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# Public Policy Update - September 2015

## By Brian Lindberg and Marly Flores

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### **Big Picture**

I hope that the Members of the House and Senate and their staffs have had a restful recess. The Congress now faces major hurdles. Not only does it have to try to avoid a government shutdown, it also has to increase the debt limit, pass another highway bill, deal with cybersecurity legislation, handle efforts to defund Planned Parenthood, and vote on the Iran nuclear deal. Discussions about addressing the crisis of Syrian refugees will also be a hot topic now that members are back from recess. And on September 24, His Holiness Pope Francis will address the Congress.

Congress left town for its five-week summer recess with all these issues looming. However, before the recess, the Republican-controlled Congress had been quite productive. Congress handed President Obama a major victory with the passage of the Trans-Pacific Partnership deal. The Senate approved and President Obama signed the Patriot Act, which allows the government to restart surveillance authority but under new restrictions. Another notable accomplishment by Congress earlier in the year was the passage of the *Medicare Access and CHIP Reauthorization Act (MACRA)*. The legislation is a permanent repeal of Medicare's despised sustainable growth rate formula for paying doctors, ending more than a decade of legislative gridlock on the issue.

Another issue that was resolved early in the summer was the Supreme Court's decision to allow federal funding for state exchanges under the Affordable Care Act.

### **Continuing Resolution (CR)**

As is often the case right before the fiscal year ends on September 30, the Congress will face the prospect of a continuing resolution to fund the government and prevent a shut down. Although there was action on most appropriations bills before the summer recess, none of the appropriations bills have been passed by both chambers of Congress or signed into law by the president.

Senator Mitch McConnell, Senate Majority Leader, has stated that the government will not shutdown "on his watch." It is unclear whether the CR will be short, e.g., three months, or much longer, perhaps a year. President Obama tweeted: "Amidst global volatility, Congress should protect the momentum of our growing economy (not kill it). We must avoid shutdown / austerity."

Although the senate majority leader and the president appear to agree on averting a government shutdown, it may be harder to pass a CR than one might think. Several Republicans in both chambers hope to use the process to force another vote to defund Planned Parenthood amid a scandal involving the organization's alleged sale of fetal tissue. A vote to do just that failed in the Senate amid Democratic opposition (all

but Sens. Joe Donnelly and Joe Manchin voted against the defunding attempt) during the summer. If Republicans attach the defunding effort to the funding resolution, Congress will again find itself on the brink of a shutdown. President Obama has stated that he will not sign a measure that includes a provision to defund Planned Parenthood.

In addition, the president has vowed to veto funding legislation that applies sequestration. Sequestration is mandated by the Budget Control Act of 2011 which was implemented to fight the budget deficit and national debt. The sequester reduces both defense and nondefense discretionary spending. Any sequester relief will have to be offset elsewhere in the budget. Civilian agencies face sequestration cuts of \$1.8 billion in 2016 if lawmakers pass House spending proposals, according to a new [report](#) from the Office of Management and Budget. The proposed spending levels would trigger a sequester because they surpass the caps set by the 2011 Budget Control Act, OMB found. Those caps were lowered in fiscal 2014 and 2015 thanks to a budget deal that offset some of the required cuts, but are scheduled to kick back in starting Oct. 1.

The defense side of the budget would be virtually unaffected by sequestration, with the BCA requiring just \$1 million in cuts under a house bill and \$3 million in cuts under a senate proposal. Non-defense discretionary spending under the senate appropriations plans came in \$146 million under the BCA caps, OMB said, meaning no sequester would be necessary. Sequestration required dramatic, across-the-board cuts for part of fiscal 2014, as Congress was unable to come up with an alternative plan to offset the required spending reductions. OMB estimated the total non-defense spending cap for fiscal 2016 will be \$510 billion.

Democrats have been labeling the Republicans' budget cuts "reckless." A report by the progressive Center for American Progress points out that budget cuts and sequestration have the potential to reduce economic investment in three critical areas: infrastructure, education, and affordable housing. In addition, federal budget cuts affect the very government programs that help level the playing field for middle and low income Americans. The CAP report promotes the idea of "user fees" (although some would argue that taxes by any other name would still smell as sweet). This tactic was used by Senator Patty Murray and Rep. Paul Ryan for the 2103 budget deal, for example, when the airline security fees were increased. The report calls for equal increases to defense and non-defense caps, something that President Obama and Minority Leader Harry Reid also support.

The sequester may never come to fruition, as appropriations bills have stalled in both the House and Senate. Even if they were passed, President Obama has threatened to veto any measure that does not significantly raise spending levels above those required by the BCA. Both the House and Senate funding measures cut spending significantly at agencies across government, though the cuts proposed in the lower chamber would not be severe enough to stave off a sequester.

Congress and the White House have through Sept. 30 to reach an agreement, or agencies will be forced to shut down.

## **Budget Predictions by the Congressional Budget Office**

According to [updated budget projections](#) by the Congressional Budget Office (CBO), federal health spending will rise more than had been expected. Health care policy changes such as the repeal of Medicare's sustainable growth rate formula is projected to increase spending by \$272 billion. CBO also estimates that the federal deficit will be \$60 billion lower than previous estimates, partly due to revenue from fees and fines under the ACA.

## **White House Conference on Aging Announcements: A Summary**

The 2015 White House Conference on Aging staged a very successful final conference at the White House on July 13, 2015. President Obama addressed the 200 invited stakeholders. The event was live-streamed and watched by thousands of Americans. The president and several of his cabinet secretaries announced a number of important efforts to assist older Americans. Staff is currently working on a final report. See more at [www.whitehouseconferenceonaging.gov](http://www.whitehouseconferenceonaging.gov) "key deliverables."

- **Medicare:** The Administration announced an interagency effort to improve notice and education for seniors and people with disabilities new to the Medicare program. It also unveiled an updated Social Security statement that will feature content on Medicare enrollment. Also announced were updates to 1-800 Medicare call scripts, beneficiary notices and more.
- **Transportation:** The White House announced collaboration between the Administration for Community Living (ACL) and the Federal Transit Administration, which awarded grants to 16 communities to develop sustainable, scalable programs that provide transportation to healthcare services.
- **Elder Justice:** ACL provided an update on the design of the National Adult Maltreatment Reporting System, which will be completed in September. There was also an announcement of ACL's comprehensive evaluation of State Long-Term Care Ombudsman programs and an update on the implementation of the new federal rule for LTCO programs, which take effect in 2016.
- **Retirement Security:** ACL's National Resource Center on Women and Retirement Planning, operated by the Women's Institute for a Secure Retirement, is partnering with the Retirement Clearinghouse on a pilot program to help low- and moderate-income workers better manage their retirement savings.

## **Feedback Needed on APS Draft Guidelines**

The ACL released [draft Voluntary Consensus Guidelines for State APS Systems](#) to promote an effective adult protective services response across the country. Experts in the field of APS and adult maltreatment developed the draft guidelines. *The deadline for comments is October 30, 2015.* Click here to [submit](#) a comment.

## **Older Americans Act Reauthorization**

On July 16, the Senate passed the *Older American Act Reauthorization Act of 2015* (S. 192), by unanimous consent. The OAA authorization expired in 2011, and its services and programs have been maintained through the annual appropriations process. The bill now moves to the House for consideration. House staff are working on their own version. Read the letter the LCAO sent to the House on the OAA reauthorization [here](#).

## **Observation Status**

On August 10, President Obama signed the *Notice of Observation, Treatment and Implication for Care Eligibility Act* (HR 876). The legislation requires hospitals to notify Medicare beneficiaries of their outpatient status when receiving observation care but have not been admitted to the hospital. Hospitals have until August 2016 to comply with the new law. Read more [here](#).

## **Veterans Affairs**

The House voted 256-170 to approve H.R. 1994, the VA Accountability Act of 2015, which would allow the Department of Veterans Affairs to make it easier to fire or demote employees for poor performance. The measure would create an 18-month probationary period for new employees and limit to 14 days the pay for employees placed on administrative leave. The White House has threatened to veto the bill noting its concern that it would limit employees' due process rights. Read more [here](#).

## **LGBT Elder Americans Act**

On July 14, Senator Michael Bennet (D-CO) reintroduced the *LGBT Elder Americans Act* (S.1765). The bill aims to make additional resources available to elder LGBT Americans and would build upon the Older Americans Act. This legislation would designate LGBT seniors as a vulnerable population and permanently establish a National Resource Center on LGBT Aging. Joining Senator Bennet as original cosponsors of the legislation are Senators Baldwin (D-WI) and Merkley (D-OR). Read the full text of the bill [here](#).

## **Social Security Trustees' Report**

The Social Security Board of Trustees released its annual report on the financial status of the Social Security trust funds. According to the [annual report](#), the combined asset reserves of the Old-Age and Survivor Insurance and Disability Insurance (OASDI) are projected to become depleted in 2034, a year later than projected last year. The DI Trust is facing an urgent threat of reserve depletion in 2016, which remains unchanged from last year's estimate. Various bills have been introduced to address this funding crisis and make other changes to the SSDI program. See testimony from Justice in Aging [here](#), an LCAO Issue Brief [here](#), and an informative blog post from the Center on Budget and Policy Priorities [here](#).

The Supplemental Security Income (SSI) Restoration Act of 2015 (H.R. 2442 and S. 138) is gaining traction in both chambers. To date, ten senators and more than 40 representatives have signed on as cosponsors. The legislation provides needed updates

to the SSI program that millions of the poorest older Americans and people with disabilities rely on as their sole source of support. Read more [here](#).

### **Democratic Leaders Urge Notice for those Close to Medicare Eligibility**

Ranking leaders of U.S. House Committees on Education and the Workforce, Energy and Commerce, and Ways and Means, and the Seniors Task Force sent a letter urging the Department of Health and Human Services, the Department of Labor, and the Social Security Administration to create a system to ensure individuals nearing Medicare eligibility receive timely and complete notice about Medicare enrollment. Read the letter [here](#).

### **Financing LTSS**

The HHS Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of Disability, Aging and Long-Term Care Policy, has issued a brief titled “Long-Term Services and Supports for Older Americans: Risks and Financing.” The report concludes that on average, an American turning 65 today will incur \$138,000 in future LTSS costs. Families will pay half of the costs themselves out-of-pocket, with the rest covered by public programs and private insurance. Read the brief [here](#).

### **Medicaid Recommendations**

The Government Accountability Office (GAO) released a report that identified more than 80 recommendations for the Centers for Medicare and Medicaid Services (CMS) to improve the Medicaid program. GAO noted that CMS has only implemented a few suggestions. The report highlights recommendations that would help CMS improve access to care, fraud prevention, and other areas of Medicaid. Read more [here](#). The House Energy and Commerce Subcommittee on Health recently held a hearing on six bills to change Medicaid.

### **CMS Nomination**

President Obama voted to nominate Andy Slavitt to be the new Administrator for the Centers for Medicare and Medicaid Services. Slavitt is the current acting administrator. Slavitt would replace Marilyn Tavener, who stepped down in February. Read more [here](#).

### **Efforts to Repeal the Affordable Care Act Continue**

House Ways and Means Subcommittee on Health Chair Kevin Brady (R- SD) believes a health care legislative package that amends the ACA could be considered this fall. Brady states that ACA proposals to enact smaller changes could garner bipartisan support. Senate Republican Conference Chair John Thune (R-SD) is doubtful that efforts to fast-track a budget containing ACA repeal will move forward this year. However, congressional aides believe the senate will likely repeal the ACA’s medical device tax by the end of the year. Read more [here](#).

### **Proposed Nursing Home Regulations Now Available**

The CMS released [proposed](#) revisions to the current federal nursing home regulations. National Consumer Voice has created a side-by-side comparison to assist in comparing the current version between the proposed rules. View the comparison [here](#).

### **State-specific Guide for Financial Caregivers**

The Consumer Financial Protection Bureau (CFPB) released the first-ever state-specific guide for financial caregivers, providing information on how to successfully manage someone else's money in Virginia. Following the release of the Virginia guides, the CFPB has plans to create similar guides for the following states: Arizona, Florida, Georgia, Illinois and Oregon. Click [here](#) to learn more about the guides and to learn how you can order copies of the free printed guides in bulk.