# What's Happening in Washington? A Legislative \& Political Update 

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# Post-Acute Care Trends 

What's Happening in 2014 ?

## Demographics are in Our Favor



## More People Will Need Our Post-Acute Services



## Changing Medicare Payment Systems

Current Approximate SNF Payer Mix



Potential Future SNF Payer Mix


Graphic courtesy of Avalere

## What the Future Could Hold



Graphic courtesy of Avalere 6

## Federal Risks Remain

$\checkmark$ MedPAC admits our total margins ar razor-thin
$\checkmark$ Budget cut discussions have shrunk from trillions to billions

- Lower Exposure
$\checkmark \quad$ 1-Year Doc Fix end of March
$\checkmark$ Provider Tax Reductions?

Medicaid trends in nursing home use and spending

```
Number of facilities (2013) Almost 15,000
Users (2010)
Spending (estimate 2013)
Non-Medicare margin (2012)
Total margin (2012)
```


# Price Tag of Permanent "Doc Fix" Lower than Stop-Gap Measures 



When Medicare budget falls short of costs, lawmakers can either cut physician pay or appropriate additional funds

Cost Difference Between 2014 Short-Term and 2014 Proposed Permanent Doc Fixes
(in billions of dollars)

In 1997, Congress created the Medicare Sustainable Growth Rate (SGR) to tie the Medicare budget to the economy's growth. However, health care spending soon outpaced the economy.


Since 2003, Congress has passed 16 short-term "doc fixes" to stabilize provider payments. Short-term doc fixes are, if only for a short while, cheaper solutions than a permanent fix and, as a result, more politically palatable

## Our Focus- RRV...

$\checkmark$ Rate

- Protect our rate and ensure increases
$\checkmark$ Regulation
- Combat duplicitous and costly regulations
- Manage Five Star Changes
$\checkmark$ Volume
- Advance policies that acknowledge our value proposition and places patients in settings based on their needs


## AHCA/NCAL 2015 Goals

$\checkmark$ To avoid any payment reductions in coming SGR debate and to ensure appropriate market basket increases via rulemaking process. Maintaining payment predictability and adequacy remains our top priority.
$\checkmark \quad$ Continue to represent an industry promoting health care solutions to improve quality of care and reduce costs.
$\checkmark$ Expedite payment reform work and develop pay-for alternatives of varying sizes

Advocate for permanent Therapy/MMR resolution on next viable legislative vehicle
$\checkmark$ Manage Implementation of changes to the Five Star Program
$\checkmark$ Highlight problems associated with Medicaid Managed Care in a targeted manner
$\checkmark$ Continue to advance observation stay legislation and work to minimize score

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# Current State-of-Play 

House, Senate, and Administration

## 2014 Leadership Line-Up

## Senate

$\checkmark$ Majority Leader Reid (D-NV)
$\checkmark$ Minority Leader McConnell (R-KY)
$\checkmark \quad$ Finance - Wyden (D-OR)
$\checkmark \quad$ Ranking Member - Hatch (R-UT)

House
$\checkmark \quad$ Speaker Boehner (R-OH)
$\checkmark$ Minority Leader Pelosi (D-CA)
$\checkmark$ Ways \& Means - Camp (R-MI)
$\checkmark$ Health Subcommittee - Brady (R-TX)

## Deep Involvement with All Potential Leaders


$\checkmark$ Speaker Boehner (R-OH)
$\checkmark$ Minority Leader Pelosi (D-CA)
$\checkmark$ Majority Leader McCarthy (R-CA)
$\checkmark$ Rep. Hoyer (D-MD)
$\checkmark$ Rep. Becerra (D-CA)
$\checkmark$ Rep. Ryan (R-WI)
$\checkmark$ Rep. Brady (R-TX)
$\checkmark$ Rep. Upton (R-MI)

## Political \& Lobbying Focus

$\checkmark$ Deep involvement with all potential leaders
$\checkmark$ Fundraising events and tours for all on Senate Finance
$\checkmark$ Continue Rank and File activity

- 2015 rule
- Advancement of Payment Reform Efforts


## Maintaining Positive Relationships with the Administration

$\checkmark$ Dr. Gifford and Quality Department - daily contact with CMS
$\checkmark$ Mike Cheek - duals demos
$\checkmark$ Reimbursement Team - quarterly meetings with Lawrence Wilson at CMS
$\checkmark$ Mark Parkinson and Dr. Gifford - quarterly meetings with Marilyn Tavenner \& Sean Cavanaugh

# Only Urgent Issues Likely to be Addressed in Lame Duck Session 

Potential Lame Duck Session Legislative Productivity (I I $3^{\text {th }}$ Congress)



- Regardless of which party wins the Senate, expect legislators to pass only necessary, short-term bills and continuing resolutions in the lame duck session
- The lame duck session may be more productive than the status quo; necessary legislation that was not passed before the election may be taken up in the lame duck session once electoral pressure is off of members and controversial votes are easier to take
- If Dems lose the Senate, they may attempt to push legislation and appointments through while they still have control; however, even if Dems keep control of the Senate, the prospect of improved Republican vote margins in the $114^{\text {th }}$ Congress will likely push Republicans to obstruct nonessential lame duck legislation

Sources: National Journal Research, 2014; Billy House, "Election Uncertainty Complicates Budget Decisions," National Journal, August 20, 2014; Robert Longley, "Lame Duck Sessions of the U.S. Congress," About News, 2014; Billy House, "As Bills Pile Up, Congress Starts Contemplating a Lame Duck Session," Government Executive, June 18, 2014;

## Lame Duck Implications

$\checkmark$ Short Lame Duck with little meaningful action due to organization of new majority (Contingent upon Republican Majority)

- Permanent SGR fix unlikely
- Patch likely by March 2015 (9 to 12 months?)
- CR passed at least through March 2015
- Extenders (no action, 2 year bill with some permanent, some middle ground compromise)?


# 2014 Mid-Term Elections <br> Who's Going to Retain Control? 

## The Six-Year Itch

Change in congressional party makeup after midterm elections during President's second term

| Year | President | Party | Pres. Party Seat Change: House | Pres. Party Seat Change: Senate |
| :---: | :---: | :---: | :---: | :---: |
| 2006 | G.W. Bush | Republican | -30 | -6 |
| 1998 | Clinton | Democrat | -5 | 0 |
| 1986 | Reagan | Republican | -5 | -8 |
| 1974 | Nixon/Ford | Republican | -48 | -48 |
| 1966 | Kennedy/Johnson | Democrat | -48 |  |
| 1958 | Eisenhower | Republican | -48 | -4 |
| Average |  |  | -29 | -12 |

## Analysis

The President's party has been hammered in the House and/or Senate in five of the last six "six-year itch" elections since World War II

## Source: $\mathbf{2 0 0 8}$ Vital Statistics on Congress.

# Obama's Approval Ratings Slightly Below Average of Predecessors 

Second-term presidential approval ratings

| President | Approval Rating | Date |
| :---: | :---: | :---: |
| Clinton | 63\% | September 1998 |
| Reagan | 61\% | September 1986 |
| Eisenhower | 57\% | September 1958 |
| Johnson | 46\% | September 1966 |
| Obama | 41\% | September 8-14, 2014 |
| G. W. Bush | 39\% | September 2006 |
| Truman | 35\% | September 1974 |

## Current Composition - Senate

Majority: 55


Minority: 45

## 2014 Senate Races by 2012 Presidential Performance

Senators running in 2014 by 2012 presidential performance (Obama vs. Romney)

| Obama + I5 or Greater | Obama +5 to +14.9 | Obama +4.9 to Romney +4.9 | Romney +5 to +14.9 | Romney +15 or Greater |
| :---: | :---: | :---: | :---: | :---: |
| DEMOCRATS (2I) |  |  |  |  |
| Coons (DE) +19 <br> Schatz (HI) +43 <br> Durbin (IL) +17 <br> Markey (MA) +23 <br> Reed (RI) +27 <br> Booker (NJ) +17 | M. Udall (CO) +5 <br> Harkin* (IA) +6 <br> Levin* (MI) +10 <br> Franken (MN) +8 <br> Shaheen (NH) +6 <br> T. Udall (NM) +10 <br> Merkley $(O R)+12$ | Hagan (NC) R+2 <br> Warner (VA) D+4 | $\begin{aligned} & \text { Begich }(\mathrm{AK})+14 \\ & \text { Walsh* (MT) }+14 \end{aligned}$ | Pryor (AR) +24 <br> Landrieu (LA) +17 <br> Johnson* (SD) +18 <br> Rockefeller* (WV) +27 |
| REPUBLICANS (15) |  |  |  |  |
| Collins (ME) +15 |  |  | Chambliss* $(G A)+8$ <br> Cochran (MS) +12 <br> Graham (SC) +10 <br> Scott (SC) +10 | Sessions (AL) +22 <br> Risch (ID) +32 <br> Roberts (KS) +22 <br> McConnell (KY) +23 <br> Johanns* (NE) +22 <br> Coburn (OK) +34 <br> Inhofe (OK) +34 <br> Alexander (TN) +20 <br> Cornyn (TX) + 16 <br> Enzi (WY) +4I |
| ate seat is open <br> e: The Cook Political Report. |  |  |  |  |

## Most Senate Battlegrounds Voted for Romney



Source: National Journal Research with Josh Kraushaar.


Source: Scott Bland, Andrea Drusch, and Alex Roarty, "The Senate Seats Most Likely to Flip: Hotline's Race Rankings," National Journal's Hotline, June 25, 2014.

## Races that Could Lead to a Republican Landslide (Unlikely)



# If Republicans Control the Senate, Expect More Bills (and More Vetoes) 

## Potential Post-Election Legislative Productivity With Republican Senate (I I 4 ${ }^{\text {th }}$ Congress)



Sources: National Journal Research, 2014; Rebecca Kaplan, "3 big issues Congress will likely punt for now," CBS News, July 29, 2014; Billy House, "Election Uncertainty Complicates Budget Decisions," National Journal, August 20, 2014; Phillip Bump, "Yes, the Senate is ignoring hundreds of bills passed by the GOP House. But it's always been that way," The Washington Post, August 8, 2014.

## Analysis

- If Republicans win the Senate, expect legislative productivity to go up, since Congressional gridlock will be less of an obstacle to lawmaking
- However, not all legislation passed by the $114^{\text {th }}$ Congress will be conservative; Senate Republicans will still have to address concerns of moderate Democrats in order to pass legislation, so Senate bills are likely to be more moderate than House versions
- Even if Congress does pass more Republican-backed bills, Obama will likely veto highly partisan legislation


## Most Major Outlets Predicting

 Sencte FlinsSenate Control

| (世) |  |
| :---: | :---: |
| NrT <br> Oct 24 | 538 |
| $64 \%$ Rep. | $61 \% \mathrm{R}$ |



## Potential Republican Additions to SFC

$\checkmark$ John Boozman
Arkansas, elected 2010
$\checkmark$ Jeff Flake
Arizona, elected 2012
$\checkmark$ Jerry Moran
Kansas, elected 2010
$\checkmark$ Roy Blunt
Missouri, elected 2010
$\checkmark$ Dean Heller
Nevada, elected 2012
$\checkmark$ Ron Johnson
Wisconsin, elected 2010

## If Democrats Keep the Senate, Expect More Status Quo

## Potential Post-Election Legislative Productivity With Democratic Senate (II3 ${ }^{\text {th }}$ Congress)



## Analysis

- If Democrats keep the Senate, expect a slight bump in legislative productivity (at least in 2015) due to the lack of midterm-related pressure and the lack of options to punt issues to a lame duck session or a new congress
- As in the $113^{\text {th }}$ Congress, less legislation is likely to go to conference due to continued disagreements between chambers, but any legislation that makes it to the President's desk will likely be bipartisan (or uncontroversial)


## If Democrats Retain Control...

$\checkmark$ Leadership will remain the same
$\checkmark$ Composition of committees may change (if Democrats lose seats) and current Democrat Finance members may lose seat on committee (Sen. Warner most junior) or lose margin via attrition.
$\checkmark$ Key Committee Chairmanships will remain unchanged

- Except for Aging (Sen. Casey will elevate due to term limits)
- Chair of HELP will change due to Harkin retirement


## 2015-2016 (with reasonable certainty)

Senate
$\checkmark$ Majority Leader ? (Reid, McConnell, Cornyn, Thune)
$\checkmark$ Minority Leader ? (Reid, McConnell, Cornyn, Thune, Schumer)
$\checkmark$ Senate Finance Chair/Ranking D - Wyden
$\checkmark$ Senate Finance Chair/Ranking R - Hatch

## Current Composition - House

Republicans: 233
Democrats: 199
Vacant: 3

## Most Projections Favoring Republicans

Current Control of House

## Projected Control of House (Most Likely Scenario) ${ }^{\dagger}$



Democrats: 199
Democrats: 190*
Republicans: 234
Republicans: 231*
Solid Democratic
Solid Republican
Likely Democratic Likely RepublicanLean DemocraticLean Republican

* For either party, projected results do not include races considered toss-ups
$\dagger$ The Most Likely scenario is based on recent polling and the consensus of the two House forecasts cited below, allowing for toss-ups
Sources: U.S. House of Representatives; "House: Race Ratings," The Cook Political Report, July II, 20I4; "2014 House Races," Sabato’s Crystal


# Only 70 Competitive or Potentially Competitive Seats in the House in 2014 

Number of House seats in the II $3^{\text {th }}$ Congress, by party
■ Solid Democrat Likely Democrat Lean Democrat $\quad$ Toss-Up $\quad$ Lean Republican Likely Republican $■$ Solid Republican
218


Only 70 seats currently competitive or potentially competitive

Democrats must win every Solid Democrat, Likely Democrat, Lean Democrat, Toss-Up, Lean Republican, and 5 out of 17 Likely Republican districts to take back the House

## 2015-2016 (with reasonable certainty)

House
$\checkmark \quad$ Speaker - Boehner
$\checkmark$ Minority Leader (Pelosi, Hoyer, Becerra, Van Hollen)
$\checkmark$ Chair Ways \& Means - Ryan
$\checkmark$ Chair Health Subcommittee - Brady
$\checkmark$ Chair Energy \& Commerce - Upton

## 2015 Legislative Session Risks

$\checkmark$ Multiple risk windows (SGR, Debt limit, Omnibus?)

- SGR expires March 31
- Debt limit expires Summer of 2015 (July-August)
$\checkmark$ Significant legislative activity in 2015 with threat of reconciliation instructions (51 vs. 60 to pass legislation) potentially expediting passage of harmful legislation


## Macro-Risks Associated with

## Republican Majority

$\checkmark$ More Managed Care Friendly Environment

- Medicare
- Medicaid
$\checkmark$ Provider Tax Skeptics
$\checkmark$ Entitlement reform proposals to re-emerge
- Chairman Ryan's budget/block grant/Medicare plans


## Other Macro-Risk Factors

$\checkmark$ Syria/ISIS crisis could grow

- Increased pressure to lower defense cuts in sequester (increasing burden on non-defense sectors)
- Eliminates ability to spend OCO money on health expenses


## Macro-Opportunities if Republicans Take

 Senate$\checkmark$ Large, divisive, stand-alone Republican initiatives will be blocked by the President's veto (i.e. block grants)
$\checkmark$ Senate more receptive to value-producing legislation

- Hips/Knees
- Bundling
- Site Neutral
- Episodic
$\checkmark$ Receptive to MedPAC reports of low margins
$\checkmark \quad$ Mitigated regulatory risks and greater receptivity to regulatory relief proposals
$\checkmark$ Possibility of Tax Reform: could open the door for life insurance LTC insurance reform ideas

Opportunities and Threats Specific to SNF Interests

## Opportunities: Payment Reform Provides Proactive Solution

$\checkmark$ Package Deal:

- Episodic/bundling
- Therapy Rule Relief
- Observation/3 day stay relief

Positives

- Saves Money
- Solution/Quality Focused
- Confined to SNF sector
- Similar to other payment models
- Difficult to oppose

Obstacles

- Bundling proponents may oppose
- Staffers/CMS may object to specific components of proposal
- MEDPAC is mandated (IMPACT ACT) to be involved


## Threats-Sound Familiar?

$\checkmark$ Market Basket Cuts
$\checkmark$ Provider Tax Reductions
$\checkmark$ Block Grants
$\checkmark$ Rebasing
$\checkmark$ Bad Debt

## 2014 Legislative Developments

## Congressional Efforts Linking Quality \& Payment

IMPACT ACT of 2014

Reducing Re-hospitalizations

## "IMPACT ACT OF 2014"

Legislation has four parts:

1. Incorporate standardized assessment
2. Public reporting of common quality measures
3. Provide quality measures to consumers when transitioning to a PAC provider
4. HHS and MedPAC to conduct studies to link payment to quality

## "IMPACT ACT OF 2014" Part 1

$\checkmark$ Incorporate standardized assessment(s) (e.g. CARE tool) into existing assessment tools across PAC providers (LTCH, IRF, SNF, \& HH) for

- Pressure ulcers
- Functional status
- Cognitive status
- Special Services
$\checkmark$ Collect data at admission and discharge
$\checkmark$ Implement by Oct 2018


## "IMPACT ACT OF 2014 " Part 2

$\checkmark$ Develop \& Publicly report quality measures across settings:

- Rehospitalizations \& hospitalizations
- Hospitalizations after discharge from PAC provider
- Discharge to community
- Pressure ulcers
- Medication reconciliation
- Incidence of major falls
- Patient preferences
- Avg Total Medicare Spend per Beneficiary
- Plus any other measures Secretary wants
$\checkmark$ Measures must be approved by National Quality Forum
$\checkmark$ Public reporting starting in Oct 2018

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## "IMPACT ACT OF 2014" Part 3 \& 4

$\checkmark$ Hospitals and PAC providers need to provide quality and efficiency measures to beneficiaries to help them with their decision making

- Modify conditions of participation to incorporate QMs into the discharge planning process
$\checkmark$ Payment penalty of $2 \%$ for failure to collect and report data
$\checkmark$ Requires several studies and reports
- MedPAC and HHS develop plan to link quality to payment
- Review Risk adjustment methodologies
- Review use of socio-economic status in risk adjustment


## SNF Rehospitalization linked to payment

SGR fix contained legislation that links SNF rehospitalization to SNF Medicare Part A payments

- Uses a with-hold approach
- $2 \%$ "mathematical" withhold to create incentive pool
- Incentive pool is $50-70 \%$ of the withhold
- Incentive pool is "returned" to facilities based on their rehospitalization performance score
- Performance score is based on rehospitalization rate OR degree of improvement from prior year(s)
- Top performers most or all of their withhold and possibly more
- Middle performers will receive some of their withhold
- Bottom performers receive less than their withhold or nothing
- First adjustment to a SNF's market basket will be in Oct 2018 (FY 19)


## SNF Rehospitalization linked to payment

$\checkmark$ Requires public reporting of SNF rehospitalization

- Confidential feedback reports in 2016
- Public reporting in 2017
- Development of a potentially avoidable rehospitalization measure for use in 2019
- All measures need to be risk adjusted


## The Observation Stays Problem

$\checkmark$ Hospitals are keeping patients under outpatient status (to receive observation services) rather than admitting them

- To avoid RAC audits of short inpatient stays
- To avoid readmissions penalties
$\checkmark$ This practice is causing unintended consequences
- Patients not achieving 3-day stay requirement for SNF coverage
- Higher out-of-pocket costs to beneficiaries


## Potential Solutions

$\checkmark$ Legislative action

- To repeal three-day stay requirement
- To count outpatient days under observation toward 3-day stay requirement
$\checkmark$ Administrative action
- To count outpatient days under observation toward 3-day stay requirement


## Coalition Work

$\checkmark 31$ coalition members, including AARP, AMA, Center for Medicare Advocacy, LeadingAge, and Leadership Council of Aging Organizations
$\checkmark$ Garner media attention and support Hill efforts, including broad support for current legislative proposals
$\checkmark$ Organize high-level meetings

- Sean Cavanagh, CMS
- CMS Office of the Actuary (OACT)
- MedPAC


## VA Provider Agreement

$\checkmark$ AHCA supported the Department of Veteran Affairs' (VA) proposed rule on Provider Agreements when it was released for comment in February of 2013.
$\checkmark$ The rule, among other things, increases the opportunity for veterans to obtain non-VA extended care services from local providers that furnish vital and often life-sustaining medical services

## Rule Provisions

$\checkmark \quad$ Medicare (Parts A and B) or Medicaid providers are not considered to be federal contractors.
$\checkmark \quad$ Under the new VA Provider agreement, providers with VA patients would not be considered federal contractors, and would therefore not have to follow complex federal contracting and reporting rules.
$\checkmark$ Federal contracts come with extensive reporting requirements to the Department of Labor which have deterred providers, particularly smaller ones, from VA participation. The use of provider agreements for extended care services would facilitate services from providers who are closer to veterans' homes and community support structures.

## Support from Congress

$\checkmark$ Several members of Congress in support of AHCA sent bipartisan Senate (43 Senators) and House ( 109 House members) letters directly to the VA encouraging them to release the final rule.
$\checkmark \quad$ The letters had a tremendous impact. VA sent the proposed rule to the Office of Management and Budget (OMB) for review.
$\checkmark \quad$ Senator Hoeven filed an amendment (\#3905 to S. 2410) to the National Defense Authorization bill to give the VA the authority to enter into provider agreements with nursing facilities, eliminating the complex federal reporting requirements.
$\checkmark \quad$ The National Defense Authorization Act will be taken up as soon as Congress returns from recess likely right after the November elections in the lame-duck.

## Medicaid Managed Care

Medicaid Managed Long Term Care Expansion


## Letter to Senate Finance

$\checkmark$ More work on providing accessible health care data across settings and payment types
$\checkmark$ Letter sent in late August recommends that:

- CMS should remove barriers to accessing timely Medicare claims and MDS data
- CMS should ensure that MDS data systems meet certain standards of interoperability
- CMS should enhance its data collection and reporting efforts for the Medicare Advantage and Medicaid managed care programs
- The Congress should pass legislation providing incentive funding to post-acute and long term care providers for implementing electronic health records (EHRs)


# How You Can Help <br> Member Advocacy 

## Meeting Members of Congress

$\checkmark$ Work with AHCA's Grassroots team to hold tours of your centers with Members of Congress

- Matt Smyth - msmyth@ahca.org
$\checkmark$ Over 170 tours in 2014, year-to-date
$\checkmark$ AHCA/NCAL yearly goal of 200 tours
$\checkmark$ Attend Congressional Briefing: cb.ahcancal.org
$\checkmark$ Meet with your Members of Congress when needed


## Congressional Briefing

June 15-16, 2015
"Hyatt Regency on Capitol Hill

- Attend Briefings and gain understanding of Congress and AHCA/NCAL's goals
- Hear insights from Members of Congress, Administration officials, and Washington experts
- Meet with elected officials and policy makers on Capitol Hill
- Build relationships with Members of Congress
- Shape public policy
- Network with peers


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## 2014 PAC Goals

$\checkmark$ \$3.5 Million in Hard Dollars

- \$3,200,000 YTD
\$2.1 Million in Soft Dollars
- \$2,550,000 YTD
$\checkmark 150$ Political Fundraising Events - completed


## Political Focus

$\checkmark$ Deep involvement with all leadership and potential leaders
$\checkmark$ Fundraising events for Senate Finance members
$\checkmark$ Acute focus on "vulnerable" Senators
$\checkmark$ Aggressive outreach to party committees
$\checkmark$ Continue Rank and File activity
$\checkmark$ Strategic soft dollar spending to outside groups

## Questions?

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