

In an earlier life, I spent seven years as a health reporter for Congressional Quarterly, which is how I learned the intricacies of how a bill becomes a law. A former editor at CQ warned me a long time ago that you can't really cover Capitol Hill except in person, because people won't return your phone calls if they don't know what you look like.

I have to admit that it's a whole lot easier to be there when you're covering Capitol Hill. You can grab staffers, and I do an enormous amount of reporting in the House lunch carryout. You can grab members of Congress at votes. You have immediate access to policy makers and staffers.

But it's also a whole lot easier to cover what goes on in Congress when you not here than it used to be. And my job today is to tell you how.

First, we're going to go through a crash course on the legislative process. Let's start with the budget. The budget process tends to confuse reporters more than any other part of health legislating. But it's the only legislating that you can count on Congress to do every year and much, if not most, health legislation is related to the budget.

THE PRESIDENT PROPOSES

We're going to start with the president's budget. This is due to come to Congress the first Monday in February. It's usually conveniently just a couple of days after the president gives his State of the Union speech. So you tend to get a preview of the budget in the State of the Union.

It kicks off the budget cycle for the fiscal year that begins the following October. So budgeting really starts the first Monday in February and, theoretically, ends on October 1st, although Congress can do something called a "continuing resolution" to extend that deadline. And, this last year, the budget process started on the first Monday in February and ended, I believe, the Monday before Christmas.

The president sends his budget up. It's a great big thick document — actually, three great big thick documents. And it's his request for what he'd like the budget to look like. His requests come in two different forms: spending totals for existing programs and changes that require separate legislation.

As an example, for FY 2003 — which begins on October 1, 2002 — the president is proposing a \$3 billion increase for the National Institutes of Health. That's changing a funding level for an existing program.

The president's Medicare proposal, by contrast, which would add a prescription drug benefit and make a lot of changes to the program, is something that will require separate legislation. So, even though that comes up in the form of a budget request, it's really a request for a new law. [Editor's note: A Medicare drug benefit was passed by Congress and signed into law by President Bush in December 2003.]

COVERING CAPITOL HILL FROM BEYOND THE BELTWAY - HOW OUR LAWS ARE REALLY MADE

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Although Julie Rovner's remarks make reference to legislation current when she was speaking, in April 2002, her analysis of how the legislative process works is still timely. Where changes have occurred since her speech, they are noted in the text. We are grateful to Ms. Rovner for permission to reprint an edited version of her remarks, and to KaiserNetwork.org for supplying the original transcript.

CONGRESSIONAL BUDGET RESOLUTION

The first congressional part of this process is the budget resolution. By April 15, each house is supposed to pass a budget resolution. This is what's frequently described as the budget blueprint for the year. It's not binding, it's not a law; it's an expression of Congressional intent. It doesn't go to the president to be signed, notwithstanding what you've seen on West Wing. And some years the budget resolution doesn't even get done at all. But it's still important, for two reasons:

- First, it sets the overall total for discretionary spending, which are programs that are contained in the 13 annual appropriations bills. I'll get to those in a minute.
- Second, the budget resolution sets spending levels for mandatory programs, also known as entitlements, including Medicare and Medicaid, things that health reporters care about.

Last year, for example [FY 2002] the budget resolution set aside \$28 billion to spend on the uninsured, and \$300 billion for a Medicare drug benefit. As neither of those things happened last year — you didn't miss it — you can correctly surmise that getting a program into the budget resolution doesn't guarantee that it will pass. But not getting your program into the budget resolution does make it unlikely that your program will pass.

In the Senate, it means that you'll need 60 votes to overcome what's known as the dreaded "budget point of order".¹ So, if you're in the budget resolution, you've overcome the first hurdle, but not necessarily the last, toward getting a new program in place.

One other common feature of the budget resolution, especially when the budget as a whole is in deficit, is "reconciliation instructions." These are messages from the House or Senate to its respective committees, "instructing" them to come up with specified levels of savings in order to meet the overall budget targets. The House Ways and Means Committee, for example, may be instructed to come up with \$5 billion in savings from the programs in its jurisdiction, either spending cuts or revenue increases.

ABCs OF AUTHORIZATIONS, APPROPRIATIONS AND ENTITLEMENTS

Not all laws are created equally. The normal sequence, described in the text, is for Congress to pass an authorization law, and then to appropriate funds in a separate law up to the limit set in the authorization. These are often called discretionary programs.

But Congress can enact a different kind of authorization, called an entitlement. Medicare is an example. Once an entitlement law is passed, and eligibility and benefit levels are set, there is what amounts to an automatic appropriation for whatever amount is needed to pay for the benefits to which those eligible are entitled. There is no annual battle over the funding level, unless the underlying entitlement law is amended.

Any bill - authorization or appropriation -- must follow the same path to become law. Committees in each house report the bill to the floor. The full House or Senate passes it. Differences in the two versions are ironed out in a conference committee, and the compromise version must be approved again by both bodies before going to the president for signature or veto.

For a graphic depiction of the typical path for a budget bill to become a law, see Figure, "The Budget Process."

APPROPRIATIONS

Now we'll move on to the appropriations process. Once the budget resolution is passed by the House and Senate, or on May 15th if the House and Senate haven't agreed on a resolution, the appropriations process for the coming fiscal year begins.

The House and Senate each have a separate appropriations committee. Each has 13 separate subcommittees. Each of these subcommittees has one job: to produce a single spending bill each year.

Theoretically, appropriators simply decide how much to spend on existing programs; they don't make policy. That's supposed to be reserved to authorizing committees, which we'll get to in a second. In practice, though, policy changes frequently get added to appropriations bills, because they're what are known as "must pass" vehicles.

In other words, the 13 appropriations bills have to pass

every year. So, if you want to make a change, it's a good thing to get it onto that train. We know the train will be leaving the station. Last year, for example (2001), the Senate passed a sweeping mental health parity requirement, as an amendment to one of the spending bills.

Most of the health programs — and we're still talking about appropriations here — are in a bill that covers the Departments of Labor, Health and Human Services, Education, and related agencies. It's known as the Labor-HHS bill, sometimes just called "Labor H." It's the biggest of the 13 bills, because it includes funding for some big mandatory programs like Medicaid and Part B of Medicare.

But that part of the bill is kind of automatic. Appropriators don't have power to set funding levels for those mandatory programs. They are "entitlements," and spending for them can only be changed by changing the underlying law. (See box, "ABCs of Authorizations, Appropriations and Entitlements.") And only the authorizing committees can do that. I know that's confusing; it gets worse.

For reasons I once spent a full week unsuccessfully trying to discover, the Food and Drug Administration, although part of the Department of Health and Human Services, is actually funded through the appropriation for the Agriculture Department.

For the past two years, debate on that spending bill has included debate on whether to allow drugs to be reimported from Canada and other countries. That's technically an authorizing rather than an appropriations matter. But some Senators wanted to put it on the spending bill that included the FDA, and that was Agriculture. So, even though I'm a health reporter, I cover the agriculture spending bill every year. Got it?

AUTHORIZING LEGISLATION

Next, the authorization process. This is where most policy-making legislation is supposed to occur. The shorthand difference between authorization and appropriation is that the authorizers put the money in the checking account and the appropriators write the check.

Jurisdiction over health legislation is pretty

complicated. Depending on how you count, there are at least a dozen committees that handle some health issues. I'm going to go over the five most important.

In the House, there are three: Ways and Means, Energy and Commerce, and Education and Workforce. Yes, that sounds like six but I don't name them, I just cover them.

Ways and Means is best known as the tax writing committee, but it also has jurisdiction over all of Social Security, all of welfare, and Part A of Medicare (the hospital insurance part) which is financed by payroll taxes. Because it's tax financed, they have jurisdiction over it.

Ways and Means shares jurisdiction with Energy and Commerce over Part B of Medicare, which is the outpatient portion. Energy and Commerce probably has the broadest health jurisdiction in the Congress. As I just mentioned, it shares jurisdiction over Medicare Part B with Ways and Means. [Editor's note: Both committees also assert jurisdiction over Parts C and D of Medicare, covering managed care plans and the new prescription drug benefit.]

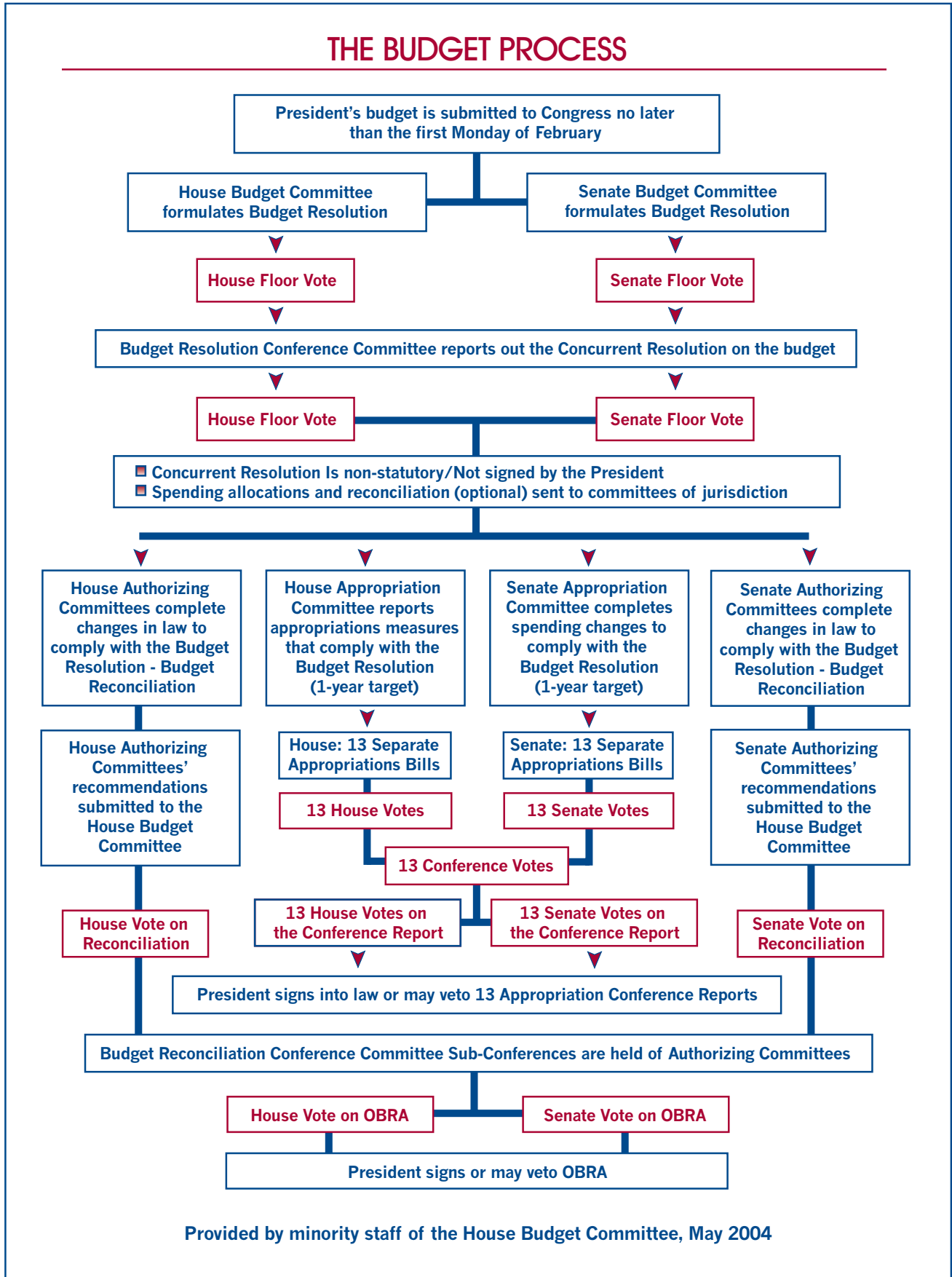
It also has sole jurisdiction over the Medicaid program. It oversees the Public Health Service, including the National Institutes of Health, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Health Resources and Services Administration. So they basically cover almost all of public health, Medicaid, and half of Medicare.

Education and Workforce has health jurisdiction mainly through its oversight of ERISA, the Employee Retirement Income Security Act, which governs most employer-provided health insurance benefits. So the mental health parity fight is going on as much in the Education and Workforce Committee as it is in the Energy and Commerce Committee, because it's largely an employer benefit.

In the Senate, of course, this being Congress, things are completely different. There, the Finance Committee, which is that chamber's tax writer, and like the House's Ways and Means Committee, oversees all of Medicare and Medicaid.

The Health, Education, Labor, and Pensions Committee, known as the HELP Committee, has the

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House Energy and Commerce Committee's public health service jurisdiction. They oversee FDA and NIH and CDC. HELP also has the House Education and Workforce Committee's ERISA jurisdiction because they also have jurisdiction over employer benefits.

Those are the basics of how a bill becomes a law. And here's how you can follow along at home. There are really only three basic tools that you'll need: Thomas, C-SPAN, and KaiserNetwork.org.

- Thomas. This is the official Congressional Web site, named after Thomas Jefferson. It's available at <http://thomas.loc.gov> (note: no "www").
- Kaisernetwork.org. This service of the Kaiser Family Foundation, at www.kaisernetwork.org, has several daily electronic reports, webcasts of hearings and other policy events, and a quantity of data on public opinion and state health facts.

- C-SPAN. Available on the web at www.C-SPAN.org, as well as on cable, this service offers live coverage of House and Senate floor debates and, through its website, audio (and some video) of all Senate hearings.

[For Julie Rovner's tips on how to get the most out of these three tools, you can consult the full original transcript, at http://www.kaisernetwork.org/health_cast/uploaded_files/Transcript_JulieRovner.pdf.]

ENDNOTES

- ¹ The Budget Point of Order is raised by a Senator claiming the provision violates Senate rules governing the budget, typically, by causing spending to exceed the amounts allowed in the Budget Resolution.

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