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MEMORANDUM

TO: National Association of County Human Services Administrators
FROM: Tom Joseph
DATE: October 6, 2008
SUBJECT: Federal Update

The last few weeks of debate in Washington were consumed by the bail out of the financial sector and were finally resolved last week, with the House passage of the legislation and enactment into law hours later. Both the Senate and the House have recessed for the November elections and may return for a brief lame duck session in mid-November.

Lost among the bailout headlines have been other Capitol Hill activities affecting health and human services programs. They were:

Spending Bills

Federal Fiscal Year 2009 Appropriations: A temporary federal fiscal year (FFY) 2009 spending measure was adopted by wide margins in both the House and Senate and signed into law on September 30 -- a day before the new federal fiscal year began. None of the 12 spending measures was adopted separately. President Bush had threatened to veto all domestic appropriations bills, including the Labor, Health and Human Services bill, arguing that they exceed his requests, albeit by single-digit percentages. The temporary spending bill funds all federal domestic programs and operations through March 6, 2009, giving the new president and Congress time to negotiate spending priorities for the remainder of FFY 2009.

All domestic programs are funded at their 2008 levels, so there were no cuts nor were there increases. One exception was made in the human services area. Funding was doubled for the Low Income Home Energy Assistance Program (LIHEAP) which assists individuals with the costs of heating their homes.

Economic Stimulus: In late September, the House and Senate adopted different economic stimulus packages that would have increased spending for a number of low-income programs and boosted investments in highway and other infrastructure spending.

Neither vote, however, was sufficient to override President Bush's promised veto, so the package appears dead for the year.

House and Senate Democrats intended that the stimulus package fund programs where the money would be spent quickly by individuals or states, providing a boost to the staggering economy.

The Senate passed its package 52-42, far short of the 67 votes usually necessary to override a veto. The bill (S. 3604) contained a number of nutrition investments; an increase in the federal financial share of Medicaid and a two year patch restoring the child support performance incentive payment cuts. Investments included:

- \$450 million for WIC
- \$30 million for the Commodity Supplemental Food Program (CSFP)
- \$50 million for the Emergency Food Assistance Program (TEFAP)
- \$40 million for senior meals programs
- A ten percent increase in the food stamp benefit through September 30, 2009.
- A four percentage point increase in the federal share of Medicaid for 15 months
- A two year restoration of the child support cuts made in the Deficit Reduction Act
- A seven week extension of unemployment benefits

The House bill (H.R. 7110) passed 264-158 and contained a five percent increase in food stamp benefits through September 30, 2009. The House measure also had a similar provision to increase the federal share of Medicaid for the next 15 months. Their legislation, however, did not contain the other food and nutrition investments nor the child support patch contained in the Senate bill.

Policy Issues

Foster Care Reform: Congress adopted a landmark bill making significant improvements to the foster care and adoption assistance programs. Called the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (H.R. 6893), the bill passed by voice vote in both the House and Senate. President Bush is expected to sign the measure.

The new law will:

- Reauthorize and update the adoption incentives program
- Gradually de-link Title IV-E adoption assistance from income requirements so that all children with special needs eventually have access to this federal support
- Provide for Title IV-E funding for kinship guardianship placements
- Extend direct Title IV-E funding to tribal governments
- Allow states to receive federal reimbursement for support provided to foster youth up to age 21
- Create a grant program to support kinship caregivers
- Require reasonable efforts to keep siblings together
- Require agencies to inform prospective adopters about the tax credit

Mental Health Parity: After years of debate, the House and Senate adopted a bipartisan bill (H.R. 1424/S. 558) to establish parity in the coverage of mental health and substance abuse treatment on the same terms and conditions as physical health. The legislation was attached to the financial bailout package and was enacted into law.

Named the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008*, the bill does not mandate mental health or substance abuse coverage, but if an insurance package offers those benefits, they must be on par with physical health coverage. Effective one year after enactment, treatment limits and financial requirements for mental health or substance

abuse treatment cannot be any more restrictive than those that apply to medical or surgical benefits. The new law requires parity in deductibles, co-payments and out-of-pocket expenses and in setting treatment limitations, such as the maximum number of doctor visits and days of coverage allowed. Numerous studies have found the additional costs to employers to be minimal.

Unresolved Health and Human Services Issues

Congress failed to act on a number of health and human services issues this year. They are outlined below.

Restoration of Child Support Cuts: Despite intensive work by state and local governments, family advocacy groups and other stakeholders, Congress did not act to reverse the Deficit Reduction Act cuts made to the child support performance incentive grant program. The *Child Support Protection Act* (HR 1386/S.803) sought to repeal the cuts which became effective October 1, 2007. Ninety members of the House and 38 Senators co-sponsored the bills.

Congress has been unable to agree upon budgetary offsets necessary to restore the cuts. The Congressional Budget Office estimates that \$3-4 billion over ten years is needed to restore the incentive payment program. Families will lose about \$11 billion in support owed to them over the same time period if the cuts are not restored.

Near the end of the session, there were discussions with both the House and Senate on placing a temporary stop to the cuts, since that provision would not be as costly. We argued that additional administrative dollars to obtain and enforce support orders would help stimulate the economy, since child support payments are spent quickly.

SCHIP: The State Children's Health Insurance Program (SCHIP) is operating under a short-term extension through March 31, 2009. Votes last year to expand the program fell just a few short of a veto-proof majority.

Congress and health advocates continue to push for a repeal of the Centers for Medicare and Medicaid Services' (CMS) directive issued last summer that essentially makes it all but impossible for states to expand coverage under SCHIP to children in families with incomes above 250 percent of poverty.

The directive was not issued as a proposed regulation. Both the Government Accountability Office and the Congressional Research Service subsequently issued legal opinions this past spring that CMS overstepped its legal authority by issuing a major policy change via a letter to the states. In mid-August, CMS said that it will not take any action against states at this time, but it also will not withdraw the directive.

Next Year

Next year will begin slowly. On Capitol Hill, new members will be setting up their offices, many returning members will move into new spaces, and congressional committees will be organized. At the White House, the new administration will have thousands of appointments to make and policies to create.

Early February is usually when the president sends a budget to Capitol Hill. If previous changes in administrations are any indication, a skeleton budget will likely be released late winter or early spring, instead of the typical huge, detailed budget.

While a new administration is usually slow to start, Congress and the president will face some rather big issues very quickly, including extending funding for most of the federal government when the **continuing spending resolution expires on March 6, 2009**.

Congress also faces two major health program deadlines in late March. They must **re-visit the numerous Medicaid regulations they delayed and the authority to operate the SCHIP program ends on March 31, 2009**. The Medicaid moratoria package delayed implementation of six regulations that would either restrict the ability of state and local governments to claim Medicaid reimbursement for services, including those provided to child welfare and behavioral health populations, and/or would restrict the ability to raise funds to match federal dollars. Both Medicaid and SCHIP could be granted new short term extensions, but how those issues are handled may serve as indicators of how well the two parties in Congress and the new administration will work together. Because the Congressional Budget Office assumed federal savings from the regulations and applied them in the federal budget baseline, Congress could only agree upon offsets sufficient to delay the regulations until next year.

The administration's **Targeted Case Management (TCM)** regulation continues to be of interest to policymakers on Capitol Hill. In August, the chairmen of the key House and Senate committees with jurisdiction over Medicaid wrote to HHS Secretary Leavitt urging him to confirm that the TCM guidance issued in late July would not apply the intrinsic element test during the regulatory moratorium that requires other programs that provide case management services to be responsible for those costs, even if the Medicaid beneficiary cannot access that program.

The types of health and human services issues that Washington policymakers will ultimately tackle in 2009 is also unknown and depends somewhat on the situation in Iraq and Afghanistan, the nation's economy and other unanticipated unknowns. Overarching these issues is something that is well known and will likely have gotten even worse – the **federal budget deficit** and the scarce federal dollars available for new initiatives.

Foster care reforms will continue to be on the congressional agenda. Efforts will be made next steps will be to de-link IV-E eligibility from the AFDC standard, provide flexibility in the use of funding and increase federal investments in training of child welfare staff. All are costly proposals, however.

Congress will again attempt to reauthorize the **Workforce Investment Act**. A WIA renewal has been delayed for a number of years, given the stalemate between the Bush administration and the Hill. The administration wanted to consolidate and cut employment and training programs and Congress was concerned that even if a bill was enacted into law, that the Department of Labor would have found ways in the regulatory process to interpret the new law in a manner contrary to congressional intent.

The **Temporary Assistance to Needy Families** program expires in 2010, so some groundwork may begin via hearings on renewing it.

Congress will likely continue to work on adopting the **Elder Justice Act** (H.R. 1783/S. 1070), which would provide federal funding for adult protective services to states and counties.

Comprehensive health reform may also be considered. If serious efforts are made to advance a bill, it would likely consume most of the scarce federal funds available and would absorb countless hours and expertise of staff on the committees dealing with human services legislation, leaving little time and energy for other human services initiatives.

Action in 2009 on **child support enforcement** will continue. If Senator Obama becomes president, advocates will point out that he introduced a comprehensive bill in 2007 (S. 1626) that contained a number of provisions to strengthen families and enhance fatherhood programs. Repeal of the child support cuts was a part of that bill.

Child nutrition programs must be reauthorized next year, including a renewal of the WIC program, school lunch and child and adult care food programs. To the extent fuel and food prices remain high, there will be further pressure to find additional funding for home delivered meals and WIC programs.

While the Farm Bill's food stamp benefit improvements are fairly straightforward and became effective October 1, 2008, there may be regulations issued to **implement the newly-named Supplemental Nutrition Assistance Program (SNAP)**. Regulations are expected at some point on the USDA's interpretation of a new provision making **states liable for over-issuances of SNAP benefits** due to 'major' computer systems failures. USDA would establish a claim against the state for the over-issuance and the state would be prohibited from collecting the overpayment from the household. The regulation would have to delineate how it proposes to define a major systemic error and how USDA would calculate the state's fiscal liability.