



## A Three-Week CR Delays Spending Showdown to April 8th; 1099 Repeal Delayed

### *Federal Spending Cut \$6.1 Billion Over Three Weeks*

Last week **President Obama** signed into law (P.L. 112-6) the House-passed continuing resolution (until April 8) which the Senate approved with little opposition from Democrats after House Republican leadership prevailed in excluding controversial riders, such as provisions that would have defunded the PPACA. However, the House vote, 271-158, included 54 Republican no votes, thus setting up a high barrier for **Speaker Boehner** to overcome in his next move to pass a final FY 2011 CR. The \$6.1 billion discretionary spending cuts largely reflect recommendations in the President's FY 2012 budget, including the elimination of unused earmarks and 25 other programs targeted for termination. However, health programs were not overlooked, with \$276 million in pandemic flu funding and \$75 million in State Health Access grants eliminated.

**Senate Majority Leader Harry Reid** said the inclusion of various riders would be a non-starter in the final budget negotiations which began last week. House budget hawks, including the new "Tea Party" members, will insist on further FY 2011 cuts to round out the \$61 billion in spending reductions under H.R. 1, while Senate Democrats will likely resist cuts of even half that amount. **Senator Schumer**

said "It's time for [House Speaker Boehner] to abandon the Tea Party and forge a bipartisan compromise." However, 32 Republicans and 32 Democrats in the Senate wrote to President Obama urging him to enter the discussions on both FY 2011 and FY 2012 budget issues before April 8. They implored that the discussions include discretionary spending cuts, entitlement changes and tax reform, as well. To date, the President has stayed out of the fray, so the burden will fall principally to **Speaker Boehner** and **Senate Majority Leader Reid**. The FY 2012 budget issues span the health spectrum, with Medicare and Medicaid facing major curtailments,

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and the perennial “doc fix” needing attention again to avoid a 29.5% cut in 2012 (CBO says the President’s budget freeze on physician payment rates through 2021 would increase outlays by \$300 billion). With AARA enhanced federal Medicaid funding ending this July, states will face even greater pressure now

and in the future to meet their balanced budget requirements. The need to increase the federal debt limit sometime in April may bring the White House into the discussions, however reluctantly, particularly given Senate Republican unity in opposing a debt limit increase without a major budget deal which includes entitlement changes.

## PPACA 1099 Repeal Delayed

**W**ith a number of Senate Democrats bucking **Majority Leader Reid’s** support last week for the repeal of the IRS Form 1099 requirements which includes an offset of the \$24.7 billion cost,

**Senator Reid** said he would let the Senate work its will this week in amending the Small Business Innovation Research and Small Business Technical Transfer Reauthorization Act (S. 493). **Senator Mike Johanns** said he

will offer his amendment which would adjust the PPACA premium assistance tax credits to achieve budget neutrality (the same offset used in the House-passed bill). Senate Democrats are expected to offer an alternative offset.

## PPACA Waiver/Loss Ratio Provisions Under Attack

**A**t last week’s House Oversight and Government Reform Health Subcommittee hearing, Republicans attacked the Center for Consumer Information and Insurance Oversight decision to approve 1,040 one-year waivers of the PPACA annual benefit limit for so-called “mini-med” plans. The agency refuted Republican charges of preference for unions, stating that such entities were on the receiving end of only 2% of the waivers while they constituted 5% of all applicants. In another area, health insurance agents have requested that their commissions be excluded from the PPACA medical loss ratio requirements, while **Senator Rockefeller**

has asked the NAIC to disregard the agents’ plea when it considers further recommendations to HHS regarding the MLR. **Senator Orrin Hatch** has also taken HHS to task over the 23 PPACA regulations it has finalized. He questioned the transparency of the rulemaking, citing the lack of proposed rules before issuing the final regs. Given several requests by states to be exempted from the PPACA Medicaid maintenance of effort requirements, **Senator Hatch** also released a CRS report stating that HHS could choose to waive the MOE requirements, if a state submitted a Section 1115 waiver, but that the law could also be interpreted otherwise.

## More PPACA Hurdles

**A**t last week’s Senate HELP Committee hearing, the NAIC testified that the lack of HHS final guidance on what constitutes “essential benefits” under state exchanges is hindering state efforts to make progress on establishing their

PPACA exchanges. HHS hinted that some rules relating to exchanges will be forthcoming this spring. Also, at a House Energy and Commerce Health Subcommittee hearing, HHS testified that the PPACA long-term care “CLASS Act” will not be implemented unless the

agency is able to design the program, as intended, so that it will be sustainable in the long term without federal funding. Legislation to repeal the CLASS Act has been introduced by **Reps. Boustancy, Gingrey and Lipinski.**

## Update on PPACA Constitutional Challenges

Last week the Eleventh Circuit granted the DOJ's request for an expedited review of the U.S. District Court for the Northern District of Florida's decision that the entire PPACA is null and void (due to the unconstitutionality of the individual mandate and the lack of a severability clause). The court has yet to say whether an en banc hearing will occur as requested

by the Florida Attorney General. Pending the oral arguments scheduled for mid-May in the Fourth Circuit Court of Appeals in the Virginia case, which struck down the individual mandate, the Department of Justice told the U.S. Supreme Court that there is no good reason for the Supreme Court to bypass appellate review of the Virginia case, especially given the expedited review of the Florida

case expected in the Eleventh Circuit. In a DOJ brief filed in the U.S. Court of Appeals for the Third Circuit in an appeal of a district case in which physicians and other plaintiffs were unsuccessful in their arguments against the PPACA, the government argued that the plaintiffs do not have standing to oppose the law and that the district court ruling to this effect should be upheld.

## House Judiciary Medical Liability Reform Bill Saves Money

CBO has determined that H.R. 5, as reported by the House Judiciary Committee (named the Help Efficient, Accessible, Low-cost Timely Healthcare Act of 2011) would reduce national health

spending 0.4% by lowering medical liability premiums and reducing utilization due to defensive medicine. The legislation is likely to be taken up soon on the House floor.

### DOL on PPACA Appeals Requirements

DOL announced that the agency plans to amend the interim final claims appeals rule setting forth the standards that non-grandfathered plans and policies of health insurance must follow. The interim rule's enforcement grace period will, in general, be extended beyond July 1 until plan years beginning on January 1, 2012.

### Democrats Strike Back

Not to be outdone, Democrats on the House Energy and Commerce and Ways and Means Committees released a report showing that drug prices had a sharp increase in the period just before the PPACA's enactment, thus bolstering their argument that Republican efforts to repeal health reform would harm seniors' ability to buy affordable drugs.

## MedPAC Recommends 1% Increase in Medicare Payments to Providers

Last week the Medicare Payment Advisory Commission released its annual report to Congress which recommends that Medicare payments to hospitals and physicians be increased by 1%

in FY 2012. The increase in physician payments would avert the scheduled 29.5% cut next January 1st.

In a House Ways and Means Health Subcommittee hearing, the MedPAC chairman defended the

commission's recommendation for an \$8 home health copay and for other recommendations that provider payments be based on quality rather than quantity.

## MACPAC Annual Report

Last week the Medicaid and SCHIP Payment and Access Commission (MACPAC) issued its first report in an effort to provide Congress with “objective policy and data analysis to assist Congress in overseeing and

improving” the two programs. The 244-page report describes the roles of Medicaid and SCHIP in the U.S. health system, provides an overview of each program, lists extensive state-specific statistical data for each program and sets

out the analytic framework the commission will use in future reports that will examine access to care, payment policies and ways to improve data collection in each program.

### Leniency for Nursing Homes

Last week CMS released a final rule under which the HHS Secretary could reduce nursing home civil monetary penalties (CMPs) by as much as 50% in cases under which nursing homes self-report compliance violations and quickly correct them. The final rule takes place next January.

### Medicare GME Interim Final Rule

Last week CMS published an interim final rule under which teaching hospitals that are members of the same Medicare graduate medical education (GME) affiliated groups would be protected from the loss of full time equivalent (FTE) resident slots. Comments are due by April 13th.

## Recently Introduced Health Legislation

**H.R. 1063 (MEDICARE)**, to amend Title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims; MURPHY of Pennsylvania; jointly, to the committees on Ways and Means and Energy and Commerce, March 14.

**H.R. 1035 (MEDICAID)**, to amend Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to permit Medicaid coverage for citizens of the Freely Associated States lawfully residing in the United States under the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the

Republic of Palau; HIRONO; to the Committee on Energy and Commerce, March 11.

**H.R. 1037 (REPRODUCTIVE HEALTH)**, to amend the Public Health Service Act to provide for the national collection of data on stillbirths in a standardized manner, and for other purposes; KING of New York; to the Committee on Energy and Commerce, March 11.

**H.R. 1041 (MEDICARE)**, to amend Title XVIII of the Social Security Act to repeal the Medicare competitive acquisition program for durable medical equipment and prosthetics, orthotics, and supplies (DMEPOS); THOMPSON of Pennsylvania; jointly, to the committees on Energy and Commerce, Appropriations, and Ways and Means, March 11.

**H.R. 1044 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide payment under Part A of Medicare on a reasonable cost basis for anesthesia services furnished by an anesthesiologist in certain rural hospitals in the same manner as payments are provided for anesthesia services furnished by anesthesiologist assistants and certified registered nurse anesthetists in such hospitals; JENKINS; to the Committee on Ways and Means, March 11.

**H.R. 1051 (MEDICARE)**, to amend Title XVIII of the Social Security Act to clarify the use of private contracts by Medicare beneficiaries for professional services and to allow individuals to choose to opt out of the Medicare

Part A benefits; SAM JOHNSON of Texas; jointly, to the committees on Ways and Means and Energy and Commerce, March 11.

**H.R. 1054 (MEDICAID)**, to amend Title XIX of the Social Security Act to provide access to certified professional midwives for women enrolled in Medicaid; PINGREE of Maine; to the Committee on Energy and Commerce, March 11.

**H.R. 1055 (MEDICARE)**, to amend Title XVIII of the Social Security Act to permit coverage of certain covered Part D drugs for uses that are determined to be for medically accepted indications based upon clinical evidence in peer reviewed medical literature; THORNBERRY; jointly, to the committees on Energy and Commerce and Ways and Means, March 11.

**H.J. Res. 48 (APPROPRIATIONS)**, making further continuing appropriations for fiscal year 2011, and for other purposes; ROGERS of Kentucky; to the Committee on Appropriations, March 11.

**H. Res. 166 (DISEASE AWARENESS)**, expressing support for designation of March 2011 as "National Kidney Cancer and Kidney Health Awareness Month;" MCCOTTER; to the Committee on Energy and Commerce, March 11.

**S. 583 (MEDICARE)**, to amend Title XVIII of the Social Security Act to permit direct payment under Medicare for clinical social worker

services provided to residents of skilled nursing facilities; MIKULSKI; to the Committee on Finance, March 15.

**H.R. 1080 (PEDIATRIC RESEARCH)**, to amend Title IV of the Public Health Service Act to provide for the establishment of pediatric research consortia; DEGETTE; to the Committee on Energy and Commerce, March 15.

**H.R. 1101 (REFORM)**, to restore the American people's freedom to choose the health insurance that best meets their individual needs by repealing the mandate that all Americans obtain government-approved health insurance; PAUL; jointly, to the committees on Ways and Means and Education and the Workforce, March 15.

**H. Res. 171 (MINORITY HEALTH)**, supporting the goals and ideals of National Minority Health Awareness Month in April 2011 in order to bring attention to the severe health disparities faced by minority populations such as American Indians and Alaska Natives, Asians, Blacks or African-Americans, Hispanics or Latinos, and Native Hawaiians and other Pacific Islanders; BRADY of Pennsylvania; to the Committee on Oversight and Government Reform, March 15.

**S. 597 (MEDICARE)**, to amend Title XVIII of the Social Security Act to include neurologists as primary care physicians for purposes of incentive payments for primary care services under the Medicare program; KLOBUCHAR; to the Committee

on Finance, March 16.

**H.R. 1117 (AIR AMBULANCES)**, to recognize and clarify the authority of the states to regulate the medical aspects of intrastate air ambulance services pursuant to their authority over health care services, patient safety and protection, emergency medical care, the quality and coordination of medical care, and the practice of medicine within their jurisdictions; MILLER of Michigan; jointly, to the committees on Transportation and Infrastructure and Energy and Commerce, March 16.

**H.R. 1119 (NURSES)**, to amend the Public Health Service Act to establish the position of National Nurse for Public Health; WEINER; to the Committee on Energy and Commerce, March 16.

**S. 604 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under Part B of Medicare, and for other purposes; WYDEN; to the Committee on Finance, March 17.

**S. 605 (DRUGS)**, to amend the Controlled Substances Act to place synthetic drugs in Schedule I; GRASSLEY; to the Committee on the Judiciary, March 17.

**S. 606 (PEDIATRIC DISEASES)**, to amend the Federal Food, Drug, and Cosmetic Act to improve the priority review voucher incentive program relating to tropical and rare pediatric diseases; CASEY;

to the Committee on Health, Education, Labor, and Pensions, March 17.

**S. 643 (MEDICAID)**, to amend Title XIX of the Social Security Act to direct Medicaid EHR incentive payments to federally qualified health centers and rural health clinics; STABENOW; to the Committee on Finance, March 17.

**S. 648 (MEDICARE)**, to require the commissioner of Social Security to revise the medical and evaluation criteria for determining disability in a person diagnosed with Huntington's Disease and to waive the 24-month waiting period for Medicare eligibility for individuals disabled by Huntington's Disease; GILLIBRAND; to the Committee on Finance, March 17.

**S. 649 (DISEASE RESEARCH AND AWARENESS)**, to expand the research and awareness activities of the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the Centers for Disease Control and Prevention with respect to scleroderma, and for other purposes; GILLIBRAND; to the Committee on Health, Education, Labor, and Pensions, March 17.

**S. 650 (REFORM)**, to require greater transparency concerning the criteria used to grant waivers to the job-killing health care law and to ensure that applications for such waivers are treated in a fair and consistent manner, irrespective of the applicant's political contributions or association with a labor union, a health plan provided for under a collective bargaining

agreement, or another organized labor group; ENSIGN; to the Committee on Finance, March 17.

**H.R. 1119 (NURSES)**, to amend the Public Health Service Act to establish the position of National Nurse for Public Health; WEINER; to the Committee on Energy and Commerce, March 16.

**H.R. 1150 (ANTITRUST)**, to restore the application of the federal antitrust laws to the business of health insurance to protect competition and consumers; GOSAR; to the Committee on the Judiciary, March 17.

**H.R. 1159 (REFORM)**, to repeal certain provisions of the Patient Protection and Affordable Care Act relating to the limitation on the Medicare exception to the prohibition on certain physician referrals for hospitals and to transparency reports and reporting of physician ownership or investment interests; HASTINGS of Washington, jointly, to the committees on Energy and Commerce and Ways and Means, March 17.

**H.R. 1172 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide an increased payment for chest radiography (X-ray) services that use computer aided detection technology for the purpose of early detection of lung cancer; BERKLEY; jointly, to the committees on Energy and Commerce and Ways and Means, March 17.

**H.R. 1179 (HEALTH CARE COVERAGE)**, to amend

the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services; FORTENBERRY; to the Committee on Energy and Commerce, March 17.

**H.R. 1184 (REFORM)**, to require greater transparency concerning the criteria used to grant waivers to the job-killing health care law and to ensure that applications for such waivers are treated in a fair and consistent manner, irrespective of the applicant's political contributions or association with a labor union, a health plan provided for under a collective bargaining agreement, or another organized labor group; ISSA; to the Committee on Energy and Commerce, March 17.

**H.R. 1185 (REFORM)**, to delay the implementation of the health reform law in the United States until there is final resolution in pending lawsuits; ISSA; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, House Administration, the Judiciary, Natural Resources, Appropriations, and Rules, March 17.

**H.R. 1186 (REFORM)**, to repeal changes made by health care reform laws to the Medicare exception to the prohibition on certain physician referrals for hospitals; SAM JOHNSON of Texas; jointly, to the committees on Energy and Commerce and Ways and Means, March 17.

**H.R. 1187 (MEDICAID)**, to amend Title XIX of the Social Security Act to direct Medicaid EHR incentive payments to federally qualified health centers and rural health clinics; KINZINGER of Illinois; to the Committee on Energy and Commerce, March 17.

**H.R. 1195 (OPTOMETRISTS)**, to amend the Public Health Service Act to provide for the participation of optometrists in the National Health Service Corps scholarship and loan repayment programs, and for other purposes; MCMORRIS RODGERS; to the Committee on

Energy and Commerce, March 17.

**H.R. 1200 (REFORM)**, to provide for health care for every American and to control the cost and enhance the quality of the health care system; MCDERMOTT; jointly, to the committees on Energy and Commerce, Ways and Means, Oversight and Government Reform, Armed Services, and Education and the Workforce, March 17.

**H.R. 1206 (HEALTH INSURANCE)**, to amend title XXVII of the Public Health Service Act to preserve consumer

and employer access to licensed independent insurance producers; ROGERS of Michigan; to the Committee on Energy and Commerce, March 17.

**H. Res. 176 (TUBERCULOSIS)**, commending the progress made by anti-tuberculosis programs; ENGEL; jointly, to the committees on Foreign Affairs and Energy and Commerce, March 17.