regulations that it doesn't like. Alternatively, the Administration could seek to retract the final rules and issue new ones—which would take a long time and might be subject to legal challenge.

What is clear is that the Medicaid managed care regulations are under heavy attack by the National Governors' Association and, hence, face an uphill battle. These regulations implement provisions of the Balanced Budget Act of 1997, which allowed states to enroll Medicaid beneficiaries in managed care without their consent and without a waiver. In exchange, Congress included a number of protections for beneficiaries such as restrictions on marketing, a requirement that enrollees have a choice of at least two plans, a prudent layperson standard for emergency care, assurances of access to specialists, quality of care, and a right to a review. Check the

Medicaid Clearinghouse on our Web site ([www.familiesusa.org](http://www.familiesusa.org)) to get involved.

### Proposed Rule Gives Medicare+Choice Enrollees Notice Before Termination

The Health Care Financing Administration (HCFA) recently released a proposed rule that will make sure consumers enrolled in Medicare+Choice plans receive written notice at least four days in advance before a proposed termination of a provider service. This proposed rule is not affected by the hold described above. The rule would also establish a fast-track review process to appeal termination decisions.

The proposed rule was published as a condition of a settlement agreement in *Grijalva v. Shalala*, a class action lawsuit in which HCFA agreed to address notice and appeal procedures for enrollees when a Medicare+Choice plan terminates services.

Another condition of the settlement requires HCFA to solicit comments on the proposed rule, particularly on how Medicare+Choice plans can provide new notice and appeal procedures.

You can read a copy of the proposed rule on the Medicare Web site at [www.medicare.gov](http://www.medicare.gov). We encourage you to submit comments to HCFA on the proposed rule. You should mail your comments to:

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HCFA, Department of Health and Human Services, Attention: HCFA-4024-P, P.O. Box 8013, Baltimore, MD 21244-8018. Comments can also be hand delivered to Room 443-G, Hubert H. Humphrey Building, 200

Independence Avenue, SW, Washington, DC 20201, or to Room C5-16-03, 7500 Security Boulevard, Baltimore, MD, 21244. The deadline for comments is 5 p.m. on Monday, March 26, 2001.

### *Block Grants, Price Controls Mark Plans*

## **Bush, Progressive Caucus, and Democratic Leadership Introduce Prescription Drug Bills**

President George W. Bush sent his "Immediate Helping Hand" proposal—block grants to states to improve or establish a prescription drug program—to Congress in early February. Bush says the plan will provide quick drug coverage for the Medicare beneficiaries most in need but, in reality, it offers little in the way of real help to seniors struggling with soaring prescription drug costs.

Bush's plan would create a block grant—\$48 billion over four years—so states can establish or augment their own pharmaceutical assistance programs or replace state funds with federal funds in the programs they now run. At the end of that four years, those programs and the federal funding would end. Another key flaw is that, despite its name, the program would not be "immediate." Only about half of the states currently have prescription drug assistance programs in place. It will take months, even years, to get programs up and running in the rest of the states. In addition, existing state pharmaceutical programs do far worse than other means-tested programs in reaching poor seniors, helping fewer than one-fourth of those who are eligible.

Immediate Helping Hand does not guarantee a meaningful drug benefit, but instead provides different coverage to different people depending on where they live. Some state programs limit drug coverage to specific conditions, such as heart disease, arthritis, or diabetes, and

don't provide coverage for drugs unrelated to these diseases.

Advocates are concerned that passage of the Immediate Helping Hand proposal would slow the momentum towards adding a prescription drug component to the Medicare program. Since the President's proposal doesn't require states to maintain their current financial commitment to prescription drug assistance programs in operation now, advocates are also concerned that states will simply replace their own funds with federal dollars, meaning that no new individuals would receive coverage.

### **Progressive Caucus Bill**

The Progressive Caucus, a coalition of Democratic members of Congress and one Independent, also introduced a prescription drug proposal recently. The "Medicare Extension of Drugs to Seniors Plan" would establish a drug benefit under a new Medicare Part D. Medicare would pay 80 percent of drug costs, with consumers paying a monthly premium of \$24 in the program's first year. The monthly premium would increase to \$50 in five years.

Beneficiaries with incomes under 135 percent of the federal poverty level (approximately \$11,300 for a single and \$15,000 for a couple) would have their benefits completely subsidized. Those with incomes between 135 percent and 150 percent would qualify for sliding-scale subsidies. The Progressive

### **No Guide to the U.S. Congress This Year**

In the past, Families USA has produced a *Guide to the United States Congress* that listed contact information for all members of Congress and key committees. To help keep our publishing costs down this year, we will not be producing a *Guide to Congress*. You can find the information normally included in the Guide on the Legislative Action Center on our Web site ([www.familiesusa.org](http://www.familiesusa.org)) and on Thomas, the Library of Congress' congressional Web site (<http://thomas.loc.gov/>).

Caucus' plan relies on cost controls that they say would reduce drug prices by as much as fifty percent.

### **Daschle Bill**

The Medicare Prescription Drug Coverage Act of 2001, introduced by Senate Minority Leader Tom Daschle (D-SD), would give all Medicare beneficiaries, the elderly and disabled, the option of prescription drug coverage. Under this proposal, beneficiaries would pay the first \$250 in drug costs out of pocket. After the \$250 deductible is met, beneficiaries would pay half the cost of each prescription up to a total of \$3,500 and 24 percent of the cost of each prescription from \$3,500 to \$4,000. Beneficiaries with incomes below 135 percent of poverty would pay no premium or copayments. Those with incomes between 135 and 175 percent of poverty would receive assistance paying the monthly premium on a sliding scale.

### **Not on our List(serv)?**

Go to "Get Involved" on the Families USA Web site ([www.familiesusa.org](http://www.familiesusa.org)) and subscribe today.

# McCain, Edwards, and Kennedy Introduce a New Patients' Bill of Rights

Senators John McCain (R-AZ), John Edwards (D-NC), and Edward Kennedy (D-MA) introduced the Bipartisan Patient Protection Act of 2001 on February 7. Supported by Democratic and Republican lawmakers, the bill is a strong patients' bill of rights and would allow individuals to sue their HMOs.

## March 26th National Town Meeting on Expanding Health Coverage

As the epidemic of uninsurance rolls on, Families USA continues to explore ways to raise public awareness and to draw policymakers' attention to the issues. One new effort is planned for Monday, March 26th: a "national town meeting" that will be broadcast via satellite to auditoriums across the country. It will feature people without insurance, members of Congress, health providers, advocates, and others sharing their perspectives. The national broadcast will be followed by local discussions with a diverse audience of stakeholders. We hope to have hundreds of local "downlink" sites across the country, and our colleagues at the American Hospital Association and the Catholic Health Association are busy recruiting their local hospitals' members to join the effort. You can participate by attending one of the local sites, or by sponsoring your own site (at a college, for example). For more information about the teleconference, visit the Town Meeting Web site ([expandinghealthcoverage.org](http://expandinghealthcoverage.org)) or you can contact Carolyn Carpenedo at Families USA ([ccarpenedo@familiesusa.org](mailto:ccarpenedo@familiesusa.org)).

The McCain-Kennedy bill is very similar to the Norwood-Dingell bill that passed the House in 1999, and it is supported by Families USA. It would cover all 160 million privately insured Americans and would guarantee access to emergency and specialty care. The bill also requires health plans to tell consumers how to pay for out-of-network emergency room visits, how to access specialists, and how to handle appeals.

The bill differs from the Norwood-Dingell bill in three ways. First, it creates a two-pronged path for lawsuits. All cases involving issues of medical necessity will be dealt with in state courts, while cases involving contract terms will proceed through federal courts. Second, employers will only be liable for decisions made by managed care plans if they are directly involved

in a decision. This language is stronger than that contained in the Norwood-Dingell bill. Third, the Department of Health and Human Services (HHS) will determine if a state's consumer protection laws are comparable to the federal rules. If they are determined to be comparable, state law and enforcement will apply. For provisions that are present in the federal bill, but are not currently state law, the federal law will apply.

Despite these differences, McCain-Kennedy is a strong consumer protection bill. Rep. Charlie Norwood (D-GA), a key sponsor of the Norwood-Dingell bill, supports the McCain-Kennedy bill but has postponed his formal sponsorship of the legislation in an effort to give the new administration more time to formulate a position on the issue.

## New Report from Families USA

# Getting Less Care: The Uninsured with Chronic Health Conditions

To combat the persistent misconception that the uninsured somehow get the care they need, especially when they have serious health problems, Families USA has issued a new report that looks at whether uninsured consumers with chronic health problems really get care. *Getting Less Care: The Uninsured with Chronic Health Conditions* compares the health care received by insured and uninsured people who have five common health conditions: heart disease, hypertension, high blood cholesterol, arthritis, and chronic back pain. Each of these conditions has a significant impact on the quality of life and/or the

life expectancy of millions of Americans. This report demonstrates that the likelihood of receiving medicine, doctors' care, or other treatment for these conditions differs greatly depending on insurance status.

The report is available on our Web site ([www.familiesusa.org](http://www.familiesusa.org)). For a hard copy of the report, write to us at Families USA, 1334 G Street, NW, Washington, DC 20005. Be sure to tell us which publication you're ordering and include a check or money order for \$15.00. (DC residents add 5.75% sales tax.)



## Health Action 2001 Conference Wrap-Up

Over 600 health care advocates from forty-three states attended the Health Action 2001 conference for three days of informative workshops and insightful discussions. Despite the challenges inherent in the new political climate, the conference was characterized by lots of positive energy and a commitment to pushing our issues forward.

On the opening day, conference participants were treated to presentations from congressional leaders including Senate Minority Leader Tom Daschle (D-SD), and First-Lady-turned Senator, Hillary Rodham Clinton (D-NY). Missed the conference? You can see and hear the speeches by Sens. Daschle and Clinton, as well as the Medicare plenary and a workshop on state drug assistance programs, on [kaisernetwork.org](http://kaisernetwork.org), the Kaiser Family Foundation's free online service that webcasts health policy events around the country. (You can get there from the Families USA Web site.)

Another conference highlight was the presentation of the "Consumer Health Care Advocate of the Year" Awards. Several dedicated individuals were honored for their work on health care issues. Rep. Henry Waxman (D-CA) was recognized for his outstanding leadership on health care issues in Congress with a Lifetime Advocacy Award. Other awardees included Richard Kirsch, executive director of New York Citizen Action; Margarita Romo, founder of Farmworker's Self Help in Florida; and former Maine State Senator Chellie Pingree, a leader on expanding health coverage and cracking down on prescription drug pricing.

The conference closed on a high note with an exciting speech by Sen. Edward Kennedy (D-MA) and an inspiring talk by AFL-CIO Executive Vice President Linda Chavez-Thompson.



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## Briefly Noted

■ Consumers Union has issued a new guidebook to help seniors make health care decisions. "Consumer Reports Complete Guide to Health Services for Seniors" offers hands-on, practical advice on navigating the health care system for seniors and their caregivers. The guide also includes two new tools, the "Nursing Home State Detection Index" and the "Nursing Home Watch List by State." The Index shows how all 50 states and the District of Columbia measure up when it comes to detecting problems in nursing homes. The Watch List uses information reported by state inspectors who surveyed these facilities to identify facili-

ties with numerous citations and repeat deficiencies. The book is available for \$19.95 anywhere books are sold or by calling 800-500-9760.

■ Health Action 2001 Tool Kit - If you missed the Health Action 2001 conference, but still want the valuable information included in the Tool Kit, you can order a copy for \$35.00. Write to us at Families USA, 1334 G Street, NW, Washington, DC 20005. Be sure to tell us which publication you're ordering and include a check or money order for \$35.00. (DC residents add 5.75% sales tax.)