



## **Outlook for Aging Services Programs May 8, 2017**

### **Overview**

This week the House is in recess while the Senate is in session. Both houses will have a one-week Memorial Day recess May 29 – June 2.

Last week, the House passed H.R. 1628, the American Health Care Act, to repeal and replace parts of the Affordable Care Act. The bill's future in the Senate is not yet clear.

Congress also passed H.R. 244, an omnibus spending bill for fiscal 2017 to keep federal programs and agencies in operation through September 30. This measure was especially important for housing and home- and community-based services programs.

For fiscal 2018, the Trump Administration submitted the skeleton of a budget proposal, the so-called "skinny budget." The 2018 outline calls for \$6 billion in cuts to the Department of Housing and Urban Development, which gives us great concern about funding for Section 202 housing, although the outline does not specify per-program proposals.

The Administration has indicated that a more complete 2018 budget will be submitted this month or in June.

### **American Health Care Act (AHCA) – H.R. 1628**

The American Health Care Act, to partially repeal and replace the Affordable Care Act (ACA), passed the House on May 4.

Senator Orrin Hatch (R-UT), chair of the Finance Committee, commended the House legislation but said that his committee will work to put together a package that could gain 51 votes in the Senate, "and remain focused on the art of the doable." We expect that if the Senate moves forward on legislation to repeal and replace the Affordable Care Act, it will look significantly different from H.R. 1628.

In order to gain House passage, the bill was amended to allow states to opt out of ACA requirements on insurance coverage of essential health services and on community rating of premiums. Because of concerns that weakening community rating requirements would make insurance coverage prohibitively expensive for people with pre-existing health conditions, another amendment was adopted to authorize \$8 billion to help states fund high-risk pools.

Neither of these amendments addressed the two sections of the bill that greatly concern us:

- Repeal of the ACA's Medicaid expansion, and
- Conversion of Medicaid into a program of per capita capped allotments to the states.

The transformation of Medicaid into a system of per capita allotments would cause states to lose more funding than could be made up by increased efficiency and “flexibility”, and the gap between funding levels necessary to cover current services and the money actually available in the future would grow over time. This fundamental transformation of the program would be next to impossible to reverse in the future. We also question what will happen to the present mandate for Medicaid coverage of nursing home care or optional coverage for home- and community-based services and medically-needy nursing home residents if per capita caps are enacted.

According to the estimates published March 13 by the nonpartisan Congressional Budget Office, the Medicaid provisions of the AHCA bill would reduce federal Medicaid spending by \$880 billion over the next ten years.

The AHCA bill provides separate caps for various categories of Medicaid beneficiaries, including those aged 65+ and people with disabilities. Caps would be based on each state's Medicaid spending in 2016, adjusted forward by a factor less than actual increases in the cost of care. This calculation would not take into account the change in the composition of the age 65+ population and the aging of this cohort into the decades in which the need for long-term services and supports becomes common.

We are concerned that this attempt to fence elders away from other Medicaid-covered populations would not be sufficient to protect the services elders now receive. States facing new restrictions on federal Medicaid funding still will have little choice other than to restrict services covered by the program, make it more difficult to qualify for coverage, cut payments to providers, or some combination of all three. People aged 65+ are the most expensive population to cover and long-term services and supports are among the most expensive services.

In fact, many states already have taken steps to make their Medicaid programs more cost-efficient, for example, by folding their long-term services and supports population into managed care plans. It will be all the more difficult for states that have worked to rein in the growth of Medicaid costs to absorb restrictions on federal funding without eliminating coverage of needed services or making it more difficult to access coverage. We therefore cannot expect that our residents and clients and the services LeadingAge members provide would be unaffected by the transformation of Medicaid.

The AHCA legislation's Medicaid provisions would have a smaller impact on states which have not so far expanded their Medicaid programs under the Affordable Care Act. Manatt-Phelps has published an analysis of how states would fare under the legislation:

<https://www.manatt.com/Insights/White-Papers/2017/Changes-to-Medicaid-Expansion-in-the-American-Heal>.

We continue to advocate strongly against any change in the operating structure or the financing of Medicaid.

### **Nursing home oversight and requirements of participation**

We have communicated with both CMS and members of Congress on especially egregious examples of survey overreach. We will continue working with the new administration on a more reasonable approach to nursing home oversight.

We also are urging Congress and the Administration to delay the next round of the requirements of participation. On April 3, Katie Sloan, Cheryl Phillips, three LeadingAge members from Kansas, Michigan and Ohio, and the Director of Government Affairs from LeadingAge Kansas met with CMS Administrator Seema Verma. They discussed the recent spike in immediate jeopardy citations and the need to reconsider and delay the next phases of the ROPs. Administrator Verma was receptive to our concerns and we are following up on her request for additional information.

We drafted a dear colleague letter for circulation among members of Congress to urge Health and Human Services Secretary Tom Price and CMS Administrator Verma to delay and review Phase II of the requirements of participation. Rep. Glenn Grothman (R-WI) is circulating this letter for sign-on by his colleagues.

Earlier, we submitted a statement to the Senate Finance Committee on the need for reconsideration of the nursing home requirements of participation.

At several of the congressional office visits during PEAK, staff expressed interest in the CNA training lock-out issue. Since the automatic loss of training authority is statutory, we are drafting legislative language to make the remedy optional, rather than mandatory and soliciting a sponsor to introduce the measure.

As part of the proposed Medicare payment rule, the Centers for Medicare and Medicaid Services (CMS), also requested comments from stakeholders about possible changes to the revised Requirements of Participation (RoPs) for nursing homes. In its rationale underlying the request for comments, CMS noted concerns expressed by stakeholders regarding the cost and regulatory burden associated with the provisions of the final revised RoPs rule promulgated last October. Comments are due June 26. We will file comments and have sent several notices to members regarding the opportunity to give CMS their own comments.

### **Proposed Medicare payment rule for 2018**

The proposed rule, published May 4, contains a 1% payment update for nursing homes, as provided under the so-called “doc fix” legislation passed in 2015.

Medicare 2% payment sequestration remains in effect, so most nursing homes likely will see no actual increase in Medicare payments and some could see reductions.

The proposed rule also begins implementation of the IMPACT Act's skilled nursing facility quality reporting program and skilled nursing facility value-based purchasing.

### **Senior housing funding**

For the remainder of fiscal 2017, our intensive advocacy succeeded in full renewal of funding for Section 202 Project Rental Assistance Contracts (PRACs) and Section 8 Project-Based Rental Assistance, which provides the rental assistance for more than 204,000 Section 202 homes.

The omnibus spending bill, H.R. 244, also provided a \$10 million appropriation for either new Section 202 construction or Senior Preservation Assistance Contracts (SPRACS). New Section 202 construction funds are sorely needed and have not been provided by Congress since fiscal year 2011. The SPRAC program has only been funded once before, in 2013, allowing HUD to preserve more than 1,700 older, Section 202 direct loan program units that had matured and would otherwise have been lost from the affordable housing inventory. Whether HUD uses the \$10 million for new construction or for SPRAC will be the HUD Secretary's choice.

We are continuing advocacy on fiscal 2018 housing funding. We have just launched the Save HUD 202 campaign, a comprehensive, multi-month effort to convince lawmakers to fully fund the 202 program, [www.saveHUD202.org](http://www.saveHUD202.org). The campaign will include a rally at the U.S. Capitol in June and intensive grassroots activity.

### **Home health conditions of participation and settings rule**

As discussed in this [article](#) by Peter Notarstefano, our Director of Home- and Community-Based Services, CMS issued a proposed rule on March 31 to delay the effective date of the COPs by six months.

Peter also [advises](#) that HHS Secretary Tom Price and CMS Administrator Seema Verma support extending the timeframe for compliance with the settings rule.

### **Home- and community-based services funding**

For fiscal year 2018, we are urging Congress to lift sequestration under the 2011 Budget Control Act and to maintain spending parity between defense programs and the non-defense discretionary portion of the budget that includes senior housing and aging services programs.

We have detailed appropriations asks for 2018 that will fully fund the renewal of all Section 202 project rental assistance contracts, project-based rental assistance contracts, renewal of all tenant-based rental assistance vouchers and service coordinators. We also are urging Congress to provide money for new construction and to give project rental assistance contract properties access to the Rental Assistance Demonstration program.

### **New Medicare Observation Days legislation**

We are supporting H.R. 1421 and S. 568, the Improving Access to Medicare Coverage Act. The legislation would resolve the observation days issue by requiring all time Medicare beneficiaries spend in a hospital to count toward the three-day stay requirement for coverage of any subsequent post-acute care. We urge legislators to cosponsor these bills.\

### **Medicare therapy caps**

The therapy caps exceptions process expires at the end of this calendar year. We support H.R. 807 and S. 253, to repeal the therapy caps.

### **New home- and community-based services legislation**

We are advocating in favor of S. 309, the Community Based Independence for Seniors Act, introduced by Senators Charles Grassley (R-IA) and Ben Cardin (D-MD). The legislation would establish a community-based special needs plan that would give low-income Medicare beneficiaries coverage for home- and community-based services. There is no similar bill in the House as yet.

We also support S. 445, the Home Health Planning Improvement Act, introduced this week by Sens. Susan Collins (R-Maine) and Ben Cardin (D-Maryland). The bill would facilitate Medicare beneficiaries' access to home health care by allowing physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse midwives to order home health services. These health care professionals are playing increasingly important roles in the delivery of health care, particularly in rural and underserved areas.