

Health News Briefly

Continued

will probably be the last major piece of legislation sponsored by Santorum, who was defeated in the midterm election.

"The passage of this landmark single-disease legislation signals the federal government's declaration of war on the epidemic of autism," said Jon Shestack, co-founder of the nonprofit group Cure Autism Now.

— JIM ABRAMS

Tax bill pushed through before Dems take over

WASHINGTON (AP) — Rejected by voters and limping off stage, the Republican House passed a sweeping bill reviving expired tax breaks and protecting doctors from a big cut in Medicare payments.

As final adjournment loomed, Republicans dumped an unfinished budget on the Democrats about to take power, passing by a 320-70 vote a stopgap spending bill putting the government on autopilot until Feb. 15.

The Senate by voice vote barely met a midnight deadline to pass the stopgap funding measure, required to keep the government running, and then moved toward early morning votes on a hybrid tax, trade and energy bill.

But the failure to pass budget bills for domestic agencies, said Rep. David Obey, D-Wis., amounted to "a blatant admission of object failure by the most useless Congress in modern times."

The House also worked into the night, passing a package of trade bills and the stopgap government funding bill. Under a complicated procedural pique, the tax and trade legislation — along with a plan to open 8.3 million acres in the Gulf of Mexico to oil and gas drilling — was bundled together and sent to the Senate, where a handful of Republicans were opposed, though they withdrew threats to delay the Senate's adjournment.

Republican budget hawks bristled at the measure's cost and textile state senators objected to trade provisions benefiting Haiti. The House passed the trade bill by a 212-184 margin.

The 367-45 vote on the tax bill reflected widespread bipartisan support for extending expired tax breaks, including the research and development tax credit for businesses, sales tax deductions for people in states without income taxes, the tax deduction on college tuition, a tax credit for hiring welfare recipients and others facing difficulties finding jobs and tax credits for alternative energy producers and purchases of solar energy equipment by homeowners and businesses.

All told, the tax cuts would cost \$38 billion over five years.

Also driving the massive bill forward was an effort to prevent a 5 percent cut in Medicare payments to doctors from taking effect Jan. 1. The GOP-crafted solution to the problem was criticized as an accounting gimmick since it would double the cost of fixing the problem again next year.

On the rest of the budget, work remained unfinished on nine of 11 spending bills, requiring the stopgap funding bill to put 13 Cabinet departments on autopilot through Feb. 15 frozen at or slightly below current levels.

Democrats face difficult choices and weeks of work on the leftover budget, which totals \$463 billion and must be passed at President Bush's strict budget limits.

"They are leaving us with a tremendous mess," Senate Minority Leader Harry Reid, D-Nev., told reporters. "We have alternatives, none of which are very good."

Democrats made good on a promise to block an automatic congressional pay raise until the minimum wage is increased. Under pressure from future House Speaker Nancy Pelosi, D-Calif., and Reid, GOP leaders added language to the stopgap funding bill language stopping the pay raise slated for Jan. 1 until Feb. 16.

Now, if the pay raise goes into effect Feb. 16, members would lose some \$320 of their anticipated \$2,800 annual increase. That raise would be \$3,300 if Congress acts to boost the cost-of-living allowances for all federal employees in 2007. Currently, rank-and-file members get \$165,200.

The House also approved, 330-59, an agreement to allow U.S. shipments of civilian nuclear fuel to India, an administration priority that is opposed by some because India, which has nuclear weapons, has not submitted to full international inspections. The Senate was poised to clear the bill for Bush's signature.

Laser treatment for dermatological purposes: Who can perform these procedures in Michigan?

By Robert S. Iwrey

Laser treatment has been utilized with limited frequency for certain dermatological applications such as the removal of tattoos, acne scars, port wine stains, and skin blemishes for over a decade.

However, in recent years, laser treatment for hair removal and wrinkle treatment has grown significantly in popularity, which has subsequently increased the demand for providers of laser treatment.

Since state law governs the issue of who can perform these procedures, it is important for all current and prospective providers of laser treatment to be familiar with Michigan law, including the Michigan Public Health Code delegation provision regarding the use of lasers for dermatological purposes.

In addition, on December 5, 2005, the Michigan Department of Community Health (MDCH) released a position statement regarding the use of laser equipment by health professionals, which clarifies the relevant law on the subject.

Delegation authority

According to MDCH's position statement, laser treatment falls within the Michigan Public Health Code's definition of the practice of medicine because the treatment involves the "diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition by attendance, advice, device, diagnostic test, or other means . . ." Thus, generally speaking, dermatological laser procedures should be performed by a licensed physician.

However, MCLA 333.16276 permits a "licensee, registrant, or other individual" to perform laser procedures for dermatological purposes as long as the procedure is performed under the supervision of a licensed physician.

Notably, delegation will not be permitted unless the patient involved has knowledge and consents to the laser treatment procedure being performed by a non-physician. This delegation provision further permits physician's assistants and nurse practitioners to perform these laser procedures without supervision, as long as the procedure is performed in a healthcare facility as narrowly defined by the Michigan Public Health Code (e.g., a hospital).

It should also be noted that the delegation provision does not permit physician's assistants and nurse practitioners to delegate the authority to perform these laser procedures to someone else.

What is 'supervision'?

The key aspect of this delegation authority for laser procedures, as noted and clarified in MDCH's position statement,



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is the definition of "supervision," as all providers of laser treatment should be well aware that the ultimate responsibility for the tasks and duties performed by any delegated individual falls on the licensed physician.

A licensed physician should perform extensive research on the background, education, and training of any prospective delegated individual to ensure the individual is duly qualified, as it is reasonable to assume in practice "appropriate education or training" may entail at least a certification in laser treatment.

Supervision entails the overseeing of, or participation in, the work of another individual by a licensed health professional in circumstances where at least all of the following conditions are met:

- Acknowledgement by the physician that the delegated individual has the appropriate education, training or experience to properly use lasers.
- Continuous availability of direct communication in person, or by radio, telephone or other telecommunication, between the physician and the delegated individual.
- Regularly scheduled availability of the physician to consult, educate, and review the records and practice of the delegated individual in laser use.
- Development by the physician of written procedures and protocols to guide the delegated individual's laser use.

These conditions clearly demonstrate the high level of care and attention that a licensed physician must exert when contemplating the possibility of delegating the authority to perform laser treatment.

The licensed physician is not only ultimately responsible for the outcome of the procedure, but is also required to be readily available to assist (in person or by telephone or radio) the delegated individual at all times.

Limited application

The delegation provision at MCLA 333.16276 is limited in application to the use of lasers for "dermatological purposes." This entails any purposes relating to the diagnosis and treatment of medically necessary and cosmetic conditions of the skin, hair, and nails by various surgical, reconstructive, cosmetic, and non-surgical methods.

Therefore, this provision permits the delegation of such procedures as laser hair removal or acne scar removal, but it does not permit the delegation of other laser procedures unrelated to the practice of dermatology such as laser eye surgery.

A licensed physician who is considering delegating the authority to use laser treatment for dermatological purposes

should address the issue in a prudent and thorough manner, as Michigan's law on the issue is stringent. Specifically, utmost care must be taken when determining whether an individual has the appropriate qualifications and training to perform the laser procedures.

This compliance corner provides two tips to assist licensed physicians contemplating this delegation.

Tip 1 — Make sure to do your homework when selecting a delegated individual

Pursuant to MDCH's position statement, a delegated individual can be a licensed or unlicensed individual.

With that said, it is recommended the licensed physician perform extensive research on the background, education, and training of any prospective delegated individual to ensure the individual is duly qualified, as it is reasonable to assume in practice "appropriate education or training" may entail at least a certification in laser treatment.

The licensed physician should maintain a personnel file on each delegate that includes any and all certificates and other documentary evidence of training in laser treatments.

In short, licensed physicians would be well-advised to err on the side of "over-qualified" when selecting a delegated individual, as the licensed physician must keep in mind that he or she is ultimately responsible for the outcome of any of the delegated procedures.

Tip 2 — Do not overlook the requirement to establish written procedures or protocols to guide the delegated individual's laser use

A physician should provide a delegated individual with extensive hands-on training regarding the laser treatment to be delegated.

Additionally, a physician must create a detailed written procedure or protocol to assist the delegated individual. This protocol can be in the form of a manual, with step-by-step instruction to guide the individual. The required duties and tasks of the delegated individual should be clearly elaborated in this written protocol.

Further, the performance of the delegated individual should be regularly reviewed and evaluated. The delegated individual should maintain detailed records of all laser procedures performed under the supervision of a licensed physician. These records should also be reviewed by the licensed physician on a regular basis.

It is vital that delegated individuals not only possess appropriate background qualifications, but also maintain a satisfactory work record performing these laser procedures.

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Compliance Corner

large numbers of low-income patients.

The trade portion establishes permanent normal trade relations with Vietnam, which is generally supported, with the extension of trade benefits for sub-Saharan Africa, Haiti and Andean nations. The Haiti provisions in particular raised red flags with lawmakers trying to protect home state textile industries.

Eight GOP senators from North and South Carolina, Georgia, Alabama and Kentucky wrote congressional leaders saying 100,000 textile jobs in their region had already been lost due to trade agreements and they would oppose "as forcefully as possible" the Haiti measure.

Then there was Senate Budget Committee Chairman Judd Gregg, R-N.H.,

who gave an extraordinary floor speech lambasting his party for losing its way on fiscal discipline and his leadership for jamming it past rank-and-file Republicans opposing the massive measure.

Gregg particularly objected to a provision tucked into the tax bill to expand federal funding for the health benefits of retired coal miners at a cost of some \$5 billion over 10 years.

"You just have to ask yourself how we, as a party, got to this point, where we have a leadership which is going to ram down the throats of our party the biggest budget buster in the history of the Congress under Republican leadership," Gregg said.

— ANDREW TAYLOR