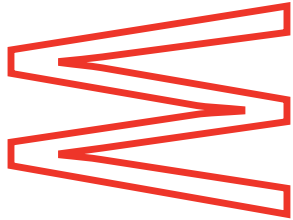


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## Washington, D.C. Update



The summer congressional recess is fast approaching. There are now only seven legislative days before Congress's seven-week summer break. They will return to Washington after Labor Day. After returning, Congress is only scheduled to be in session for five weeks before heading back out to finish the sprint to the November elections. As such, pre-election maneuvering has overtaken the Capitol, with House and Senate Democrats each attempting to force votes on a variety of issues

including gun control measures and Zika funding. Expect more political maneuvering in the coming days and weeks.



This month, we're pleased to introduce a new occasional feature to the Washington, D.C. Update, *Three Questions With...* Our inaugural guest is Senator Tom Daschle (D-SD), former Senate Majority Leader and Founder and CEO of The Daschle Group, a Public Policy Advisory of Baker Donelson. Each edition of *Three Questions With...* will feature a political, military, business or non-profit leader discussing the pressing topics of the day.

In this month's update we highlight the following issues:

- [Three Questions with Former Senate Majority Leader Tom Daschle \(D-SD\)](#)
- [FY17 Appropriations A Likely Victim of Election Year Calendar](#)
- [GOP Unveils Obamacare Replacement](#)
- [Zika Funding Delayed](#)
- [Tariff and Trade Bill Signed Into Law](#)
- [Toxic Substances Control Act](#)
- [CMS Announces Second Round of TCPI Support Grants](#)
- [Helping Families In Mental Health Crisis Act, Ready for House Floor Consideration](#)
- [Opioid Epidemic Response Measures Move to Conference](#)

Additionally, here's what we're reading this month:

- [Understanding Medicaid Hospital Payments and the Impact of Recent Policy Changes](#) – The Kaiser Family Foundation
- [How to Make Budget Process Reform Politically Feasible](#) – The Brookings Institution
- [Increasing the Effectiveness and Sustainability of the Nation's Entitlement Programs](#) – American Enterprise Institute

Please feel free to reach out to me for additional information on these topics or other issues of importance.

[Sheila Burke](#)  
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**Three Questions with Former Senate Majority Leader Tom Daschle (D-SD), Founder and CEO of The Daschle Group, a Public Policy Advisory of Baker Donelson**

**1. As we head into a new Administration and the new Congress, what do you see as the opportunities and challenges for the Affordable Care Act?**

The Affordable Care Act (ACA) is much greater than a single legislative action. It is an umbrella for a fundamental remaking of our health care system. Because of this, implementing the many changes included in the ACA had to take place over a number of years, and many of the most difficult pieces are being implemented now. As such, we are only now grappling with these challenges. Additionally, due to Republican opposition, some of the fundamental building blocks of the new system, such as the health insurance exchange marketplaces, remain unsettled. Looking forward to a new Administration, I expect we will probably see either greater movement toward implementing the ACA, or significant efforts to repeal and make changes to sections of the law.

That said, there are a number of non-ACA related health care issues, some of which have bipartisan support that I expect to remain on Congress's agenda, including payment reform, Medicaid expansion, efforts to improve health care quality, expansion of telemedicine, initiatives aimed at improving transparency, and the acquisition and management of big data.

**2. With an increasingly short congressional session, what should we expect to see legislatively for the rest of this year?**

Given time limitations, appropriations will clearly be the primary topic of deliberation in Congress in the coming months. In particular, it will be interesting to see whether Congress is able to pass individual appropriations measures, or will need to package them into either an omnibus bill or pass some sort of a Continuing Resolution that maintains current spending levels until after the election.

In addition to fiscal year appropriations, Congress must fund efforts to counter the spread of the Zika virus. The current situation is problematic and must be addressed sooner rather than later. Already present in Puerto Rico, Florida and in other parts of the country, the threat of Zika will grow as the summer continues.

Finally, there is a chance that Congress may revisit the Cuba travel ban. Baker Donelson and the Daschle Group, through the Howard Baker Forum's [Cuba Consortium](#), have been at the center of these deliberations and will continue to remain engaged in moving forward.

**3. What do you think will be the congressional priorities of the 115th Congress? How will that change based on whether President Clinton or Trump is in office?**

With such striking policy differences between a Trump and Clinton Administration, it is difficult to predict the legislation that will move in the 115th Congress. But there remains bipartisan interest in addressing a number of issues, only some of which have seen action in the 114th Congress. Chief among them is moving forward with tax reform. There has been interest from both sides of the aisle in recent years to reform our tax code. However, so far, Democrats and Republicans have only been able to agree upon the reauthorization of certain tax extenders each year – a number of which are now permanent. Additional expiring tax extenders may provide the impetus for a broader tax reform agreement next year.

I also see a growing interest in addressing the more than \$3 trillion infrastructure repair backlog. The failure to address our country's crumbling infrastructure is a problem that has been growing for decades and affects all Americans. One only need to look at Memorial Bridge in Washington, D.C. – a major commuter thoroughfare – that will be forced to close in the next five years unless we are able to find the money to fund some \$250 million in repairs.

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Another issue where we may see movement in 2017 is on trade. Regardless of what happens this year on the Trans-Pacific Partnership (TPP), the issues raised by TPP will continue to be front and center. In fact, Congress may be forced to revisit many of these same issues and challenges upon completion of the Transatlantic Trade and Investment Partnership negotiations with the European Union.

### **FY17 Appropriations a Likely Victim of Election-Year Calendar**

Election year politics and the aftermath of the Orlando shootings have slowed floor progress on the FY17 appropriations process, but trouble looms. Combined with the abbreviated election-year calendar and other factors, Congress and the President will likely be unable to meet the October 1 fiscal year deadline for enacting all 12 individual spending bills that collectively fund the federal government. That means a temporary stop-gap funding bill will be needed to keep the government operating past October 1 until the regular FY17 legislation is finalized.

Despite unprecedented progress this spring by the House and Senate Appropriations committees in reporting FY17 spending legislation to the floor of their respective chambers, floor consideration has slowed. In a strange turn of events following the Orlando nightclub shooting, the usually popular Military Construction-Veterans Affairs (MilCon-VA) bill, the Commerce-Justice-Science (CJS) bill and an emergency Zika virus funding measure got caught up in the highly-charged politics of gun control. Acrimony between the two parties following a “sit-in” protest by House Democrats spilled over into House and Senate negotiations on the final MilCon-VA/Zika funding bill, while gun control amendments in the Senate slowed the CJS bill to a crawl. Even if the two parties are able to resume regular order on FY17 legislation, the shortened election-year calendar will delay action on the vast majority of spending legislation until September. The House and Senate are in session in July for fewer than ten legislative days before breaking for the presidential conventions and annual August recess. The five-week September session will likely be devoted to finalizing a small number of the least controversial spending bills, as well as passing a temporary stop-gap funding measure needed to keep the federal government operating in the new fiscal year.

Determining the length of the temporary stop-gap funding measure may not be as simple as it seems due to demands by some in Congress to leave final FY17 decisions until next winter

when a new President and Congress take power. Because the election results will not be known until November 8, a more likely scenario is a temporary stop-gap funding measure until the third week of November when Congress is in session to organize for the 115th Congress and decide on the parameters of a post-election lame duck session. At that time, Congress will determine how it will proceed on the FY17 appropriations legislation.

**Takeaway:** Although the fate of the popular MilCon-VA bill is linked for now to partisan differences on Zika funding, look for efforts by the House and Senate Appropriations committees to finalize the least controversial appropriations measures in September. The bulk of the spending measures will likely be addressed after the November election. Because both committees were able to report all 12 of the FY17 spending bills out of committee much earlier in the process than is usually the case, stakeholders and affected parties have more time to assess differences between the two chambers and make their case to Appropriations Committee members and staff well before members are forced to make final decisions in the fall.

### **GOP Unveils Obamacare Replacement**

On June 22, House Speaker Paul Ryan (R-WI) and Republican House members released their official proposal to replace the Affordable Care Act. The proposal is the first comprehensive plan floated by congressional Republicans since the passage of the ACA in 2010. The House GOP’s proposal includes bold promises to reduce premiums by double digits, to save Medicare and to create sweeping savings across the health care system. However, the plan does not go into great detail on a number of issues, including price, time frame or implementation. The plan, which is not in the form of legislation, would:

- Repeal the Affordable Care Act;
- Gradually raise the Medicare eligibility age from 65 to 67;
- Cap the tax deductibility of employer-based health care plans;
- Create a refundable tax credit for Americans who don’t receive employer-provided insurance;
- Expand the use of health savings accounts;
- Transform Medicaid into state block grant or per-capita allotment program; and
- Move Medicare toward a “premium support” model where seniors would choose a private health plan.

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Democrats immediately decried the proposal. White House spokeswoman Katie Hill called it “nothing more than vague and recycled ideas to take health insurance away from millions and increase costs for seniors and hardworking families.”

**Takeaway:** It is unlikely that the proposal will gain traction this year. But if Republicans are able to gain control of the White House and maintain control of the House and Senate, look for the proposal to provide an outline for Republican health care legislation. In the meantime, the proposal provides Republican candidates with a proposal around which to frame their health care goals during the fall campaign, complementing the longstanding Republican promise to “Repeal and Replace” the Affordable Care Act.

### **Zika Funding Delayed**

Emergency supplemental financing to fight the Zika virus appears to be delayed after the Senate failed to overcome a Democrat filibuster of a \$1.1 billion compromise measure negotiated between House and Senate Republicans. Democrats rejected the House-passed proposal, objecting to provisions that redirect \$750 million of the \$1.1 billion from other programs, including from an ACA program and a fund set up to fight Ebola in 2014. Senate Democrats are also dismayed by a decision to exclude \$50 million in requested funds for maternal and child health and a provision that blocks supplemental funds from going to Planned Parenthood for birth control services. Additionally, the House-passed measure provides significantly less than the \$1.9 billion requested by the Obama Administration.

House Republicans hailed the compromise language, highlighting the approximately \$750 million taxpayer dollars that will be saved thanks to the use of offsets and applauding the limitations placed on the use of funds as “strong oversight controls on the use of every dollar.” After the Senate rejected the measure, Senate Majority Leader Mitch McConnell (R-KY) repeatedly said no changes would be made to the bill.

**Takeaway:** It is not immediately clear how congressional leaders might resolve the impasse, or when the federal money for Zika would ultimately be approved. Look for the Zika funding measures to remain a key issue when Congress returns to Washington for the first two weeks of July.

### **Tariff and Trade Bill Signed Into Law**

On May 20, President Obama signed the American Manufacturing Competitiveness Act of 2016. The bipartisan, bicameral legislation, which was passed overwhelmingly in the House and by unanimous consent in the Senate, reforms the way Congress considers Miscellaneous Tariff Bills (MTBs) – tariff relief – for certain products used in U.S. manufacturing operations. MTBs have failed to advance since 2012 when Republican opposition to earmarks brought the process to a halt. The new law resolves the issue by assigning the U.S. International Trade Commission (ITC) to determine whether the statutory criteria for relief are met, rather than having the constituents request duty suspensions from their representatives or senators. If the requirements are met, the ITC will submit a package to Congress, which will then examine the proposal, draft a bill and exclude proposed products if objections are raised.

**Takeaway:** With passage of the American Manufacturing Competitiveness Act, MTBs may have an easier path forward in the future.

### **Toxic Substances Control Act**

For the first time in 40 years and after years of negotiation, on June 22, the President signed the compromise legislation updating the Toxic Substances Control Act (TSCA) of 1976. The bipartisan bill, H.R. 2576, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, had support from Democrats and Republicans, as well as the Chamber of Commerce, chemical manufacturers and the Environmental Defense Fund.

Public health advocates and industry have long differed over the proper way to update TSCA. H.R. 2576, which gained both bipartisan and bicameral support, requires the Environmental Protection Agency (EPA) to begin evaluating roughly 22,000 chemicals that are currently on the market but were not included in the 1976 law. The law also requires the EPA to take only the health and environmental effects of a chemical into account when devising new rules, not the financial effect of those regulations.

**Takeaway:** H.R. 2576, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, is a rare compromise between environmentalists and the chemical industry, as well as between Democrats and Republicans.

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### **CMS Announces Second Round of TCPI Support Grants**

On June 10, the Center for Medicare and Medicaid Services (CMS) committed \$10 million over the next three years to fund a second round of the Support and Alignment Networks under the Transforming Clinical Practice Initiative (TCPI). The TCPI program was designed to help clinicians and their practices transform the way in which they deliver care. The second round of funding for the Support and Alignment Networks is intended to leverage primary and specialist care transformation work and learning to spur the adoption of Alternative Payment Models under the new Quality Payment Program, which was part of the proposed Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) regulation.

**Takeaway:** Under the second round, competitive applicants will have received commitments to enroll at least 5,000 eligible clinicians ready to improve their practices by enhancing quality and lowering costs. Final applications are due to CMS by July 11. CMS anticipates announcing awards in the fall.

### **Helping Families in Mental Health Crisis Act, Ready for House Floor Consideration**

After months of delays, on June 15, the House Energy and Commerce Committee passed H.R. 2646, the Helping Families in Mental Health Crisis Act, by a vote of 53 to 0. Representative Tim Murphy (R-PA) originally introduced the legislation in 2013, but the measure stalled over objections from both sides of the aisle. In recent months, Energy and Commerce Chairman Fred Upton (R-MI) worked to change the bill significantly to smooth over areas of objection and move the bill forward. The bill is expected to be voted on by the House sometime this week.

Democrats hailed the bill's progress out of committee as a good first step, but noted that more funding is needed to truly address the challenge of mental illness. The House's most recent changes to the bill have made it more like the Senate bill, S. 2680, which is sponsored by Senate Health, Education, Labor & Pensions (HELP) Committee Chairman Lamar

Alexander (R-TN), Ranking Member Patty Murray (D-WA), Senator Chris Murphy (D-CT), and Senator Bill Cassidy (R-LA), among others. S. 2680 was approved by the Senate HELP Committee on March 16.

**Takeaway:** While passage in the House Energy and Commerce Committee is encouraging for supporters of the legislation, during markup a number of Democratic amendments were rejected on party-line votes, indicating the proposals may present a challenge passage of the bill on the House floor.

### **Opioid Epidemic Response Measures Move to Conference**

On June 16, the Senate agreed to a conference committee with the House on S. 524, the Comprehensive Addiction and Recovery Act (CARA) of 2016. The proposal, which would authorize the Attorney General to award grants to address the national epidemics of prescription opioid abuse and heroin use, was approved by a vote of 95 to 1. Only Senator Mike Lee (R-UT) voted in opposition. Democrats called for more funding to fight the epidemic. In March, all but five Republicans opposed a Democratic amendment from Senator Jeanne Shaheen (D-NH) to add in \$600 million in emergency funding to fight opioids, defeating the proposal. However, the Senate adopted a measure from Shaheen to instruct the conference committee to include funding in its final product, though it did not specify the amount. The measure was approved 66 to 29, with 24 Republicans voting in favor. The House approved its version of the legislation on May 13 by a vote of 400 to 5.

**Takeaway:** There remains significant disagreement among conferees as to whether to include \$600 million in emergency funding as part of the final legislative package. Though instructions to the conferees include Senator Shaheen's amendment, among the five Senate Republicans put on the conference committee, three – including the No. 2-ranking member of the Republican leadership, Senator John Cornyn (R-TX) – said they would oppose funding in the bill.

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