Changes Under Consideration for Technical Expert Panels

The Senate Committee on Homeland Security and Governmental Affairs is reviewing a report and considering action to modify and expand requirements for federal advisory committees through the Federal Advisory Committee Act Amendments of 2017, H.R. 70.

At any given time, ASN members serve on multiple technical expert panels (TEPs) providing professional guidance to policymakers in the federal government, particularly the Department of Health and Human Services (HHS). TEPs and other federal advisory groups help inform public policy, and Congress has deemed it appropriate to require public transparency of advisory committee membership and activities.

However, TEPs are among the groups whose activities could be affected by the bill's amendments to the Federal Advisory Committee Act (FACA).

FACA defines a federal advisory committee as any term-limited committee, board, commission, council, conference, panel, task force, or similar group that dispenses objective advice and recommendations to officers and agencies of the executive branch, including TEPs commonly used by the Centers for Medicare & Medicaid Services.

In 1970, Congress conducted hearings that revealed the ways in which advisory committees were being used by agencies to cherry-pick industry leaders to advise on policy in secret. In addition, agencies did not have a standard set of requirements for advisory committee operations, resulting in uncontrolled costs, missing reports on activities, and duplication of roles between multiple committees.

As a result, Congress passed FACA in 1972 to give uniform guidance to agencies on how to operate advisory committees and report on their activities.

The current bill requires that appointments to federal advisory committees be made without regard to political affiliation or political activity, unless required by federal statute.

The head of a federal agency making an appointment to an advisory committee must give interested persons an opportunity to suggest potential committee members by including a request for comments in the Federal Register and providing a mechanism for interested persons to comment through the agency's official website. The agency must consider any comments submitted in making selections of advisory committee members.

The proposed bill requires that any individual appointed to an advisory committee who is not a full-time or permanent part-time officer or employee of the federal government shall be designated as:

(1) a special government employee if the individual is providing advice based on the individual's expertise or experience, or

(2) a representative if representing the views of an entity outside of the federal government.

Advisory requirements

The bill specifies that an agency may not designate committee members as representatives to avoid making them subject to federal ethics rules and requirements.

Also, a designated ethics official of each agency shall review the designation of each member of an advisory committee to determine whether such member's designation is appropriate and may redesignate members if appropriate.

The bill gives the Government Accountability Office the authority to review, and report on, compliance by agencies with FACA, including whether agencies are appropriately appointing advisory committee members as either special government employees or representatives.

The American Society of Nephrology (ASN) is monitoring this situation and any possible implications for ASN members.