

LeadingAge Policy Update



January 23, 2019

Overview

The 116th Congress began on January 3, 2019. With a new Democratic House majority, committee chairs are changing, and Democrats have more seats on key committees with jurisdiction over Medicare, Medicaid, and appropriations. The House is still completing committee assignments and there have been a few changes in the Senate as well.

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.

Partial government shutdown

The outgoing 115th Congress was unable to reach agreement with President Trump on some of the spending bills for fiscal 2019, which began October 1, 2018. The spending stand-off has continued into the new Congress. As a result, agencies whose appropriations have not been completed have been shut down.

The most severe impact of the partial shutdown is on affordable housing programs. As the partial shutdown extends into its 4th week with uncertainty over when normal HUD operations will resume, an estimated 1,175 rental assistance contracts with December 2018 and January 2019 expiration dates will not be able to be renewed until after the shutdown ends. Section 202/811 PRAC projects comprise the majority of affected contracts.

While some funding may be available to help the Section 8 and 811 properties at least through January, HUD already has told owners of 440 Section 202 PRAC contracts representing 20,944 units that their contracts cannot be renewed during the shutdown and that they must rely on reserves to pay routine operating expenses. We have [posted information](#) on the HUD guidance property managers should follow.

MSNBC spent much of the day on January 14, 2019, broadcasting live from San Jose Manor, a LeadingAge member in Jacksonville, FL with about 100 residents on the impact of the shutdown.

On January 14 we sent an action alert to all members to urge Congress to pass a fiscal year 2019 HUD funding bill and end the shutdown. Congress needs to hear from communities about how an ongoing shutdown could impact them.

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Other effects of the partial shutdown

Medicare and Medicaid are not subject to the annual appropriations process, and the spending bill covering the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) was signed into law in September. These agencies and programs therefore have not been affected by the partial government shutdown.

However, in failing to finalize a spending bill for fiscal 2019, Congress and the President have left spending caps enacted under the Budget Control Act of 2010 in effect. Over the past several years, Congress has waived these spending caps, which call for total federal spending to be ratcheted down to levels that neither a majority of legislators nor the White House can actually support. Without a spending bill containing a waiver, the Budget Control Act caps could trigger spending sequestration across all government programs.

Medicare reimbursement, already subject to 2% sequestration, would get an additional, estimated cut of 0.1% if a spending bill with a budget caps waiver does not become law by the end of this month. This could mean a small reduction in Medicare reimbursements to providers. Sequestration also could reduce funding for CMS administrative operations; we do not have information as yet how the agency might cope with an across-the-board cut in its funding.

Federal nutrition programs also have been affected by the partial shutdown. Congregate and home-delivered meals provided under the Older Americans Act received their appropriation on a timely basis and are fully funded. However, the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps, is likely to run out of money at the end of February unless a new fiscal 2019 spending bill is enacted. The 4.8 million older people covered by SNAP represent 11% of the population the program serves.

Federal budget for fiscal 2020

With fiscal 2019 spending still unresolved, it appears unlikely that the President will be submitting fiscal 2020 budget proposals to Congress in early February, in accordance with the 1974 Budget Act's timetable. A delay in the start of the fiscal 2020 budget process could result in the enactment of fewer 2020 spending bills before the new fiscal year begins on October 1.

As Congress and the President consider funding levels for federal programs this year and next, we will work with both sides to ensure awareness of the importance of essential health and long-term care, shelter, and community-based services for a rapidly growing population of older people.

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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 are working to get new legislation introduced this year.

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 still have a few months left on the moratorium on civil monetary penalties for deficiencies cited under Phase II.

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.

Payroll-Based Journal (PBJ) staffing reports: The transition to PBJ reporting became fully effective as of April 1, 2018. We contacted the Centers for Medicare and Medicaid Services on behalf of members whose data did not post accurately, urging CMS to adjust a nursing home’s Five Star rating as soon as data has been corrected. We will continue to help members with tools and information to ensure successful compliance.

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.

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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 (MFP): This demonstration program that helps states rebalance their Medicaid programs expired at the end of 2018. Congress now has passed H.R. 259, the Medicaid Extenders Act of 2019, to provide three months of funding for MFP, allowing states to use the money through the end of September 2019. President Trump is expected to sign this bill into law.

Spousal impoverishment protections for Medicaid HCBS clients – This was another program that expired at the end of the 115th Congress. The Medicaid Extenders Act also included a three-month extension of this protection for spouses of Medicaid beneficiaries receiving home- and community-based services. (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.

Affordable Care Act litigation

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. In fact, the U.S. Department of Justice has asked for a pause in the case due to the partial government shutdown, which prevents government attorneys from working on cases.

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.



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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.

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.

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 chairs the House Energy and Commerce Committee, which has jurisdiction over this issue. 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.

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Other News

Guidance on marijuana and weapons policies

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

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.

Center for Managed Care Solutions and Innovations

The Center moderated its first webinar January 16th on "Becoming a Provider Led Institutional Special Needs Plan" and recently posted three new quick casts on Medicaid Managed Care contracting. Members can access these free quickcasts either directly in the Learning Hub under managed care or by going to the Center under Tools, Checklists, Promising Practices and then Contracting and Contracting Negotiation, Implementation and Management <https://www.leadingage.org/contract-negotiation-implementation-and-management> A three-part session on Medicare Advantage managed care contracting also will be available soon.

Regulatory tracker

We are happy to announce the launch of our new [Regulatory Roundup 2.0](#), a quick and easy tracker to help members find pertinent rules and federal regulations, with timelines for submitting comments and links to any comments LeadingAge may have submitted.

