Washington Update

AMERICAN COLLEGE OF OSTEOPATHIC INTERNISTS

ORLANDO, FLORIDA

OCTOBER 17-21, 2018

TIMOTHY W. MCNICHOL, ESQ.
Disclosures

Neither I nor my spouse have had a financial relationship in any amount with any commercial interest in the last 12 months.
Learning Objectives

As a result of participation in this session, participants will be able to:

- Describe the current political environment in Washington, DC and the resulting impact on public policy.

- Describe the effect of the current political environment on legislative and regulatory activities impacting physicians and patients.

- Describe the potential impact of the 2018 mid-term elections on future legislative and regulatory activities impacting physicians and patients.
2018 Congressional Composition – 115th Congress

- **U.S. Senate**
  - 51 Republicans
  - 47 Democrats
  - 2 Independents

- **U.S. House of Representatives**
  - 235 Republicans
  - 193 Democrats
  - 7 Vacancy

*2/3 of Both the House and the Senate are needed to override a Presidential Veto (290 and 67 Respectively)*
A House Divided...

Majority controls the chamber

Majority controls the committee structure and activity

Legislative and investigative activity controlled by the majority party

In the Senate, majority controls the confirmation process
Congressional Activity by the Numbers

Compiled from Senate Resume of Congressional Activity data.
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### Congressional Activity by the Numbers

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Compiled from Senate *Resume of Congressional Activity* data. As of September 30, 2018.
Healthcare Reform Remains Front and Center

“Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111-148)
  ◦ Signed into law March 23, 2010

“Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111-152)
  ◦ Signed into law March 30, 2010

Collectively known as the ACA and implemented through extensive regulations

Continues to be the source of legislative, regulatory and legal activity
Uninsured Rate Among the Nonelderly


*Note 2018 data is for Q1 only.*
ACA Remains a Hot Topic

Legislation to repeal and replace the Affordable Care Act

Efforts to repeal the ACA advanced through the regulatory process

Medicaid reform – waivers for work requirements

Risk Adjustment Payment Program – Off-again / On-Again

Courts – More to Come
Executive Order 13765 of January 20, 2017

Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. It is the policy of my Administration to seek the prompt repeal of the Patient Protection and Affordable Care Act (Public Law 111–148), as amended (the “Act”). In the meantime, pending such repeal, it is imperative for the executive branch to ensure that the law is being efficiently implemented, take all actions consistent with law to minimize the unwarranted economic and regulatory burdens of the Act, and prepare to afford the States more flexibility and control to create a more free and open healthcare market.

Sec. 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.

Sec. 3. To the maximum extent permitted by law, the Secretary and the heads of all other executive departments and agencies with authorities and responsibilities under the Act shall ensure that the implementation of the Act is consistent with the principles of efficiency and minimizing the unwarranted economic and regulatory burdens of the Act, and shall take all actions consistent with law to achieve these ends.

So the Process Begins...EO 13765

“In the meantime, pending such repeal, it is imperative for the executive branch to ensure that the law is being efficiently implemented, take all actions consistent with the law to minimize the unwarranted economic and regulatory burdens of the act...”
Medicaid Waivers and the Uninsured

Repeal and Replace…Maybe Not…

Source: www.realclearpolitics.com

January 2, 2018 favorability changes as does the politics of the ACA.
Other Legislative Activity Still Occurring

Chronic Care Legislation
  ◦ Advancing Chronic Care, Extenders, and Social Services (ACCESS) Act

Opioid Use Disorder

Prescription Drug Pricing

Right-to-Try

Budget and Appropriations
Opioid Legislation Signed into Law

Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT for Patients and Communities Act)

660 Pages

Eight House and five Senate committees considered and combined more than 20 separate bills

Bi-partisan support
- House 393 – 8
- Senate 99 – 1

Signed into law September 17, 2018 – Public Law 115-240
Opioid Law General Summary

The law is intended to:

Combat illicit and synthetic drugs from entering the United States
Encourage the development of new non-addictive painkillers
Improve prescription drug monitory programs
Remove barriers to access treatment for opioid use disorders
Address the effects of opioid crisis on families and children
Establish comprehensive opioid recover centers
Opioid Law Highlights

Beginning in 2022, establishes requirement for providers to check a patient’s prescription drug history through a prescription drug monitoring program (PDMP)

Requires the Centers for Medicare and Medicaid Services to issue guidance options for federal reimbursement of telehealth services used in the treatment of opioid use disorders

Expands Medicare coverage for opioid treatment services provided by opioid treatment programs (medication-assisted treatment, counseling and toxicology testing)
Opioid Law Highlights (Cont’d)

Provides bundled payments for a full cycle of care including testing, counseling and medication

Increases the number of patients to whom a physician can provided medication-assisted treatment

Allows for the prescribing of controlled substances through telemedicine

Provides for various grants from 2019-2023
Opioid Law Has Expansive Reach

Department of Health and Human Services
U.S. Postal Service
Customs and Border Protection
Drug Enforcement Administration

Department of Homeland Security
Department of Justice
Federal Trade Commission
Department of Transportation
Right to Try Act


Provides patients with life-threatening diseases with access to experimental treatments without permission from the Food and Drug Administration

Applies to drugs and biological products that are not approved for commercial distribution, but have successfully completed a phase 1 clinical trial
Right to Try Act (Cont’d)

A physician would have to certify that a patient has exhausted approved treatment options and cannot participate in a clinical trial involving the drug.

Allows for broader use of certain drugs under the FDA Expanded Access program if certain conditions are met.

Drug makers, prescribers and others are exempt from liability under the Act.

Approximately 40 states have adopted their own right-to-try-laws.
ACOI Advocates on Your Behalf

Monitors legislation, regulations and federal court decisions that impact you and your patients

Provides comments and works with other physician organizations where appropriate

ACOI became the first osteopathic organization to become a member of the Medical Society Consortium on Climate Health
November 6 – Senate Prospects

Source: RollCall -- https://media.cq.com/electionguide/senate/
November 6 – House Prospects

Source: RollCall – https://media.cq.com/electionguide/house/
The Party in Power in Congress...

Majority controls the chamber and ultimately the rules

Majority controls the committee structure and activity

Legislative and investigative activity controlled by the majority party

In the Senate, majority controls the confirmation process
# The Supreme Court

<table>
<thead>
<tr>
<th>Justice</th>
<th>President</th>
<th>Vote</th>
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<tbody>
<tr>
<td>Brett Kavanaugh</td>
<td>Trump</td>
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<tr>
<td>Neil M. Gorsuch</td>
<td>Trump</td>
<td>54 - 45</td>
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<td>Elena Kagan</td>
<td>Obama</td>
<td>63 - 37</td>
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<td>Sonia Sotomayor</td>
<td>Obama</td>
<td>68 - 31</td>
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<tr>
<td>Samuel Alito</td>
<td>Bush</td>
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<td>John G. Roberts, Jr.</td>
<td>Bush</td>
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<td>Stephen G. Breyer</td>
<td>Clinton</td>
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<tr>
<td>Ruth Bader Ginsburg</td>
<td>Clinton</td>
<td>96 - 3</td>
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<tr>
<td>Clarence Thomas</td>
<td>H.W. Bush</td>
<td>52 - 48</td>
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**Merrick B. Garland was nominated on March 16, 2016.**

Healthcare, Redistricting and More
November 6, 2018 and Beyond

Government funding will have to be dealt with again before the end of the year

The House of Representatives could change hands (Leadership battles are certain to ensue.)

The Senate is less likely to change hands, but the margins will remain slim

The Special Counsel’s Report could be released in the very near future (See notes on majority party!)

The 2020 race for the White House will be underway!
Where Does this Leave Us?

Congress will return for a lame duck session.

Division will remain the norm for the foreseeable future.

Expect the unexpected!
Government Affairs Committee

Robert DiGiovanni, DO, Chair
Joseph Giaimo, DO
Stephen Bell, DO
Peter Meyers, DO
Seger Morris, DO
Jason Beckrow, DO
William Stephenson, DO

Megan Eshbaugh, DO
Virginia Irwin-Scott, DO
David Tolentino, DO
Kevin Wietecca, DO
Eric Good, DO
Glenn Nordehn, DO
Andrew Vogel, DO
Resources

American College of Osteopathic Internists
  - www.acoi.org

www.house.gov

www.senate.gov

www.congress.gov

www.regulations.gov

www.cbo.gov
Questions?
Contact Information

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