



**NATIONAL ASSOCIATION
OF STATE HEAD INJURY
ADMINISTRATORS**

116th Congress: Final Report

2019-2020

A summary of legislation, funding and policies impacting brain injury



January 6, 2021

National Association of State Head Injury Administrators

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NASHIA assists state government in promoting partnerships and building systems to meet the needs of individuals with brain injuries and their families.

Introduction

This Final Report is a summary of federal legislation enacted by the 116th Congress (2019-2020) relating to the priorities of the National Association of State Head Injury Administrators (NASHIA) as outlined in the *116th Congress: Federal Public Policy Platform* and approved by the membership at its annual meeting in the fall of 2018. The report also includes the results of other legislation, funding and policies impacting individuals with brain injury and their families, particularly with regard to the Congressional and Administrative actions taken in 2020 to address the coronavirus (COVID-19) pandemic.

Highlights of the 116th Congress

The 116th Congress convened on January 3, 2019, and concluded January 3, 2021. Republicans controlled the Senate, while Democrats controlled the House of Representatives. This Congress represented the most diverse Congress in history, with 128 non-white Members and 131 women. The Congress enacted 252 public laws.

Legislation and Policies Relating to the COVID-19 Pandemic

At the beginning of 2020, the United States, as well as the rest of the world, was faced with the coronavirus (COVID-19) pandemic creating a public health and economic crisis for every American. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, providing authority for the Secretary of HHS to exercise the authority under section 1135 of the Social Security Act (SSA) to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

The Centers for Medicare and Medicaid Services (CMS) allowed States to make temporary changes to their Medicaid State plans and address access and coverage issues during the COVID-19 emergency. CMS developed a new Medicaid Section 1115 demonstration opportunity and application template to extend HCBS flexibilities available under 1915(c) home and community-based services (HCBS) waiver Appendix K to beneficiaries receiving long-term services and supports (LTSS) under State Plan Amendments (SPA) authorities (such as 1915 (i) State Plan HCBS and 1915 (k) Community First Choice) and to allow for applicant self-attestation of resources for the purpose of determining eligibility for certain groups.

To address public health and needs of Americans, lawmakers enacted four separate pieces of legislation, which cost approximately \$2.6 trillion, in March and April, and a relief package in December 2020, that cost an estimated \$900 billion. The first legislation passed in March provided \$8.3 billion in emergency funding for public health agencies and vaccine research. Included in that bill was discretionary funding to federal State and local health agencies, as well as \$500 million in mandatory funding through a change in Medicare. These bills include:

- The **Family First Coronavirus Response Act**, passed March 18, 2020, to provide \$192 billion in funding for enhancing unemployment insurance benefits; increased federal Medicaid and food-security spending; paid sick leave and family leave for certain employees due to expanded tax credits for employers to offset costs; and free coverage for COVID-19 testing under government health programs.
- The **Coronavirus Aid, Relief, and Economic Security (CARES) Act**; a \$2 trillion relief package, enacted on March 27, 2020, to provide financial assistance to assist companies, loans to businesses, State and municipalities through a new Federal Reserve lending facility; \$380 billion largely for the new Paycheck Protection Program (PPP) to offer as loans to small businesses to avoid laying off their workers; direct payments to taxpayers, depending on incomes; further expansion of unemployment benefits; federal aid to hospitals and health care providers; and

various tax incentives to allow businesses to defer payroll taxes and other tax benefits. The CARES Act funding included:

- \$200 million for Home and Community Based Services (HCBS), to help greater numbers of older adults shelter in place to minimize their exposure to COVID-19. This included personal care assistance; help with household chores and grocery shopping; transportation to essential services (such as grocery stores, banks, or doctors) when necessary; and case management.
- \$480 million for home-delivered meals for older adults. With this funding, States could also expand “drive-through” or “grab-and-go” meals for older adults who typically would participate in meal programs at community centers and other locations that have been closed due to social distancing measures.
- \$85 million for Centers for Independent Living to provide direct and immediate support and services to individuals with disabilities who experienced disruptions to their independent, community-based living due to the COVID-19 pandemic. Services are to ensure individuals with disabilities have the supports they need to safely stay in their homes or return home after a hospitalization or institutionalization during (and directly after) COVID-19.
- \$20 million for nutrition and related services for Native American Programs to help tribes and tribal organizations provide meals and supportive services directly to Native American elders.
- \$100 million for the National Family Caregiver Support Program to expand a range of services that help family and informal caregivers provide support for their loved ones at home. These services included counseling, respite care, training, and connecting people to information.
- \$20 million to support State Long-term Care Ombudsman programs in providing consumer advocacy services for residents of long-term care facilities across the country. Restrictions on visitation have significantly increased demand for ombudsman services, as families seek assistance in ensuring the well-being of their loved ones. Ombudsman programs will seek to expand their virtual presence to residents and their families, and continue to promote the health, safety welfare, and rights of residents in the context of COVID-19. This funding will give Ombudsman programs the flexibility to hire additional staff and purchase additional technology, associated hardware, and personal protective equipment once in-person visits resume.
- \$50 million for Aging and Disability Resource Centers (ADRCs) to fund programs that both connect people at greatest risk to COVID-19 to services needed to practice social distancing and seek to mitigate issues created by it, such as social isolation. ADRCs across the country are reporting unprecedented demand for assistance with applications for services, care coordination, services that support people in returning home following hospitalization, and the like.
- **Paycheck Protection Program and Health Care Enhancement Act**, enacted on April 24, 2020, totaling \$438 billion of which \$383 billion was appropriated for economic support for small businesses; funding to replenish the PPP (\$321 billion); emergency-lending for small businesses (\$60 billion) and \$2 billion for salaries and expenses to administer such programs), another \$75 billion in funding for hospitals, and about \$25 billion to fund more testing for the pandemic.

- The bill also included a number of health extenders, including the Money Follows the Person Demonstration Program (MFP) and the spousal impoverishment protections for Medicaid home and community-based services (HCBS) recipients through September 30, 2023.
- **Coronavirus Response and Relief Supplemental Appropriations Act, 2021, H.R.133**, was signed by the President December 27, 2020. The \$900 billion bill included:
 - 325 billion for small businesses.
 - \$166 billion for a \$600 stimulus check, for most Americans with an adjusted gross income lower than \$75,000.
 - \$120 billion for an extension of increased federal unemployment benefits (\$300 per week until March 14, 2021).
 - \$82 billion for schools and universities, including \$5 to public K-12 schools, \$23 billion for higher education; \$4 billion to a Governors Emergency Education Relief Fund; and slightly under \$1 billion for Native American school.
 - \$69 billion for vaccines, testing and health providers, and health providers; mental health received \$4.5 billion.
 - \$25 billion for a federal aid to State and local governments for rental assistance programs (also covering rent arrears, utilities, and home energy costs).
 - \$13 billion to increase the monthly Supplemental Nutrition Program (SNAP/food stamp) benefit by 15% through June 30, 2021.
 - \$13 billion round of direct payments to the farming and ranching industry.
 - \$10 billion for child care (specifically, the Child Care Development Block Grant program).
 - \$10 billion for the U.S. Postal Service (in the form of forgiveness of a previous federal loan).

The legislation also extends the CDC-imposed eviction moratorium (halting evictions for failure to pay rent for tenants with annual incomes of less than \$99,000) to January 31, 2021; the moratorium had initially been set to expire at the end of 2020.

Appropriations

While the President annually submits budget requests for federal programs to Congress, Congress is responsible for passing spending bills each year. The federal fiscal year begins on October 1 and ends on September 30. During the past two years, Congress used the appropriations process to extend or reauthorize federal programs that were set to expire.

FY 2020 “Minibus” Appropriations Bill

After passing two short-term funding measures to avoid a government shutdown, Congress passed a “Minibus” in December 2019, to provide fiscal year (FY) 2020 funding for the Departments of Labor, Health and Human Services (HHS), Education, Housing and Urban Development (HUD), Transportation and Veterans Affairs. For the first time in more than twenty years, funding was appropriated for gun violence research to be conducted by the Centers for Disease Control and Prevention (CDC) and National Institutes of Health (NIH). Other funding included:

- Administration for Community Living (ACL) Traumatic Brain Injury (TBI) Program – level funded (\$11.321 million).
- ACL National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) received an increase of \$3 million of which \$2 million is for continued investment in research focused on independent living, addressing the disabled aging populations, and targeting rural, frontier, and tribal communities; and \$1 million increase directed to assistive technology formula grant funding.
- NIH received an overall increase of \$2.6 billion (6.65%) to a total of \$41.7 billion. Within that increase are the following:
 - \$500 million for the BRAIN Initiative, a \$71 million increase;
 - \$500 million for the All of Us precision medicine initiative, up \$161 million;
 - A total of more than \$800 million for opioid addiction research, alternative pain management research, and treatment; and
 - \$2.45 billion for the National Institute of Neurological Disorders & Stroke (NINDS), the largest single funder of disability and rehabilitation research within NIH, an increase of \$170 million.
- The CDC's National Center for Injury Prevention and Control (NCIPC) received a \$30 million funding increase of which:
 - \$12.5 million for firearm injury and mortality prevention research;
 - \$10 million for suicide prevention; and
 - \$4 million for adverse childhood experiences.

The bill also included:

- Protections for manual complex rehabilitation technology (CRT) wheelchairs from competitive bidding and suspends the competitive bidding rates for manual CRT wheelchair accessories for an 18-month period, beginning Jan. 1 2020 and lasting until June 31, 2021.
- Report language directing CMS not to publish any regulation restricting Medicaid non-emergency medical transportation (NEMT) services until the Medicaid and CHIP Payment and Access Commission studies the impact of those restrictions on beneficiaries.
- Extended funding for programs which had expired or set to expire, such as Temporary Assistance for Needy Families (TANF) and the Patient-Centered Outcomes Research Institute (PCORI), which was reauthorized through September 30, 2029;

FY 2021 Omnibus Appropriations Bill

Congress passed the Consolidated Appropriations Act, 2021, consisting of twelve appropriations bills and COVID-19 relief, which was signed into law December 27, 2020. Overall highlights included:

- Extended the MFP and the spousal impoverishment protections with regard to Medicaid HCBS to 2023;
- Funding for housing programs including Section 811 Supportive Housing for People with Disabilities, tenant-based vouchers, and project-based rental assistance;
- Emergency rental assistance and expanded eviction and foreclosure protection;
- Additional nutrition assistance;
- Additional education funding;

- Funding for substance use prevention and treatment, suicide prevention, and community mental health services, and homelessness services, as well as emergency response grants to address COVID-19 related behavioral health needs;
- Restoration of supplemental unemployment compensation; and
- \$100 million in coronavirus response funding for the Administration for Community Living.

Administration for Community Living (ACL) -- The bill funds ACL at \$2.3 billion, which is \$35 million above the 2020 enacted level. This amount includes:

- \$952 million for Senior Nutrition programs, an increase of \$15 million above the 2020 enacted level.
- \$200 million for Family Caregivers Services, an increase of \$4 million above the 2020 enacted level:
 - \$7.1 million for the Lifespan Respite Care Programs, an increase of \$1 million over FY 2020.
 - \$188.0 million for the National Family Caregiver Support Program, an increase of \$3 million.
- \$112,970,000 for NIDILRR, an increase of \$1 million.
- Level funding for the ACL TBI Act programs.

Centers for Disease Control and Prevention (CDC) – The bill included a total of \$7.9 billion for CDC, an increase of \$125 million above the 2020 enacted level. This includes \$856 million in transfers from the Prevention and Public Health Fund. The bill includes more than \$12 million in new funding for the National Center on Injury Prevention and Control (NCIPC), including:

- \$.5 million increase for domestic violence and sexual violence program;
- \$12 million, an increase of \$2 million, for suicide prevention;
- \$12.5 million, the same amount as the 2020 enacted level, to specifically support firearm injury and mortality prevention research;
- \$1 million increase for Adverse Childhood Experiences (ACES);
- \$1 million increase for the National Violent Death Reporting System;
- Level funding for the Injury Center’s TBI program (\$6.75 million); and
- \$500,000 increase for a total of \$2.05 million for the elderly falls program.

Other Legislation

Congress also passed:

- The Lifespan Respite Reauthorization (H.R. 8906) passed on December 18, 2020, to support State lifespan respite care services for family caregivers of children and adults with disabilities. The legislation authorizes \$50 million for lifespan respite over 5 years through block grants monitored by HHS. The bill was signed into law January 5, 2021.
- The Beneficiary Enrollment Notification and Eligibility Simplification (BENES) Act (S. 1280/H.R. 2477) passed on December 23, 2020, as part of a comprehensive legislative package, which was signed into law days later. These policies will update Medicare enrollment rules for the first time in over 50 years to end lengthy waits for coverage, expand critical administrative flexibilities, and inform future policymaking on enrollment period alignment.
- The Supporting Older Americans Act of 2020 (H.R. 4334), which was signed into law March 25, 2020 (P.L. 116-131). The bill allows funding for screening for fall-related TBIs and to promote

public awareness in order to help detect these injuries early and ensure that seniors receive the care they need.

- The Emergency Medical Services for Children Program Reauthorization Act of 2019 (P.L. 116-49), which was enacted August 22, 2019.

Reports

The General Accountability Office (GAO) released the report, “Domestic Violence: Improved Data Needed to Identify the Prevalence of Brain Injuries among Victims,” in June 2020. The GAO work was the result of a bipartisan amendment to the Defense and Health and Human Services 2018 “minibus III” funding bill to require the GAO to report on federal efforts to study the prevalence of TBI among victims of domestic violence.

The U.S. Supreme Court (SCOTUS)

On September 18, 2020, Justice Ruth Bader Ginsburg died from metastatic cancer of the pancreas. She left behind a body of work relating to women’s right and disabilities rights, as she authored the majority opinion in *Olmstead v L.C.*, which held that people with disabilities have a right to live in communities of their choice. The Senate confirmed Judy Amy Coney Barrett as Associate Justice in her place.

On November 10, 2020, the U.S. Supreme Court heard arguments on the legality of the Affordable Care Act (ACA) as the result of the lawsuit *California v. Texas* filed by twenty States represented by 18 Republican attorneys general and 2 Republican governors, along with the federal government, challenging the constitutionality of the law once the individual mandate for insurance was invalidated. If successful, millions of Americans would lose healthcare coverage, including people approaching Medicare eligibility due to age or disability; reopen the Medicare Part D donut hole; end Medicaid expansion; and allow insurers to deny coverage based on pre-existing conditions.

In 2012, SCOTUS ruled that the individual mandate requiring individuals to have insurance or pay a penalty exceeded Congress' power to regulate interstate commerce, however the mandate survived. Congress then repealed the mandate effective 2019, but other parts of the Affordable Care Act survived. ACA opponents believe since the taxing provision and mandate have been eliminated that all provisions of the healthcare bill should be repealed.

About NASHIA’s Public Policy Work

The NASHIA Public Policy Committee is chaired by Jennifer Braun (MO) and is composed of members administering an array of public and private programs. During 2019-2020, NASHIA retained the services of Becky Corby, Ridge Policy Group, to advocate on behalf of NASHIA. Susan L. Vaughn served as the Director of Public Policy, providing staff support to the Committee, as well as monitoring legislation and proposed federal rules which were reported in *Capitol News*, *Action Alerts*, *Washington Weekly*, as well as other public policy materials to support NASHIA’s positions.

NASHIA’s Public Policy Platform for the 116th Congress served as a guideline for NASHIA’s positions and public policy work, which is carried about by public policy staff, the Public Policy Committee, and members who advocated at the grassroots level. NASHIA’s Priorities for the 116th Congress were to:

- Enhance and expand State capacity to provide services and supports for individuals with brain injury and their families.
- Expand public and professional awareness about brain injury and service delivery.
- Maintain and expand access to health care, rehabilitation, and community-based long-term services and supports and community integration for individuals with brain injury.

- Maintain and expand access to health care, trauma care and rehabilitation.
- Expand research to promote best practices with regard to brain injury treatment, rehabilitation and vocational rehabilitation.
- Support public assistance and safety net programs.
- Expand primary, secondary and tertiary prevention related initiatives to prevent traumatic brain injury, minimize affects after a brain injury, and to improve the quality of life and life expectancy for those who have incurred a brain injury.

During the past two years, the public policy staff worked closely with stakeholders and the Congressional Brain Injury Task Force (CBITF) to promote brain injury awareness. NASHIA participated in the 2019 (March 23, 2019) and 2020 (March 4, 2020) CBITF's Brain Injury Awareness Day's activities, including a Fair featuring national organizations and agencies that provided information on brain injury; a congressional briefing; and a congressional reception in honor of the Task Force. NASHIA public policy staff also worked closely with CBITF with regard to appropriations and legislation impacting brain injury. Each year, NASHIA submitted testimony with regard to appropriations and also submitted a Statement for the Record to the U.S. Senate Special Committee on Aging's Hearing on "Falls Prevention: National, State, and Local Solutions to Better Support Seniors," October 16, 2019.

To assist members with advocacy, the Public Policy Committee offered a webinar prior to the annual Congressional Brain Injury Task Force (CBITF) Awareness Day held in March each year to prepare members for visits with Congressional meetings arranged by Becky Corby, NASHIA Governmental Relations. Prior to the 2020 CBITF Awareness Day, staff facilitated a meeting at the Capitol providing tips, materials, and packets to assist with office visits. A podcast was also held in September 2020 on public policy featuring Jennifer Braun, Public Policy Committee Chair; Becky Corby; Susan Vaughn, Director of Public Policy; and Carrie Swope, Rep. Bill Pascrell, Jr. staff. Advocacy materials were posted on the NASHIA website.

NASHIA is a member of the Consortium for Citizens with Disabilities (CCD), American Brain Coalition (ABC), the Disability and Rehabilitation Research Coalition (DRRC), Coalition to Preserve Rehabilitation (CPR) and the Injury and Violence Prevention Network (IVPN).

About NASHIA:

NASHIA is a nonprofit organization that was incorporated in 1994 by State government employees to help States plan, implement and administer public programs and services for individuals with brain injury and their families. Its members represent a broad spectrum of State agencies including health, Vocational Rehabilitation, mental health, Medicaid, social services, developmental disabilities and education. NASHIA membership also includes associate membership, which is represented by rehabilitation professionals and agencies, advocates and other interested persons. For further information regarding the association, contact Rebeckah Wolfkiel, Executive Director, at rwolfkiel@nashia.org. For information regarding public policy, contact Susan L. Vaughn, Director of Public Policy, at svaughn@nashia.org.