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ISSUE
06

The ElderCounselor

"Providing Solutions to Seniors and People with Disabilities"

December 2017



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What 2017 Has Brought for Seniors, Veterans and Persons with Disabilities

It has been a year packed with activity on the presidential and congressional level. We have seen proposed, amended and failed legislation, blocked executive orders, investigations, and charges of collusion on both sides. In this issue, we will summarize how developments from 2017 are likely to impact seniors, Veterans, and persons with disabilities.

What Happened with Health Care?

2017 saw multiple attempts by Congress to repeal and replace the Affordable Care Act. The House passed its legislation but Senate Republicans did not. The legislative process and the House and Senate bills were explained in detail in previous editions, so we will begin this recap with a short summary.

Even though the Republicans have a majority in both the House and Senate, they only have 52 Republicans in the Senate. Sixty (60) votes are needed to pass new legislation, so they have been attempting to pass the legislation through the Budget Reconciliation process which only requires 51 votes. However, because that process is limited to budget items only, they could not include provisions that some Republicans wanted in a full repeal and replace bill—such as letting insurance companies sell across state lines to increase competition, lower prices and create better plans, and allowing the government to negotiate lower drug prices.

Republicans were also trying to make changes to Medicaid. The Affordable Care Act allowed states to expand Medicaid to some low-income Americans above the poverty level, which greatly increased the number of people on Medicaid. Also, the funding for Medicaid is open-ended, which means the funding increases as need increases.

The goal of Medicaid reform was to reduce the number of enrollees and reduce future spending so that it grows more slowly. Instead of open-ended benefits, both the House and Senate plans would have provided the states with either a per capita cap (a certain number of dollars per person) or a block grant of funds, which each state could use as it wished.

Republican proposals would also allow insurers to charge older Americans and those with pre-existing conditions more for their coverage than they charged younger, healthier people. (Those who could not afford the higher premiums would receive premium assistance from the government.) Insurers would also be allowed to offer plans that did not include all of the Affordable Care Act-mandated benefits and comprehensive-only plans for younger, healthy Americans.

After promising “Repeal and Replace” for more than seven years, Republican leadership seemed to be caught off-guard by its members’ objections. Conservative Republicans wanted a full repeal and replace while some moderate Republicans wanted to keep some of the more popular parts of Affordable Care Act, including Medicaid expansion and no extra charges for those with pre-existing conditions. In the end, Senate Republicans were unable to pass any health care reform, not even a flat repeal of Affordable Care Act as a starting point.

That has not stopped President Trump from taking some action through Executive Orders (EOs) to start dismantling the Affordable Care Act. In October, he signed an EO that included a 90% cut to the advertising budget for the Affordable Care Act enrollment period starting November 1. The EO also directed agencies to issue new regulations that would expand the ability of small businesses and other groups to band together to buy insurance through association health plans, and it lifts limits on short-term health insurance plans.

A second EO, also signed in October, cut off payments to insurers that are known as cost-sharing reductions (CSRs). These were created under the Affordable Care Act to reimburse insurers for reducing out-of-pocket expenses for customers making up to 250% of the federal poverty level (about \$61,000 for a family of four). The payments are the subject of an ongoing lawsuit that argues they were not properly authorized under Affordable Care Act. The White House agreed and decided to end them. Congress can easily solve the problem by passing a law appropriating funds for the CSRs. However, a new multi-state lawsuit has been filed to stop President Trump from halting the payments to insurers.

What This Means for Seniors, Veterans and the Disabled

The uncertainty about the future of health insurance is very unsettling to many seniors, the disabled and Veterans who depend on Affordable Care Act or Medicaid for their health insurance. According to one recent study, about 15.6 million people are covered by individual insurance plans. (Most Americans have insurance through their employers or are on Medicare.) But almost 70 million are currently covered by Medicaid, including about 11 million Veterans who do not get their health care through the Veterans Affairs system.

The Congressional Budget Office (CBO) estimated that as many as 23 million people would lose their current health care coverage if the House or Senate bills had passed.

This number includes individuals who would voluntarily discontinue their health care coverage when the individual mandate was eliminated. It also includes millions who were added to Medicaid by the expansion under Affordable Care Act.

Many leaders on both sides believe something must be done soon to address several issues with the Affordable Care Act: Premiums continue to rise; deductibles and copays are so high that many cannot afford to use their plans; and insurers, who underestimated costs, are leaving markets. Many counties across the country will have no plans in the individual marketplace in 2018.

Members of Congress have stated they will try again as part of the tax legislation they are working on now. There have also been bi-partisan meetings with some early proposals.

Specific Actions for Veterans

President Trump campaigned on helping Veterans. With his actions, encouragement and the appointment of Secretary of Veterans Affairs David Shulkin, there have been some positive developments this year. Here are some of the highlights:

- The Accountability and Whistleblower Protection Act of 2017 was passed in June and promptly signed by President Trump. Written in response to an Obama-era scandal in which Veterans died waiting for doctors' appointments, this law will make it easier to discipline and fire bad employees, better protect those who report misconduct and improve care for Veterans.
- As of July 14, the VA has fired over 500 employees, suspended 200, demoted 33 and disciplined 22 senior leaders.
- A Veterans' complaint hotline has been established.
- Unemployment rates for Veterans fell in October to 2.7%, continuing a long-term downward trend in unemployment among U.S. Armed Services. This rate is down from 4.7% in October 2016 and 10.2% in 2009.
- President Trump also signed into law The Veterans Choice Program (VCP) Extension and Improvement Act, improving the 2014 program that allows eligible veterans to receive care from providers in the community instead of only from the VA.

- The VA has announced a new Electronic Health Record (EHR) system that will modernize its medical records to use the same system as the Department of Defense. The Veterans' records will now follow them when they leave service, providing faster and better care.
- In August, President Trump signed The Veterans Appeals Improvement and Modernization Act, which streamlines the process for Veterans to appeal disability benefit claims.
- Also in August, President Trump signed an expansion of Veterans' education benefits, boosting aid by \$3 billion over the next 10 years and extending assistance to some veterans and dependents who didn't qualify. This "Forever GI Bill" is officially titled The Harry W. Colmery Veterans Educational Assistance Act of 2017, named for the past commander of the American Legion who authored the GI Bill of Rights in 1944.
- The VA Connect app is being expanded to allow patients to conduct telehealth visits from their home computers and mobile devices and from private medical offices. VA providers in cities where there are a lot of doctors and specialists will be able to help Veterans in areas where there aren't as many healthcare professionals. This will be a valuable service for those who are home-bound, live in rural areas, or need help in the area of mental health and suicide prevention.

A Look Ahead to 2018

Congress is already at work on tax cuts and tax reform. Republicans want to simplify the tax code so that most people can file their tax returns on a postcard.

We will most likely see continued efforts to either repeal and replace the Affordable Care Act, or to address Medicaid spending.

Treatment of Veterans and processing of claims will continue to be an important issue for members of Congress and the President.

It should be another exciting year! If you or those you serve have any questions, we would be happy to hear from you.

Welcome Elder Law Attorney Beverly White

Gibbons | Neuman is excited and pleased to announce that Beverly J. White, an Estate Planning and Elder Law Attorney, has joined the firm. Beverly has been practicing in the state of Florida for over 20 years. She is a member of the National Academy of Elder Law Attorneys, The Academy of Florida Elder Law Attorneys, the Elder Law Section and the Real Estate, Probate and Trust Law Sections of The Florida Bar. She is a Director on the Board of Meals on Wheels, Tampa. Before she began specializing in providing legal services to seniors and the disabled, Beverly was a trial attorney for a number of years. Originally from Michigan, Beverly is a graduate of Michigan State University and the University of Detroit School of Law.

Beverly's knowledge, experience, and stellar professional reputation make her a great addition to our legal team at Gibbons Neuman.

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