



Federal Update January 3, 2018

Overview

The current continuing resolution is keeping federal programs in operation through January 19. Congress then will have to pass another short-term CR to keep federal programs operating while fiscal 2018 spending bills are rewritten in accord with current discussions between the White House and the congressional leadership over spending totals for this fiscal year. Other measures, including Medicare “extenders” may be added to the January 19 continuing resolution.

Senior housing funding for 2018:

Last year, both the House and Senate Appropriations Committees approved HUD 2018 spending legislation that would fund Section 202 at \$573 million, \$70.6 million more than FY17. This amount would fully cover contract renewals and amendments.

Also, both Appropriations Committees would have allowed HUD to expand its successful Rental Assistance Demonstration program to include Project Rental Assistance Contracts which we call "RAD for PRAC." RAD for PRAC would bring new housing preservation opportunities to aging PRAC communities and is a key priority for LeadingAge.

The fiscal 2018 HUD spending measures approved by the Appropriations Committees last year were not enacted. Once the Administration and the congressional leadership reach agreement on total federal spending levels for this year, funding will be reallocated among federal programs. We are urging Congress to include the funding levels previously approved for Section 202 and RAD for PRAC in whatever fiscal 2018 spending bill is passed to cover the remainder of this fiscal year.

Nursing home oversight and requirements of participation (ROPs):

While Phase II went into effect as of November 28, our advocacy resulted in a delay in the imposition of civil monetary penalties for any deficiencies cited on the new requirements for the first 18 months. We have posted tools and conducted webinars on the new requirements to assist members in preparing.

Nurse aide training lock-out: Our advocacy last year attracted some congressional 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.

Medicare therapy caps:

Because Congress failed to extend the exceptions process before the end of calendar 2017, Medicare beneficiaries now are subject to the annual per-beneficiary caps on outpatient therapy. This year the caps are \$2,010 for physical and speech combined and another \$2,010 for occupational therapy.

In November, the House Ways and Means Committee announced a bipartisan agreement that included making the therapy caps exceptions process permanent and extending the rural home health add-on for another five years.

However, the committee indicated that these and other “extenders” would have to be offset by this measure must be budget-neutral and must therefore contain offsetting spending cuts. Reimbursement reductions for skilled nursing facilities and home health care providers are on the list. We are concerned about this possibility, since Medicare payments already are reduced by 2% sequestration.

Medicare extenders may be added to the 2018 continuing resolution Congress has to pass by January 19.

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.

Congressional action on this issue may come about as part of an end-of-year Medicare measure, as yet unseen.

Home- and community-based services legislation:

We are advocating in favor of the following measures to improve Medicare coverage of home- and community-based services:

- S. 309/H.R. 4006, the Community Based Independence for Seniors Act. The legislation would establish a community-based special needs plan that would give low-income Medicare beneficiaries coverage for home- and community-based services. The House bill sets a tighter limit on the number of beneficiaries who may participate.
- S. 445, the Home Health Planning Improvement Act, introduced 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.

- H.R. 3992, the Rural Home Health Extension and Regulatory Relief Act, which would extend the Medicare payment add-on for home health care providers and delay a Medicare payment change that would have serious consequences for home health care providers around the country.

Technology: We support the following measures to advance the application of technology in the long-term services and supports field:

- S. 870 – CHRONIC Care Act: bipartisan legislation which is now ready for floor votes in Senate. Among its provisions to improve Medicare coverage of services people living with chronic health conditions need, the CHRONIC Care Act would authorize payment for telehealth for accountable care organizations and includes “home” in the definition of “originating site”. In addition, the bill calls for a GAO study to determine how barriers could be removed to enable health and long-term care providers to make effective use of technology for care planning, coordination and documentation.

While there is no companion bill in the House, there are a number of bills on specific topics that are incorporated in the CHRONIC Care Act, and these measures could gain House consideration. Alternatively, provisions of the CHRONIC Care Act could be incorporated into an end-of-year Medicare measure.

- S.1016 - CONNECT for Health Act: a bipartisan bill to allow Medicare reimbursement for telehealth in a variety of settings and for a variety of conditions, including accountable care organizations and bundled health payments.
- S.787 - Telehealth Innovation and Improvement Act: Bipartisan legislation allowing CMS to test the use of telehealth and other technologies in improving care for Medicare beneficiaries with certain defined conditions in conjunction with existing evaluations of accountable care organizations, bundled payment models and coordinated care models.

Outlook for 2018 advocacy:

Despite a variety of challenges, 2017 was a successful year:

- We were able to stave off repeated efforts to convert Medicaid into a system of block grants or per capita capped allocations;
- We countered a call for severe cuts in housing funding with legislation that increased money for Section 202 and gave us RAD for PRAC;
- We got an 18-month delay in the imposition of civil monetary penalties for any deficiencies cited under Phase II of the requirements of participation in Medicare and Medicaid for nursing homes.

While we were not able to defeat the new tax law, we were able to preserve the medical expense deduction and tax-exempt private activity bonds, two provisions that matter to all of our members and their residents and clients.

Our efforts would not have succeeded without the outstanding advocacy by LeadingAge members throughout the year. Just to mention a couple of indicators, over 1,100 housing residents from properties throughout the country came to our first-ever Capitol Hill rally in June to advocate in favor of Section 202. And whereas in the past we usually generated around 5,000 messages to Congress on various issues in any given year, this year LeadingAge members sent over 32,000 communications.

For this year, we are preparing to build on these successes. We have to anticipate renewed proposals for cuts to Medicaid, senior housing and other aging services programs. We still have to get spending legislation passed for senior housing and for home- and community-based services under the Older Americans Act. By early February, we may see the first federal budget proposals for fiscal 2019.

We are discussing an affirmative LeadingAge policy agenda to preserve and enhance security and supports for people as they age. We have our recently-issued integrated services and long-term services and supports financing papers to give us direction.

Grassroots involvement will continue to be the key to our success. We look forward to working with all LeadingAge members and their residents in the year ahead.