**Public Policy Update – October 2017**

**By Brian Lindberg and Marly Santoro**

**The Big Picture**

**There are less than 40 days left on the legislative calendar for 2017. Many lawmakers will then turn more of their attention to the midterm House and Senate elections of 2018. Passing major legislation during an election year can become even more complicated than usual.**

**Nevertheless, Congress was able to tackle some looming deadlines in September. On September 28, Congress extended federal funding for teaching health centers, an Indian Health Service diabetes program, and a Medicare demonstration program (Intravenous Immune Globulin demo) via a larger bill that extended funding for the Federal Aviation Administration (FAA) (H.R. 3823 – Disaster Tax Relief and Airport and Airway Extension Act of 2017 - P.L. 115-63). Funding for FAA and the health care programs were set to expire on September 30.**

**Unfortunately, Congress failed to reauthorize the very popular Children’s Health Insurance Program (CHIP). The current reauthorization ran out on September 30. A bipartisan deal is in the works in the Senate (S. 1827), but Republicans in both chambers seem to have been distracted by the latest attempt to repeal the Affordable Care Act, and the deadline to reauthorize passed. See more below.**

**ACA Repeal Proposal and More**

**According to Senate Parliamentarian Elizabeth MacDonough, lawmakers had until September 30 to pass a health reform bill under the budget reconciliation process. The reconciliation process allows bills to advance with just 51 votes, compared to 60 votes.**

**Republican Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV) and Ron Johnson (R-WI) introduced a bill to repeal major portions of the Affordable Care Act (ACA) and overhaul Medicaid.** See the press release, section-by section analysis, and more at [Senator Cassidy’s website here.](https://www.cassidy.senate.gov/newsroom/press-releases/senators-introduce-graham-cassidy-heller-johnson) **The senators faced a tight timeline with only 2 weeks to bring the bill to the Senate floor under budget reconciliation rules. Immediately, the bill received pushback by Senators John McCain (R-AZ), Rand Paul (R-KY), Lisa Murkowski (R-AZ) and Susan Collins (R-MA). Subsequently, a revised version of the reform bill was released which provided an increase in federal funds to Alaska, Arizona, Kentucky and Maine. The bill seemed to be gaining momentum but fell short of the 50 votes needed to pass (with VP Pence as a tiebreaker) and it was never brought up for a vote. Here is the** LCAO letter opposing the bill: <http://www.justiceinaging.org/wp-content/uploads/2017/09/LCAO-Graham-Cassidy-Senate-Letter-092517.pdf>

HELP to Rescue ACA?

**During the month of September, the U.S. Senate Committee on Health, Education, Labor & Pensions (HELP) held four hearings on a bipartisan healthcare approach to stabilize individual insurance markets for 2018 and fund the Affordable Care Act’s (ACA) cost-sharing reduction payments. According to Senate Minority Leader Chuck Schumer (D-NY), Senators Lamar Alexander (R-TN) and Patty Murray (D-WA) are close to finalizing a deal to “stabilize markets and lower premiums” after the latest effort to repeal and replace the ACA failed.**

Next Up: Trump Executive Order

The president plans to use an executive order to enable insurance companies to offer additional products in the individual health insurance market that do not cover ACA mandated benefits. Republicans claim that the expanded benefits have resulted in the recent premium increases. The order would allow the creation of “association health plans.” This is how the *Washington Post* described them: “Here's how association plans would work: By banding together to buy coverage, individuals and small businesses could join the large group insurance market, which is exempt from the ACA’s requirement that individual and small group plans cover what are known as essential health benefits. These association plans could be formed by trade groups, professional organizations or community groups with the idea of expanding options for consumers and possibly lowering their costs.” The downside could be encouraging healthy people to leave the ACA marketplaces which could drive up costs further.

**Using the FY 2018 Budget to Pave Way for Tax Reform**

**House and Senate Republican leaders have unveiled their tax reform blueprint crafted with the White House. The proposal has received support from members of the conservative Freedom Caucus. House Republicans have already taken the first legislative steps to advance tax reform. On** October 5, the House passed its budget ([H Con Res 71](http://www.cq.com/bill/115/HCONRES71)) by a vote of 219-206. All Democrats and 18 Republicans voted against the bill. *Congressional Quarterly* reported that House Republicans are signaling that they could probably support the senate bill if it were sent over for their approval. The house bill includes a provision calling for at least $203 billion in mandatory spending cuts which are likely to come from Medicaid. The house bill also would allow for large tax cuts for the wealthy that would result in a loss of revenue in the ballpark of a trillion dollars.

* Here is the CCD Fiscal Policy Task Force co-chair letter opposing the House Budget Resolution: <http://www.c-c-d.org/fichiers/CCD-Fiscal-Policy-Task-Force-letter-on-House-2018-Budget-Resolution-vote-Oct4.pdf>
* Here is the bill: [House FY 2018 Budget](https://www.congress.gov/115/bills/hconres71/BILLS-115hconres71rh.pdf)
* Senator Wyden spoke on the [Senate floor](https://www.youtube.com/watch?v=Se7prq2FY2Y&t=6s) to contrast his bipartisan tax reform proposal with the four-page Republican tax framework released by the Administration.
* The New York Times: “[Republican Tax Cut Would Benefit Wealthy and Corporations Most, Report Finds](https://www.nytimes.com/2017/09/29/us/politics/republican-tax-cut-would-benefit-wealthy-and-corporations-most-report-finds.html?smid=tw-share&_r=0)”
* Politico: “[Democrats: Senate budget cuts nearly $500B from Medicare](http://www.politico.com/story/2017/10/04/democrats-respond-senate-budget-medicare-243436)”

Also on October 5, the Senate Budget Committee passed the Republican fiscal 2018 budget resolution on a party-line vote of 12-11. The full Senate is likely to consider the bill the week of October 16.

Here is the CCD letter opposing the bill: <http://www.c-c-d.org/fichiers/CCD-Fiscal-Policy-Task-Force-letter-on-Senate-2018-Budget-Committee-markup-Oct-5.pdf>

Agreement on a budget resolution between the Senate and House leads to the budget reconciliation process that will be used to attempt to pass tax reform (with only a simple majority vote needed in the Senate). This is the same process that was used for the ACA Repeal and Replace strategy.

**The house is expected to vote on a fiscal year (FY) 2018 budget, which will provide a path to pass tax reform by a simple majority and avoid a filibuster. House Majority Leader Kevin McCarthy (R, CA-23) noted that “passing this budget will also enable tax reform, which is the key to economic growth and seeing that Americans take home more of their hard-earned dollars.” Expect to read and hear a great deal about the Republican plans to reform the tax code in the coming weeks and months.**

* **Tax reform proposal:** <https://www.treasury.gov/press-center/press-releases/Documents/Tax-Framework.pdf>
* **Highlights:** <https://www.treasury.gov/press-center/press-releases/Documents/Tax-Framework_1pager.pdf>

**Back in July, the House Budget Committee tried to advance a budget but it lacked the votes to pass on the floor due to concerns from the Freedom Caucus.** Conservatives who opposed the committee budget have argued that they must see the details of the tax overhaul plan before voting on the budget because this budget will be the vehicle that will eventually lead to a budget reconciliation package that will include the tax plan and would only need a simple majority to pass in the senate. Republican leaders are aiming to finish tax reform by the end of the year.

**The proposed house budget would increase military spending and calls for $203 billion in mandatory spending cuts, mainly to anti-poverty and agriculture programs, over the next ten years. The senate Budget Committee released its version of the FY 2018 budget last week. The Senate budget would cut non-defense spending starting in 2019 (up to $106 billion by 2027) and would cut mandatory spending by $1 billion. Senate Majority Leader Chuck Schumer (D-NY) and House Minority Leader Nancy Pelosi (D, CA-12) have called on President Trump to oppose the Republican budget over cuts to Medicare and Medicaid program in a push to fund tax cuts. In a letter sent to President Trump, Democratic congressional leaders point out that as a candidate, the president made a campaign promise to not cut Medicare or Medicaid. The letter asks President Trump to “reject the more than $1 trillion in Medicaid benefit cuts in the House and Senate budget resolutions.” The Senate Budget Committee is expected to mark up its version next week, with a full Senate vote expected for mid-October.**

**Appropriations Work and Challenges**

The federal government is funded through December 8 by a Continuing Resolution (H.R. 601 – Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017). The full house passed a 12-bill appropriations package (H.R. 3354) and sent the bill to the senate. The senate has focused its work on individual appropriations bills. The house and senate need to come to agreement on their significantly different bills. In the meantime, more disaster aid is needed and the house is planning to take up a $29 million disaster relief bill shortly that was requested by the president. The senate would likely address the bill when it returns the week of October 16.

The President may have muddied the final FY 2018 appropriations waters when he released a new set of demands for any bill that would address the “dreamers” who were brought to the U.S. illegally as children. The Administration’s proposal seems to go back on an agreement that the President had with Minority Leaders Pelosi and Schumer by linking the Deferred Action for Childhood Arrivals program extension to construction of a wall along the entire length of the U.S.-Mexico border, a crackdown on “sanctuary cities” and other immigration issues. This has raised the possibility that Democrats will hold up the final FY 2018 appropriations bill(s) until the dreamers have been protected from deportation.

**Elder Justice: Grassley-Blumenthal Bill Passes House**

S.178, the Grassley-Blumenthal Elder Abuse Prevention and Prosecution Act of 2017 (also known as the Robert Matava Elder Abuse Prosecution Act of 2017), previously passed by the full senate on August 1, was passed by the full house on October 3. It awaits the president’s signature.

EJC National Coordinator Bob Blancato called S.178 "the most significant elder justice legislation to pass since the Elder Justice Act of 2010." He said, "We were proud to endorse the bill and especially to support its goal to improve our nation's response to elder abuse and financial exploitation by seeing this as a law-and-order issue. We encourage the investigation and prosecution of perpetrators of elder abuse who are nothing more than predators…and support the bill's call for improving data collection, training FBI agents on elder abuse investigations, and designating at least one Assistant US Attorney from each federal judicial district as an elder justice coordinator."

The bill can be read in full [here](http://r20.rs6.net/tn.jsp?f=001OkrbR0jqK1EfS2PJizLZej4ZXKLB8ZheslGwwNv9C4CiXYAYaVT6IliANhFwL7Ko0q6G02LZDQOAqUkdHlgca1wUFqhz-PyuqmnHKarcLS2OkJZSEIAkL8Tb8AhpdlZvm_909BLJAE1FBgtj-xJq5kjO1tunJO9OLCQxy2onS_iucHkinJ-Kk6R-DyJsPhGW8DL1EE_etnLKF-GJB3CQENLrvOKP8CQ_QMdSdLdtxq8=&c=Xj84p8b4ty8uGi0WzZcK-SfTp5UUa3yUKef5VLZHaO3cGQJD3eaVpQ==&ch=cihFAXhMGTMhw534aIqW5Ea1X1wbMvkkDBzgGCd940AB2t89cRTfeA==).

**CHIP**

On October 4, the House Energy and Commerce Committee passed several bills that are listed below. Ranking Member Frank Pallone (D-NJ) made the following statement about the process and bills:

“The partisan bills Committee Republicans approved late last night have no chance of ever becoming law.  I’m concerned that the Republicans’ actions in Committee will make it more difficult to come to a bipartisan agreement and will further delay reauthorization of CHIP, Community Health Centers and other important public health laws.  In order to expedite action, I call on Chairman Walden to return to the negotiating table so that we can develop a bill that can garner strong, bipartisan support.  CHIP and Community Health Centers have traditionally been approved with both Democratic and Republican support, and that should not be any different this year.  Let’s continue the negotiations so we can end the uncertainty for millions of kids and families who rely on CHIP and Community Health Centers for their health care.”  In a subsequent statement (October 10), E&C Chairman Greg Walden (R-OR) agreed to briefly delay floor consideration of the bills to consider the concerns of the Democrats on the Committee.

Senate Finance Committee leaders Orrin Hatch (R-UT) and Ron Wyden (D-OR.) announced that they have reached an agreement to extend the Children's Health Insurance Program (CHIP) for five years. The program has bipartisan support and must be reauthorized every five years. It officially expired September 30. The committee has not determined how it would fund the $8 billion program. The Committee reported their CHIP reauthorization bill, the Keep Kids’ Insurance Dependable and Secure (KIDS) Act of 2017, to the full Senate: <https://www.finance.senate.gov/hearings/open-executive-session-to-consider-the-keep-kids-insurance-dependable-and-secure-kids-act-of-2017>

Here is a Roll Call article: “[Senate Committee Advances Children’s Health Care Bill](http://www.rollcall.com/news/policy/senate-advances-childrens-health-bill)”

Here are the House bills that Rep. Pallone referenced:

[H.R. 849, Protecting Seniors’ Access to Medicare Act of 2017](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-115849ih_0.pdf), To repeal the provisions of the Patient Protection and Affordable Care Act providing for the Independent Payment Advisory Board.

[H.R. 2465, Steve Gleason Enduring Voices Act of 2017](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1152465ih_1.pdf), To amend title XVIII of the Social Security Act to make permanent the removal of the rental cap for durable medical equipment under the Medicare program with respect to speech generating devices.

[H.R. 2557, Prostate Cancer Misdiagnosis Elimination Act of 2017](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1152557ih_2.pdf), To amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of certain DNA Specimen Provenance Assay clinical diagnostic laboratory tests.

[H.R. 3120,](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1153120ih_0.pdf) To amend title XVIII of the Social Security Act to reduce the volume of future electronic health record-related significant hardship requests.

[H.R. 3245, Medicare Civil and Criminal Penalties Update Act](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1153245ih_1.pdf), To amend title XI of the Social Security Act to increase civil money penalties and criminal fines for Federal health care program fraud and abuse, and for other purposes.

[H.R. 3263](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1153263ih.pdf), To amend title XVIII of the Social Security Act to extend the Medicare independence at home medical practice demonstration program.

[H.R. 1148, FAST Act of 2017](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1151148ih_1.pdf)

[H.R. 3271, Protecting Access to Diabetes Supplies Act of 2017](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-1153271ih_0.pdf)

[H.R. \_\_, HEALTHY KIDS Act](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-115pih-HEALTHYKIDSAct.pdf), To extend funding for the Children’s Health Insurance Program, and for
other purposes.

[H.R. \_\_, CHAMPION Act](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/BILLS-115pih-CHAMPIONAct.pdf), To extend funding for certain public health programs, and for other purposes.

**Resignation of HHS Secretary**

On September 29, Health and Human Services (HHS) Secretary Tom Price resigned in the wake of multiple federal investigations and increasing criticism over his extensive use of private planes for government business. President Trump has appointed Don J. Wright, the current deputy assistant secretary for health and the director of the Office of Disease Prevention and Health Promotion, to serve as acting HHS Secretary.

<http://www.politico.com/story/2017/09/29/price-has-resigned-as-health-and-human-services-secretary-243315?elq_cid=1597125&x_id>=

**GAO Request on Nutritional Quality in Federal Programs for Older Americans**

Senators Patty Murray (D-WA) and Bob Casey (D-PA) have filed a request with the Government Accountability Office (GAO) to determine if federal funded programs meet the nutritional needs of the older adults they serve. The Defeat Malnutrition Today Coalition’s National Coordinator Bob Blancato noted their interest in this study correlates directly with the growing rate of malnutrition among older adults.

<http://www.defeatmalnutrition.today/blog/gao-request-made-nutritional-quality-federal-programs-older-adults>

**President’s Committee for People with Intellectual Disabilities Continued**

On September 29, President Trump signed an executive order continuing the President’s Committee for People with Intellectual Disabilities (PCPID) for another 2 years. PCPID is a federal advisory committee that promoted policies and initiatives that support independence and lifelong community inclusion. Appointments to the vacant positions on the committee are likely to be made over the next few months.

<https://www.whitehouse.gov/the-press-office/2017/09/29/presidential-executive-order-continuance-certain-federal-advisory>

**Right of Nursing Home Residents to Sue**

In response to the nursing home deaths caused by Hurricane Irma, 46 House Democrats have asked the Centers for Medicare and Medicaid Services (CMS) to let nursing home residents take facilities to court over abuse allegations. CMS had announced it intended to change the rule under the previous Administration that banned nursing homes that accepted Medicare and Medicaid funds from requiring a third party to settle disputes. The Fair Arbitration Now Coalition, consisting of more than 75 health and advocacy groups, seeks to stop the rule’s reversal.

<http://thehill.com/policy/healthcare/353876-house-democrats-plead-for-right-of-residents-to-sue-nursing-homes?utm_source=&utm_medium=email&utm_campaign=11186>

**RAISE Family Caregivers Act - S. 1028**

The full senate passed this bill on September 26.  The bill’s primary objectives are to direct the Department of Health and Human Services (HHS) to develop, maintain, and periodically update a National Family Caregiving Strategy and to have HHS convene a Family Caregiving Advisory Council to advise it on recognizing and supporting family caregivers.

**Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act of 2017 – S. 870**

The full senate also passed this bipartisan bill designed to ensure, among other things, that Medicare beneficiaries living with advanced illness receive the highest quality care.

**Medicaid Agencies Partner with SHIPS to Improve Care for Duals**

A brief written by the Integrated Care Resource Center describes opportunities for Medicaid agencies to partner with State Health Insurance Programs (SHIPs). SHIPs are responsible for providing counseling and assistance for Medicare beneficiaries and their families. States have found their SHIPS to be helpful partners in educating Medicare-Medicaid (duals) enrollees on integrated healthcare programs. The brief highlights methods used by Arizona, Massachusetts and Texas, where Medicaid agencies and SHIPs have worked together to educate duals on new car delivery options. You may recall that the house has proposed elimination of SHIP. The Senate Appropriations Committee, however, passed its LHHS bill for FY 2018 which includes SHIP funding at $47.1 million, preserving the FY 2017 federal investment in this program.

<http://nasuad.org/sites/nasuad/files/Medicaid%20Partnerships%20with%20SHIPS.pdf>