**Public Policy Update – January 2017**

**By Brian Lindberg and Marly Santoro**

**Big Picture**

The 115th Congress is underway and the newly-sworn in Republican-controlled Congress wasted no time in tackling President Donald Trump’s policy priority of dismantling the Affordable Care Act or ACA. President Trump has also begun to shake up Washington, DC. Minutes after his inauguration, President Trump signaled plans to pull the U.S. out of the Trans-Pacific Partnership and renegotiate the North American Free Trade Agreement. In the first ten days of the Trump administration, the President signed two proclamations, seven executive orders and seven presidential memoranda, many of which have been controversial.

Notable executive orders include: minimizing the economic burden of the Affordable Care Act, “build the wall,” regulation reduction, and issuing a travel “ban” that prohibits citizens of seven predominantly Muslim countries from entering the United States under any visa. The travel ban is the most controversial executive order to date, leading to protests at international airports across the country. Sally Yates, acting attorney general, refused to defend the executive order which led to her firing for insubordination.

Notable memoranda signed by President Trump include a federal hiring freeze, construction of the Keystone XL and Dakota Access Pipelines, and the Mexico City Policy, which prohibits any foreign non-governmental organization that receives U.S. funds from providing abortion-related information or services. The signed executive orders and memoranda align with the promises he made during the presidential campaign.

Movement has been slow on approving Cabinet and sub-Cabinet nominees with Democrats holding up votes on some of the more controversial nominations.

Approved by the full Senate so far: Elaine Chao, Transportation; Rex Tillerson, State; Betsy DeVos, Education (required a tie-breaking vote by Vice President Pence); James Mattis, Defense; John Kelly, Homeland Security; Jeff Sessions, Attorney General; Nikki Haley, Ambassador to the United Nations; and Mike Pompeo, Central Intelligence Agency.

Nominees approved by committee and awaiting a vote in the full Senate are: Tom Price, Health and Human Services; Steve Mnuchin, Treasury; Ben Carson, Housing and Urban Affairs; Rick Perry, Energy; Ryan Zinke, Interior; Wilbur Ross, Commerce; Scott Pruitt, Environmental Protection Agency; Mick Mulvaney, Office on Management and Budget.

Still awaiting committee action are: Andrew Puzder, Labor; Sunny Purdue, Agriculture; and David Shulkin, Veterans Affairs.

After delays by Democrats at the committee level, Representative Tom Price is likely to be confirmed shortly. The HHS secretary nominee has faced backlash for trading stock in dozens of companies while supporting legislation that could affect those companies. It is likely to take several months (or longer) before nominees for agencies such as the Administration for Community Living, the Administration on Aging, and the Health Resources Services Administration are announced and then confirmed.

On January 31, President Trump selected Neil Gorsuch to succeed Antonin Scalia on the Supreme Court. Gorsuch is a well-respected conservative who sits on the Colorado-based 10th Circuit U.S. Court of Appeals. His most notable case from his time on the Tenth Circuit Court of Appeals is likely *Hobby Lobby vs. Sebelius*, a case about religious objections to the rules on birth-control coverage in the ACA, which later became a landmark Supreme Court decision. He is also known to be firmly opposed to assisted suicide and euthanasia and argues against death with dignity laws, which currently exist in five states. He describes his opposition in his book, “The Future of Assisted Suicide and Euthanasia.” During a meeting with Senator Blumenthal, Gorsuch was said to have referred to President Trump’s comments on the judiciary as “disheartening” and “demoralizing.” Democrats face a difficult situation in determining whether to filibuster his nomination in retaliation for the Republican’s depriving Judge Merrick Garland a vote last year when he was nominated by President Obama. Such a filibuster could lead to the Republicans changing the senate rules to disallow filibusters on Supreme Court nominees.

Democrats are under pressure from their base to oppose most of Trump’s priorities.

**Budget Reconciliation and ACA Repeal in Motion**

Both the Senate (on Jan. 12 by a vote of 51-48) and the House (on Jan. 13 by a vote of 227-198) voted to advance a Fiscal Year 2017 budget resolution that initiates Republican efforts to repeal the ACA through the budget reconciliation process. Certain committees in the House and Senate have begun drafting legislation to dismantle much of the ACA. A budget resolution can pass with a simple majority and cannot be filibustered in the Senate. There are now 52 Republicans and 48 Democrats/Independents in the 100-member chamber.

Trump has noted that as soon as the Secretary of the Department of Health and Human Services is approved, a repeal and replace “will be essentially simultaneously…it will be various segments, you understand, but it will most likely be on the same day or the same week, but probably the same day, it could be the same hour.” Although President Trump’s ACA replacement plan is unknown, Trump advisor Kellyanne Conway during interviews on January 22nd said the replacement plan will seek to convert Medicaid into a [block grant](https://www.nytimes.com/2017/01/22/us/politics/donald-trump-health-plan-medicaid.html?_r=2&elq_cid=1597125&x_id) program. Given public pushback on repealing the ACA without a true replacement program, the process has slowed and several Republicans are developing legislation to replace ACA as a higher priority. A recent Quinnipiac poll showed that 84 percent of Americans oppose ACA repeal without a replacement. On January 25, House Speaker Paul Ryan (R, WI-1st) said Republicans would seek to repeal and replace parts of the ACA by the spring. He has now said that replacement will take place by the end of 2017. President Trump has said it could take longer. House Ways and Means Committee Chairman Kevin Brady continues his work toward an end of March deadline. As congressional lawmakers look to repeal the ACA, Republican governors have urged Congress to continue funding Medicaid expansion even if the ACA is repealed.

Several bills have been introduced, including S. 222, *The Obamacare Replacement Act* (Senator Rand Paul) and S. 191, the *Patient Freedom Act* (Senators Cassidy and Collins). Various approaches to replacing the ACA have been discussed, including creating state high-risk pools, expanding health savings accounts, allowing insurers to sell across state lines, partially protecting people with pre-existing conditions, establishing new tax credits for health coverage, and restructuring Medicaid through block-grants or a per capita cap system. Challenges abound given the promise that the majority has made that coverage will be better, cost less, and cover more people. Possibly the biggest challenge will be to secure the support of enough Republicans to pass the various bills needed to repeal and replace and pay for it all. It seems unlikely that Democrats will help. One Republican said that they will own the next health care system - Trumpcare.

In the meantime, President Trump has signed an executive order directing federal agencies to “ease the burden” of the ACA. The order allows federal agencies to grant exemptions, waivers, and delays of certain ACA provisions, such as the law’s individual mandate. According to a [report](https://www.cbo.gov/publication/52371?elq_cid=1597125&x_id) by the Congressional Budget Office, millions of U.S. residents could lose their health coverage and insurance premiums could increase by double digits if major provisions of the ACA are repealed and not replaced. In the first year of the repeal, the CBO estimated 18 million residents would lose coverage and insurance premiums would increase between 20 and 25 percent. According to a new Urban Institute [analysis](http://www.urban.org/sites/default/files/publication/86916/2001046-the-impact-on-health-care-providers-of-partial-aca-repeal-through-reconciliation_0.pdf?elq_cid=1597125&x_id=&elqTrackId=e59bb134e6514a17a8c742f1176dbcc3&elq=4c68030d3e78462e88eb769a47d2ff57&elqaid=62541&elqat=1&elqCampaignId=28704), repealing major provisions of the ACA could also increase uncompensated care costs by $1.1 trillion over 10 years.

Block granting Medicaid or using a per capita cap and other reforms are likely to be part of either or both the FY 2017 reconciliation bill or the FY 2018 reconciliation bill.  In addition, the House Energy and Commerce Committee continues its work on Medicaid reforms and eligibility changes.  Republican governors seem to be weighing in with concerns about losing Medicaid expansion and having the funds block granted.

**Fiscal Year 2018 Budget and Appropriations**

The government is currently funded through April 28th by a Continuing Resolution passed at the end of the last Congress. Congress will need to address the rest of the fiscal year by April 28th unless they do another short-term fix. Funding for the rest of the fiscal year could be done with another CR, an omnibus appropriations bill merging all the remaining subcommittee bills, or small packages (minibus) that fund the various agencies. Typically, the Labor, Health and Human Services appropriations bill is more difficult to pass, more vulnerable to policy riders, and is more likely to be a part of a CR, which will generally extend FY2016 funding levels with a potential across the board cut. For FY 2017, it remains up in the air, but pundits believe that putting off the LHHS appropriations bill until this April was designed to enable the Republican Congress and White House to reduce funding levels.  Cuts would most likely come in the form of an across the board cut on a CR that would go through the end of the fiscal year.  But anything is possible…cuts to some programs and not to others.

It is the general understanding that President Trump will release this month or next a 175-200 page “skinny budget” that sets out his spending priorities. By mid- to late April, he is likely to release the full budget. Expectations are that his first budget will attempt to reduce federal spending by up to $10.5 trillion over ten years. This is slightly higher but consistent with other Republican proposals in recent years, and the budget could include elimination of some of the programs the Heritage Foundation and others have recommended in the past (e.g., Violence Against Women grants, National Endowment for the Arts, Legal Services Corporation).

In theory, that budget will be a starting point for the passage of a second budget this year and the subsequent budget reconciliation package and appropriations work for FY 2018.

There is a real threat to non-defense discretionary (NDD)funding for FY 2017 and, particularly, for FY 2018. For FY 2018, the planned reduction in the current budget law would be about $3.5 billion in NDD programs.

The White House and many Republicans and Democrats would like to increase defense spending. The new director of the Office of Management and Budget is not a proponent of using the Overseas Contingency Operations account to supplement defense spending, and this could put further pressure on NDD spending. A critical issue will be whether Democrats are able to keep the current parity in cuts between D and NDD that was part of the last big budget deal. Many think that the best scenario may end up being another sequestration for 2018.  Democrats with the help of some Republicans in the Senate still have the ability to influence appropriations because of the 60 votes needed to stop a filibuster.

**Lifting the Debt Ceiling**

Raising the debt limit now falls to the Trump administration. On Wednesday, the Treasury Department reminded Congress that the government will be unable to pay its bills after March 15th unless legislators vote to lift the debt limit. The Treasury Department continued to advise that raising the debt ceiling does not permit new spending. Failure to lift the debt limit could lead to a potential U.S. default. Furthermore, the debt could worsen if Republicans push new tax cuts and more spending. A crisis, however, is not imminent as the Treasury Department can use extraordinary accounting measures to stay below the ceiling, possibly until fall.

**Tax Reform**

Tax reform usually takes years, but the White House and Republicans in Congress are working on a plan that they hope could be passed and signed into law this summer or fall. It could start as soon as April and May with the second reconciliation package.

**Part D Savings**

The Centers for Medicare and Medicaid Services (CMS) announced that more than 11.8 million Medicare beneficiaries have saved close to $26.8 billion since January 2011 through an ACA provision that requires pharmaceutical companies to offer discounts to those who reach the Medicare Part D “doughnut hole.” CMS stated that in 2017, Medicare beneficiaries affected by the coverage gap will receive discounts and savings totaling 60 percent of brand-name drugs’ costs and 49 percent of generic drugs’ cost. Read more [here.](http://www.modernhealthcare.com/article/20170113/NEWS/170119936?elq_cid=1597125&x_id)

**Lowering Drug Costs**

President Trump met with executives from top pharmaceutical companies to discuss the administration’s concern over “astronomical” drug prices and that it would seek to reduce regulatory hurdles for the industry and increase prescription drug production in the U.S. President Trump did not provide specific policy details but the administration mentioned increasing competition and encouraging “bidding wars” as a way to lower drug prices. Read more [here.](http://www.modernhealthcare.com/article/20170131/NEWS/170139984?elq_cid=1597125&x_id)

**Federal Poverty Levels for 2017**

The Department of Health and Human Services (HHS) released the 2017 federal poverty guidelines, commonly referred to as the Federal Poverty Level (FPL). The FPL guidelines are used to determine whether individuals are financially eligible for federal and state programs. The guidelines set the 100% poverty level for a single individual in the 48 contiguous states at $12,060 (up from $11,880 in 2016) and for a couple at $16,240 (up from $16,020 in 2016). For families/household with more than 8 persons, add $4,180 for each additional person. Read more [here.](https://aspe.hhs.gov/poverty-guidelines)

**340B Drug Discount Program**

The Obama administration finalized a rule for the 340B drug discount program that would penalize drug makers that “knowingly and intentionally” overcharge providers for drugs purchased under the program. Under the final rule, drug-makers could face a fine up to $5,000. Also, the drug-maker would be required to repay the overcharge. Read more [here.](http://www.healthcarefinancenews.com/news/drug-companies-will-face-5000-fines-340b-drug-overcharges-hhs-says?elq_cid=1597125&x_id)