FEDERAL POLICY UPDATE

AMERICAN SENIORS HOUSING ASSOCIATION
Living Longer Better

December 20, 2019

CONGRESS CLOSES OUT 2019 WITH A MASSIVE SPENDING AND TAX PACKAGE AND ASHA VICTORIES

Congress has once again proved that, if it weren't for the last minute, nothing would get done. After months of political infighting and gridlock, congressional leaders and the President patched together a massive spending and tax agreement. It took the threat of another government shutdown and the holidays closing in to finally complete negotiations on the massive "Christmas tree" deal – a deal that provides each side with a range of gifts for their constituents. Several ASHA supported bills were included in this end of year deal including an extension of the medical expense deduction rules, an increase in Alzheimer's funding at NIH, legislation to incentivize retirement savings (SECURE Act) and program extensions for federal insurance backstops.

The core of the agreement consists of two separate appropriations bills that together establish $1.4 trillion of government-wide spending priorities for the remainder of the fiscal year (i.e., through September 30, 2020). Congressional appropriators and the White House worked through mid-December to reach compromises on hundreds of spending issues.

At the same time, the tax-writing and other committees were busily decorating the legislation with tax, health, and other policy ornaments. The deal adds $428 billion in tax cuts that include the extension a variety of expired tax rules and repeal of certain health care taxes that were added by the Affordable Care Act.

In a separate action, Congress and the White House also reached an agreement on a revised trade deal with Mexico and Canada (the USMCA). Impressively, all of these bipartisan agreements were accomplished as the House voted on a partisan measure to impeach the President. Odds are there will not be many more significant bipartisan actions before next year's elections.

DETAILS OF MASSIVE YEAR-END SPENDING AND TAX DEAL

The year-end legislation contains hundreds of policy shifts. Some of the most relevant for ASHA's members and their residents are summarized below.

Favorable Medical Expense Deduction Rule Extended: Historically, medical expenses have been deductible to the extent that they exceed 7.5% of income. However, without congressional action, that threshold was scheduled to increase to 10% beginning with tax returns for 2019. ASHA has been working tirelessly to retain the 7.5% threshold because more than five million senior citizens annually rely on the medical expense deduction to help partially offset the significant costs of health care and supportive services such as those received in ASHA member communities. We outline the need for the deduction in our most recent letter to Senate and House Leaders urging them to move this bill. Another important eligible expense is the payment of premiums for long term care insurance. Our advocacy efforts, individually and in coalitions, have been successful and the year-end bill includes language that will keep the 7.5% threshold in place through the end of 2020. We will continue our efforts to make the 7.5% rule permanent.

Retirement Savings Improvements Included: The Setting Every Community Up for Retirement Enhancement Act (SECURE Act) includes dozens of provisions aimed at encouraging individuals to save more for retirement and promoting better retirement planning with respect to the amounts saved. For example, distributions from employment-based retirement plans and IRAs must generally start for the year the individual attains age 70½. The SECURE Act would increase that age to 72. This delay in the time of required distributions means that many retirees will retain a greater portion of their retirement savings into the later years of life when they may be needed to finance LTC services.

The SECURE Act also would eliminate the current prohibition on making IRA contributions during or after the year an individual attains age 70½ (although the individual would still have to have earned income in order to make IRA contributions for any year). The Act also will make it easier for employers to offer their workers annuity distribution options from their 401(k) or other defined contribution plans, thus increasing the chances that more individuals will take advantage of the guaranteed lifetime income those products provide. Other changes in the bill include a requirement to provide access to 401(k) plans for certain long-term part-time workers, further incentives to encourage employers to automatically enroll employees in their retirement plans (with employee right to opt out), and generous tax credits for small employers establishing new retirement plans. In addition, special rules have been provided that would automatically provide temporary relief from certain retirement rules for individuals residing in a disaster zone.

Additionally, a new provision of the bill dealing with the timing of required distributions for non-spousal beneficiaries of a deceased retiree was modified to make it clear that accelerated required distributions would not be required for beneficiaries who are disabled or chronically ill.

Medical Device Tax and "Cadillac" Tax Repealed: The year-end legislation also repeals a number of the tax provisions that were adopted to offset the cost of the Affordable Care Act (ACA) coverage expansion, although no further changes in the ACA coverage provisions were made. The tax changes include the repeal of the so-called Cadillac tax that would have imposed a 40% excise tax on high-cost employer medical plans. The legislation also repealed the 2.3% tax on medical devices and a multi-billion dollar tax on health insurers. If the cost savings from the repeal of these tax measures are passed through, they might marginally reduce health care premiums in the future.

National Flood Insurance Program (NFIP) and Terrorism Risk Insurance Act Extended: Another set of important provisions for the real estate industry, including the seniors housing sector, involves the extension of certain expiring insurance program safety nets. Specifically, the National Flood Insurance Program (NFIP) has been extended through the end of the fiscal year, September 30, 2020 and the Terrorism Risk Insurance Program (TRIA) received a seven-year extension and is now set to expire in 2027. Both provisions are vital to ensure the availability of risk insurance for flooding and terrorism for all types of commercial real estate developments, including multifamily properties.

Alzheimer's and Dementia Research Funding Boosted: The bill includes an increase of almost 7% in funding of the National Institutes of Health (NIH), including added funding for research on chronic conditions like Alzheimer's. Specifically, the legislation will increase Alzheimer's and dementia research funding $350 million for fiscal year 2020, raising total funding to $2.8 billion, a more than six-fold increase of funding since 2011. In addition to the research funding increase, the bill includes $10 million to implement the BOLD Infrastructure for Alzheimer's Act, which aims to build modern infrastructure for the prevention, treatment, and care of Alzheimer's and related dementias.

Other Key Provisions in Year-End Bills: Other provisions in the year-end spending package include:

- *EB-5 Visa Program Extension:* The EB-5 visa program for immigrant investors would be extended to December 2020.

- *Employer Tax Credits Extended:* The employer tax credit for paid family and medical leave and the worker opportunity tax credit (WOTC) is extended through the end of 2020.

- *Pass-through Status for Drugs under Medicare Part B* – The Imagining Dementia Evidence for Amyloid Scanning (IDEAs) study is designed to provide more evidence related to the effects of amyloid PET imaging on diagnosis or health outcomes for people with Alzheimer's and related dementias. The provision would extend certain payment policies to the other diagnostic radiopharmaceuticals furnished in the context of the IDEAs study.

- *Extension of Spousal Impoverishment Protections.* Rules providing limited asset protection for spouses of a Medicaid patient would be extended through May 22, 2020, for spouses of Medicaid patients.

- *Extension of the "Money Follows the Person" Demonstration Program:* The demonstration program, which provides states with enhanced FMAP for services and supports to help seniors and people with disabilities moving from institutions to a community-based setting, would be extended through May 22, 2020.

Provisions that are NOT Included in the Year-End Bills: Despite strong efforts from interested stakeholders and considerable discussion, a large number of items were not included in the enacted tax and spending measures. These include most of the technical corrections to the 2017 tax legislation; improvements in the Low-Income Housing Tax Credit program; enhanced reporting requirements with respect to Opportunity Zone investments; a correction to the Alternative Depreciation System (ADS) for multifamily properties and drug pricing reforms.

ASHA recently joined our real estate industry colleagues in a letter of support for the Multifamily Depreciation Parity Act of 2019. This legislation corrects the drafting error in the TCJA relative to the ADS which now calls for a 40-year recovery period for existing property owners when electing out of the limits for purposes of the business interest deduction, instead of the revised 30 years. We will continue to advocate for passage of this bill in 2020.

TREASURY ISSUES QUALIFIED OPPORTUNITY ZONES REGULATIONS AND IS CLOSE TO ISSUING FINAL RULES ON THE INTEREST DEDUCTION LIMITATION

Along with the dash to the end-zone for lawmakers in Washington, the Department of the Treasury released final regulations related to qualified opportunity zones on December 19th. The regulations include guidance relating to how qualified opportunity funds may invest the amount of their investors' deferred gains into qualified opportunity zone property and businesses. Specifically, the proposed regulation addresses what types of property qualify as opportunity zone business property. More recently, Treasury sent OMB final rules on the new interest deduction limits, including guidance on the exception provided for real estate trades or businesses. After OMB review those regulations will be finalized and David Kautter, Treasury's Assistant Secretary for Tax Policy, has said he expects them to be ready for release in January.

2019 OLDER AMERICANS BENCHMARKING REPORT RELEASED BY ABA FOUNDATION

In November, the American Bankers Association (ABA) released an annual benchmarking report on the findings from a survey of banks across the U.S. The report presents findings from the ABA Foundation's 2019 Older Americans Benchmarking Survey, which was designed to capture data on how banks educate older Americans, respond to fraudulent activity, and train their staff to protect older customers. The survey sampled 130 banks across asset classes, representing over 90% of the U.S. banking population. The benchmarking report details that banks are increasingly reporting elder financial exploitation to Adult Protective Services (APS) and 81% of banks surveyed listed reporting to APS as one of their key actions in dealing with suspected elder fraud. The report also details that banks are increasingly embracing their roles as leaders in customer education and outreach to protect seniors from fraud.

FAIR HOUSING

FINANCIAL SERVICES COMMITTEE DEMOCRATS OPPOSE PROPOSED HUD RULE SETTING HIGHER BAR FOR HOUSING DISCRIMINATION CLAIMS

On November 22nd House Financial Services Committee Chairwoman Maxine Waters (D-CA) and the 33 Democrat members of the committee sent a letter to Department of Housing and Urban Development (HUD) Secretary Ben Carson opposing proposed changes to the disparate impact standard under the Fair Housing Act. The proposed rule was released back in August but due to the significant interest and number of comments received, has not yet been finalized. It would reverse current policy and make it more difficult to bring discrimination claims under the Fair Housing Act. The proposal would require plaintiffs to clear a higher bar to prove unintentional discrimination and give defendants more leeway to rebut a claim.

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