



FY 2011 Spending Showdown to Follow Short-Term CR

Government Shutdown Avoided?

In order to avoid a government shutdown when the current CR expires March 4th, House and Senate leaders will have to achieve agreement this week on another short-term continuing resolution to give them time to craft a spending bill for the remainder of the FY 2011 period ending September 30th. House Republicans opened their hand by demanding a spending cut of \$4 billion over a two-week period (a percentage of the \$61 billion spending cut in H.R. 1, passed by the House before the recess).

After some bluster, Senate Democrats are apparently crafting a measure which will also cut spending by an amount which reflects an acceleration into this year of a number of the spending cuts proposed in the President's budget for FY 2012. The Senate would prefer a 30-day CR, but this may be a tough sell in the House.

The negotiations to follow over discretionary spending levels for the remainder of this fiscal year will be intense with the House likely to insist on reductions on the level of the

\$61 billion already staked out in the House CR.

Of particular note will be the outcome of the PPACA "defunding" amendments included under H.R. 1. Senate Democrats initially said their position would follow the President's "freeze" in his 2012 budget. However, recent discussions in the Senate Democratic Caucus have apparently moved the debate somewhat by seeking additional cuts for this fiscal year. While intense, the negotiations over FY 2011 spending levels will pale in comparison to the budget battle coming later this spring over FY 2012 discretionary and entitlement spending and deficit levels.

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Update on Court Challenges to PPACA

Last week another court, the U.S. District Court for the District of Columbia, dismissed a lawsuit brought by several individual plaintiffs who claimed that the PPACA's individual mandate is unconstitutional. The court said the "commerce clause" gave

Congress the authority to enact the provision because it regulates an activity that substantially affects interstate commerce. While the Department of Justice hailed this decision, the Department's motion in the Florida suit calling for a "clarification" of the court's opinion on the immediate effect on

states of the court's opinion that the PPACA is unconstitutional was strongly opposed by the 26 states bringing suit. The states said the DOJ request was merely an attempt to delay the process after the states interpreted the ruling as allowing them to ignore the law's mandates.

Form 1099 Repeal

This week the House is slated to take up H.R. 4, Rep. Lungren's legislation reported by the House Ways and Means Committee which would repeal the PPACA's IRS Form 1099 reporting provisions, but without an offset for the \$19.2 10-year cost of the legislation. Exactly how the House bill, with not cost offset, will get to conference with the Senate remains to be seen, given that the Senate version, including a cost offset, was included in FAA legislation the Senate already sent to the House.

PPACA Medicaid/SHIP MOE Rules

Last week CMS gave state Medicaid directors additional guidance on the PPACA "maintenance of effort" rules relating to SCHIP and Medicaid eligibility. CMS provided FAQ on possible exceptions to the MOE rules and other flexible means to deal with premium increases and prior expansions of coverage. The House Energy and Commerce Committee will hold hearings on Medicaid this Tuesday and will likely hear about the concerns many states have with the MOE requirements.

Expanded Coverage for Children under PCIP

The CCIIO announced that children under the age of 19 who have been without health insurance for at least six months can obtain insurance coverage under the Pre-Existing Condition Insurance Plan (PCIP), if (1) they can show they were offered coverage during the previous 12 months for at least twice the standard market rate, or (2) they can show they had a condition before enrolling in the program whether or not any medical advice, diagnosis, care or treatment was recommended or received.

More PPACA State Grants

To date, HHS has provided states \$2.8 billion in funding to implement provisions related to health insurance and Medicaid under the PPACA. Last week HHS released another \$200 million to help states review health insurance rate increases. In addition, HHS announced the availability of \$100 million in grants for state incentive programs that demonstrate changes in health risk and outcomes and encourage Medicaid enrollees to adopt healthy behaviors. Also, HHS announced that 13 states will receive a total of \$621 million in grants through 2016 to help move Medicaid beneficiaries out of institutions and into their homes or community settings. In addition, the 13 states will receive \$45 million in grants to start an MFP demonstration program in their states. A CMS proposed rule would also allow all states access to \$3.7 billion in federal funding to provide long-term services through the Community First Choice Option Program under the PPACA.

MedPAC on SGR Changes

Last week the Medicare Payment Advisory Committee discussed changes to the Medicare physician payment formula, centering on the

development of expenditure targets based on service type (exempting from these targets providers in accountable care organizations) and penalizing high spenders.

Lacking specific recommendations, however, MedPAC has delayed for several months a final decision affecting the SGR.

Medicare Advantage Payment Increases

CMS said that Medicare Advantage managed care plans will receive an estimated increase of 1.6% 2012. The increase reflects a cut under the PPACA in MA county benchmarks coupled with an increase in the national per capita growth percentage and the start of a quality bonus program.

Delay in April Deadline for RAC Program

CMS announced that it will not enforce an April 1 deadline for states to implement their Medicaid Recovery Audit Contractor programs. A new deadline will be announced when a final rule is published later this year.

Recently Introduced Health Legislation

S. 374 (MEDICARE), to amend Title XVIII of the Social Security Act to eliminate the 190-day lifetime limit on inpatient psychiatric hospital services under Medicare; to the Committee on Finance, Feb. 17.

S. 385 (EMERGENCY RESPONDERS), to include nonprofit and volunteer ground and air ambulance crew members and first responders for certain benefits; LEAHY; to the Committee on the Judiciary, Feb. 17.

S. 396 (VETERANS' HEALTH), to require the secretary of veterans affairs to ensure that the South Texas Veterans Affairs Health Care Center in Harlingen, Texas, includes a full-service Department of Veterans Affairs inpatient health care facility; CORNYN; to the Committee on Veterans' Affairs, Feb. 17.

S. 408 (MEDICARE), to provide for the temporary retention of sole community hospital status for a hospital under Medicare; ROCKEFELLER; to the Committee on Finance, Feb. 17.

S. 409 (DRUGS), to ban the sale of certain synthetic drugs; SCHUMER; to the Committee on the Judiciary, Feb. 17.

H.R. 767 (REFORM), to permit individuals to choose to opt out of the requirement to maintain health insurance minimum essential coverage if such individuals also opt out of specified insurance reform protections; DeFAZIO; jointly, to the committees on Energy and Commerce, Ways and Means, and the Judiciary, Feb. 17.

H.R. 782 (REFORM), to enable states to opt out of certain provisions of the Patient

Protection and Affordable Care Act; McCOTTER; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 17.

H. RES. 98 (FOOD AND DRUG ADMINISTRATION), expressing the Sense of the House of Representatives that the commissioner of the Food and Drug Administration should give the greatest weight in making critical policy decisions to readily available hard science data, including evidence from the natural sciences, physical sciences, and computing sciences; FINCHER; to the Committee on Energy and Commerce, Feb. 17.

H.R. 798 (MEDICARE), to require the establishment of a Consumer Price Index for Elderly Consumers to compute cost-of-living increases for Social Security

and Medicare benefits under titles II and XVIII of the Social Security Act; DeFAZIO; jointly, to the committees on Ways and Means, Energy and Commerce and Education and the Workforce, Feb. 18.

‘H.R. 804 (VETERANS’ HEALTH), bill to amend Title 38, United States Code, to clarify the eligibility of certain veterans who serve in support of Operation New Dawn for hospital care, medical services, and nursing home care

provided by the Department of Veterans Affairs; FILNER; to the Committee on Veterans’ Affairs, Feb. 18.

H.R. 814 (MEDICARE), to provide Medicare payments to Department of Veterans Affairs medical facilities for items and services provided to Medicare-eligible veterans for non-service-connected conditions; FILNER; jointly, to the committees on Ways and Means, Energy and Commerce and Veterans’ Affairs, Feb. 18.

H.R. 816 (REFORM), to prevent the Patient Protection and Affordable Care Act from establishing health care provider standards of care in medical malpractice or medical product liability cases, and for other purposes; GINGREY of Georgia; jointly, to the committees on Energy and Commerce and the Judiciary, Feb. 18.