



End of Year Report – 2019

DATE: January 29, 2020

Van Scoyoc Associates, Inc. (VSA), and our affiliated firm Capitol Decisions, Inc. (CDI), perform advocacy work for the County of Sonoma on three issues: health care, transportation, and tribal issues. While VSA/CDI provided information to the County on a number of issues beyond the scope of those issues, the following is a summary outline of issues we anticipate will be of interest to the County from the end of 2019 and in the second session of the 116th Congress.

Appropriations/Budget

Just before Christmas, Congress passed two omnibus appropriations packages to fund the federal government for the remainder of Fiscal Year 2020. The first package included the Defense, Homeland Security, Commerce-Justice-Science and Financial Services measures and the second included the remaining eight measures, the Agriculture, Labor HHS, Energy-Water, Interior-Environment, State-Foreign Operations, Transportation-HUD, Military Construction-VA and Legislative Branch bills.

Health Care

A total of \$94.9 billion was included for the Department of Health and Human Services (HHS), an increase of \$4.4 billion above the 2019 enacted level. Funding levels of interest include:

Opioid Funding - Several agencies within HHS will receive funding for opioid treatment, prevention, and research, including:

- \$1.5 billion for state opioid response grants administered by the Substance Abuse and Mental Health Services Administration.
- \$475.6 million for opioid overdose prevention and surveillance at the Centers for Disease Control and Prevention.
- At least \$250 million for opioid misuse and addiction research at the National Institutes of Health (NIDA and NINDS).
- \$89 million for medication-assisted treatment programs.

Health Resources and Services Administration (HRSA) – The bill includes \$7.3 billion for HRSA, which is \$177 million above FY19. The amount includes:

- \$1.6 billion for the Health Centers program.
- \$2.4 billion, an increase of \$70 million, for the Ryan White HIV/AIDS program.

- \$50 million in Health Centers and \$70 million in the Ryan White HIV/AIDS program to reduce new HIV infections by 90 percent in 10 years.
- \$944 million, an increase of \$17 million, for programs to improve maternal and child health, including an additional \$5 million to reduce maternal mortality.
- \$286 million for the Title X Family Planning program.

Centers for Disease Control and Prevention (CDC) – The bill includes a total of \$7.974 billion for CDC, \$636.8 million above FY19 level. The bill includes:

- \$225 million for a new CDC building to enhance public health research collaboration.
- \$10 million in new resources at CDC to combat the increasing rates of suicide.
- \$12.5 million for gun violence research at the CDC.
- \$140 million to support CDC's efforts to reduce new HIV infections by 90 percent in 10 years.
- \$230 million, an increase of \$20 million, to address tobacco and e-cigarettes.
- \$27 million, an increase of \$2 million, for the Diabetes Prevention Program.
- \$173.4 million, an increase of \$75 million, for global disease detection efforts.

Substance Abuse and Mental Health Services Administration (SAMHSA) – The bill includes \$5.9 billion, \$140 million above FY19 for SAMHSA. The bill also includes:

- Suicide prevention including \$16 million for the Zero Suicide program, an increase of \$7 million; and \$19 million for the Suicide Lifeline, an increase of \$7 million.
- Substance abuse treatment: \$3.8 billion, an increase of \$19 million, including continued funding for opioid prevention and treatment.
- Substance abuse prevention: \$206 million, an increase of \$1 million above the 2019 enacted level.

Health Policy Provisions - In addition, a number of health-related policy items were included on the domestic spending bill. Some of the key provisions of interest include:

- A ban on selling tobacco products to people under 21.
- Extensions of key health programs through May 22, 2020 including, among others:
 - A scheduled \$4 billion reduction in disproportionate share hospitals
 - Community health center programs
 - Teaching Health Center Graduate Medical Education Program
 - National Health Service Corps
 - Temporary Assistance for Needy Families Program
 - Certified Community Behavioral Health Clinics demonstration program
 - Health profession opportunity grants
- A rider barring HHS from ending auto-reenrollment in the Obamacare exchanges and prevent the Trump administration from banning a practice called "silver-loading," a strategy to minimize fallout from President Donald Trump's elimination of a key Affordable Care Act subsidy.
- Repeal of three Affordable Care Act taxes:
 - The "Cadillac tax," a 40% excise tax on pricey, generous health-insurance plans.
 - A 2.3% excise tax on medical devices.
 - An annual fee on the health insurance industry.

- A full list of health related provisions included in the package can be found [here](#) starting on page 4.

Surprise Billing/Drug Pricing Legislation

As House and Senate negotiators were unable to reach an agreement last year, work continues on legislation surrounding drug pricing and surprise out-of-network billing.

The sticking point that has thus far prevented agreement on a final deal on legislation addressing surprise billing has been whether to use an arbitration or rate-setting approach for dealing with disputes. Providers generally favor an arbitration approach while insurers prefer rate-setting.

On December 12, 2019, the House passed HR 3, the Lower Drug Costs Now Act. However, Senate Majority Leader McConnell (R-KY) has said his chamber will not take up the bill. In the Senate, Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR) released a modified version of their drug pricing bill on December 6, 2019 in the hopes of securing enough support to move the legislation.

As noted above, the end-of-year spending package passed in December temporarily re-authorized a variety of health programs through May 22, 2020 and that date is serving as an unofficial deadline for reaching an agreement on health policy legislation including surprise billing and prescription drug pricing.

Mental Health and Substance Use

With the primary focus on drug pricing and surprise billing legislation, mental health and addiction legislation was put on the back burner in 2019. However, the Senate Health, Education, Labor and Pensions (HELP) Committee legislation addressing surprise medical billing and other issues includes parity provisions.

Specifically, Sections 310 through 312 in the legislation approved by the HELP Committee would require group health plans and insurers to provide the Secretaries of Labor, Treasury, and Health and Human Services with analysis comparing non-quantitative limitations to medical and surgical benefits with those to mental health and substance use disorder benefits when requested.

Additional parity legislation that has been introduced this Congress includes:

- **Mental Health Parity Compliance Act of 2019 (S.1737/H.R. 3165)**
 - Requires group health plans or insurers to provide comparative analyses about the design and application of nonquantitative treatment limitations (NQTLs) to medical and surgical benefits and mental health and substance use disorder benefits to Department of Labor (DOL), Treasury, and Health and Human Services (HHS), upon request.
 - Would add an annual Report to Congress with redacted versions of the comparative analyses, findings on whether plans are in compliance with parity

laws, and any actions the plans should take to submit additional information and/or come into compliance

- **Parity Enforcement Act of 2019 (H.R. 2848)**
 - Amends the Employee Retirement Income Security Act (ERISA) to provide DOL the authority to investigate and levy monetary penalties against health insurers and plan sponsors that offer health plans to employers that violate the Mental Health Parity and Addiction Equity Act.
- **Behavioral Health Coverage Transparency Act (S.1576/H.R. 2874)**
 - Establishes a Consumer Parity Portal that: gives patients a single place to get info about their rights, the info submitted by insurers about how they make parity decisions, and results of audits
 - Requires insurance companies to disclose how they are making parity decisions, their denial rates for mental and physical health claims, and reasons they deny mental health claims compared to physical health claims.
 - Encourages compliance w/ existing parity laws by ensuring that HHS, DOL, and Treasury perform no fewer than 12 random audits of health plans per year.

We anticipate that Congress may return its attention to mental health and addiction in 2020 leading up to November elections as they will likely want to be seen as “doing something” to address the twin epidemics of suicide and opioid overdoses. The House Education and Labor Committee recently sent a letter to the Department of Labor requesting information on the Department’s parity enforcement activities and may use the Department’s response to develop legislation intended to strengthen parity enforcement.

Violence Against Women Act.

The House passed H.R. 1585, a reauthorization bill for the Violence Against Women Act (VAWA), on April 4, 2019. VAWA addresses and provides grants to prevent domestic violence, sexual assault, and dating violence. VAWA’s authorization expired in February 2019. H.R. 1585 not only reauthorizes VAWA, but also expands the list of crimes that Tribes are able to prosecute to include sexual violence, sex trafficking, stalking, and assault of law enforcement or corrections officers. The bill could be considered and voted on by the full Senate, but negotiations are ongoing on the larger reauthorization of VAWA. Senator Feinstein introduced a companion bill, S. 2843, in the Senate on November 13, 2019.

Administration

The Department of Health and Human Services (HHS) issued a [proposed rule](#) in August which amends 42 CFR Part 2 and modifies how the medical records of patients with substance abuse disorders (SUDs) are shared between providers to align more with HIPAA. Currently under HIPAA, a covered entity may generally use or disclose protected health information for treatment, payment, or health care operation purposes without a patient’s consent. With limited exceptions, 42 CFR Part 2 currently requires a program to attain a patient’s explicit written

consent for such purposes in connection to the disclosure of records related to SUDs, including the disclosure to a treating provider.

On September 5, the Department of Labor (DOL) issued [guidance](#) on mental health parity compliance. This guidance largely followed the 2018 proposed parity compliance guidance.

Transportation

FY 2020 Appropriations

The FY 2020 appropriations bill provides \$86.2 billion in total for the Department of Transportation, \$325 million below the 2019 enacted level. The Statement of Managers for DOT is [here](#). The bill includes:

- \$1 billion for **National Infrastructure Investments (TIGER/BUILD)**, \$100 million above the 2019 level. The bill ensures parity between urban and rural awards.
- \$17.6 billion for **Federal Aviation Administration**, \$166 million above the 2019 level.
 - This includes an additional \$400 million from the General fund for **Airport Improvement Grants**, which is provided along with the authorized \$3.35 billion, bringing the total to \$3.75 billion.
 - The bill provides \$170 million for the Contract Tower Program.
- \$48.6 billion for the **Federal Highway Administration**. This fully funds the FAST Act authorization for highway and bridge funding in FY 2020.
 - This includes \$2.2 billion for from the General fund for **Highway Infrastructure Programs**
 - \$1.15 billion for a risk-based bridge rehabilitation and reconstruction program.
- \$2.8 billion for the **Federal Railroad Administration**, \$80 million below the 2019 level
 - \$325 million for **Consolidated Rail Infrastructure and Safety Improvements**, \$70 million above the 2019 level.
- \$12.9 billion for the **Federal Transit Administration**, \$503 million below the 2019 level.
 - The bill provides \$1.978 billion for **Capital Investment Grants**, \$575 million below the 2019 level.
 - The bill provides \$510 million for **Transit Infrastructure Grants**, from the General fund. These are in addition to the FAST Act authorized funding levels.

Surface Transportation Authorization

The current surface transportation funding and policy legislation will expire on September 30, 2020. Last August, the Senate Environment and Public Works Committee voted unanimously to advance S. 2302, the America's Transportation Infrastructure Act (ATIA). This bill is the first step in a process that will run through next year and possibly into 2021, as Congress grapples with increasing the federal gas tax or finding alternative revenue sources.

Highlights of the Senate bill (S. 2302) include:

- The bill would provide \$287 billion in highway spending over FY 2021-2025. The majority of those funds (90 percent) would be distributed to the states by current formulas. As proposed, the bill would provide for roughly a 10 percent increase in highway and bridge spending over current levels.
- It would authorize \$10.8 billion for programs addressing resiliency and other climate issues, including \$1 billion for electric, hydrogen, and natural gas vehicle charging and fueling infrastructure.
- It would authorize \$6 billion over five years for a new competitive bridge program.
- The bill would codify the President's "One Federal Decision" directing that DOT complete project environmental reviews and federal agency permitting within two a year period.
- The bill would reauthorize the Diesel Emissions Reduction Act, for rehabilitating or replacing diesel-powered equipment and vehicles, and would create a new program to help reduce truck idling at ports.

Before S. 2302 is considered by the full Senate, several other Committees will need to develop their titles, including Finance (revenue), Banking, Housing and Urban Affairs (transit), Commerce, Science and Transportation (rail, motor carrier, and auto safety).

The House Transportation and Infrastructure Committee is expected to begin action on this legislation early next year. Committee Chairman Peter DeFazio (D-OR) has said that he wants a bill with robust funding. It will be left to the Ways and Means Committee to determine where the \$107 billion in new revenue that is needed just to sustain current funding for highways and transit, much less the amounts needed to grow those programs.

Aviation

With the enactment of the FAA Reauthorization Act of 2018 (Public Law 115-254), Congress extended funding for the Airport Improvement Program (AIP) through FY 2023. The AIP program funds airport development, including the Sonoma County Airport, which received \$10 million in early 2019. Congress also adopted a number of other provisions of interest to the County and VSA will continue to monitor implementation of that legislation.

Tribal

Lytton Rancheria Homelands Act of 2019

H.R. 1388, the Lytton Rancheria Homelands Act, was included in the National Defense Authorization Act (NDAA), a defense bill Congress considered as a must-pass bill at the end of 2019. As such, Congress passed the bill in December and then President Trump signed the bill into law on December 20, 2019. The legislation will start the process for the federal government to take 511 acres of land in Sonoma County into trust for the Lytton Rancheria.

Fee-to-Trust Reform

H.R. 375, legislation to amend the Act of June 18, 1934 and reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, was introduced by Rep. Tom Cole (R-OK). The legislation would authorize the Interior Department to take land into trust for the benefit of any federally recognized American Indian Tribe, regardless of when the Tribe was recognized. The legislation, previously passed in the House on a vote of 323 – 96, is still awaiting consideration by the Senate Indian Affairs Committee and the full Senate. According to Senate Indian Affairs Committee staff, the Committee is considering possible hearings for the bill in 2020.

SURVIVE Act

S. 211, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act, is still awaiting full consideration by the Senate. The legislation was introduced by Senator John Hoeven (R-ND) and would require a 5 percent allocation from the Crime Victims Fund be provided to Indian Tribes through a grant program. The Fund is financed by fines and penalties paid by convicted federal offenders. The Indian Affairs Committee released report language, [here](#), to accompany the bill. The full Senate could consider the bill in 2020.

Savanna's Act

S. 227, Savanna's Act, is still awaiting full consideration by the Senate. The legislation was introduced by Senator Lisa Murkowski (R-AK) and directs the Department of Justice to review, revise, and develop law enforcement and justice protocols to address missing and murdered Indians. The Indian Affairs Committee recently released report language, [here](#), to accompany the bill. As a bipartisan bill with 28 Senate cosponsors (including Senator Harris), the legislation could be considered in 2020 by the full Senate.