Bush Administration and the Democratic Senate Wrestle With Health Care

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As his administration approaches its 6-month mark, President Bush has filled his cabinet, survived a showdown with China over a spy plane, and seen his $1.35 trillion tax cut passed by the House and Senate—just as the Republicans lost control of the Senate with the change of party by Senator James Jeffords of Vermont, who became an independent. Yet Bush and the new Senate Majority leader Tom Daschle (D-SD) agree that a patients’ bill of rights is a top priority.

Presidential Appointments

For Secretary of the Department of Health and Human Services (HHS), President Bush selected Wisconsin Governor Tommy Thompson, a conservative best known for successfully pruning the welfare roles in Wisconsin. Less well known is that, to do so, he offered innovative solutions for day care and health care for the former welfare recipients entering the work place. Thompson was known as a supporter of scientific research and a critic of governmental bureaucracy, particularly at HHS and its Health Care Financing Administration, now renamed the Centers for Medicare and Medicaid Services (CMS).

In filling out his staff and agency directors, Thompson and the White House, advised by Senator Bill Frist, MD (R-TN), have considered hundreds of nominees (Disclosure: the author served on the Bush-Cheney Transition Committee). To run CMS, they tapped Thomas Scully, who was formerly in charge of Medicare and Medicaid budget oversight at the Office of Management and Budget under former President Bush, after which he served as Executive Director of the Federation of American Health Care Systems, the trade association for the Hospital Corporation of America, Tenet, and Humana. Scully is considered moderately conservative; several more passionate right-to-life candidates were given positions unrelated to health care. Scully is focusing now on encouraging health maintenance organizations (HMOs) to offer plans to Medicare beneficiaries and on making CMS more efficient and physician-friendly.

Currently, finding a new commissioner for the Food and Drug Administration seems to be a top priority. No political litmus tests for this position, if they exist, have been discussed publicly, but numerous medical, scientific, and consumer organizations have been consulted, and many candidates have been interviewed. The directorships of the National Institutes of Health (NIH), Centers for Disease Control, and the White House Science and Technology Advisor’s Office likewise remain unfilled. Surgeon General David Satcher, MD, will serve the remaining 6 months of his contract, but the other title he held, that of Assistant Secretary of Health, was removed, and a search is ongoing.

President Bush’s Budget: Medicare, the Uninsured, and the NIH

President Bush recently discussed his principles for health-care reform at the Annual Scientific Sessions of the American College of Cardiology on March 21, 2001, in Orlando, Fla. He offered an incremental approach to the problem of 15% to 20% of Americans lacking health insurance. His budget for fiscal year 2002 (FY2002) proposes to spend $70 billion over 10 years for a $1000 tax credit for health care for low-income individuals ($2000 for families) who have no employer-sponsored coverage. A total of $124 million is earmarked for the increased funding of health centers. The proposal also calls for the establishment of a Healthy Communities Innovation Fund Initiative for state and local projects to address important local needs. The bill would also make permanent the medical savings accounts. President Bush’s budget also would provide incentives to small businesses to provide health insurance to their employees and would increase funding for migrant health centers. The total budgeted for the uninsured was $100 billion.

Congress responded by authorizing an additional $28 billion over 3 years to expand existing programs, but it will be left to the Appropriations committees to decide how much goes to Medicaid and community health programs.

For Medicare, the administration’s budget proposes to fund, in part, the prescriptions of Medicare beneficiaries with $48 billion over 4 years, which will be distributed as block grants to the states. To keep up with medical costs, which have once again begun to spiral upward, the President proposes to increase Medicare’s FY2002 budget by $230 billion and, over 10 years, to double the Medicare budget. Unfortunately for teaching hospitals and universities, the budget would reduce funds for training health professionals from $353 million to $140 million, and funds for training pediatric residents will decline from $235 million to $200 million.

As for the NIH, the administration budget proposes an increase for FY2002 of $2.8 billion (total, $23.1 billion). A resolution in the House of Representatives by Pennsylvania...
Republican George Gekas and in the Senate by Iowa Democrat Tom Harkin and Pennsylvania Senator Arlen Specter asked for a $3.4 billion increase to keep pace with former President Clinton’s promise to double the NIH budget by 2003. The House-Senate conference committee agreed on May 9, 2001, to an NIH budget of $23 billion.

Thompson and the White House have put on hold the anticipated NIH request for proposals for research on embryonic stem cells. Their public statements acknowledge the enormous potential benefits of stem cell research but question whether embryonic stem cells are necessary and, if so, whether federal funding is required. To date, there has been no public discussion of a ban on privately funded embryonic stem cell research. Nor, for that matter, is there public discussion of overturning the Food and Drug Administration’s approval of RU486, much less the Supreme Court’s historic green light for abortion, Roe v Wade.

The Rights of Insured Patients

During the campaign, the issue that drew the most attention was whether patients should have the right to sue their HMO (largely prevented by the federal Employee Retirement Income Security Act [ERISA; 1974], although several states have developed paths around ERISA). The other healthcare issue frequently raised during the campaign was patient privacy. President Bush dealt expeditiously with the latter by deciding, after a period of study, to allow the Clinton privacy regulations, which are known as HIPAA (Health Insurance Portability and Accountability Act), to be implemented over the next 2 years. Hospitals and insurers have criticized the added regulatory burdens involved and, on May 10, 2001, a bill was introduced by Representative Bill Thomas (R-CA) and Nancy Johnson (R-CT) that calls for fewer restrictions on health care providers, particularly those designed to protect patient privacy from being violated through oral communications.

The focus is now on the various patients’ bills of rights, particularly because President Bush has announced he wants to sign some type of patients’ rights legislation this year and new Senate Majority Leader Tom Daschle (D-SD) has labeled it his top priority. In February, Senators John McCain (R-AZ), John Edwards (D-NC), Bob Graham (D-FL), and Edward Kennedy (D-MA) introduced Senate Bill S283 and Representatives John Dingell (D-MI) and Greg Ganske (R-IA) introduced an identical bill (HR526) in the House. This bill would allow patients to sue their HMO in state courts for quality-of-care issues and in federal court for contractual issues. The bill would prohibit gag clauses (by which plans seek to prohibit doctors from discussing more expensive alternative treatments). It would also guarantee a point-of-service option and access to emergency rooms and specialty care.

Because President Bush suggested he would veto that bill, on May 14, 2001, Senators William Frist, MD (R-TN), John Breaux (D-LA), and James Jeffords (I-VT) introduced a compromise bill, known as the Bipartisan Patients’ Bill of Rights, that would permit patients to sue their HMO in federal court only after a review by a physician panel. Economic damages are unlimited, but punitive damages are prohibited and damages for pain and suffering are limited to $500,000 (McCain-Edwards allows up to $5 million in federal assessments, with state limits on damages as applicable). The bill also prohibits gag clauses and supports the recent call by the American Medical Association and Blue Cross/Blue Shield for HMOs to cover second opinions. The Frist bill would also guarantee a point-of-service option and access to emergency rooms and specialists, including pediatricians and obstetrician-gynecologists. Texts of both bills are available at http://thomas.loc.gov

The Frist bill, although endorsed by President Bush, has received its share of criticism not just from trial lawyers but from the Republicans. Representative Charlie Norwood (R-GA) said, “The bill protects HMOs, not patients,” and Senator Don Nickles (R-OK) opposes the federalization of the process and the right to sue and described Senator Frist as having moved significantly to the left of his Republican colleagues. The Health Benefits Coalition, which represents insurers and employers, objected that the Frist bill “opens up the health care system to new lawsuits that will drive up costs.” The Frist proposal allows HMOs to pick the physician panel and does not permit the patient to sue for damages if the physicians side with the health plan. Another difference between the bills is that the Frist bill requires patients to use the appeals panel, even if the alleged damage has already occurred; in such a case, the McCain-Edwards proposal permits patients to skip the panel’s review. Political commentators have noted the irony that Bush angered conservatives by agreeing to any lawsuits at all, yet lost the support of Vermont’s James Jeffords, who had chaired the Senate health committee until his May resignation from the Republican party gave the control of the Senate to the Democrats. The president’s supporters point out Bush succeeded in Texas, which passed the strongest patients’ rights bill to date after he had vetoed an earlier version.

Both bills fulfill the major requirements of the American College of Cardiology and have been praised by President Doug Zipes, MD, although the College had hoped for a provision that would eliminate “withholds” and other financial incentives to restrain costs by ordering fewer tests and treatments. Cardiologists have appreciated Senator Kennedy’s skepticism of for-profit HMOs and his support of teaching hospitals, and in recent years, have often voted Democratic. Yet cardiologists have been strong supporters of Senator Frist, a heart transplant surgeon, and responded enthusiastically to President Bush’s speech in Orlando. In recent testimony, Zipes indicated a preference for the Frist bill because it “appears the bill introduced by Senator John McCain carries a higher risk than Senator Frist’s bill of physicians being added as codefendants in lawsuits against health plans.” In contrast, the American Medical Association favors McCain-Edwards.

The Congressional Budget Office estimated the costs of the McCain-Edwards bill as follows: employer-based health insurance premiums would be increased by the requirements for an internal and external appeals mechanism (1%), health plan liability (0.8%), permission to participate in clinical trials (0.8%), access to emergency care (0.4%), access to specialty care (0.3%), assurance of continuity of care (0.3%),
utilization review (0.2%), women’s health and cancer rights provisions (0.2%), consumer choice provisions (0.1%), and information access (0.1%). The Congressional Budget Office predicts a total increase in costs of 4.2% (versus 2.9% for the Frist-Breaux bill). Most business associations believe the increases will be greater, making health insurance less affordable; they favor Frist-Breaux.

**Prospects**
The resignation of Senator Jeffords from the Republican Party has now given chairmanship of the Senate Committee on Health, Education, Labor, and Pensions to Senator Kennedy, which will give him the prerogative of considering his bill first. The President’s backing of Senator Frist’s bill suggests that if the two bills can reach a middle ground, new patients’ rights will likely be signed into law this year. Whether the projected budget surplus will be great enough to permit increased expenditures in Medicare, medical research, patient privacy, patients’ rights vis-a-vis HMOs, and some expansion of coverage for the uninsured remains to be seen. If not, the savings will have to come from new Medicare regulations. The alternative is stricter enforcement of current regulations, which Scully has said he wants to avoid, because the crusade against fraud, most of which was perpetrated by nonphysicians, has reduced wastage but distressed many physicians. To incorporate these new requirements within their budget, Thompson and Scully have the difficult tasks before them of completing their team, finding common ground on research with embryonic stem cells, and making HHS, the federal department with the most emotional issues and the largest budget, work with unprecedented efficiency.

**Key Words:** Editorials ■ health policy ■ insurance ■ Medicare ■ Medicaid
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Circulation. 2001;104:244-246
doi: 10.1161/01.CIR.104.3.244
Circulation is published by the American Heart Association, 7272 Greenville Avenue, Dallas, TX 75231
Copyright © 2001 American Heart Association, Inc. All rights reserved.
Print ISSN: 0009-7322. Online ISSN: 1524-4539

The online version of this article, along with updated information and services, is located on the World Wide Web at:
http://circ.ahajournals.org/content/104/3/244

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