



MEMORANDUM

DATE: November 4, 2010

TO: NASUAD Members

FROM: NASUAD Staff

SUBJECT: Preliminary Election Analysis

The purpose of this memorandum is to provide National Association of States United for Aging and Disabilities (NASUAD) members with a preliminary analysis of the November 2 midterm election results. Below, the Association staff provides a preliminary overview and analysis of the following:

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- ***Congressional Implications*** – In this section, NASUAD staff discuss implications for Committee Chairpersonship positions and major legislation such as: Affordable Care Act (ACA), the reauthorization of the Older Americans Act (OAA), Appropriation measures, and the reauthorization of the Workforce Investment Act (WIA).
- ***State-Federal Representation*** – Also discussed below, are possible changes in the composition of key state government associations including the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), and the Council of State Governments (CSG).
- ***Ballot Initiatives*** – Finally, the memo offers an overview of key state ballot initiatives. The initiatives have been grouped into the following categories: a) budget and financing; b) health; and c) aging and disability.

Several races are still undecided, including the U.S. Senate races in Alaska and Washington, nine U.S. House of Representatives races and the gubernatorial races in Connecticut, Illinois and Minnesota. As these seats are filled and more information becomes available about possible policy agenda shifts and priorities for the new Congress, NASUAD will provide regular updates.

If you have questions or suggestions for tracking and reporting, please feel free to contact either Martha Roherty at mroherty@nasuad.org or Mike Cheek at mcheek@nasuad.org.

Background

On November 2, 37 gubernatorial elections were held in addition to the midterm Congressional elections. Incoming elected officials will face a myriad of issues including several that will directly impact NASUAD members and their service systems:

1. *A Continuing Economic Crisis.* Most states are facing declining or flat revenues levels while, at the same time, they are facing an increasing demand for publicly-financed heating bills and providing home delivered meals, as well as all types of long-term services and supports (LTSS). Due to these issues, state directors continue to grapple with difficult budget and service reductions decisions. According to the most recent NASUAD Economic Survey nearly 80 percent of the states reported that they made cuts both FY 2009 and FY 2010. Most states have indicated that FY 2011 and FY 2012 also will prove challenging. Discussed in more detail below, the economic crisis also has forced many states to make administrative cuts, including in personnel, and struggle with unforeseen increases in service demands while resources dwindle.
2. *State Workforce Reductions.* In a 2009 NASUAD survey, 32 percent of the states reported that more than 25 percent of their department employees were eligible for retirement. Nearly one million state workers have vacated their positions in state service since the start of the recession through early retirement and increased furlough days resulting in a reduction of nearly one fifth of the overall state government workforce. This reduction has placed a strain on existing staffs to maintain current government operations but in many cases without the institutional knowledge required to administer complex supports and services programs. Additionally, many states have implemented hiring freezes, resulting in unfilled positions, furlough days, and lay-offs.
3. *A Growing Population of Baby Boomers and Increasing Demand for Services and Supports.* The first baby boomer turned 60 years old in 2006, heralding an era of increasing demand for services financed by the Older Americans Act, Medicare, Medicaid, as well as Social Security income supports and retirement benefits. Already, over 52 million Americans are over age 60. By 2020, almost one in six individuals will be age 65 and older. Exacerbating the demographic shift impacts, the economic crisis has resulted in unforeseen demand increases for NASUAD member services (i.e., meals, transportation, foreclosure assistance, information and referral, requests for assistance with benefits applications, such as Medicaid, and Medicaid-financed but NASUAD member operated services).
4. *A Complex New Health Care System.* The passage of the Affordable Care Act (ACA) signaled a sea change in the way that most state aging and LTSS programs are administered. In addition to the relatively minor ACA opportunities that will be overseen by the Administration on Aging (AoA), state agencies are struggling

to keep track of the numerous Medicare program and the Medicaid program changes. ACA also includes an array of options intended to help build stronger home and community based systems, but such options differ from traditional mechanisms.

5. *Fragmented LTSS Systems.* In a global economy, adult children are geographically dispersed because of professional opportunities, but remain involved in their parents' health care and social needs. Frequently, adult children are unable to access timely and accurate information on long-term services and supports for their loved ones due to lack of a basic understanding of what services and supports are available and whom to call for help. Further complicating the matter are information technology databases that are unable to interface with other health and human services systems. Such a fragmented MIS/IT infrastructure calls for a more coordinated effort between SUAs, AAAs, ADRCs, and Centers for Independent Living (CILs) that are able to deliver information in a reliable and timely manner. Cash strapped state agencies likely are not in a position to make significant changes in IT architecture without federal program assistance (i.e., Advanced Planning Documents, Cost Allocation Plans, etc.).

Preliminary Analysis

Below, NASUAD provides an overview of Congressional changes and potential implications, State-Federal representation and implications for coordination, and state ballot initiatives.

Congressional Changes and Potential Implications. Republicans have secured control of the U.S. House of Representatives and made significant gains in the U.S. Senate. Taking advantage of an anti-incumbent mood grounded largely on a weak economy and 9.6 percent unemployment rate, Republicans recaptured 61 seats in the House bringing their total number of representatives to 240, with 9 seats currently undecided. In the Senate, Republicans have *officially* (see discussion below) picked up six seats held by Democrats, bringing their total to 46, leaving Democrats with a razor-thin majority. Moving forward, Democrats will need to rely on the continued support of Independents Senators Lieberman (I-CT) and Sanders (I-VT) who currently caucus with the Democrats.

Two Senate seats remain too close to call, Murray (D-WA) and Murkowski (R-AK). Murkowski is battling against Republican tea-party backed Joe Miller; thus, regardless of the Alaska outcome, Republicans are guaranteed the seat in Alaska, bringing their total to **47**. In Washington State, there is a two percent spread between candidates meaning that the final results could take days or weeks to determine. Notably, Senator Harry Reid won his reelection bid against Sharron Angle, and he is expected to remain the Senate Majority Leader. However, Senator Lincoln (D-AR), staunch supporter of Older Americans Act services and a member of the U.S. Senate Committee on Finance and its

Subcommittee on Health Care with jurisdiction over Medicare and Medicaid programs, lost her bid for a third term.

Senate Democrats plan to hold elections for committee leadership on November 16. It has not yet been announced when Republican committee leadership elections will be held, but it is widely speculated that Alabama's Senator Sessions (R-AL) will move to the Budget Committee, opening the Judiciary leadership slot for Grassley of Iowa, who is term-limited as ranking member of the Finance Committee which has jurisdiction over Medicare and Medicaid. Taking over the GOP team on Finance will be Hatch of Utah. Control of the Senate Committee on Health Education Labor and Pensions (HELP), which has jurisdiction over the services provided under the Older Americans Act, is likely to remain the same.

Moving forward, Republicans will take over as the Chairs of key House Committees, including the Committee on Energy and Commerce which has jurisdiction over Medicaid, the Committee on Ways and Means which has jurisdiction over Social Security and Medicare, and the Committee on Education and Labor with jurisdiction all matters dealing with programs and services for the elderly, including nutrition programs and the Older Americans Act and other key programs such as the Social Services Block Grant program and the Low-Income Home Energy Assistance Program (LIHEAP).

State-Federal Representation and Liaison. Many of NASUAD's national partners are membership organizations, such as the National Governors Association, the National Conference on State Legislatures, and the Council of State Governments. Accordingly, their policy priorities and legislative agendas depend heavily on the composition of their membership. With the 2010 midterm elections ushering in dramatic partisan changes at the state and national levels, these organizations will necessarily be impacted with the influx of newly elected officials who are their members. As the new class of state and federal officials takes office, NASUAD will continue to work with our partners to monitor how the changes at the national and state levels will affect states in the coming years. See Table 1, below for an overview. The Governors and the Legislatures are discussed separately, below.

Table 1.

2010 STATE AND LEGISLATIVE PARTISAN COMPOSITION PRE AND POST MIDTERM ELECTIONS						
	Legislative Control		Governor's Party		State Control (Gov. and Leg.)	
	Pre- Election	Post-election	Pre-election	Post-election	Pre-election	Post-election
Democrat	27	16	26	17	16	8
Republican	14	25	23	29	9	20
Independent			1	1		
Divided	8	5			24	15
Undecided		3		3		6

The National Governors Association (NGA), is the bipartisan organization of the nation's governors and provides governors and their staff members with technical assistance, best practices, and a unified, national voice. With 37 gubernatorial elections held on November 2, and 27 new governors elected (as of 11/3), NGA will face shifting policy priorities and focus areas in the coming months as they work to assist newly elected governors transition into their roles. NASUAD will continue to work with NGA to monitor the impact of the gubernatorial elections on and state policy, including the implementation of the ACA and the likelihood of new governors to join the pending lawsuits challenging the new law. See **Table 2** and **Figures 1** and **2**, below.

Table 2.

GOVERNOR PARTY CHANGES		
	Pre-election	Post-election
Democrat	26	17
Republican	23	29
Independent	1	1
Undecided Races		3

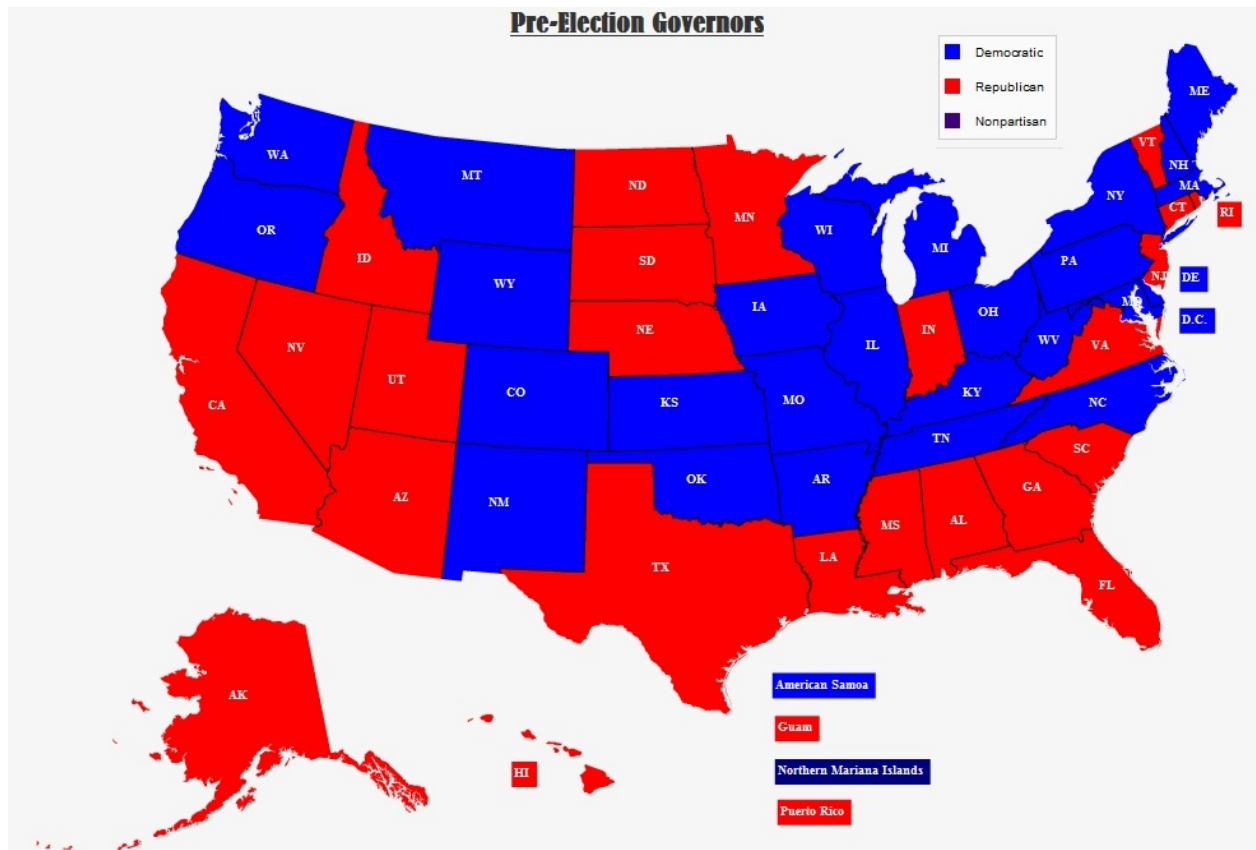
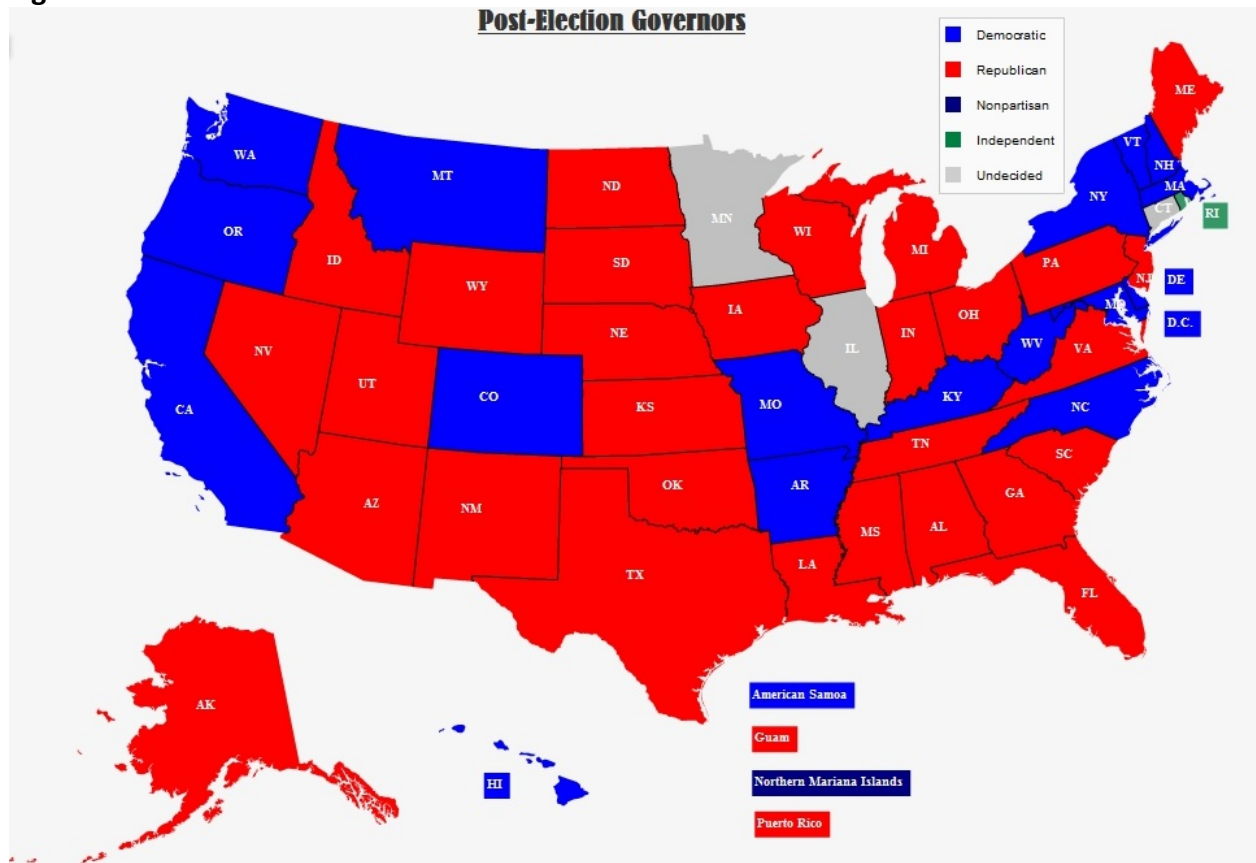
Figure 1.

Figure 2.



The National Conference on State Legislatures (NCSL) is a bipartisan membership organization comprised of state legislatures that works to enhance the role of states and state legislatures in the federal system. As a result of the 2010 midterm elections, during which 6,115 seats in 46 states were up for election, the organization faces an evolving membership. Prior to the election, 27 state legislatures were controlled by Democrats, 14 by Republicans, and eight were divided. In the 2010 midterm elections, Republicans made historic gains in state legislative races, and are at their highest point since 1928, with legislatures in Montana, Minnesota, Wisconsin, Michigan, Indiana, Ohio, Pennsylvania, New Hampshire, Maine, North Carolina and Alabama all switching to a Republican control. With composition changes within the state legislatures looming, NASUAD will continue to track the impact of the election at the state level, such as the dynamic between the state legislatures, the governors, and state agencies. See **Table 3** and **Figures 3** and **4**, below.

Table 3.

STATE LEGISLATURE PARTY CHANGES		
	Pre-election	Post-election
Democrat	27	16
Republican	14	25
Independent		
Divided	8	5
Undecided Races		3

Figure 3.

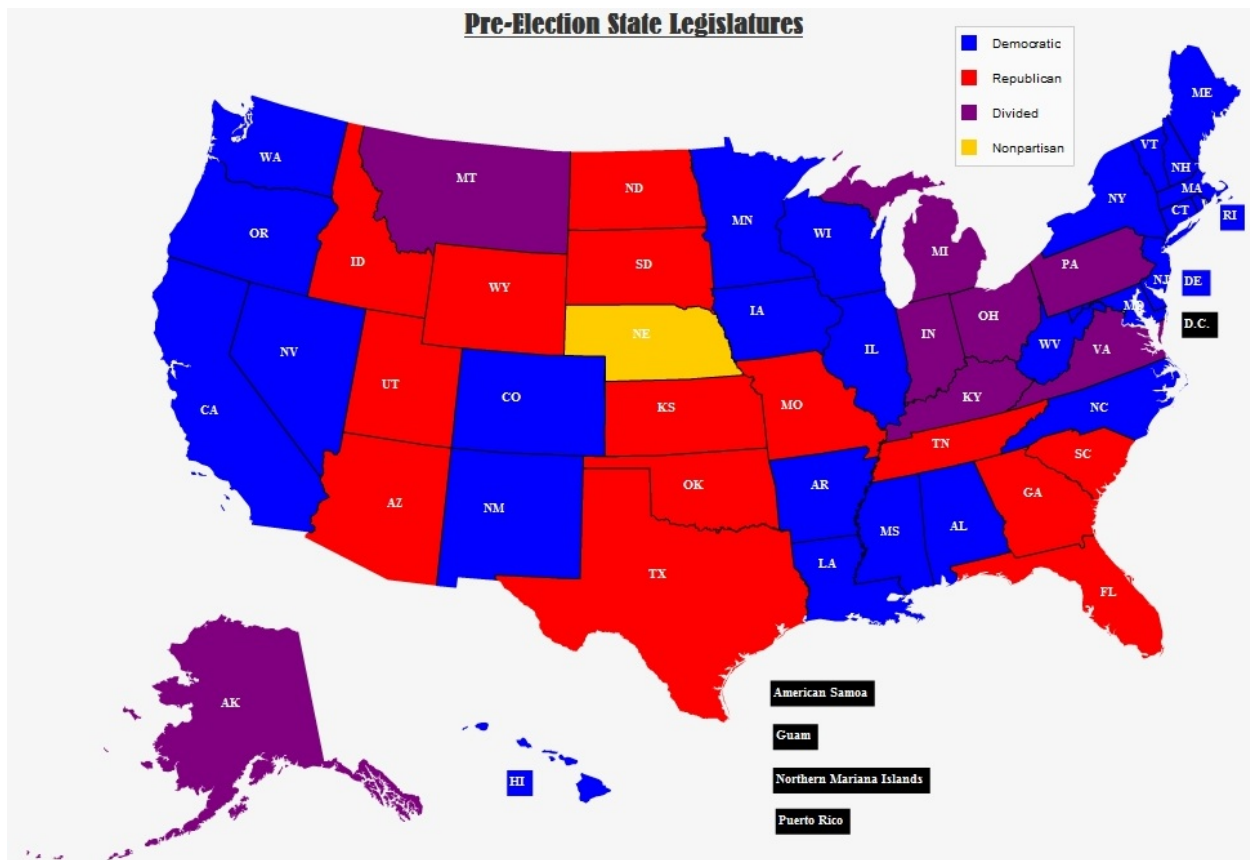
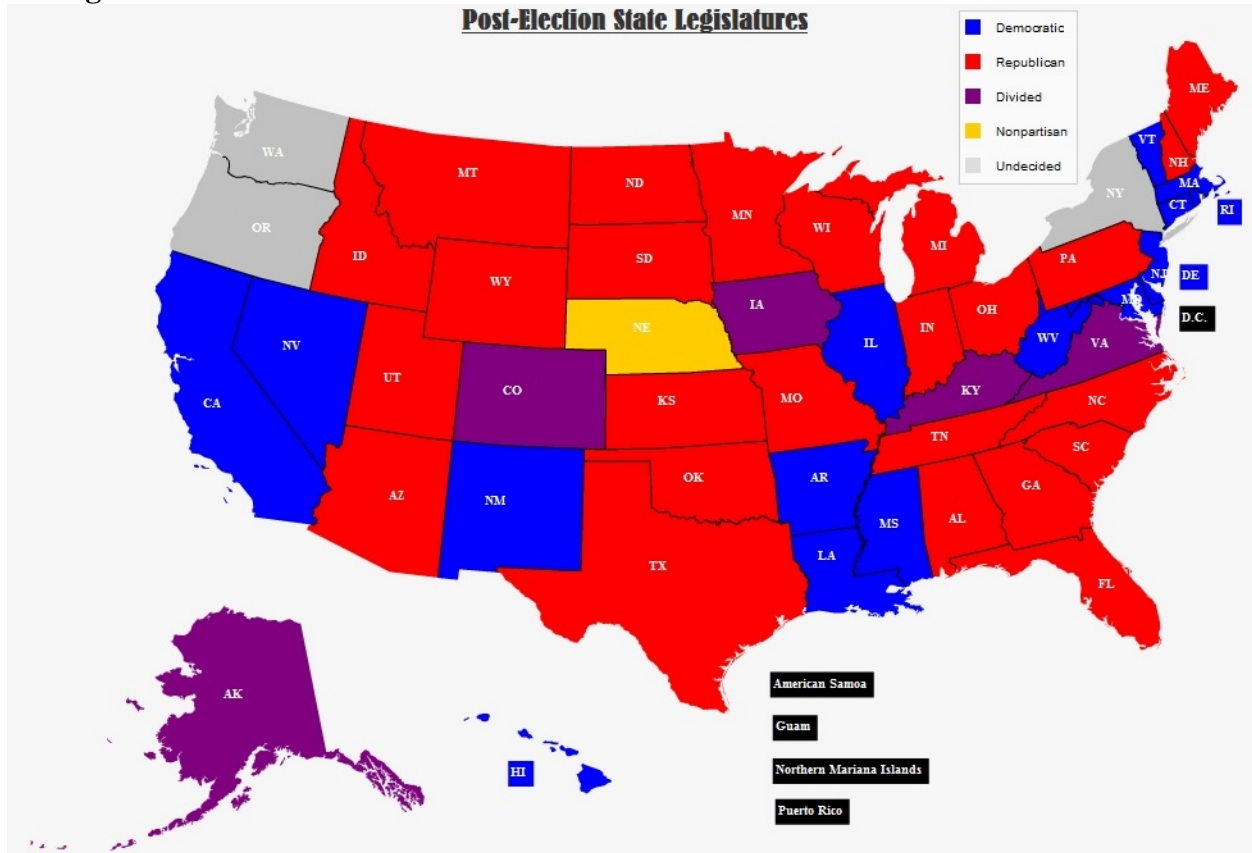


Figure 4.



The Council of State Governments (CSG) is a region-based forum that fosters the exchange of ideas to help state officials shape public policy. Since CSG is the nation’s only organization serving all three branches of state government, its direction in light of the midterm elections will be impacted by the newly elected officials transitioning into their roles. In tracking policy changes and priority shifts, NASUAD will continue to monitor and analyze the impact of the initiatives and direction of CSG. See **Table 3**.

Table 3.

STATE PARTY CONTROL CHANGES		
	Pre-election	Post-election
Democrat	16	8
Republican	9	20
Independent		
Divided	24	15
Undecided Races		6

Ballot Initiatives. A number of states also included ballot initiatives. **Attachment A** provides an overview of these efforts categorized as follows: a) state budget and

finance initiatives; b) health-focused initiatives; and c) aging and disability-focused initiatives.

Implications

Regarding Congress, in their new positions, House Republican leaders have vowed to deliver on their "golden opportunity" to roll back the size of government and President Barack Obama's signature health care law. Repealing the health care law, with its mandates and subsidies to extend health insurance to nearly all Americans, has been a Republican rallying cry for months but Obama, with his veto power, and the Democrats still in control of the Senate stand in the way. "I think it is important for us to lay the groundwork before we begin to repeal this monstrosity," Boehner said. Senate Majority Leader Harry Reid, said "I'm ready for some tweaking" on the health care law but would fight its repeal. Other Democrats in both Houses of Congress also have expressed an appetite for ACA changes.

Thus, with prospects of repealing the law increasingly unlikely, GOP lawmakers have begun to look for other ways to promote their "repeal and replace" health care agenda, such as interfering with the law's implementation through blocking ACA funding, targeting the repeal of unpopular provisions of the bill, and filling the calendars of key Administration officials with Congressional hearings.

A successful Republican strategy of blocking funds needed to implement the law would require the unlikely approval of both Senate Democrats and President Obama. Thus, House appropriators will have to compromise on spending bills, or be willing to risk a government shutdown if funding is not approved through the appropriations process. To avoid such a scenario, the GOP may elect to target funding for the more unpopular provisions of the law, such as the Independent Payment Advisory Board created to limit Medicare spending growth, instead of electing to stall all implementation funding. Similarly, the House majority may work to garner bipartisan support for eliminating certain pieces of the legislation, such as the ACA's tax-reporting requirement for small businesses, a provision which both parties have introduced legislation to repeal.

While Republican lawmakers could potentially disrupt the implementation process by holding numerous hearings to question top administration officials, such as HHS Secretary Sebelius and CMS Administrator Berwick, these efforts would serve more as a temporary political maneuver than as a long-term legislative strategy. Therefore, as a result of Republicans gaining control of the House, it is likely that their agenda will include initiatives designed to impede the implementation of the ACA, rather than immediate, successful efforts to repeal the law in its entirety. While any legislation would require approval of Senate Democrats and a Democratic President, there remain procedural and legislative tactics that the GOP may employ in the 112th Congress.

Additionally, it is likely that the FY 2011 budget process will not proceed; but that a Continuing Resolution with level funding will ensue until the new Congress takes office in 2011. Therefore, the proposed increased funding for the Older Americans Act programs for FY 2011 is in question. In addition, given the ambitious legislative agenda of the Republican Party (i.e., extending the Bush Tax cuts, reducing government spending, repealing and replacing the Affordable Care Act, government reform, and national security), it will prove difficult to reauthorize in the 112th Congress the Older Americans Act and other important legislation, such as the Workforce Investment Act.

At the state level, 20 Republican state attorneys general and governors have filed a challenge to the ACA and its implementation in Florida Federal District Court, alleging in part, that the new law's individual mandate is unconstitutional, and that the ACA's requirement that states expand their Medicaid programs violates state sovereignty by unlawfully commandeering state resources. The federal judge in the case ruled in October that the challenges in the suit may proceed, and the case is currently pending.

Recently, a federal judge in Michigan upheld the ACA's insurance coverage mandate as constitutional, ruling that the mandate was well within Congress's power to regulate interstate commerce, thereby dismissing the plaintiff's motion to enjoin the enforcement of the ACA. Elsewhere, a federal court in Virginia denied the Obama Administration's motion to dismiss a similar lawsuit challenging the ACA's constitutionality, thus allowing the case to proceed. With conflicting judicial opinions being issued, it is likely that the question of the ACA's constitutionality will eventually be resolved by the Supreme Court. With a net gain of seven Republican governors (as of 11/3), it is possible that additional states will file lawsuits challenging the ACA, or will join existing suits. NASUAD will continue to monitor the progress of these judicial challenges.

Finally, with a large number of new federal and state legislators, as well as new governors, it will be critical for NASUAD members to be prepared to secure lines of communication with these newly elected officials and their transition teams in order to educate them about key issues such as:

1. *Impacts of the Continuing Economic Crisis on Elders, Persons with Disabilities and the Systems that Support them.* First, Legislators and new Executives must understand the new demand-side landscape. The first baby boomer turned 60 years old in 2006, heralding an era of increasing demand for services financed by the Older Americans Act, Medicare, Medicaid, as well as Social Security income supports and retirement benefits. Already, over 52 million Americans are over age 60. By 2020, almost one in six individuals will be age 65 and older. Exacerbating the demographic shift impacts the economic crisis has resulted in unforeseen demand increases for NASUAD member services (i.e., meals, transportation, foreclosure assistance, information and referral, request for

- assistance with benefits application, such as Medicaid, and Medicaid-financed but NASUAD member operated services).
2. *Dwindling State Resources and Complex New Systems.* Many states have or currently are experiencing a significant number of early retirements. Additionally, many states have implemented hiring freezes, resulting in unfilled positions, furlough days, and lay-offs. The culminating impact in most states is a much smaller workforce. Concurrently, states have an array of mandatory efforts that must be implemented. First, the passage of the Affordable Care Act (ACA) signaled a sea change in health care coverage. State Medicaid agencies are struggling to keep pace with ACA ***mandatory*** provisions as well as implement ***critical*** budget saving efforts. At the same time, ACA also includes many ***optional*** changes to how aging and long-term supports and services (LTSS) programs may be administered. Second, states continue to struggle to develop efficient strategies to deliver LTSS with fewer staff in fragmented arrangements. NASUAD officials may struggle to position LTSS system priorities in the broader context of tight resources and mandatory efforts (i.e., ACA-required provisions and budget efforts) unless such efforts can be attached to a budget savings effort or piggyback on an ACA provision.

In the coming months, NASUAD will be producing resources and tools for the membership to aid with these messaging and educational efforts.

Conclusion

As more details become available, NASUAD to provide members with additional information. If you have questions, suggestions or concerns, please feel free to contact Martha Roherty at mroherty@nasuad.org or Mike Cheek at mcheek@nasuad.org.