**Public Policy Update –December 2016**

**By Brian Lindberg and Marly Flores**

**Big Picture**

The legislative work of the 114th Congress has come to an end, more or less. Under the new normal, the Senate continued to hold brief pro forma sessions with no real business being conducted until about five minutes before the 115th Congress convened at noon on January 3, 2017. This maneuver prevents President Obama from making any recess appointments, such as that of his Supreme Court nominee, Chief Judge Merrick Garland.

The 115th Congress officially commenced on January 3, 2017, and the Republican-controlled Congress is wasting no time in moving forward on its ambitious legislative agenda. Congressional leaders have begun to tackle President-elect Donald Trump’s policy priority of dismantling the Affordable Care Act. Other priorities by the Trump administration include enacting tax cuts, making changes to immigration policy, reducing federal regulations, and rolling back executive orders made by President Obama. This will not be an easy agenda to undertake. Congress still needs to consider federal funding for both Fiscal Year (FY) 2017 and FY 2018, confirm 690 appointees to key political posts and begin to conduct hearings on the U.S. intelligence community’s conclusion that Russia hacked the Democratic National Committee’s email system to interfere in the 2016 elections. Another future battle for Congress will be over President-elect Trump’s pick to fill the Supreme Court vacancy.

**Recap from the 114th Congress:**

**Legislation passed in the 114th Congress**

The 114th Congress spanned two years, so here is a reminder of some of the aging-related laws that were enacted. It took years, but Congress finally fixed the way we pay doctors under Medicare with the passage of theMedicare Access and CHIP Reauthorization Act (MACRA), Pub. L. 114- 10. And it took way too long, but Congress finally passed the Older Americans Act Reauthorization Act of 2016, now Pub. L. 114-144. Pub. L. 114-39 extended the Independence at Home demonstration for 2 more years. With the NOTICE Act, Pub. L. 114-42, patients no longer have to guess their inpatient or observation status, but the bill does not fix the underlying observation problem. Pub. L. 114-74 extended the life of the Social Security Disability Insurance program. The first major federal addiction legislation in 40 years, the Comprehensive Addiction and Recovery Act of 2016 (CARA), became Pub. L 114-198. According to the CDC, overdoses from heroin, prescription drugs, and opioid pain relievers last year surpassed car accidents as the leading cause of injury-related death in America. Pub. L. 114-40, the Steve Gleason Act of 2015, makes speech generating devices more readily accessible for patients with ALS and other neurological disorders by making the purchase of the devices eligible for reimbursement through Medicare.

**Budget and Appropriations**

Both the House (on Dec. 8 by a vote of 326-96) and the Senate (on Dec. 9 by a vote of 63-36) passed a continuing resolution (CR) to fund the federal government until April 28, 2017. Government funding was due to expire at midnight on December 9. Republicans in both chambers were able to put together this “short-term” CR which will allow the Trump administration to have early input on the next spending bill and an approach to issuing reconciliation instructions for overturning the Affordable Care Act.

Details of the CR:

* Includes $872 million in funding for the 21st Century Cures Act of 2016, which boosts critical medical research, drug approval, and drug abuse efforts. This includes $20 million for the Food and Drug Administration Innovation account, $352 million for the National Institutes of Health Innovation account, and $500 million for states to respond to the opioid abuse crisis.
* Keeps most programs in the remaining 11 individual appropriations bills funded at FY 2016 levels through April 28, 2017.
* There are exceptions to this including natural disaster relief and military spending from the Overseas Contingency Operations (OCO) funds.
* There is a provision that would allow for expedited consideration in the Senate of a bill that specifically exempts the next Secretary of Defense confirmed by the Senate from a law that requires retired officers to be out of the service for seven years before being considered for the post.
* The bill enables the next administration to influence both the FY 2017 and FY 2018 funding levels.

Again, most programs will continue on FY 2016 funding levels, but that could change after April 28, 2017, when this bill would expire. Retiring Appropriations Committee Vice Chair Barbara Mikulski put it this way, “Our Committee is a problem-solving Committee. Our markups are vigorous and rigorous, but at the end of the day, we find compromise without capitulating on our principles. I had three goals for Appropriations this year – parity for defense and non-defense spending, no poison pill riders, and additional funds for the opioid abuse, Flint, and Zika crises. I had hoped to be finishing with full year bills as we did the past three years, but this CR does accomplish all three of my original goals.”

**21st Century Cures Act Becomes Law**

One of the last bills that President Obama signed into law was the 21st Century Cures Act, Public Law 114-255. (I had the honor of attending the White House signing ceremony. These events are always exciting but this was even more rewarding because included within the Cures Act was another bill, the Special Needs Trust Fairness Act, that I worked on.)

After months of negotiations, a revised Cures bill moved quickly through the House and Senate in late November and early December. The Cures Act is a major bipartisan piece of legislation that includes Vice President Biden’s “Cancer Moon Shot” ($1.8 billion) developed in part by the Cancer Moon Shot Task Force and the National Cancer Institute at NIH. The new law will increase funding for biomedical innovation, the Precision Medicine Initiative, BRAIN Initiative, Alzheimer’s disease, and opioid addiction treatment. It addresses a broad range of other issues including mental health and Medicare payments. The bill is designed to provide incentives for new medical treatments by expediting the approval process for drugs and devices to reduce the time and money needed. The bill provides $4.8 billion for NIH and $500 million for the FDA’s “regulatory modernization” over ten years.

**Passing such a significant bill that shifts some funding from Medicare and Medicaid and favors the pharmaceutical industry was not easy. Groups such as the Center for American Progress, the AFL-CIO, and the American Federation of Teachers tried to delay the nearly 1,000-page bill until next year. Public Citizen fought against passage stating, “**the bill fails to deliver on its original promise of mandatory NIH funding, as appropriators will have discretion whether to release the promised funding each year, starting the bargaining process over again and potentially forcing further public health concessions.” They further argued that the FDA mandate to use “real world evidence” will weaken standards for review and approval of drug applications.  **Senators Sanders (D-VT) and Warren (D-MA) were among a small group that tried unsuccessfully to change the bill to reduce drug costs and company profits. Yet the bill passed in the House by a vote of 392 to 26 and in the Senate by a vote of 94 to 5. At the end of the legislative session, most Democrats were not willing to fight to delay the bill when they supported much of it. In addition, lawmakers will be able to use this bill as an example of bipartisan accomplishment. Read more** [here](http://app.ns.advisory.com/e/er?elq_cid=1597125&x_id=&s=230127911&lid=131722&elqTrackId=1bdcbc8e85b9457eabd30f8ef6186250&elq=6be6a91273a94ba783fde00e1f26562e&elqaid=61747&elqat=1)**.**

**Chronic Care Act**

On the good news front, introduced on December 6, 2016, by Senators Hatch (R-UT), Wyden (D-OR), Isakson (R-GA), and Warner (D-VA), the Creating High-Quality Results and Outcomes Necessary to Improve Chronic Care Act of 2016 (the CHRONIC Care Act, S.3504) addresses the challenge of how to deliver coordinated medical care to Medicare beneficiaries living with multiple chronic conditions. The bill is the product of a multiyear study by the Senate Finance Committee’s Chronic Care Work Group (CCWG). The workgroup received 530 submissions from stakeholders on improvements and produced a policy options paper in December 2015. The CHRONIC Care Act would encourage improvements to care coordination, telehealth services, advance care planning, and quality measurement, among other things. In addition, the CHRONIC Care Act would extend the Independence at Home demonstration project until September 30, 2019, which would provide Congress more time to consider converting the 17-site IAH demonstration project into a national Medicare benefit for high cost, high need Medicare enrollees. There is no cost estimate for the legislation yet, but some are hopeful that it will produce significant savings.  In addition, Congress will also have to face the expiration of the bipartisan Children’s Health Insurance Program (CHIP) at the latest next fall.

**115th Congress and First 100 Days:**

**Budget Reconciliation and Efforts to Repeal the ACA**

On the first day of the 115th Congress, Senate Budget Committee Chairman Mike Enzi (R-WY) introduced a budget resolution to repeal the ACA through the budget reconciliation process. The budget resolution provides the House Energy and Commerce Ways and Means Committee, the Senate Finance and the Health, Education, Labor and Pensions Committee until January 27to approve the proposed legislation and to determine which parts of the ACA would be repealed and how long to delay implementation of the repeal. A budget resolution can be passed by a simple majority vote and cannot be filibustered in the Senate. There are now 52 Republicans and 48 Democrats/Independents in the 100-member chamber. Congress is likely to take up a bare-bones budget resolution for FY 2017 the week of January 9, if not sooner.

Proposals to replace the ACA are being drafted and may be revealed this month, but they are more likely to become part of a second budget reconciliation package (FY2018) that will also include a major tax reform bill. Also, some of the ACA will not be eligible to be part of budget reconciliation, so other vehicles will be needed and they will be more difficult to get through the Senate. The ACA replacement is likely to be phased in over two to four years.

On January 4, President Obama met with Democrat lawmakers to discuss strategies to protect his signature healthcare law. That same day, Vice President-elect Mike Pence met with Republicans lawmakers to determine how they can move forward with plans to repeal and replace the ACA. Insurers, healthcare providers and other healthcare advocacy groups have launched advocacy campaigns that express concerns about dismantling the ACA without a comparable replacement plan. In a [letter](http://www.aha.org/presscenter/pressrel/2016/160612-pr-aca.shtml?elq_cid=1597125&x_id) to President-elect Trump, the American Hospital Association and the Federation of American Hospitals said repealing the ACA without implementing a replacement could cost hospitals hundreds of billions of dollars and result in “an unprecedented public health crisis.” Read more [here.](http://www.modernhealthcare.com/article/20170103/NEWS/170109989?elq_cid=1597125&x_id)

**Medicaid and Medicare Reform in the Horizon**

Speaker Ryan has been talking about Medicaid block grants for years and although a “per capita cap” bill is more likely to be enacted, the effort to reform Medicaid and replace the ACA is likely to take place in the summer of 2017. Also on the Speaker’s agenda is changing Medicare into a premium support or voucher type program - ideas reflected in his policy paper “[A Better Way.”](http://abetterway.speaker.gov/_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf?elq_cid=1597125&x_id=&elqTrackId=53b7576aaf634d04a2420f0c919c5164&elq=be3e850a187143e491daebdbbc43aff6&elqaid=61189&elqat=1&elqCampaignId=27964) This may be difficult given President-elect Trump’s promise not to hurt Medicare and Social Security and Senate moderates who are wary of touching Medicare.

It is much tougher to govern than to oppose those who are governing, and with all of these issues the majority risks hurting millions of their constituents and causing chaos in the insurance marketplace. Real people will need time to make arrangements for coverage and insurance companies will need to develop new models, plans, and marketing. All that, plus Americans will expect that premiums will not go up.

**Administration’s FY 2018 budget**

By the first Monday in February, the Trump Administration is supposed to submit its federal budget for the upcoming fiscal year to Congress. The President’s budget sets the tone for the spending priorities of the President. Policy experts predict that the incoming Trump Administration will not submit a budget for FY 2018. The Congressional Budget Act requires the president to submit the FY 2018 budget to Congress between January 2 and February 6, 2017. A violation of the Congressional Budget Act is not a criminal offense.

**Public-Private Option for the VA**

According to an official on the President-elect transition team, Trump is considering a “public-private” option for the Department of Veterans Affairs (VA). In October, President-elect Trump [outlined](http://thehill.com/blogs/ballot-box/gop-primaries/258755-trump-lays-out-plan-to-reform-veterans-affairs) a plan which would allow veterans to choose to receive care at a VA facility or non-VA hospital. The official also stated that the president-elect is considering creating an advisory committee to “help us navigate through what’s a very complicated process, providing healthcare to veterans.” Read more [here.](http://app.ns.advisory.com/e/er?elq_cid=1597125&x_id=&s=230127911&lid=133560&elqTrackId=d71ded86931e49c5a1f4d2352331191a&elq=8b5427c9604e4e26bb0c96aef236726c&elqaid=62274&elqat=1)

**Senate Key Committee Changes (in bold)**

Appropriations

Chairman: Senator Thad Cochran (R-MS)

Ranking Member: **Senator Patrick Leahy (D-VT)**

Special Committee on Aging

Chairman: Senator Susan Collins (R-ME)

Ranking Member: **Senator Bob Casey (D-FL)**

Judiciary

Chairman: Senator Chuck Grassley (R-IA)

Ranking Member: **Senator Dianne Feinstein (D-CA)**

Veterans’ Affairs

Chairman: Senator Johnny Isakson (R-GA)

Ranking Member: **Senator Jon Tester (D-MT)**

Rules and Administration

Chairman: **Senator Richard Shelby (R-AL)**

Ranking Member: **Senator Amy Klobuchar (D-MN)**

Ethics

Chairman: Senator Johnny Isakson (R-GA)

Co-Chair: **Senator Chris Coons (D-CT)**

Select Committee on Intelligence

Chairman: Senator Richard Burr (R-NC)

Ranking Member: **Senator Mark Warner (D-VA)**

Indian Affairs

Chairman: **John Hoeven (R-ND)**

Ranking Member: **Senator Tom Udall (D-AZ)**

Foreign Relations:

Chairman: Bob Corker (R-TN)

Ranking Member: **Senator Ben Cardin** **(D-MD)**

**House Key Committee Changes (in bold)**

Appropriations

Chairman: **Rep. Rodney Frelinghuysen (R, NJ-11th)**

Ranking Member: Rep. Nita Lowey (D, NY-17th)   
Budget

Chairman: Rep. Tom Price (R, GA-6th)

Ranking Member: **Rep. John Yarmuth (D, KY-3rd) likely**   
Education and the Workforce

Chairman: **Rep. Virginia Foxx (R, NC-5th)**

Ranking Member: Rep. Bobby Scott (D, VA-3rd)

Energy and Commerce

Chairman: **Rep. Greg Walden (R, OR-2nd)**

Ranking Member: Frank Pallone (D, NJ-6th)

Veterans’ Affairs

Chairman: **Rep. Phil Roe (R, TN-1st)**

Ranking Member: Rep. Mark Takano (D, CA-41st)   
Ethics

Chairman: **Rep. Susan Brooks (R, IN-5th) \***Appointment by Speaker Paul Ryan

Ranking Member: Rep. Linda Sanchez (D, CA-38th)