

LEGISLATIVE UPDATE
LAME DUCK SESSION, 109TH CONGRESS
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Includes:

- FY 07 appropriations
- NIH reauthorization
- Medicare/physician fees
- Ryan White reauthorization
- FDA commissioner confirmation

The 109th Congress finished up its business in the early morning hours on Saturday, Dec. 9th. As expected, a flurry of legislative activity on health policy occurred in the last few hours of the legislative session, leaving lawmakers with a short list of accomplishments in an otherwise non-productive year related to health issues. Although more details will emerge during the next several days, please find below a summary of key legislative measures acted upon during the last 24-48 hours.

FISCAL YEAR 2007 LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION (LHHS) APPROPRIATIONS BILL

Congress passed a continuing appropriations resolution (CR) through February 15th which encompasses the 9 fiscal year 2007 appropriations bills not yet completed, including the LHHS bill. The CR includes funding for programs in the LHHS bill at the fiscal year 2006 level. This includes the National Institutes of Health, the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Agency for Health Research and Quality, the Department of Education, and other agencies supported in the LHHS bill. It is not yet clear how the incoming 110th Congress will resolve funding levels in the final fiscal year 2007 LHHS bill.

COMPROMISE NIH REAUTHORIZATION LEGISLATION PASSED-INCLUDES IMPORTANT SAFEGUARDS AND IMPROVEMENTS TO ORIGINAL LEGISLATION

A compromise between Senate and House negotiators led to passage of HR 6164, the National Institutes of Health Reform Act of 2006. The legislation would reauthorize the National Institutes of Health for the next several years. Many of the provisions in the original bill that passed the House of Representatives, which scientific and patient advocacy organizations found egregious, were modified in such a way that lawmakers in both the House and Senate found acceptable. A summary of key provisions and compromises is as follows:

- Establishes the NIH Director's Common Fund, but eliminates the 50/50 formula included in the original House bill that would have tied funding for the Common Fund to overall NIH appropriations. Instead, the bill requires the

NIH Director to establish a reserve account to fund the Common Fund, subject to a specific appropriation. In this manner, funding for the Common Fund will not come at the expense of what is made available annually for individual institutes and centers.

- Increases the dollar level for authorizations of appropriations (which were capped at 5% in the original bill) for fiscal years 2007 and 2008, and authorizes “such sums as may be necessary” for fiscal year 2009. These changes were significant in that historically NIH’s budget has grown at a rate of more than 5% annually. Although it may be difficult for the Appropriations Committees to reach the authorization levels with actual funding in the current fiscal environment, the appropriators did not want the bill to set such low caps, establishing a precedent for low levels of increases.
- The bill maintains House passed provisions creating the overall funding authority for NIH instead of the individual institutes, but the Appropriations Committees have said that they will continue to fund institutes and centers individually.
- Eliminates the provision from the original House bill which would have allowed the NIH Director to reconfigure, eliminate, or reorganize institutes and centers at NIH. Many groups expressed concern that the NIH director should not have that authority. Negotiators agreed, and eliminated the provision. Current law, which allows the HHS Secretary to reconfigure institutes and centers, would be maintained. Most groups are comfortable with that arrangement since the HHS Secretary has generally not acted upon that authority, and any reorganization at that level would be subject to a much more public process.
- Modifies the provision which would allow individual institute and center directors to reconfigure and reorganize programs with their institute or center. The final bill calls for any institute or center director who wishes to initiate major changes to engage in a public process, and receive input from the patient, scientific and other interested parties, and secure the approval of the Director of NIH.
- Establishes a Scientific Management Review Board to periodically review the configuration of the NIH and make recommendations to key officials every 7 years.
- Establishes a more comprehensive reporting system for the National Institutes of Health in terms of spending on various diseases, and the management of data and statistics. Requires the NIH Director to report to Congress on progress on key areas of health, but includes a provision which would allow individual institutes and centers to report directly to Congress, as well.

- Establishes a Bridging the Sciences Initiative, a High Risk-High Reward Initiative, and a Public-Private Partnerships Initiative.
- Includes a provision modifying the Clinical and Translational Science Award program to preserve independent funding and infrastructure for pediatric clinical research centers.

A summary of key provisions and changes is attached.

KEY MEDICARE/PHYSICIAN REIMBURSEMENT AMENDMENTS PASS

A package of Medicare and physician reimbursement provisions passed as part of a major tax package. A three-page summary is attached, but key provisions include:

- Prevents a 5 percent Medicare physician payment cut in 2007 by freezing payment rates for physician services.
- Provides a 1.5 percent bonus-incentive payment to physicians who report on quality measures in 2007.
- Establishes a fund to promote physician payment stability and physician quality initiatives in 2008.

RYAN WHITE HIV/AIDS TREATMENT REAUTHORIZATION LEGISLATION PASSES

HR 6143, the reauthorization measure for the Ryan White HIV/AIDS treatment program passed. The bill authorizes \$2.3 billion in grants annually to fund medical care and other support services for individuals with HIV/AIDS.

A new provision in the legislation authorizes a \$30 million program for HIV/AIDS testing (including rapid testing) through the Centers for Disease Control and Prevention.

SENATE CONFIRMS ANDREW VON ESCHENBACH AS FDA COMMISSIONER

Dr. Andrew von Eschenbach was confirmed by the US Senate as the Commissioner of the Food and Drug Administration. Retiring Senate Majority Leader Bill Frist (R-TN) forced a vote on von Eschenbach's nomination which resulted in an 80-11 vote for confirmation.

Von Eschenbach's nomination had been the subject of various senatorial "holds" for the last nine months, but Frist insisted on a vote because the FDA had been without

leadership for so long. Dr. von Eschenbach is the former director of the National Cancer Institute, and a close ally of the Bush family.