FEDERAL POLICY UPDATE

AMERICAN SENIORS HOUSING ASSOCIATION
Living Longer Better

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» CONGRESS STALLS ON BUDGET BUT WORK CONTINUES ON KEY SENIORS HOUSING INTERESTS

March was supposed to be the month that Congressional Republicans unveiled their alternative to President Obama's final budget submission. However, Republicans in both Chambers struggled to develop a consensus and scheduled markups were postponed. While Senate Majority Leader Mitch McConnell (R-KY) and Speaker of the House Paul Ryan (R-WI) continue to say they will take up a budget this year, it remains unclear if they will be able keep that promise. Nevertheless, budget discussions will continue to be at the top of the agenda for the next several weeks.

In the meantime, work on other long-term issues has begun. The House Republican task forces created by Speaker Ryan to shape the election year agenda have begun their "listening sessions." Although no deadline for the task forces to complete their work has been announced, some task force chairs have indicated they hope to have a blueprint ready this spring or early summer. In addition, there is renewed interest on the Hill in long-term care with a House Subcommittee holding a hearing this month that followed on the heels of the release of reports on the issue by police experts. And, the House Financial Services Committee approved bills that modify the risk retention rules enacted by Dodd-Frank.

» LONG-TERM CARE

New Long-Term Care (LTC) Financing Report Emphasizes Importance of Fostering Community-and Home-Based Care

The debate over LTC financing solutions continues to percolate. A report recently released by the Long-Term Care Financing Collaborative, a diverse group of policy experts and stakeholders from across the political spectrum, recommends a series of reforms to expand access to long-term services and supports (LTSS) for people of all incomes. While the recommendations differ from those of the Bipartisan Policy Center's (BPC) Long-Term Care Initiative that we reported on last month, the two reports have several common themes. Both groups concluded that increasing long-term care insurance coverage will require private market solutions as well as a public catastrophic insurance program, and both called for modernizing Medicaid by revamping its LTSS component to better serve those with long-term care needs. Significantly, both reports called for making public programs more flexible to allow delivery of care in the setting most appropriate to the needs of individuals, whether at home or in a care facility.

The Collaborative also acknowledged the many unanswered questions concerning LTSS financing and delivery, and recommended further research on areas such as the total lifetime risks and costs of LTSS, the effects of proposed Medicaid reforms on overall costs and a beneficiary's quality of life, and the effects of integrating the financing and delivery of healthcare and LTSS.

A copy of the report with its recommendations can be found here.

House Committee Holds Hearing on Long-Term Care Financing

The recent release of think tank reports seems to have prompted Congress to take another look at long-term care financing. The reports were a prominent part of the discussions during a March 1, 2016 House Energy and Commerce Subcommittee on Health hearing on the financing and delivery of long-term care.

Subcommittee members and witnesses highlighted the fact that demand for long-term care is expected to significantly increase, and few older adults and their families are prepared for the financial risk of needing such care. There were many comments about the publics lack of awareness that they, and not the government, are responsible for paying for long-term care until their savings have been exhausted, and there was agreement among the witnesses and members about the need to improve public education. In addition, some Subcommittee members discussed bills they have introduced or plan to introduce. Recognizing an effort of this magnitude will take some time, the ongoing attention from respected health policy experts and the scheduling of this hearing are positive steps highlighting the need for action.

Congress Continues to Address Overreach of NLRB and DOL

Efforts continue in Congress, the courts and regulatory agencies to reverse several actions taken by the National Labor Relations Board (NLRB) and the Department of Labor (DOL) in several areas of labor and employment law. These actions overturn decades of well-settled law and can be problematic for some in the seniors housing industry. ASHA is working with industry partners in the Coalition for a Democratic Workforce (CDW) to urge Congress to adopt language through the appropriations process that will prohibit the funding of these initiatives, rules and decisions at the agencies for the purpose of enforcement. This is a common and effective legislative strategy to stop an action from going into effect.

Specifically, we are urging Congress to prevent enforcement of the following decisions or rules:

1. ***Joint employer standard***: The NLRB's decision broadens the standard used to determine whether two separate companies are considered one employer for purposes of unfair labor practice liability and collective bargaining obligations under the NLRA.

2. ***Ambush Rulemaking***: The NLRB's rule drastically reduces the amount of time between a union filing a representation petition and an election taking place--the median time has already dropped to approximately 24 days and could drop to as few as 10.

3. ***"Micro unions" decision***: The Board's August 2011 ruling in Specialty Healthcare radically changes the standard for determining which employees should be included in a bargaining unit represented by a union. It can make it easier for unions to organize by cherry-picking a unit composed of the subset of employees most likely to organize regardless of whether those employees constitute a practical unit.

4. ***"Influencer" Rule***: DOL's proposed rule ends a long-standing exemption from reporting and disclosure requirements that for decades has exempted employers and third parties hired for labor relations "advice" (often attorneys) when the third party does not speak directly to employees.

» SENATE DEMOCRATES INTRODUCE BILL TO LIMIT USE OF ARBITRATION

Senate Democrats introduced legislation that would place new limits on the use of arbitration agreements in employment disputes and other lawsuits.

S. 2506, the Restoring Statutory Rights and Interests of the States Act, would (1) make the Federal Arbitration Act (FAA) inapplicable for claims involving individuals and small businesses "arising from the alleged violation of a Federal or State statute, the Constitution of the United States, or a constitution of a state," (2) allow Federal and State courts to invalidate arbitration agreements that were "unconscionable, invalid because there was no meeting of the minds, or otherwise unenforceable as a matter of contract law or public policy," and (3) require a court to determine whether the FAA applies to arbitration agreements, rather than having an arbitrator make this initial determination. We do not expect any action on the bill this Congress, but we will be closely monitoring the issue.

» HOUSING

House Financial Services Committee Votes To Ease Dodd-Frank Risk Retention Rules

On March 2nd, the House Financial Services Committee approved legislation that would pare back the risk retention rules created by the Dodd-Frank Act. The Committee approved H.R. 4620, the Preserving Access to CRE Capital Act, by a vote of 39-18. The bill, introduced by Representative French Hill (R-AR), would (1) exempt single asset single borrower securitization transactions from the credit risk retention rules and (2) expand the definition of a qualified commercial real estate loan to allow more commercial real estate loans to qualify.

The Committee also approved H.R. 4166, the Expanding Proven Financing for American Employers Act by a vote of 42-15. The bill was introduced by Representatives Andy Barr (R-KY) and David Scott (D-GA) and would modify the risk retention requirements for managers that organize "qualified loan obligations." A date for consideration by the full House of Representatives has not yet been scheduled.

Federal Housing Finance Agency (FHFA) Director Outlines Challenges and Risks Facing Fannie Mae and Freddie Mac

In a speech on the long-term viability of the conservatorship of Fannie Mae and Freddie Mac, FHFA Director Mel Watt called the Enterprises' lack of capital the most serious risk and the one that has the most potential for escalating in the future. With each Enterprise's capital reserves scheduled to be eliminated by January 2018, Director Watt is concerned they will have no buffer and no ability to weather quarterly losses without taking another draw from the Treasury Department. He outlined a number of non-credit related factors that could lead to losses and result in such a draw. He is concerned that future draws could undermine confidence in the housing market lead to a hastily adopted legislative response. He hopes that Congress will tackle thoughtful housing reform before "we reach the crisis of investor confidence or a crisis of any other kind."

» HOUSE REPUBLICAN POLICY AGENDA TASK FORCES

The task forces created by Speaker Paul Ryan (R-WI) to formulate an election-year House Republican policy agenda have begun releasing mission statements and holding "listening forums" to receive input from their Republican colleagues on the six broad agenda topics – national security; tax reform; reducing regulatory burdens; health care reform; poverty, opportunity, and upward mobility; and restoring constitutional authority – announced in February. ASHA is monitoring the task forces, especially the work of the tax reform, health care reform, and regulatory burden panels.

Tax Force on Tax Reform

The leader of the Task Force on Tax Reform, Ways and Means Committee Chairman Kevin Brady (R-TX), held his first "idea forum" on March 2, 2016. Chairman Brady's mission statement which outlines broad principles for tax reform include ensuring similar tax bills for taxpayers with similar income; closing loopholes; eliminating special-interest carve-outs; limiting tax deductions, exclusions, and credits; increasing investment in business capital and gross domestic product; and providing a fair and competitive tax rate for job-creating businesses. The task force will meet weekly and the Committee on Ways and Means Subcommittee on Tax Policy may hold hearings to augment the task force's efforts.

Tax Force on Health Reform

The Chairs of the four House Committees with jurisdiction over health issues – Budget Committee Chairman Tom Price (R-GA), Education and the Workforce Committee Chairman John Kline (R-MN), Energy and Commerce Committee Chairman Fred Upton (R-MI), and Ways and Means Committee Chairman Kevin Brady (R-TX) – are co-chairing the Task Force on Health Care Reform. The Chairmen announced their goals and principles for developing a plan to replace Obamacare. The principles include providing Americans with choices, not mandates, to gain access to affordable and portable health coverage, promoting innovation to improve competition and fostering better cures and treatments for patients, and saving Medicare and Medicaid to strengthen health security. The co-chairs also announced that hearings will be held this spring on issues such as health tax expenditures, increasing state flexibility and sustainability in the Medicaid programs, and reforming broken insurance markets.

Tax Force on Reducing Regulatory Burdens

The mission statement of the Task Force on Reducing Regulatory Burdens outlines nine principles. The first principle is ensuring "federal regulations are a last resort and minimally intrusive." The others are divided into four categories: energy and environment, financial services, small business, and frivolous legal proceedings.

ASHA will continue to monitor the progress of these groups as they take shape.

» MISCELLANEOUS

Don't Forget to Complete the ASHA 2016 Public Policy Survey

ASHA monitors and engages on many policy issues in Congress and at the federal agencies. Tax treatment of real estate, employment law, health insurance and assistance programs, immigration, access to capital and critical research funding are all on ASHA's advocacy radar. However, it is important from time to time to seek your feedback to ensure we are on track. Please take a few minutes and let us know the policy issues that are important to you. We will report the findings as soon as we compile them.

Please click here to complete the survey and thanks in advance for your participation.

Urban Land Institute Research Project

The Urban Land Institute Terwilliger Center for Housing in collaboration with the Urban Land Institute (ULI) Senior Housing Council has launched a new study to explore opportunities for increasing minority participation in private pay senior housing (PPSH) types. Michael Stark of PMD is spearheading this effort and seeking senior housing providers participation. For study eligibility criteria , click here to see the attached announcement.

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