

LeadingAge Policy Update



January 3, 2019

Overview

The 116th Congress begins on January 3, 2019. While the lame duck 115th Congress finalized some aging services issues, several remain unresolved, including fiscal 2019 funding for senior housing.

The new Congress has many new members, given the number of seats that changed party control and the retirement of several long-time legislators. With a new Democratic House majority, committee chairs are changing, and Democrats will gain more seats on key committees with jurisdiction over Medicare, Medicaid, affordable housing, and appropriations. We do not expect House committee assignments and leadership selections to be completed before mid-January.

These changes give us challenges and opportunities to educate the new Congress on the long-term services and supports on which people rely as they age. We will work to build on successes we achieved over the last two years in repealing Medicare therapy caps, gaining new construction funding for senior housing, and the beginnings of regulatory reform.

Senior housing funding for 2019

In 2018, congressional appropriators negotiated a fiscal 2019 Department of Housing and Urban Development (HUD) spending bill. This measure provided \$678 million for Section 202 in 2019, the same level the program received for fiscal 2018, and several other provisions for which we had advocated.

The measure never got to a vote before the 115th Congress ended. The incoming House leadership has drafted a 2019 spending bill containing many of the same provisions. The House likely will pass this measure soon after the 116th Congress convenes, but the legislation faces an uncertain future in the Senate given continuing disagreements with the Trump Administration over funding for a wall on the U.S.-Mexican border.

We are urging Congress to pass 2019 HUD appropriations with the funding levels already agreed to by appropriators from both houses. In addition to providing new construction funding, this appropriation is essential to ensure sufficient Section 202 funding to renew all Project Rental Assistance Contracts (PRACs) and for Section 8 Project-Based Rental Assistance Contract renewals in this fiscal year.

Senior Housing Resources

In the new Congress, we are working to reintroduce legislation to improve and expand the Low-Income Housing Tax Credit program. Key areas of improvement for us are in better serving low income older adults and preserving LIHTC housing.



LeadingAge Policy Update



We also expect a lot of activity in the 116th Congress on the National Housing Trust Fund and the Capital Magnet Fund, which provide significant capital and operating subsidies for affordable housing. Both these funds get their resources from Fannie Mae and Freddie Mac, whose next regulator may call for halting funding into the HTF and the CMF.

Health care

On December 14, 2018, a federal district court in Texas ruled the Affordable Care Act unconstitutional in its entirety. The decision in the case, *Texas v. United States*, is still subject to further litigation and appeal, likely to the U.S. Supreme Court. This process likely will not conclude before the end of 2020.

According to the December 17, 2018 statement by Health and Human Services Secretary Alex Azar, the Administration will continue carrying out Affordable Care Act programs until a final resolution of the lawsuit. We do not anticipate that the district court ruling will affect LeadingAge members or their residents and clients for at least the coming year.

The incoming House leadership will hold a vote the week of January 7 on a resolution for the House to intervene in the litigation in support of the ACA.

Federal budget for fiscal 2020

Although fiscal 2019 spending remains unresolved, the fiscal 2020 budget is already on the legislative horizon. The federal budget process calls for the President to submit his proposals to Congress in early February.

With the federal budget deficit approaching \$1 trillion, there may be calls for reductions in programs like affordable housing, supportive services, Medicare, and Medicaid. In view of the importance of these programs in providing essential health and long-term care, shelter, and community-based services for a rapidly growing population of older people, we will work to preserve these programs from cutbacks.

Nursing home regulation:

Nurse aide training lock-out: Since the automatic loss of training authority is statutory, we worked with Rep. Sean Duffy (R-WI) in the 115th Congress on the introduction of the Nursing Home Workforce Quality Act. We educated dozens of Congressional offices about the devastating impact of the CNA training lockout, and many LeadingAge members participated in our grassroots campaign.

Because the legislation was not enacted during the 115th Congress, we will work to get new legislation introduced in the new Congress.

Requirements of Participation: The third and final phase of the new requirements of participation go into effect November 28, 2019. We have begun posting tools and holding webinars to help members prepare. We have approximately six months left on the moratorium on civil monetary penalties for deficiencies cited under Phase II.



LeadingAge Policy Update



Health inspections rating freeze: According to a memo issued in June 2018, CMS “is monitoring outcomes of the new inspection process and plans to resume health inspection rating calculations (ending the current freeze) in the spring of 2019.” Nursing homes have been left with the same star ratings in the Nursing Home Compare health inspection domain that they had when CMS imposed the freeze over a year ago. We have urged CMS to post more current information on nursing homes’ performance so that consumers have accurate reports on which to base decisions on long-term care.

Teens operating patient lifts – The Department of Labor recently issued a proposed rule that would remove the current restrictions on the operation of patient lifts by nursing home employees under age 18. We filed [comments](#) in support of this rule, pointing out that use of lifts is safer for both residents and staff than manual lifting, that a job in a nursing home can be a valuable employment opportunity for a young person, and that young workers are an essential part of the long-term care workforce.

Medicare Patient-Driven Payment Model (PDPM)

The new Medicare payment system for skilled nursing facilities will go into effect on October 1, 2019. To prepare, SNFs will need to learn the new minimum data set (MDS) requirements and coding according to the ICD-10 system. We are making tools and information available to members.

Medicare 2019 payment rule for home health

On October 31, 2018, CMS released the final payment rule for home health, which contains a proposed revision of the home health payment system according to a Patient-Driven Groupings Model, to begin in 2020. This proposal could have far-reaching implications for providers; we are developing tools and educational resources for members.

Medicare Observation Days legislation:

The 115th Congress did not consider legislation we support to 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 will pursue its reintroduction and passage in the new Congress.

Home- and Community-Based Services (HCBS)

Money Follows the Person – EMPOWER Care Act - The lame duck 115th Congress failed to extend the Money Follows the Person demonstration program that helps states rebalance their Medicaid programs. The program has now expired, but the spending legislation the new House leadership has introduced for fiscal 2019 includes extension provisions. In the meantime, states have through fiscal 2020 to use any grant money that may have been earned through people’s transitions from nursing homes to community-based settings.

LeadingAge Policy Update



Spousal impoverishment protections for Medicaid HCBS clients – This was another program that expired at the end of the 115th Congress. However, most states have policies to maintain this protection for most HCBS recipients and their spouses. The spending legislation the new House leadership has introduced for fiscal 2019 includes a three-month extension. (Note: Nursing home residents covered by Medicaid and their spouses have their own protections and are unaffected by this policy.)

Older Americans Act – The law that funds a wide range of home- and community-based services, including congregate and home-delivered meals, family caregiver support, and transportation, is due for reauthorization this year. We are working with other stakeholders on reauthorization legislation, including an increase in funding to meet the needs of an aging population.

Long-Term Services and Supports Financing:

We filed [comments](#) on the concept paper Rep. Frank Pallone (D-NJ) put forward in 2018 to incorporate a long-term care insurance product into the Medicare program. The goals of this proposal share those expressed in our "New Vision" report: facilitate independence, protect families and individuals from high out-of-pocket expenses, alleviate the burden on family caregivers and address unmet needs. Our comments addressed both policy questions and the nitty-gritty of implementation.

In the 116th Congress, Rep. Pallone will chair the House Energy and Commerce Committee. We look forward to continuing to work with him and stakeholders from the aging and disability communities on his concept, which represents a critical step toward developing a more universal system for paying for long-term services and supports.

Immigration – We have raised concerns about the loss of temporary protected status for thousands of immigrant long-term care workers who now will be subject to deportation according to President Trump's Administration.

In view of the number of long-term services and supports workers who have come to the United States from other countries, mostly on the basis of family reunification, we would be concerned about any proposals to restrict family-based immigration.

We support changes in immigration laws and regulations to better recognize direct care as a profession meriting work-related immigration status.

We also filed comments in opposition to the rule proposed by the Department of Homeland Security to broaden the number of federal programs the federal government would consider in making public charge determinations on admissions of potential immigrants.

Other News

Guidance on marijuana and weapons policies

We also have published guidance for members on [medical marijuana](#) and [weapons](#) policies in aging services organizations.



LeadingAge Policy Update



2030 Scenario Planning for Aging Services

In an uncertain political and regulatory environment with multiple forces impacting aging services, it is imperative that we help our provider members take the initiative to plan for possible futures. We engaged the Institute for Alternative Futures to help us with 2030 Scenario Planning for Aging Services and developed a [toolkit](#) for members.

Center for Workforce Solutions

Leading Age's Center for Workforce Solutions has developed a series of [podcasts](#) on LeadingAge Workforce Innovators. Each episode features interviews such as those with extraordinary LeadingAge members who share their promising practices that might be replicable for your organization's workforce, along with reports about the employment outlook.