

The NAPWA/TAEP HIV/AIDS POLICY REPORT

The 110th Congress

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The 2006 congressional elections provided hope for those living with HIV/AIDS. For the first time in 12 years, the Democrats won control of both houses of Congress—the Senate and the House of Representatives. Given that Democrats have historically been more willing to address the issue of HIV/AIDS, people living with HIV and those affected by HIV were hopeful that the political shift would result in improvements in the lives of HIV-positive people. Indeed, when members of the 110th Congress took office in January 2007, they did so promising to prioritize HIV/AIDS-related programs and funding. Advocacy efforts that had once focused on damage control in an unwelcoming climate could perhaps now support a more positive, proactive agenda.

One year later, TAEP and NAPWA ask: Has the 110th Congress measured up to our expectations? The initial excitement caused by a Democratic-controlled Congress has been tempered by the reality of a less-than-sympathetic administration and the lack of a veto-proof majority in Congress. The war in Iraq continues to claim a disproportionate share of both Congress's time and the nation's resources. Politics involve negotiation and compromise, and it is an often grindingly slow process.

Although AIDS advocates have seen more Congressional goodwill than in recent years, the high hopes for the 110th Congress remain largely unfulfilled. To have a truly successful HIV/AIDS policy agenda depends on electing a supportive president, or securing a veto-proof majority in Congress. Policy responses to the epidemic remain largely piecemeal, rather than a nationally coordinated plan. Historically, such a plan would come from the presidential administration—perhaps 2008 will bring us closer to that possibility. Despite some frustrations and setbacks, the 110th Congress has been more responsive to issues affecting people living with HIV/AIDS than have many other Congresses to date.

In this policy update, we'll look specifically at what the 110th Congress has done regarding: access to care and treatment; funding; prevention and education; and research.

Access to Care and Treatment

Several new bills address the need for affordable health care and medications for people living with HIV/AIDS by proposing new programs and changing existing ones.

Early Treatment for HIV Act (ETHA)

The Early Treatment for HIV Act (ETHA) would

allow states to expand their Medicaid programs to cover people who are HIV positive but do not yet have AIDS. Under current Medicaid rules, people must wait to become disabled in order to access the care that could have prevented them from becoming disabled in the first place.

The lead sponsor of ETHA in the House is Nancy Pelosi, who was a progressive member of the minority party and became Speaker of the House in the 110th Congress. However, even the support of the Speaker has not been enough to move this important piece of legislation forward. ETHA bills in the House (H.R. 3326) and Senate (S. 860) remain in committee. Advocates are lobbying intensively to advance these bills and to include an amendment authorizing ETHA in the final federal budget.

Medicare Part D

The Medicare Modernization Act of 2003 created a Medicare prescription drug benefit (Part D). There have been problems with the program since Part D began in 2006. In one survey, more than half of the medical providers surveyed said their patients had gone without medications because of problems with Part D coverage. AIDS advocates are focusing on two key changes that would improve access and affordability of HIV/AIDS medications.

The first change is to have Congress make into law the requirement that Part D plans cover "all or substantially all" of the medications in six categories of drugs, including drugs used to treat HIV/AIDS, mental illness, cancer, epilepsy and autoimmune diseases. Currently, antiretroviral drugs are protected from measures that would restrict their use, such as requiring prior approval for a prescription. But these protections expire in 2007 and are subject to annual review. HIV advocates want access to lifesaving HIV medications written into the law for the long term.

The second change would allow AIDS Drug Assistance Program (ADAP) expenditures to count toward helping consumers meet their Part D True Out-of-Pocket (TrOOP) costs. Under Part D, Medicare beneficiaries have to pay deductibles, coinsurance and co-payments out of their own pockets until they have paid enough to reach catastrophic coverage, after which point most of the costs of the drugs are paid by insurance and the federal government.

Under current federal law, ADAPs can help individuals with their Part D expenses, but these ADAP payments cannot count toward the

beneficiary's TrOOP limit. ADAPs are stuck continuing to pay rather than making short-term contributions to help beneficiaries reach Part D's catastrophic coverage.

Allowing ADAP payments to count toward Part D catastrophic coverage and would free up ADAP resources to help other people living with HIV/AIDS. Since Medicare allows payments from other sources, like the State Pharmacy Assistance Plans, to count toward TrOOP, advocates argue that it's only fair to also count ADAP funds.

Numerous bills including these two key changes sought by AIDS advocates have been filed in both the House and Senate, with bipartisan support. At press time, however, most of these bills remain in committee, and none have passed. Advocates expect that Congress will pass Medicare legislation before the end of 2007 and are working to include these provisions.

Mental Health Parity

Many people living with or at risk for HIV/AIDS also frequently battle mental illness or addiction. Private health insurers often have strict limits on coverage for these conditions, making it difficult to get treatment. Bills addressing mental health parity would require health insurers to provide the same level of coverage for mental illness and addiction as for other services.

There were two bills addressing the issue of mental health parity. The Senate bill (S. 558) passed in September 2007 with broad support. The House bill (H.R. 1424) is also expected to pass. If it does, the next step is a conference committee to reconcile the Senate and House bills.

In addition to the mental health parity bills, Senate bill 2190 would ensure the coverage of barbiturates and benzodiazepines under Medicare Part D. These drugs, used to treat mental illness, are currently excluded from Part D coverage. S. 2190 was in committee as of November 2007.

Funding

The 110th Congress will likely improve federal funding for HIV/AIDS programs, but proposed appropriations for fiscal year 2008 (October 1, 2007–September 30, 2008) continue to fall short of the needs projected by HIV/AIDS advocates. At press time, Congress had not finalized the FY 2008 budget.

When members of the 109th Congress left office, more than three months into the new federal fiscal year, they still had not passed a budget. With a possible government shutdown looming, the Democratic 110th Congress needed to

fund government programs quickly. The result was a \$463 billion Joint Resolution that kept funding levels for many programs the same. Most federally funded HIV/AIDS programs were flat funded for FY 2007.

President Bush's FY 2008 budget proposes funding increases for some HIV/AIDS programs but includes substantial decreases for several others. For a chart of FY 2008 budgets, go to POZ.com and search for "January/February AIDS Policy Report."

The HIV appropriations levels in the House and Senate bills for FY 2008 are an improvement over the president's budget proposal. Congressional appropriations have no significant funding cuts for HIV/AIDS programs and a number of significant increases. The House of Representatives' appropriations mark is generally higher than the Senate's but not for every program. While Congress's proposed appropriations are better than the president's, they still fall below the funding level requested by HIV/AIDS health advocates.

In May 2007, the Bush administration announced cuts in Ryan White CARE Act funding to certain areas (primarily San Francisco). Speaker Nancy Pelosi (D-CA) and Rep. Dave Obey (D-WI) introduced language that was approved in the House Labor-Health and Human Services (HHS) appropriations bill (H.R. 3043) to restore some of this funding. In October 2007, Senator Michael Enzi (R-WY) offered an amendment to the Labor-HHS bill to prohibit implementing the Pelosi language. The Senate has passed the Enzi amendment.

Prevention and Education

The 110th Congress has introduced a number of bills designed to prevent HIV/AIDS. Several of these bills concern transmission of HIV in prisons or by prisoners upon release from prison. The most successful of these so far is the Stop AIDS in Prison Act of 2007 (H.R. 1943), which has passed in the House and remains to be voted on in the Senate. The bill aims to increase awareness and encourage prisoners to take responsibility for their health. A key component of the bill is regular screening of inmates to facilitate early identification. A pending House bill (H.R. 822) would mandate that insurance cover routine HIV screening, in line with recent CDC recommendations that HIV screening be part of routine blood work.

Two pieces of legislation specifically address the disparate impact HIV/AIDS has on minority groups. S. 1790 would provide funds to target teen pregnancies and the transmission of STDs in minority populations. H.R. 2736 would designate

some CARE Act funds for grants that in part would provide prevention services to minority groups. Both bills remain in committee.

After years of focus on abstinence-only programs by the Bush administration, AIDS advocates expected that a Democrat-controlled Congress would prioritize evidence-based HIV/AIDS education programming. HIV/AIDS advocacy groups have called on Congress to remove funding structures that require abstinence-only education. Unfortunately, the 110th Congress has not consistently responded to this call.

The House passed a FY 2008 budget that increased funding for community-based abstinence-only education. Whether these provisions remain in the final FY 2008 budget was undecided at press time.

While the budget provisions are disappointing, there have been several bills filed in both the Senate and the House that attempt to institute science-based HIV/AIDS prevention education. The Responsible Education About Life Act (S. 972 and H.R. 1653) seeks to provide funding for comprehensive sexual education. Both the Protection Against Transmission of HIV for Women and Youth (PATHWAY) Act of 2007 (H.R. 1713) and the HIV Prevention Act of 2007 (S. 1553) would remove the requirement that the United States spend 33 percent of its international HIV prevention funding on abstinence-until-marriage education. As of November 2007, all of these bills remain in committee.

Research

In addition to making efforts in education and prevention, the 110th Congress has introduced two bills designed to expand HIV/AIDS research. The Comprehensive Tuberculosis B Elimination Act of 2007 (S. 1551), which remains in committee, expands research on the relationship between tuberculosis and HIV/AIDS. The Microbicide Development Act (S. 823 and H.R. 1420) would promote the development of microbicides that could prevent the transmission of HIV and other sexually transmitted diseases. This bill has been introduced in the past. It remains to be seen whether it will be enacted by this Congress.

Action Alert

You can help make better HIV/AIDS policy! Ask your members of Congress to become cosponsors of the Early Treatment for HIV Act. Visit poz.com for more information. And join NAPWA at napwa.org to become part of the dialogue.

