**September 2014 PUBLIC POLICY UPDATE**

**By: Brian Lindberg**

**Big Picture**

Congress returned to DC from its five-week recess on September 8th for only a short period.  The House and Senate completed their work on the must-pass Continuing Resolution (CR) to keep government operating beyond September 30th, and then they headed home on September 19 to campaign. They plan to return to DC again on November 12th.

The Congress spent some of that short time in session taking “messaging votes” on bills that had no chance of becoming law before the elections, but might put the other party on the defensive. For example, the Senate Democrats scheduled votes on a bill to ensure that men and women receive equal pay for equal work and legislation to enable Congress to limit campaign contributions and expenditures. The House Republicans continued their work to undo the Affordable Care Act (ACA) by passing a bill that would allow health insurance companies to continue to offer for sale through 2018 policies in the group market that were in effect in 2013, but do not meet ACA standards.

If one had thoughts that the lame duck session planned for after the elections is going to make up for the least productive Congress in six decades (only 163 bills enacted), disappointment may be just around the corner. Pundits are already calling the session after the elections the “lamest lame-duck.” There are a few bills that need to or may move in November and December including the longer term appropriations bill (CR), the National Defense Authorization Act, the Marketplace Fairness Act, a tax “extenders package,” an energy efficiency bill, executive branch nominations, and a resolution authorizing military action in Iraq and Syria. There is still talk that an effort to finish work on the Sustainable Growth Rate for Physicians (SGR) will materialize, but most see that as too heavy a lift this year. So, there is plenty to do, but much of it does not relate to the aging and health care agenda. Of course, the results of the election and who will be leading the Senate in the next Congress will influence the agenda. Some Republicans are already discussing plans for significant health care reforms by using the budget reconciliation process next year if they control both the House and Senate.

Finally, the Affordable Care Act remains a relevant force in the upcoming elections. Here is what a recent Center for Medicare Advocacy article reported about a September 9, 2014 Kaiser Family Foundation poll: “The Poll also found that public opinion on the ACA overall remains more negative than positive: 47% view the law unfavorably compared to 35% with a favorable view. The percentages among registered voters are similar, with 49% holding unfavorable views compared to 35% holding favorable views. Among likely voters the negative views increase slightly: 51% compared to 35%. Despite the higher negative opinions of the law, nearly twice as many Americans would like their Congressional representatives to focus on improving the existing law (63%) rather than repealing and replacing it with something else (33%).

Voters in the 11 states with the most competitive Senate races, as rated by The Cook Political Report, found that political campaigns focused large percentages of their advertisements on the ACA. The survey found that 72% reported seeing ads related to the health care law; 34% reported seeing more ads against the law, while only 4% reported seeing more ads in support of the law.”

**FY 2015 Appropriations**

Before Congress left town, the Senate passed H.J.Res.124, which funds the federal government through December 11, 2014. The bill also reauthorizes the Export-Import Bank through June 2015, provides $88 million to fight the Ebola outbreak in Africa, and authorizes the arming and training of Syrian opposition fighters. The bill funds government programs and services at the current annual cap of $1.012 trillion but includes an across the board cut of 0.0554 percent. How this reduction will play out in the final appropriation bill for the rest of the fiscal year has not been determined.

Here are two items of note that were included in the CR:

Commodity Supplemental Food Program: “A provision allowing additional funds to offset food price increases in the Commodity Supplemental Food Program to ensure that no current recipients are removed from the program.” (<http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=392934>).

LIHEAP (from the LIHEAP coalition [www.liheap.org](http://www.liheap.org)): the CR contains language similar to last year that allows HHS to allocate up to 90% of the LIHEAP funding during the term of the CR (while most programs without such exceptions are expected to be conservative in their spending through December). This will allow LIHEAP to respond to the bulk of demand for heating assistance.

Here is a link to information on [the CR](http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=392934).

On September 15, the House Appropriations Labor-HHS-Education Subcommittee Democrats released an appropriations bill for Labor-HHS-Education FY 2015. Among other things, it would fund the Elder Justice Initiative at the same level as the Senate proposed inits bill, $10 million. Here are the details: [**one-pager**](http://r20.rs6.net/tn.jsp?f=001a0Lv8B2IwqhaGcz1yCBV1QcdX7NHwqFInLuMMCY91rg1nKK-otFp8EEWFEtYEm_zlEXRWiz8oJBo9oRQtsoTvUZ1m_jFArqfTqMM9_bjsRo_RiiJ34X2f8fBICnq7pQ9InOnsJBSz27XBeBjq2TS25bgmdRl_9OsLo9iFRih5XbF20znVJW2lPSiq-oimnmbK0r-Zm44s0ts-gM5R7QcQft-Tyr0W-AbmrjKAuJhQJaX-Wso7g4u4jB_J3MOfKyk&c=xVGAT_ubUNZqz8_dFEM27uOkpxEGbo0jANS_lLH3MVGK2dcrjFAptA==&ch=NpFUARp08qMkZICXZ2yz4jPUzHgEVE57cg__AptQxE_g4gcJMzq2sQ==)**;** [**summary**](http://r20.rs6.net/tn.jsp?f=001a0Lv8B2IwqhaGcz1yCBV1QcdX7NHwqFInLuMMCY91rg1nKK-otFp8EEWFEtYEm_znX3GoLK5gCxoaTbyoTpNb2W6KMeFHCcP5eip_ImzTAGS3cQPGo84u6T2MWi6IQQ07F9IIzm7vV1Y_g-m9SaAIE5fgLVG_hIyp1473dVWYfdTM3oeqVBTa2R2FXCtT-KQsWTMMyejZ8NrufeSLD9OaiNUGJabUmdsQIvJ3YXKFXhcPVOB3aUG5qM4wkiGLxhobi8WhqTZ5VA=&c=xVGAT_ubUNZqz8_dFEM27uOkpxEGbo0jANS_lLH3MVGK2dcrjFAptA==&ch=NpFUARp08qMkZICXZ2yz4jPUzHgEVE57cg__AptQxE_g4gcJMzq2sQ==)**;** [**funding table**](http://r20.rs6.net/tn.jsp?f=001a0Lv8B2IwqhaGcz1yCBV1QcdX7NHwqFInLuMMCY91rg1nKK-otFp8EEWFEtYEm_zatPbgp3v4b4Pc68EEtVIj-Obk4SpTcT9fOCyNSdwp6z9tzmj9Yl4x7XvxdUnteSWcGYh9Rb2QWclcNPjP-Cfy6QV1mHAzQO-OV_Th1SxrOQV4p4KaVzlqP7fACbV94IwLrVNSUGDPOGPywRxPMZ1OGQxqJwOEZ3EY53QDYUxF0BTKis86OoonPrUDp06v4l1&c=xVGAT_ubUNZqz8_dFEM27uOkpxEGbo0jANS_lLH3MVGK2dcrjFAptA==&ch=NpFUARp08qMkZICXZ2yz4jPUzHgEVE57cg__AptQxE_g4gcJMzq2sQ==)**;** [**full bill**](http://r20.rs6.net/tn.jsp?f=001a0Lv8B2IwqhaGcz1yCBV1QcdX7NHwqFInLuMMCY91rg1nKK-otFp8EEWFEtYEm_zFcGy7XASJUOfV3isamcPAN_9CeEGOgGziDoBG0uYtoXt2AoUQDEeTpLL7YNBcpmyf_wHy1Q81Tj4sk6rhOoUbosxi2Dv1xJGoIiAaK7h3-zCujZ6DHBTwJ0uLzvg-88iuPSW51NUxBTYRsudH8cauxchhbK8N7rUU_TvF9eOZU6rhj633v0RNfEomVMSqZvA&c=xVGAT_ubUNZqz8_dFEM27uOkpxEGbo0jANS_lLH3MVGK2dcrjFAptA==&ch=NpFUARp08qMkZICXZ2yz4jPUzHgEVE57cg__AptQxE_g4gcJMzq2sQ==)**.**

**Hospice Legislation**

The last week before the House and Senate recessed until after the elections, both bodies passed H.R. 4994 (S. 2553), the Improving Medicare Post-Acute Care Transformation Act (IMPACT Act). The bill is expected to be signed by the President.

Post-acute care can be provided by skilled nursing facilities, inpatient rehab facilities, long-term care hospitals, and home health agencies. These providers will now have to submit standardized data which will help enable comparisons across various provider the settings. The legislation also has the Department of Health and Human Services reducing payments to nursing homes that do not report the data. Data will be use to modify the payment system, better coordinate care, and improve outcomes in the future. The bill increases the scrutiny on hospice providers. The *Washington Post* reported that: “Several Medicare statistics analyzed by the Washington Post indicate that some hospices may be stinting on patient care in order to pad profits. For example, about 18 percent did not provide a single patient with "crisis care" during 2012, according to Medicare billings analyzed by the *Washington Post*, meaning the hospice did not provide either continuous nursing care or inpatient treatments. Hospices are required to provide such services to patients whose symptoms are difficult to control.” [Washington Post](http://NAELA.informz.net/z/cjUucD9taT00MjkwNTMwJnA9MSZ1PTEwMjQwOTg0MTgmbGk9MjQ5NjY4NDc/index.html)

In the meantime, the American Medical Association (AMA) released current procedural terminology (CPT) codes for advanced care planning services. These codes address the issue of paying doctors for the end-of-life discussions that they have with patients. One of the new codes covers 30 minutes of the time spent discussing advance directives with the patient, family member, and/or surrogate. Other codes cover additional time.

**Older Americans Act**

In spite of grassroots and DC-based efforts by the aging network and the Leadership Council of Aging Organizations (LCAO), little progress was made during the summer toward reauthorization of the OAA. Advocacy groups continue their work during the current recess, but few are confident that disagreements regarding state funding allocations for the OAA will be resolved during the lame duck session.

**White House Conference on Aging**

Nora Super, the Executive Director of the 2015 White House Conference, dove right into her new role by beginning what may be a long series of “listening sessions” across the country at national conferences. Advocates await details on future regional meetings and pre-conference events focused on the four primary issue areas.

**Elder Justice**

On September 17, Rep. Peter King (R-NY) introduced [**H.R. 5515**](http://r20.rs6.net/tn.jsp?f=001a0Lv8B2IwqhaGcz1yCBV1QcdX7NHwqFInLuMMCY91rg1nKK-otFp8EEWFEtYEm_zUPP6D3mCGzRXHZ4UYmLaJ9jbygBT7VYCaxx7wpPLCFERkR4HxxEKn5ZsTsPzEAK1dWuFHuTqLm1KGqu7KY6xXiOXmNnmPJ7zaUHMMs7H7xnBU-hzUOgDRqXSkNqcXYXKqTYSYM10cjNqPDoC7AcgAZFoAZeX7vnPIMZAUWZU6Vs=&c=xVGAT_ubUNZqz8_dFEM27uOkpxEGbo0jANS_lLH3MVGK2dcrjFAptA==&ch=NpFUARp08qMkZICXZ2yz4jPUzHgEVE57cg__AptQxE_g4gcJMzq2sQ==), the Elder Justice Reauthorization Act. The EJRA is a simple reauthorization of the current law (Elder Justice Act) through the end of FY 2019. It is co-sponsored by Representatives Tim Bishop (D-1st-NY), Earl Blumenauer (D-3-OR), Steve Cohen (D-9th-TN), Alan Grayson (D-9th-FL), Raul Grijalva ((D-3rd-AZ), Mike Honda (D-17th-CA), Marcy Kaptur (D-9th-OH), Michelle Lujan Grisham (D-1st NM), and Jan Schakowsky (D-9th-IL). The bill was referred to the Ways and Means Committee, the Judiciary Committee, the Education and Workforce Committee and the Energy and Commerce Committee.

The U.S. Department of Justice (DOJ) has launched an elder justice website.  The [site](http://r20.rs6.net/tn.jsp?f=0010dRzu3gMXNwPGesNn3Ut18KvnzO7_tTKZc0FTsxE3pFDDOI8HevdrA9OlHvUAAZsz5EKtYRW4sYMiAOo18RlxkkcCH8LAyC7jenqaFIDwjyuT7qA9P8BiZBkfXeiZd2_7TfMGjDKGEWKEvrmwcTJlSpjOZDJzFQ3D6yw8Dvh7wQOTym6EgfurPW7D-whtmuS&c=hihhhPlSjHcH0tIEm00juqAfirG7joAXPvQskTRsOGk-x9iTR3VCFQ==&ch=m4nqcHjTTDJyIcM2COomnOsYGic9Yk9gEp6j-icGsHTv4IfgSA7Hag==) is designed to provide information to victims, family members, prosecutors, researchers, and service providers.