



WASHINGTON STRATEGIC CONSULTING

CLIENT GUIDE TO THE  
115<sup>TH</sup> CONGRESS, 1<sup>ST</sup> SESSION  
Legislative Summary, Fall Preview

The background of the central section is a low-angle, upward-looking photograph of the massive, fluted columns of the U.S. Capitol dome. The columns are made of light-colored stone and are set against a bright blue sky with scattered white clouds. The perspective creates a sense of height and grandeur.

August 2017



## Overview

This report provides an overview of relevant legislative action since the opening gavel of the 115th Congress in January through the start of the summer recess period. The report also discusses the legislative deadlines that Congress will need to address, and policy initiatives that the president and congressional leaders want to advance, during the fall of 2017.

## Introduction

The protracted debate over repealing and replacing the Affordable Care Act monopolized the first half of the year. The process began on January 3 with the introduction of a reconciliation measure and only ended on July 28 when a last-ditch effort on the Senate floor failed to keep the process moving forward. This has resulted in a backlog of deadline-driven, must-pass legislation, combined with very little progress on other priorities of the president and congressional leaders.

Congress will return from its summer break with only 12 legislative days remaining before September 30, the end of the fiscal year. Temporary measures will likely be needed to extend some or all of the end-of-fiscal-year deadlines for passing spending bills, raising the nation's debt limit and reauthorizing several public health programs.

After Congress returns from the August recess, legislators will spend the rest of the year working toward a consensus on must-pass legislation, while attempting to advance major campaign promises, such as tax reform, immigration, and deficit reduction. House and Senate leaders have also indicated that they will develop legislation to stabilize ACA exchange insurers. In short, it's going to be a busy fall (and possibly winter) in Washington.



## Legislative Activity: January – July 2017

Shortly following the 2016 election, President Donald J. Trump released a “*Contract with the American Voter*” that outlined 10 legislative measures that he would work with Congress to enact during his administration’s first 100 days: repeal and replace the ACA, end job offshoring, invest in energy and infrastructure, end illegal immigration, enhance defense spending and child/elder care, and undertake education, criminal justice, and government ethics reform.

In late January, House and Senate leaders announced a “Two Hundred Day Plan” of issues that would be addressed by the summer recess. That plan included many of the president’s priorities and additional issues including infrastructure, tax reform, and regulatory reform.

Congress left Washington for its summer break without pushing any of these initiatives across the finish line. Of the 43 bills that the president has signed into law so far, only two created new federal policies: whistleblower protections for the Department of Veterans Affairs, and sanctions on Iran, North Korea, and Russia. Another 15 bills rolled back regulations issued by the Obama administration, eight were ceremonial or initiative-creating, six extended or expanded existing legislation, and 12 were related to government funding or operations.

Despite the lack of major accomplishments, a series of more narrow health-policy bills have advanced through the initial stages of the legislative process. These bills may advance further in the fall on their own or as part of a larger legislative vehicle.

The following table lists the two health-related bills that have been signed into law and all the bills of relevance to health care providers that have received committee and floor consideration.



## ACTIVE HEALTH BILLS

### SIGNED INTO LAW

FDA Reauthorization Act	H.R. 2430	Five-year extension of user-fee programs.	Awaiting signature
Veterans' Choice Act	S. 544	Eliminates the expiration date of non-VA health provider program.	Signed 4/9/17

### HOUSE

Protecting Access to Care Act	H.R. 1215	Medical liability reform for federally subsidized care.	Passed House
Medicare Part B Improvement Act	H.R. 3178	Reforms payments for home infusion & telehealth kidney disease.	Passed House
Self-Insurance Protection Act	H.R. 1304	Excludes employer stop-loss insurance.	Passed House
Competitive Health Insurance	H.R. 372	Exempts insurers from federal antitrust laws.	Passed House
Small Business Health Fairness Act	H.R. 1101	Reduces regulations on small business association health plans.	Passed House
Broader Options for Americans Act	H.R. 2579	Tax credits for Individuals with unsubsidized COBRA.	Passed House
Verify First Act	H.R. 2581	Requires immigration status verification for premium tax credits.	Passed House
Veteran Access to Mental Health	H.R. 918	Permits urgent mental health services at non-VA providers.	Approved by VA Committee
Access to Medicare Adv. Plans	H.R. 3168	Reauthorizes MA Special Needs Plans.	Approved by Ways & Means
SOAR to Health and Wellness Act	H.R. 767	Pilot program to train providers to identify potential human trafficking victims.	Approved by Energy & Commerce
MISSION ZERO Act	H.R. 880	Grants for civilian trauma centers to train military personnel.	Approved by Energy & Commerce
Preserving Employee Wellness Programs Act	H.R. 1313	Allows workplace wellness programs to collect information about a disease or disorder from employees and their families.	Approved by Committee on Education and the Workforce
Therapy Cap Exceptions	Discussion draft	Extends exception process for annual, per-patient therapy expenditures.	Under consideration by Energy & Commerce
Bundled Payments for Mobile Lab Services	Discussion draft	Creates bundled payment program for lab services in nursing homes and in the home.	Under consideration by Energy & Commerce

### SENATE

Trickett Wendler Right to Try Act	S. 204	Authorizes the use of unapproved drugs for terminal illness.	Passed Senate
Jessie's Law	S. 581	Standards for hospitals and physicians regarding displaying the history of opioid addiction in medical records.	Passed Senate
CHRONIC Care Act	S. 870	Medicare payment reforms to improve chronic disease management.	Approved by Senate Finance



## Fall Preview

When Congress returns to Washington the week of September 4, House and Senate leaders plan to immediately begin work on the below looming legislative deadlines. They will also be looking for consensus on other priorities, including deficit reduction, comprehensive tax reform and legislation to stabilize health insurers participating in ACA exchanges.

### SEPTEMBER DEADLINES

#### [FY 2018 Appropriations](#)

Since Congress has not yet finalized a traditional budget resolution that would set funding levels available for each of the 12 appropriations bills for FY 2018, House and Senate appropriators are determining for themselves how to allocate funding based on caps established by the Budget Control Act of 2011. So far, none of the 12 bills have been sent to the president for his signature.

In the House, the Appropriations Committee has approved all 12 of its appropriations bills and the full House has approved four of them: Defense, Energy and Water, Legislative Branch and the Military Construction-VA bill. House leaders say they will package the four approved bills with the remaining eight appropriations bills into a single omnibus bill when they return in September.

The Senate has made much slower progress. The Senate Appropriations Committee has approved only half of the annual spending bills, and the full Senate has yet to pass a single one.

It is likely that Congress will pass a continuing resolution to extend government funding beyond the September 30 deadline. In addition to the short window of time available, the spending bills will face challenges in the Senate, where the bills will require some support from Democrats. Senate Democrats have signaled their opposition to the House bills' funding levels and priorities, including the inclusion of funding for constructing a wall along the Mexican border.

#### [U.S. Debt Ceiling](#)

The Congressional Budget Office estimates that Congress must act to raise the \$20 trillion U.S. debt limit by early to mid-October. Since March, the Treasury Department has used its authority to suspend the issuance of new debt in order stay below the cap. Treasury Secretary Steven



Mnuchin has implored Congress to increase the nation’s borrowing authority by September 29 or risk defaulting on government’s debt obligations.

Some conservative Republicans have demanded that legislation to raise the debt ceiling include deep federal spending cuts, while Democrats have said they will oppose any such conditions.

### State Children’s Health Insurance Program (CHIP)

The Children’s Health Insurance Program (CHIP), jointly financed by the federal government and states, provides coverage for nearly 9 million children who fall in the gap between Medicaid eligibility and the ability to afford private health insurance. The Medicare Access and CHIP Reauthorization Act of 2015 extended funding for the program through September 30.

The Senate Finance Committee held a hearing on CHIP reauthorization in May and the House Energy & Commerce Health Subcommittee held a similar hearing in June. Neither committee has begun the process of considering legislation. Republicans may prefer a two-year extension while many Democrats prefer a five-year extension.

### Medicare & Medicaid Payment Extenders

A series of short-term Medicare and Medicaid payment policies, known as extenders, were reauthorized through September 30 as part of the Medicare Access and CHIP Reauthorization Act of 2015. The House Ways & Means Health Subcommittee held a hearing on the extenders in May and the House Energy & Commerce Health Subcommittee held a similar hearing in July.

Reauthorization of the payment extenders is usually non-controversial and has historically been attached to other end-of-year legislation passed by Congress. This year, Congress may include the extenders in its CHIP reauthorization bill.

EXPIRING PAYMENT POLICIES	
Medicare	
<ul style="list-style-type: none"> <li>▪ Assistance for Low-Income Programs</li> <li>▪ Medicare-Dependent Hospital Program</li> <li>▪ Low-Volume Adjustment</li> <li>▪ Quality Measure Selection</li> <li>▪ Long-Term Care Hospital Moratoria</li> <li>▪ Adjustment Delay for Long-Term Care Hospitals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Assistance for Rural Ambulance Providers</li> <li>▪ Increase for Ground Ambulance Services</li> <li>▪ Work Geographic Practice Cost Indices Floor</li> <li>▪ Home Health Rural Add On</li> <li>▪ Therapy Cap Exceptions Process</li> </ul>
Medicaid	
<ul style="list-style-type: none"> <li>▪ Beneficiary Liability Settlements</li> <li>▪ Medicaid and CHIP Express Lane Option</li> </ul>	<ul style="list-style-type: none"> <li>▪ Child Health Quality Measures</li> </ul>



## [ACA Insurer Stabilization](#)

Leaders of House and Senate health committees have also indicated that they will consider narrow, bipartisan legislation in September designed to lower insurance premiums for ACA exchange plans. They are also considering legislation repeal the ACA's medical device and health insurance taxes. Lawmakers hope to pass legislation before, or shortly after, insurers sign final agreements to participate in the exchanges by September 27.

The Senate Health, Education, Labor & Pensions Committee announced that it will act first with hearings on measures to stabilize exchange insurers. The legislation is expected to focus on guaranteeing funding for cost-sharing reduction payments that assist more than 6.4 million low-income Americans. Congress may opt to guarantee the \$10 billion needed just for 2018. It is unclear if such legislation would be signed by the president who has repeatedly threatened to halt the payments.

Legislation may also create a reinsurance program and modify the ACA's risk-adjustment program.

## [Other Expiring Public Health Programs](#)

*The Community Health Center Fund:* Funds Section 330 federal health centers located in medically underserved areas.

*Teaching Health Centers:* Provides GME payments to support medical and dental residents training at qualified teaching health centers and outpatient health care facilities.

*National Health Service Corps:* Provides scholarships and loan repayments to certain health professionals in exchange for providing care in a health professional shortage area.

*Maternal, Infant, and Early Childhood Home Visiting Program:* program provides grants to states, territories, and tribes for the support of evidence-based early childhood home visiting programs.

## **WHITE HOUSE / GOP LEADERSHIP FALL PRIORITIES**

Beyond health care policy, the White House and Congress are working to build a consensus among Republicans in order to pass comprehensive tax reform legislation before the end of the year. In addition to the challenge of agreeing on the policy details of tax reform, lawmakers will need to identify massive spending reductions to offset the expected loss of federal revenue created by new tax policies.



## Federal Budget Deficit Reduction

House and Senate leaders are working on a budget resolution to serve as a vehicle for reducing the federal deficit and for passing comprehensive tax reform through the reconciliation process.

While a final FY18 Budget Resolution has not yet been passed by both chambers of Congress, the House Budget Committee approved a budget resolution on July 21 that includes many of the proposals in the House GOP's "*Building a Better America*" policy agenda. The resolution's policies would cut federal spending by \$5.44 trillion over 10 years. Defense spending would increase by \$929 billion, while non-defense discretionary spending would be cut by \$1.3 trillion.

Proposed spending reductions on health spending include:

### Affordable Care Act Repeal

- Assumes cost savings in the House-passed ACA repeal bill (H.R. 1628) will have already been enacted into law

### Medicare Reductions

- Partial privatization.
- Additional means testing of premiums in Parts B and D for high-income seniors
- Combine graduate and indirect medical education into a single payment
- Combine Medicare and Medicaid DSH programs into one uncompensated care payment

### Medicaid Reductions

- Seeks hundreds of billions more in savings in the Medicaid program, in addition to the \$700 billion in cuts passed in the House ACA repeal bill

The House budget resolution includes reconciliation language that instructs the authorizing committees to develop legislation to reduce mandatory spending by a minimum of \$203 billion in mandatory budget cuts over the next 10 years. The committees must submit their legislation to the House Budget Committee by October 6.

The full House is expected to vote on the budget resolution when it returns in September. The Senate Budget Committee will also begin work on a budget resolution after the August recess.

## Tax Reform

The White House and congressional leaders have set a goal for completing "fundamental tax reform" by mid-November. The yet-to-be developed legislation will be subject to the budget



reconciliation process, which allows legislation to pass the Senate with a simple majority as long as it meets specific requirements.

Using reconciliation improves the chances of passing tax reform, but it also comes with limitations. For example, reconciliation requires that permanent tax policies be budget neutral. In other words, reduced revenue created by tax cuts need to be offset by corresponding reductions in spending. Reconciliation rules also prohibit the inclusion of any provisions not directly related to taxes or spending.

A tax reform bill is being pre-negotiated by a group known as the Big 6, which includes Ways and Means Chairman Kevin Brady, House Speaker Paul D. Ryan, Senate Majority Leader Mitch McConnell, Finance Chairman Orrin G. Hatch, Treasury Secretary Steven Mnuchin, and National Economic Council Director Gary Cohn.

Little detail has emerged about the forthcoming legislation beyond a set of objectives identified by Republican leaders. Those objectives include:

- ✓ Simplify tax code
- ✓ Lower individual rates
- ✓ Consolidate individual tax brackets
- ✓ Lower corporate tax rate

The House Ways & Means and Senate Finance committees are expected to markup legislation during the first and second week after Congress returns in September.

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