



LEGISLATIVE REPORT

OCTOBER/NOVEMBER 2008

OVERVIEW

While the first session of the 110th Congress included the five-year reauthorization of the *Best Pharmaceuticals for Children Act* (BPCA), the *Pediatric Research Equity Act* (PREA) and new pediatric device legislation, the *Pediatric Medical Device Safety and Improvement Act*, the second session of this Congress has been plagued with inaction on issues related to children and adolescents. Unable to pass all 12 appropriations bills to fund the federal government in FY 2009, including funding Title VII, AHRQ, Children's Hospital GME program and the National Children's Study, a short-term spending bill (Continuing Resolution –CR) was signed by the President on September 30 just a few short hours before the start of the 2009 fiscal year. Other important bills, such as the *Pediatric Research Consortia Establishment Act*, a tobacco regulation bill, reauthorization of Title VII or the Agency for Healthcare Research and Quality, to name a few, were not completed.

The following is a summary of federal legislative and regulatory activities of interest to the Academic Pediatric Association. The first session of the new Congress – the 111th - will begin on January 6, 2009, with a full agenda including the reauthorization of the State Child Health Insurance Program (SCHIP) that expires at the end of March 2009.

- **Pediatric Workforce**
- **Access to Health Care**
- **FY 2009 Budget**
- **Maternal and Child Health Block Grant**
- **Pediatric Research**
- **Immunizations**
- **Emergency Medical Services for Children**
- **Congressional Calendar**
- **How to Contact Congress and the President**
- **AAP FAAN and Key Contact Programs**

PEDIATRIC WORKFORCE

Title VII Health Professions Program and Title VIII Nursing Professions Program – Appropriations: The President's **FY 2009** budget proposal eliminated funding for Title VII and calls for a significant cut in funding for nursing education. The Academic Pediatric Association (APA) worked with the Health Professions and Nursing Education Coalition (HPNEC), led by the AAMC, to urge Congress to restore as well as increase funding. The coalition's request was \$550 million for both Titles VII and VIII in FY 2009. Under the FY 2009 continuing resolution,

Title VII and VIII will be funded through March 6, at the current level of funding - \$193 million for Title VII and \$156 million for Title VIII.

Title VII Health Professions Program—*Reauthorization:* Unfortunately there was no action in the 110th Congress on the reauthorization of the Title VII. However, the pediatric community did begin a dialogue with congressional staff on the future of the program. A letter, outlining specific issues for consideration, was submitted to the Senate HELP Committee hearing record by the Federation of Pediatric Organizations, which includes the APA as well as APS, SPR, AMSPDC, the AAP, ABP, and AAPD. The letter included the following recommendations:

- Enhancing pediatrics in Title VII;
- Training primary care physicians in the workforce, especially those serving disadvantaged/underserved populations;
- Training all physicians in the workforce about primary care, care of underserved populations, and emerging health care needs;
- Training minority physicians and minority faculty; training primary care researchers and leaders to address: *Healthy People 2010* objectives, disparities in health and health care, and primary care practice and health outcomes; and,
- Research and innovations in primary care training and health care delivery with demonstrated impact on health care quality.

GME Financing for Children's Hospitals (CHGME)—*Appropriations:* The President's FY 2009 budget proposal called for completely *eliminating* funding for CHGME. Despite efforts by Congress to increase funding to \$310 million, the program is funded at current levels - \$301.7 million - through March 6, 2009, under the CR.

Higher Education Act: In September of 2007, the President signed the *College Cost Reduction and Access Act* (P.L. 110 - 84), the budgetary provisions of the current HEA reauthorization. Among the most notable changes, the measure includes a change to the definition of economic hardship deferment. The law also creates a new income-based repayment and "public service" loan forgiveness program. Shortly thereafter, Secretary of Education Margaret Spellings retained this pathway in regulation and assured Congress and the medical education community that the Department would continue to offer the debt-to-income ratio. However, on March 4, 2008, the Department of Education abruptly reversed this decision and indicated that it plans to eliminate the 20/220 pathway in the November 1, 2008, regulations currently being drafted. Legislation has been introduced (H.R. 4344/S.2303) to remedy this serious problem and reinstate the 20/220 pathway in the ongoing HEA reauthorization conference.

The pediatric community joined the AMA, ACP, AAFP, ACOG, and numerous other medical organizations in sending a letter to the Secretary of Education this past August urging her to reinstate the debt-to-income ratio of the economic hardship loan deferment ("20/220 pathway") permanently or provide an equivalent funding mechanism for loan deferments so that medical residents continue to have an option to postpone loan payments, without facing financial penalties, during a crucial time in their training.

ACCESS TO/COVERAGE OF HEALTH CARE

State Children's Health Insurance Program - Second Session 110th Congress: Shortly after the House returned for the second session of the 110th Congress on January 23, the House voted 260-152, to override President Bush's veto of the SCHIP expansion legislation (HR 3963). It fell 15 votes short of the two-third majority required. The legislation would have expanded the program to cover 10 million children and increased spending on the program by \$35 billion over five years, funded by a 61-cent-per-pack increase of the federal cigarette tax. It also would have limited coverage to children and adolescents in families with annual incomes below 300% of the federal poverty level. In the second override attempt, 42 Republicans voted to override the veto, two fewer than in the first override vote, and one Democrat, Rep. Jim Marshall (D-GA), voted to sustain the veto.

Following the vote in January, House Democrats said they expect to revisit SCHIP later this year, but it was determined that they would not do so before the Congress adjourned.

CMS Threatens SCHIP: The Centers for Medicare and Medicaid Services (CMS) has announced that states will **not** be penalized for failing to implement the requirements included in the August 17th Directive. The so-called "August 17, 2007 Directive" would have limited states' ability to cover children above 250% of the federal poverty level (FPL). The Directive required that states must first cover 95% of those eligible children below 200% FPL before covering uninsured children at higher income eligibility levels. Even though the Administration has repeatedly emphasized that the Directive is intended to encourage states to reach "poor kids first," if left intact, the restrictions on state flexibility would have resulted in tens of thousands of children across the country losing SCHIP coverage. It was scheduled to go into effect on August 17, 2008.

Both the Congressional Research Service (CRS) and Government Accountability Office (GAO) released reports challenging the legality of the Directive. In legal opinions released April 18th, the [GAO](#) and the [CRS](#) said the way that the SCHIP Directive was issued violated statutory requirements for congressional notice and review.

Since the Directive was issued, Indiana, Louisiana, Ohio, Oklahoma, and New York have been forced to scale back or rely on limited state funds to maintain their SCHIP programs (each had planned to provide affordable coverage options through SCHIP or Medicaid to uninsured children in moderate-income families). Additionally, if implemented, 19 more states would have been affected by the Directive's stringent requirements.

Even though the Directive has taken a substantial toll on state coverage initiatives for uninsured children, this new development will ensure that states can continue to cover and enroll more uninsured children.

FY 2009 BUDGET

BACKGROUND - President's FY 2009 Budget Proposal: The President's FY 2009 budget proposal was released on February 4, 2008. This was the final budget proposal for the Bush Administration. The budget proposal included some interesting surprises, such as an increase in funding for the State Child Health Insurance Program (SCHIP)—though it still falls short of the \$35 billion needed to cover additional eligible low-income children. The proposal also included some serious disappointments, slashing more than \$2 billion from discretionary health and human services programs, including many for children and adolescents. In addition, Bush proposed trimming costs in Medicaid, the health safety net for the nation's poorest children, by \$18 billion over the next five years. The budget proposal maintained current level funding for several key programs aimed at children and adolescents, including child welfare and abuse prevention programs, child care and development grants, and crucial biomedical and health services research at the National Institutes of Health and the Agency for Healthcare Research and Quality. The President's budget proposal also went further and eliminated funding for the National Children's Study at the NIH, Emergency Medical Services for Children, Title VII, health professions training including primary care medicine and dentistry, the Children's Hospitals GME program, and universal newborn hearing screening.

The APA joined with over 440 organizations to ask Congress to increase public health funding in FY 2009 in order to 1) restore funding to public health programs cut in FY 2006; 2) restore lost purchasing power that flat-funding for at least five years has eroded; and 3) provide investments that begin to meet the health challenges currently facing the nation. The estimate to meet this goal is an additional \$5.3 billion.

FY 2009 Congressional Budget Resolution: On March 13, the House and Senate approved similar \$3 trillion fiscal year 2009 budget resolutions (H. Con. Res. 312 and S. Con. Res. 70). Both proposals would increase spending for health care and other domestic programs above the President's budget proposal and balances the budget by 2012. The Senate passed the reconciled version of the budget resolution on June 4th, 2008 and the House passed it on June 5th, 2008.

Overall funding was \$3.1 trillion, with \$1.013 trillion for discretionary spending, \$21 billion more than the President's request.

The budget resolution is essentially an internal congressional document, non-binding on other committees and does not need to be signed by the President. The budget resolution, however, does offer an important spending blueprint and sets in motion the process by which decisions on spending and taxes must be made – appropriations and reconciliation.

FY 2009 Appropriations: The appropriations process slowed down to a screeching halt prior to the August congressional recess, and it did not do any better when Congress returned in September. At that time, the APA joined with the Academy and over 300 organizations in a letter to the chair and ranking members of the House and Senate Appropriations Committees urging them to take into consideration the highest funding level, for each public health agency and program within each appropriations bill in whatever final funding package emerges.

However, despite these efforts, Congress was unable to complete its work on all 12 bills including the Labor-HHS-Education appropriations bill. Therefore, Congress passed and the President signed on September 30, HR 2638, a continuing resolution (CR) that provides full fiscal 2009 funding only for military construction and the departments of Defense, Homeland Security, and Veterans Affairs. The legislation keeps the rest of the government funded through March 6, 2009, at fiscal 2008 levels. This means that when the new President and Congress arrive in January final decisions on spending for domestic programs will need to be made.

MATERNAL AND CHILD HEALTH BLOCK GRANT (TITLE V)

The President's FY 2009 budget requested \$666 million for the Title V, Maternal and Child Health Block Grant program, the same amount as in the current fiscal year. This is the lowest funding for this important program since 1993. As part of the Friends of Title V, the pediatric societies, including the APA, supported \$850 million for this program, the same amount as currently authorized. In FY 2003, funding for the MCH Block Grant was \$731 million and has remained flat or has decreased ever since. During the senate debate on the FY 2009 budget, Senator Chris Dodd (D-CT), along with Senators Hatch (R-UT), Charles Schumer (D-NY), and Richard Durbin (D-IL), introduced an amendment to increase funding for the Title V program by \$184 million. The amendment passed by unanimous consent. However, despite this budget amendment the available funding for the MCHB program remains at \$666 million throughout the duration of the continuing resolution – March 6, 2009.

PEDIATRIC RESEARCH

Agency for Healthcare Research and Quality (AHRQ): The President's FY 2009 budget proposal recommended \$325.7 million, a decrease from the current fiscal year level of \$335 million. Working with the Friends of AHRQ, the pediatric community requested \$360 million for FY 2009, with a goal of \$500 million in five years. Under the CR, funding through March 6, 2009 is at the current spending level.

Although there was some interest expressed by the Senate Health, Education, Labor and Pensions Committee (HELP) on the reauthorization of AHRQ, no action was taken this year.

Pediatric Research Consortia Establishment Act (S.2773): Senators Sherrod Brown (D-OH) and Kit Bond (R-MO) introduced S.2773, to amend Title IV of the Public Health Service Act to establish the National Pediatric Research Consortia. The APA as well as the members of the Federation of Pediatric Organizations have all provided their collective support to this important legislative effort. To date there is one additional Senate cosponsor of the bill, Sen. Jim Bunning (R-KY). The House companion bill, H.R. 6089, was introduced by Rep. Dianna DeGette (D-CO) and has 17 co-sponsors.

The *Pediatric Research Consortia Establishment Act* authorizes up to 20 National Pediatric Research Consortia at institutions throughout the country. The consortia will conduct both

basic and translational research. Each consortium will partner with satellite facilities. The peer-reviewed awards will be made for five years with each consortium receiving initially no more than \$2.5 million per year and will be renewable for another five years contingent on evaluations by a peer review panel and Director.

National Institutes of Health (NIH)—Appropriations: The President's FY 2009 budget proposal, released on February 4, 2008, included level funding (FY 2008) - \$29.23 billion - for the NIH. The pediatric community, including the APA, joined the advocacy efforts led by the Ad Hoc Group for Medical Research in requesting an increase of \$1.9 billion, for a total of \$31.1 billion. Under the continuing resolution, funding will remain at \$29.23 billion through March 6. The NIH is currently working on determining what impact this will have on their grants.

The National Institute of Child Health and Human Development (NICHD) current allocation under the CR is \$1.256 billion. As a member of the Friends of the NICHD, the APA supported an increase of approximately 6.5 percent for the NICHD - \$1.34 billion in FY 2009 - during the appropriations process.

National Children's Study (NCS) – Once again, the President's budget proposal for FY 2009 eliminated funding for the NCS. The APA, working in collaboration with the AAP and the March of Dimes -- and with the support of members of Congress (such as Representatives Doris Matsui [D-CA] and Chris Smith [R-NJ], who co-chair the congressional NCS caucus) -- advocated for and supported the next increment in funding for FY 2009 - \$192 million. Almost 40 organizations signed onto a letter supporting \$192 million as the next step in funding the NCS for FY 2009. In its version of the bill, the Senate Appropriation Committee approved \$192 million in funding for NCS, an increase of \$81 million over FY 2008 levels, and, during a senate hearing on the NIH in June, Senator Tom Harkin (D-IA) restated his support for adequate funding for the NCS in FY 2009. However, under the CR, the funding for the NCS will be at current levels - \$110 million - at least until March 6.

The NCS announced the award of contracts to new study centers, which will manage operations in 30 more communities across the country, on October 3.

Review of the National Children's Study (NCS): In May, The National Academy of Sciences (NAS) released its review of the NCS Research Plan. The review was requested by NCS and NICHD Institutional Review Board. Overall, the review was positive, but did have several recommendations including the implementation of a pilot phase, improvements to data collection, and attention to racial, ethnic and other disparities. The NCS response to the NAS can found on the NCS website.

The next meeting of the National Children's Study Federal Advisory Committee is scheduled for November 5 -6, 2008. Several pediatricians continue to serve on the NCS advisory committee.

New National Children's Study Website: The NCS has updated its website with new content, information, and tools such as an interactive map of Study locations. The website address is the same - <http://www.nationalchildrensstudy.gov> - but the website has been redesigned to reflect the progress NCS has made.

IMMUNIZATIONS

Section 317 Program – Appropriations: Throughout the appropriations process, the immunization advocacy community, including APA, the AAP, and the Association of State and Territorial Health Officials, urged Congress to provide \$802 million for Section 317 in FY 2009. Current funding for the 317 immunization program is \$468 million – an increase of \$15 million above the FY 2007 enacted level and above the original Bush budget proposal.

EMERGENCY MEDICAL SERVICES FOR CHILDREN

EMSC—Reauthorization: The EMSC program’s authorization expired in late 2005, but the program has yet to be reauthorized. On the first day of the first session of the 110th Congress, Senators Inouye (D-HI) and Hatch (R-UT) introduced an EMSC reauthorization bill, (S. 60) the *Wakefield Act*. It currently has 11 cosponsors. The House version, HR 2464, introduced by Representatives Matheson (D-UT), Capps (D-CA), and King (R-NY), was passed by the House on April 8th by a vote of 390 - 1. Unfortunately, at the time of this writing no floor action had occurred in the Senate although efforts were made at all levels to move the bill forward before the end of this session of Congress.

EMSC—Appropriations: Similar to the past several years, the President’s FY 2009 budget once again zeroed-out funding for the EMSC program. Current funding (FY 2008) for the EMSC program is \$19.454 million and will remain at this level under the CR through March 6.

CONGRESSIONAL CALENDAR (110th Congress – Second Session)

Sept. 26 Target Adjournment (House)
November 4 Election Day

January 6, 2009 111th Congress (first session) convenes

HOW TO CONTACT YOUR MEMBER OF CONGRESS:

Write: If you decide to write a letter, remember to be courteous, to the point, and include key information and personal examples to support your position. Address only one issue in each letter and, if possible, keep the length to one page. Due to increased security on Capitol Hill, you should fax or e-mail your letter, instead of using regular mail, to ensure that your communication arrives in a timely manner.

To a Senator:

The Honorable (name)
United States Senate
Washington, DC 20510

To a Representative:

The Honorable (name)
United States House of Representatives
Washington, DC 20515

Dear Senator _____: Dear Representative _____:

Fax: Currently it is best to fax and **not** mail your letter to Congress. Fax numbers are available through the Capitol Hill Switchboard (202) 224-3121, or you can look up your members of Congress on “Thomas,” the official website for Congress available at <http://thomas.loc.gov/>, by going to “House Directory” or “Senate Directory” from the front page.

Call: You can contact your Senator’s and Representative’s offices by calling the U.S. Capitol Hill Switchboard at (202) 224-3121. If you do not know who your Representative is, the switchboard operator will be able to direct you to the proper office. Ask to speak to the staff member who works on health care issues. Be prepared to leave a very short message as well as your name and address. You can also call your legislators in their home districts; if you are a member of the American Academy of Pediatrics, information about local offices is available on the AAP Member Center website, www.aap.org/moc. You can also go directly to www.senate.gov or www.house.gov for this information.

E-mail: All of members of Congress now have e-mail addresses, but there is no set format for them. On some members’ web sites there is a mechanism to directly email, most notably if you are a constituent. We suggest calling the congressional office to get an accurate e-mail address or www.senate.gov or www.house.gov for this information. Be sure to identify, in the subject line, that you are a constituent along with the legislative topic of the email correspondence.

HOW TO CONTACT THE PRESIDENT – This is an excellent time to contact the president to urge him NOT to veto the SCHIP reauthorization bill when it comes to his desk!!

Write: The Honorable George W. Bush

The White House

1600 Pennsylvania Avenue

Washington, DC 20500

Call: 202-456-1414

Fax: 202-456-2461

E-mail: president@whitehouse.gov

American Academy of Pediatrics’ - KEY CONTACT PROGRAM

If APA members, who are members of the Academy, want to do more federal advocacy than responding to the FAAN alerts, we encourage pediatricians to join the American Academy of Pediatrics Key Contact program. Key Contacts have an interest in developing a stronger working relationship with their congressional delegation and usually work on several AAP legislative issues. Key Contacts are contacted on a regular basis (approximately once a month when Congress is in session). Key contacts receive all the latest information and news, advocacy tips and tools, suggestions for improving relationships with members of Congress, and more sophisticated advocacy assignments, such as media work and congressional visits (all with help from AAP staff).

To sign up to be an AAP Key Contact, log on to <http://www.aap.org/moc> (Member Login required, use your AAP member ID, which can be found on the AAP News or Pediatrics mailing label) and click on "Federal Affairs." For more information on the Key Contact program, contact the AAP Department of Federal Affairs, 800-336-5475.

This legislative report is also available on the APA website at <http://www.ambpeds.org/legupdate.cfm>.

Additional information and resource materials on these and other child and adolescent health care issues are available from: Karen M. Hendricks, JD, khendricks@aap.org or Becky Fowler, bfowler@aap.org c/o AAP, Department of Federal Affairs 601 13th Street, NW, Suite 400 North, Washington, D.C. 20005, phone: 800/336-5475 fax: 202/393-6137.

This report was prepared by APA's governmental affairs staff.

Submitted by:

Mark Schuster, MD, PhD, Chair
APA Public Policy and Advocacy Committee
Chief of General Pediatrics & Vice-Chair for Health Policy Research,
Department of Medicine, Children's Hospital Boston
Professor of Pediatrics, Harvard Medical School
300 Longwood Avenue
Boston, MA 02115
Phone: 617-355-4661
Fax: 617-730-0633
mark.schuster@childrens.harvard.edu

October 25, 2008