**February 2014 PUBLIC POLICY UPDATE**

**By: Brian Lindberg and Marly Flores**

Big Picture

President Obama called for a “year of action” in his State of the Union Address. Yet the speech consisted of many recycled or repackaged items, such as higher minimum wages, universal pre-k, and gun control. During the speech, President Obama emphasized that he would use his executive power to accomplish his policy goals if Congress failed to act on them.

Some members of Congress responded immediately expressing serious concern about the President invoking his use of executive powers. Representative Scalise (R, LA-1st), chairman of the Republican Study Committee stated “we don’t have a monarchy in this country- there’s an executive branch and the legislative branch, and the president has to work with Congress to get things done.” Senator Cruz wrote a *Wall Street Journal* [op-ed](http://online.wsj.com/news/articles/SB10001424052702304632204579338793559838308) titled “The Imperial Presidency of Barack Obama.” In the op-ed, he wrote about President Obama’s disregard of the written law and that he, instead, enforces his own policies via executive “fiat.”

In other news, Rep. Henry Waxman (D, CA-33rd) the Ranking Member of the House Energy and Commerce Committee, has announced his retirement after nearly 40 yearsin Congress. Rep. Waxman is considered by many to be a legislative genius. Representatives Frank Pallone (D, NJ-6th) and Anna Eshoo (D, CA-18th) have announced their intent to pursue the chairmanship. Former Chairman John Dingell (D, MI-12th) is giving “thoughtful consideration” to a possible bid. Rep. Pallone is the third Democrat in seniority and has served as chairman or ranking member of three of the committee’s six subcommittees. Rep. Eshoo is fifth in seniority and has close ties to Democratic leader Nancy Pelosi.

FY 2014 Appropriations

With the Bipartisan Budget Agreement (BBA) under its belt, Congress succeeded in passing an appropriations bill for the remainder of FY 2014. AppropriationsChairs Senator Mikulski (D-MD) and Representative Rogers (R, KY-5th) came to an agreement (and Congress passed) a $1.1 trillion omnibus spending bill to fund the government. The passage of the spending bill averts another government shutdown.

Under the deal, most Older Americans Act (OAA) programs will receive level-funding in FY14, relative to the FY13 post-sequester levels. Programs that will receive a boost in funds include Congregate and Home Delivered Meals, NIA, and geriatric education. Unfortunately, the Elder Justice Act’s Adult Protective Services Demonstration did not receive the $8 million as requested in the Administration’s FY14 budget proposal.

FY 2015 Appropriations

House Appropriations Chairman Rogers (R-KY) announced on January 29 the subcommittee rosters for the second session of the 113th Congress. The Labor, Health and Human Services Subcommittee has two new members: Rep. Martha Roby (R-AL) and Rep. Chris Steward (R-UT). Chairman Jack Kingston (R-GA) will remain as Chair and Steve Womack (R-AR) will remain as Vice-Chairman for the Labor, Health and Human Services Subcommittee.

*Congressional Quarterly* has reported that the House and Senate appropriators are likely to pre-negotiate the spending levels for the 12 annual FY 2015 discretionary spending bills instead of waiting for Congress to pass a budget resolution. The bipartisan budget agreement provided the Appropriations Chairs Mikulski and Rogers with a top line of $1.014 trillion for discretionary spending for FY 2015. Caps are also set for non-defense programs at $492.5 billion and defense spending at $521.4 billion.

Debt Ceiling

The nation is expected to hit the $16.7 trillion borrowing limit on February 7, 2014. Under the deal that ended the government shutdown in October 2013, the debt limit was extended until February 7. Treasury Secretary Jack Lew urged Congress to act on this matter in a February 3rd conference at the Bipartisan Policy Center. According to Secretary Lew, his ability to pay the nation’s bills will run out by the end of the month. Budget pundits expect Congress to raise the debt limit soon to avoid potential economic damage.

President Obama and Senate Democrats have insisted that they will not negotiate over a debt limit increase. Republicans are eyeing policy trade-offs for raising the debt ceiling, such as starting the construction of the Keystone XL pipeline, reversing the cost-of-living adjustment (COLA) cut for some military retirees, and repealing the temporary “risk corridors” provision in the Affordable Care Act (ACA). The risk corridor program, designed to stabilize rates, requires insurance companies to pay money into the Treasury if their earnings surpass certain thresholds, while the government covers some of their losses if the opposite scenario occurs. Any type of repeal to the ACA is a non-starter for Democrats. Republicans know they have little leverage going into debt limit talks. House Speaker Boehner (R-OH) has ruled out default. House Majority Leader Cantor (R-VA) is also “confident there will be no default.”

Affordable Care Act

The Centers for Medicare and Medicaid Services (CMS) stated that nearly 3 million people have enrolled for health care coverage through the state and federal health insurance exchanges between October 1 and December 28, 2013. Republican lawmakers continue their effort to undue or replace the Affordable Care Act (ACA). Health policy experts warn the repealing the ACA would be “cataclysmic” because about 12 million people have received new coverage or some level of tangible benefits from the federal law.

House Majority Leader Eric Cantor (R-VA) stated during an interview on *CBS* *Face the Nation* that the law is “on borrowed time” and that it will be a winning issue for the GOP in this year’s midterm elections. Republican Senators Burr, Coburn and Hatch have introduced an [alternative](http://www.washingtontimes.com/news/2014/jan/27/gop-trio-offers-alternative-obamacare/) plan to the ACA. The bill would keep popular ACA provisions (e.g., lifetime limits on insurance benefit and allow children to remain on their parents’ policies until age 26) but it would remove the individual mandate and eliminate minimum coverage requirements.

Older Americans Act

The first real movement from the House on the Older Americans Act in years took place with the modest accomplishment of the introduction of a straight reauthorization bill by Representatives Chris Gibson (R, NY-19th) and Tom Reed (R, NY-23rd): *Older Americans Act Reauthorization of 2014* (H.R. 3850). The bill is a straight reauthorization bill (no policy changes) that includes bipartisan support from Representative Betty McCollum (D, MN-4th). The Senate HELP Committee passed its version of the OAA reauthorization (S. 1562) last fall but the bill has not gone before the full Senate yet. The House Subcommittee on Higher Education and Workforce training has scheduled a hearing on the Older Americans Act Reauthorization for February 11. The text for H.R. 3850 is available [here](http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3850:), and the text of S.1562 is [here.](http://www.gpo.gov/fdsys/pkg/BILLS-113s1562rs/pdf/BILLS-113s1562rs.pdf) There are rumors that a group of members of the Subcommittee are working on their own version of a OAA reauthorization.

SGR

The Congressional Budget Office (CBO) estimated that the House Ways and Means proposal to repeal Medicare sustainable growth rate (SGR) formula ([H.R. 2810](http://beta.congress.gov/bill/113th/house-bill/2810)) would cost $121.1 billion over 10 years and the House Energy and Commerce bill would cost $153.2 billion. The Senate Finance proposal would cost $150.4 billion. All three proposals are based on a payment system that rewards physicians based on quality and performance instead of volume.

The leadership of the three committees are working to reconcile the three bills to replace the Medicare physician reimbursement formula and looking into possible offsets to pay for the bill. Offsets could affect Medicare and Medicaid providers and beneficiaries, and the 2010 health care overhaul. Lawmakers hope to pass a final agreement before March 31,2014, which is when the 3-month patch expires and physicians would see Medicare payment cuts. Word on an agreement could come at any time, but some have suggested that if it does not happen shortly, an extension until after the elections may be considered.

Two Midnight Rule

The Centers for Medicare and Medicaid Services announced that it would [delay](http://cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/InpatientHospitalReviews.html) the new “two-midnight” rule. CMS stated the controversial new rule for determining inpatient hospital stays will begin in October instead of April, 2014. The new policy would curb a costly rise in the number of extended outpatient hospital stays. Hospitals and physicians have been vocal about their opposition to the rule.

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