



Conference to Begin on Extending Doc Fix/ Payroll Tax Cuts; Briefs Filed on Obamacare

Conference Scheduled for Full-Year Extender Bill

With the signing into law of the 60-day Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78), Congress has set the stage for the coming debate over a full-year extension of the payroll cuts and, perhaps, a two-year fix for the Medicare physician payment SGR problem. The twenty conferees on the \$202 billion House-passed version of H.R.3630, the Middle Class Tax Cut Act of 2011, are expected to convene during the week of January 16. **House Ways and Means Committee Chairman Dave Camp** is expected to be the conference chairman of the committee which has 8 House Republicans (**Reps. Camp, Brady, Ellmers, Hayworth, Tom Price, Reed, Upton and Walden**), 5 House Democrats (**Reps. Levin, Becerra, Van Hollen, Waxman and Schwartz**), 4 Senate Democrats (**Sens. Baucus, Cardin, Reed and Casey**) and, the last to be named, 3 Senate Republicans (**Senators Kyl, Crapo and Barrasso**).

CMS announced that the agency will recalculate the 2012 Medicare Physician Fee Schedule to implement the zero percent update provided in the Temporary law which expires February 29th.

New Norm for Recess Appointments for Health Positions?

Even though the Senate did not formally adjourn the 1st session of the 112th

Congress and has been holding pro forma sessions every third day, nonetheless the President went ahead and made what the White House said were “recess” appointments. On Wednesday, he announced **Richard Cordray** would serve as the first director of the Consumer Financial Protection Bureau, and followed that up by appointing three members to the National Labor Relations Board. **Senator Grassley** and other Republicans have asked the Justice Department for any legal justification they gave the White House to enable the appointments which they say go against all precedent. Unless overturned, the decision could mean that the current and future presidents will be tempted to make key administration appointments during Senate “recesses” of three days or more. It also raised questions about the viability of confirmation of other Obama Administration nominees during the current year.

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Briefs Filed with Supreme Court on PPACA

The Administration filed a “merits brief” in the suit brought by Florida, 25 other states and several individuals which challenges the constitutionality of the individual mandate and other aspects of the PPACA. The Department of Justice said that Congress had the authority under the commerce clause of the Constitution to enact the individual mandate and that the necessary and proper clause of the Constitution was also invoked given the “critical role” that the mandate and the

PPACA’s minimum coverage plays in providing comprehensive health coverage for all U.S. citizens. Although lower courts have refused to find that the penalty for failure to comply with the mandate is a “tax”, the DOJ also argued that the taxing and spending clause of the Constitution is invoked in that the penalty functions as a tax and is revenue-raising. Briefs filed by the states and individuals argue that the entire law be struck down if the individual mandate is held unconstitutional (due to

the lack of a severability clause under the PPACA). Briefs are due January 10th on the issue of whether the expansion of Medicaid under the PPACA is coercive and, thus, unconstitutional. In another development, given that one of the individual small business plaintiffs declared bankruptcy, the NFIB asked the court to allow two more similarly situated persons to be added to the suit. The DOJ did not object to this request.

EFT Interim Final Rules

CMS released an interim final rule which adopts standards for the format and data content of electronic funds transfers for claims payments between health plans and financial institutions. The rule also requires the use of a trace number that automatically matches the payment and the remittance

advice notice. CMS says the new tracking system will allow health care providers to eliminate costly manual reconciliations and could cut as much as \$4.5 billion from administrative costs for providers and plans over ten years.

Quality Measures for Medicaid Beneficiaries

HHS released a final core set of quality measures which states, insurers and providers can elect voluntarily to monitor and help improve health care delivered to adults enrolled under Medicaid. The 26 quality measures approved by AHQR and CMS fall into six categories: prevention and health promotion; management of acute conditions; management of chronic conditions; family

experiences of care; care coordination; and availability of care. Perhaps indicative of future quality measures for additional populations, the HHS statement said “These core set measures will support HHS and its state partners in developing a quality-driven, evidence-based, national system for measuring the quality of health care provided to Medicaid-eligible adults.”

Participants Selected in Innovation Advisors Program

CMS announced that it has chosen seventy three individuals from 27 states among 920 applicants to participate in the Innovation Advisors program to work with the Center for Medicare and Medicaid Innovation agency to test new models of care delivery and form partnerships with local organizations to drive delivery system reform. The PPACA authorized funding of up to \$20,000 per participant.

NIH Announces New NIGMS Divisions

NIH said that the agency is creating two new divisions under the National Institutes of General Medical Sciences: the Division of Training, Workforce Development and Diversity and the Division of Biomedical Technology, Bioinformatics and Computational Biology. Funding and staffing will remain unchanged from the programs previously administered by the National Center for Research Resources.