

Bill to Block New Medicaid Regulations Faces Fight in Senate

The talk on Capitol Hill is that Senate Republicans may try to obstruct a bill that would block the Bush Administration’s new Medicaid regulations – a strategy that could force Democrats to attach the measure to war spending legislation. H.R. 5613, *Protecting the Medicaid Safety Net Act of 2008*, would block seven regulations the Administration has issued or plans to issue this year. The programs impacted include funding for public safety net institutions; rehabilitation services for people with disabilities; coverage of hospital outpatient services; and case management services – all of which are essential to the Medicaid population.

H.R. 5613 passed the House with a veto-proof majority on April 23, 2008. Senate Majority Leader Harry Reid (D-NV) put the bill on a fast-track last week, bypassing committee consideration to be in a position to move it at a time of his choosing. But the Senate Republicans will not make it easy. They are circulating two letters in opposition to the bill, one summing up arguments against it and the other outlining the Administration’s compromise offer.

At the minimum, Republicans could block motions to proceed to debate on the bill. This activity would then force Reid to file a cloture petition to break the filibuster – consuming scarce floor time that Reid needs for a number of high-priority bills, including a spending bill for the wars in Iraq and Afghanistan. A possible result would then be that Democrats change gears and add the bill to some other must-pass measure, with the war spending bill being the most obvious choice.

The Bush Administration realizes that support for its regulations is very thin. Health and Human Services Secretary Michael O. Leavitt said this week that the Administration would be willing to postpone implementation of two of the regulations. One would eliminate Medicaid reimbursement for the salaries of residents and interns at teaching hospitals; the other would limit Medicaid payments to public hospitals.

AAEM Endorses “Save Medicare Act of 2008”

In an April 22 letter from President Larry D. Weiss, AAEM endorsed S. 2785, the *Save Medicare Act of 2008*. Introduced by Senator Debbie Stabenow (D-MI) on March 13, 2008, S. 2785 would replace cuts totaling more than 15% with positive Medicare physi-

cian payment updates from July 1, 2008, through December 31, 2009. Stabenow’s bill – with 16 cosponsors – is currently under consideration by the Senate Finance Committee.

In his letter, Dr. Weiss applauded Stabenow’s leadership “. . . in introducing critical legislation that would protect patients’ access to care by preserving the Medicare program and warding off steep pending cuts in physician payment rates that threaten access for our senior and disabled patients.” He went on to say that “AAEM supports a permanent correction to the SGR that links physician payment to the real costs of health care.”

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Shorts . . .

Grants to Help Improve Access to Primary Care

The Centers for Medicare and Medicaid Services (CMS) recently awarded grants of \$50 million to 20 states to help improve access to primary medical care so that Medicaid beneficiaries could avoid improper use of hospital EDs.

Created by the *Deficit Reduction Act of 2005* (DRA), these grants will help Medicaid programs fund local and rural initiatives to provide alternative health care settings for individuals with non-emergent medical needs.

Grantees will use the funds to:

- Establish new community health centers;
- Extend the hours of operation at existing clinics;
- Educate beneficiaries about new services; and
- Provide for electronic health information exchange between facilities for better coordination of care.

States receiving grant funds under this program are Colorado, Connecticut, Georgia, Illinois, Indiana, Louisiana, Massachusetts, Maryland, Michigan, Missouri, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah and Washington. These awards help align Medicaid efforts with Medicare's value-based purchas-

ing strategies, also designed to avoid unnecessary ED visits through improved physician care and strategies to decrease re-admissions.

For more information on the grants, including the proposals and the amount each program will receive, go to <http://www.cms.hhs.gov/GrantsAlternaNonEmergServ/>

New EMS Web Site

The National Highway Traffic Safety Administration's Office of Emergency Medical Services (OEMS) has developed and launched a new Web site designed to meet the varied needs of the EMS community. [EMS.gov](http://www.ems.gov) contains the latest news from OEMS; functions as a portal to other EMS Web sites and resources; and provides background and updates on Federal initiatives and programs, including Emergency Medical Services for Children, the National EMS Information System, the Federal Interagency Committee on EMS, Enhanced 911 and Next Generation 911, and the National EMS Advisory Council. While OEMS realizes that the nation's EMS community is too diverse for a single web site to meet all its informational needs, its goal for [EMS.gov](http://www.ems.gov) is to provide EMS professionals and stakeholders with the closest thing to a "one-stop shop" for federal EMS information.

From the States . . .

CO Bill Raising Malpractice Caps on Hold

Despite fierce opposition from doctors and the state's largest medical malpractice insurer, the **Colorado** Senate approved SB 164, a measure – sponsored by Senator Peter Groff (D-Denver) and Representative Terrance Carroll (D-Denver) – that raises the caps for non-economic damages (such as pain and suffering) in medical malpractice cases to match those in other types of lawsuits. A House committee, however, has delayed action on the bill after doctors warned it could force them to stop practicing and make health care more expensive.

The current cap in medical malpractice cases for non-economic losses is \$300,000; in general liability cases, the cap is \$366,000, but that figure is scheduled to be

inflation-adjusted this year. SB 164 also proposes that whatever the new cap in medical malpractice cases turns out to be, that it be subject to potential doubling – as in general liability cases now – in extreme circumstances if a judge determines it is justified. In addition, damages for physical impairment or disfigurement, previously considered as non-economic damages, would be considered economic damages under the bill – with a cap of \$1 million. Under current law, judges can override the caps for economic losses if they determine the patient's losses exceed \$1 million, and the bill does not change that provision.

Supporters of the legislation say the bill's limits on medical malpractice claims are fairer and equitable. They also say the data does not support opponents'

claims equating higher medical malpractice rates with doctors leaving states. "It is our position that this is a fair, modest and reasonable piece of legislation," said Melissa Kuipers, legislative director for the **Colorado** Trial Lawyer's Association. Kuipers maintains that, if the legislation is approved and signed into law, **Colorado** will still be one of the most conservative states in the country in terms of medical malpractice awards.

In theory, Democrats should have an easier time passing SB 164 in the House, where they have a 40-25 majority. But House Republicans have vowed to pull out all the stops in opposition. Also, Alfred Gilchrist, executive director of the **Colorado** Medical Society, said the organization will keep on pressing its case against SB 164 in the House, and individual doctors opposing the bill are continuing to flood lawmakers with calls and e-mails.

TN Medical Malpractice Bill Goes to Governor

Legislation aimed at preventing frivolous medical malpractice lawsuits in **Tennessee** was approved by the Legislature April 24. S.B. 2001, which now goes to Governor Phil Bredesen (D) for his signature, requires those asserting a medical negligence claim to provide a 60-day notice to providers against whom such allegations are made prior to filing a lawsuit. That notice would not apply to providers made party to the action after the filing of the complaint as a result of a defendant alleging comparative fault.

The legislation also requires plaintiffs or their attorneys filing a medical malpractice claim requiring expert testimony to file a certificate of good faith within 90 days of the filing. Such certificates must state that a competent expert medical witness has been consulted and has provided a signed statement that expresses a professional belief that there is a good-faith basis to maintain the lawsuit. In addition, S.B. 2001 requires the provision of "complete and unaltered copies" of the claimant's medical records within 30 days of receipt of a written request. If enacted, the new requirements on medical malpractice claims would become effective October 1, 2008.

Both the **Tennessee** Medical Association (TMA) and the **Tennessee** Association for Justice (formerly the **Tennessee** Trial Lawyers Association) came out in support of the measure. "This legislation is an important step toward improving **Tennessee's** liability environment by addressing the significant problem of meritless lawsuits," said F. Michael Minch, Chairman of the TMA Board of Trustees. "By cutting down on the glut of lawsuits and the associated costs that clog our state's legal system, we will see a reduction in the cost of providing patient care and help **Tennessee** become a more attractive state to live and work for physicians in years to come." Daniel Clayton, President-elect of the **Tennessee** Association for Justice, stated that "It will help eliminate, or at least significantly reduce the number of lawsuits which never should have been filed . . . although the bill is not perfect, it should accomplish its purpose."

Legislative Action Center

AAEM's Legislative Action Center located at <http://capwiz.com/aaem/home> is "one-stop" shopping for federal legislative and regulatory information. It contains the important issues that AAEM is tracking for you, recent votes, current bills, and other relevant items. You can search the congressional database by name, state, committee, or leadership, and send messages to your congressional delegation directly from the site.

Additional features include:

- A "Vote Scorecard" listing every Member of Congress and how they voted on bills of interest to AAEM;
- "Megavote" provides you with a weekly e-mail on the voting patterns of your Representative and Senators;
- A searchable "Guide on National and Local Media" including newspapers, magazines, and TV networks and stations; users can send e-mails, faxes or printed letters to newspaper journalists, radio talk show hosts, and television commentators; and
- Detailed "Campaign Contribution Data".