



Federal Policy Update

AIRS 2017 I&R Conference

May 22, 2017

ACA Repeal and Health Care Reform

American Health Care Act Review

- Repeals large number of ACA taxes, regulations, and subsidies:
 - Notable: expands age-rating bands to 5:1, or state-defined amount, as opposed to current 3:1 limitation.
- Creates age-based annual tax credit of \$2,000-\$4,000/individual, capped at \$14,000/family (phasing out based on income);
- Significant restriction of ACA Medicaid expansion financing;
- Establishes a “per capita cap” on Medicaid expenditures:
 - Option for block-granting services to children and/or adults without disabilities;
 - Would be most significant change to Medicaid since enactment;
- Places restrictions on LTSS, including:
 - Repeals FMAP increase for 1915(k), limits state option to increase home exclusion for asset tests.

Current Status and Next Steps

- The AHCA narrowly passed the House (217-213) on May 4th, sending it to the Senate;
- In the Senate, there are strict restrictions on what can be included in a budget reconciliation bill:
 - Reconciliation is necessary since it would otherwise require 60 votes;
 - Must be finalized by September 30, or else start over.
- Republicans have split into several working groups to develop proposals:
 - It will not go through the normal committee (ie: Senate Finance) due to the reconciliation process;
 - Can only lose 2 votes, but big divisions remain.

CMS HCBS Regulations

CMS HCBS Regulations: Background

- Background: In January 2014, CMS released regulations that create new requirements for the provision of Medicaid HCBS services
 - The most significant provision is the requirement that all settings of HCBS services be “integrated into the community”
 - Additionally, the rule requires person centered service plans for individuals receiving Medicaid HCBS
 - Rule sets expectations that states mitigate conflict of interest between person centered plan development and service delivery
- The regulations required states to submit “transition plans” that discuss how they will come into compliance with the rule

Medicaid HCBS Transition Plans

- CMS continues to work with states regarding their HCBS Transition plans;
- Currently, there is one statewide plan with final approval (TN) and 27 with initial approval;
- CMS is focusing on “systemic” and “site-specific” review of settings:
 - Systemic: review of state laws, regulations, licensure requirements, etc., for HCBS settings;
 - Site-specific: process for examining whether the qualities of individual settings comport with the rules.

Current Status and Issues

- Timelines – CMS announced a delay in implementation (until March 2022 instead of 2019) given the lengthy process for transition plan approval;
- Heightened Scrutiny:
 - What process will states use to identify settings subject to heightened scrutiny, determine whether they are compliant with the rules, and submit evidence of the determination to CMS?
- Day services – what is compliant for individuals not seeking employment?
- Assisted living, memory care, and other congregate services for older adults – what is allowable?

DOL Regulations

- White Collar Exemption and Home Care Rule

White Collar Exemption

- In 2015 DOL released a proposed rule that would increase the threshold for overtime exemptions to executive, administrative, and professional workers;
- Currently, the threshold is \$455/week (\$23,660/year);
- The final rule sets at 40th percentile of the lowest wage census block (\$47,476/year) and updates every 3 years;
- An estimated 4.2 million individuals will be impacted by the changes;
- Many HCBS provider agencies may be affected by this rule;
- Rule was blocked by a Federal Judge:
 - Federal government was supposed to respond to injunction; 2 extensions have been issued for the response time (currently the deadline is 6/30/17);
 - Trump administration has expressed opposition to the rule.

Home Care Rule

- DOL released regulations that changed the definition of “companionship” and limited the ability of third-party employers to claim exemption from FLSA;
- Regulations were scheduled to become effective January 1, 2015; however, a Federal Judge placed the major portions of the rule under injunction;
- DOL won appeal of the decision and Supreme Court declined to hear the case;
- Regulations became effective in October 2015 and DOL “discretionary enforcement” ended Dec 31st;
- Administration likely opposed; however, any changes would require a new rulemaking process and could be challenging.

Federal Appropriations

FY2017 Appropriations Bill

- Modest increases to Older Americans Act nutrition services (\$3 million total, split \$2 million to congregate and \$1 million to home-delivered meals);
- \$2.5 million increase to OAA HCBS Supportive Services;
- \$2 million increase to Elder Justice and Adult Protective Services activities at ACL;
- \$34 million cut to the Senior Community Service Employment Program (SCSEP/OAA Title VII);
- \$5 million cut to the State Health Insurance Assistance Program (SHIP);
- Cuts to limb loss and paralysis TA centers; and
- Modest increases to Native American grants.

FY2017 Appropriations Bill

- Level funding for the Independent Living Program (\$101 million) split between Part B funding (\$23 million) and Part C funding (\$78 million);
- Level funding (\$104 million) for the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR);
- Level funding for Protection and Advocacy (P&A) Systems (\$38.7 million)
- \$2 million allocated toward grants for Alternative Financing Programs
- \$4.4 million decrease to Section 811 Supportive Housing for Persons with Disabilities
- \$90 million in increased funding for the Individuals with Disabilities Education Act (for a total of \$12 billion)

FY2018 Appropriations

- Formal budget process partially stalled by ACA repeal efforts, which are tied to the federal budget;
 - Appropriations work continues;
- Next step: President Trump releases full budget (expected by the end of the month);
- Expectation of significant proposed reductions to domestic discretionary programs based on “Skinny Budget” recommendations:
 - Elimination of SCSEP, LIHEAP, CDBG;
 - \$15.1 billion decrease in funding for HHS:
 - No details on ACL funding were included.



For more information, please visit: www.nasuad.org

Or call us at: **202-898-2578**

Policy Resources from the National Council on Independent Living

Website: www.ncil.org

Policy Priorities Booklet (will be updated for summer)

- <http://www.ncil.org/wp-content/uploads/2017/04/Policy-Priorities-February-2017.pdf>

Advocacy Monitor online

- www.advocacymonitor.com

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