

GILFIX & LA POLL
ASSOCIATES LLP
Legal and Consulting Services

2479 E. Bayshore Road, Suite 220
Palo Alto, CA 94303
Telephone: (650) 493-8070
Gil-Fax: (650) 493-4668
website: www.gilfix.com

The Trump Policy Analysis Group (TPAG)

Focusing on Older Americans and Those with Special Needs

Michael Gilfix, Esq.
Vincent Russo, Esq.
Harry Margolis, Esq.
Frank Johns, Esq.
Tim Nay, Esq.

THE TRUMP POLICY ANALYSIS GROUP (TPAG) – FOCUSING ON OLDER AMERICANS AND THOSE WITH SPECIAL NEEDS

The Trump Policy Analysis Group (TPAG)¹ has convened to consider probable changes in law that will affect older Americans and those with special needs. Initial TPAG focus is on entitlements, public benefits, tax, special needs planning, and veterans' benefits.

We used a three-fold analysis:

- Stated policy (declared Trump policies and those of the Republican Congressional Leadership);
- “Realpolitik” (circumstances and factors rather than explicit ideology, often considered “pragmatism”); and
- Educated speculation (based largely on experience and knowledge of TPAG members who have been leaders in these fields for decades).

STATEMENT OF PURPOSE

On January 20, 2017 both the White House and both houses of Congress will be in Republican hands, not seen since 2006. As president Obama said shortly after being elected in 2008, elections have consequences. We acknowledge this reality.

During the long and divisive campaign, differences in priorities and agendas between the major parties, particularly in social and health policy, were greater than in any recent election. In our opinion, the uncertainty and challenges now facing seniors, disabled, and medically needy Americans are unequaled and unsettling.

Our goals are twofold. First, to objectively analyze real and probable changes in government policies that directly impact older Americans and Americans with disabilities. Second, to identify planning and other steps these populations should take to preserve or, ideally, to increase quality of health care and quality of life.

SOCIAL SECURITY AND MEDICARE

President-elect Trump has consistently stated that the Social Security and Medicare programs are to remain intact and (presumably) solvent. How solvency would be achieved in light of impending bankruptcy of both programs (Medicare long before Social Security) remains to be seen. Government and non-government economists only

¹ The Trump Policy Analysis Group consists of five nationally known and comprehensively experienced professionals. They have over 160 years of combined experience advising individuals and families and Social Security, Medicare, Medicaid, tax, long-term care, veterans' benefits, and special needs planning. They are established authors, speakers, and experts and include founders and leaders of national organizations, including the National Academy of Elder Law Attorneys, addressing the needs of aging and vulnerable populations.

disagree about when insolvency will occur, not if it will occur. As one of their proposals to counter insolvency, Trump and Congressman Ryan (Speaker of the House) are promoting Social Security and Medicare privatization.

The Affordable Care Act took some steps designed to extend the solvency of Medicare. Trump, as President-elect, announced that he would keep parts of the Affordable Care Act but did not explain how he would pay for it. With so many members of younger generations convinced that Social Security will not be there for them, preservation of the fiscal health of both Social Security and Medicare is one of the main challenges facing this Administration.

MEDICAID

1. Rising Fears of Significant Restrictions

A significant majority of Americans are seriously worried about the cost of health care and long term care, in particular. Restrictions on benefits and legislative changes that restrict or limit access to government programs such as Medicaid can only heighten such fears.

2. The Trump and Ryan Block Grant Proposal

Currently, Medicaid is administered at the federal level by the Center for Medicare and Medicaid Services (CMS). While each state has its own state Medicaid Plan, there are mandates and there are constraints.

Block grants, which were first proposed by then Speaker of the House Newt Gingrich in 1995, presumably mean that each state would receive a certain number of Medicaid dollars. Each state would then decide how to utilize and spend those dollars. In some states, little would change. In other states, changes could be profound. For individuals who may rely on Medicaid, this is a time of uncertainty and concern. This means, in turn, that planning needs will vary from state to state.

TPAG is aware of some details and elements of proposed plans. Some are designed to restrict protective planning – to make it much more difficult for older Americans to protect their homes and other assets while qualifying for Medicaid, particularly in a long-term care setting. Planning challenges could therefore become dramatically more difficult. Increasingly, older Americans and their families will need up-to-date information and advice to understand and qualify for needed services. This will be particularly true for the majority of older Americans who will need home care services and who need to reside in skilled nursing facilities.

Americans with special needs and their families face as many worries, including concerns about possible reductions in protections and services.

TPAG believes that planning will increasingly involve multiple generations to enhance quality of life, quality of care, and asset protection.

3. Protection of Family Assets: Focus on Protecting the Family Residence

The vast majority of older homeowners will view protection of the residence as a core value, a legacy for future generations. Appropriate legislation must be preserved. Appropriate planning steps must be taken, particularly in light of possible changes in Medicaid, the only federal program that can subsidize or pay for the cost of skilled nursing care. No specific proposals to threaten existing tax and Medicaid protections for the residents have yet emerged.

TAX PROPOSALS – GIFT, ESTATE, INCOME, AND CAPITAL GAINS

1. Gift and Estate Tax

President-elect Trump calls for the elimination of gift and estate tax, perhaps replaced by a “mark to market” tax of capital gains at death. Perhaps a compromise package will not eliminate the tax but will significantly increase the level of estate and gift tax protection. Note that the current level of federal protection is historically high at \$5,450,000 per person. If any estate tax remains, it would likely be reduced from the current 40% tax rate.

2. Capital Gains Tax

Different proposals have been proffered by President-Elect Trump, Speaker Ryan and others regarding limitations on “stepped up basis” upon an individual’s passing. For some families, this could result in net tax increases.

For high-end practitioners, those who focus on avoiding estate tax, the challenges are obvious. The number of individuals requiring such sophisticated planning will, at best, dramatically diminish. For most older Americans, the avoidance of estate taxes will have little or no impact from a tax planning perspective and the focus will shift to income taxation. Further, the impacts on entitlements and family financial security could be profound.

3. Corporate and Individual Income Tax

Corporate and individual tax rates for higher earners, in particular, would be substantially reduced. The long-term impact – beyond the obvious increase in after tax income, is impossible to predict. As with most modeling and forecasting, projected outcomes depend on presumptions.

AMERICANS WITH SPECIAL NEEDS

No proposals have yet been made that would directly affect services for special needs children and adults. Medicaid block grants could adversely affect special needs residents of states that decide – at the state level – to reallocate or otherwise restrict funding for both governmental and non-governmental providers. The reach of Medicaid block grants could significantly reduce or even eliminate the benefit of special needs trusts which maximize assets for the person with a disability.

Additionally, it is possible that support for expanded charter schools and school choice could expand options. This has become more probable than just possible what with Trump's appointment of Betsy DeVos, as Secretary of Education, an outspoken advocate for charter schools and the dismantling of publicly funded schools. Many special education advocates fear these expanded options could come at a price of diminishing procedural and substantive protections of the Individual with Disabilities Education Act (IDEA), and even reduce or remove the funding formula that follows eligible individual students with special needs under IDEA).

VETERANS' BENEFITS

President-elect Trump is presumably supportive of maintaining and perhaps expanding services for veterans. At the same time, proposals that predate the election have been introduced that could restrict access to needed programs, such as Aid and Attendance, which provides financial assistance for veterans and spouses of veterans who need higher levels of home care assistance. While new legislative and perhaps regulatory restrictions could make it more difficult for veterans and their spouses to obtain benefits, proactive planning will be an inevitable need across the nation.

LGBTQ PROTECTIONS

President-elect Trump has said that he accepts the United States Supreme Court decision effectively legalizing gay marriage. (His Vice President, Mike Pence, may have a different viewpoint.) The Supreme Court ruled that the U.S. Constitution guarantees the right for same-sex couples to marry in all 50 states creating uniformity across the nation in recognition of the rights of same-sex couples.

IN TIMES OF UNCERTAINTY, FAMILIES WILL PROTECT THEMSELVES

A core conclusion of TPAG is that families will become more insular, more protective of themselves, their assets, and future generations. They will be more focused on what they can control and truly value – their families – and less on public policies that are difficult to influence. This has myriad implications for attorneys, financial planners, and other

professionals who work directly with America's elders, those with special needs and their families. A premium will be placed on advance planning. Inevitably, this will increase involvement of younger generations. The demand for multi-generational planning – planning that involves and relies on involvement of children and grandchildren – will expand dramatically.

WHAT SHOULD YOU DO?

TPAG thoroughly understands that most Americans, and older Americans in particular, are fearful at this point in time. Above all, do not panic. The stock market panicked at the end of Election Day but soon resolved and moved higher than ever. TPAG believes that the stock market's response to the election is a lesson for everyone: Learn, watch, be advised, and protect yourself and your family. The changes in store will take time.

TPAG's goal and its purpose is to turn fear into hope. This is what good planning does.

TPAG will continue to be a source of balanced, objective information about developments at the national level. TPAG is working hard to track initiatives by President-elect Trump, Republicans and responsive proposals of Democrats.

TPAG will work hard to be "one step ahead."



Michael Gilfix
California



Vincent J. Russo
New York



Harry Margolis
Massachusetts



A. Frank Johns
North Carolina



Tim Nay
Oregon