



## Government Shutdown Looms on Friday Unless CR Extended into Following Week

### *Government Shutdown on April 8?*

Last week's pronouncement by **Vice President Joseph Biden** that congressional negotiators were ready to agree on a CR for the remainder of FY 2011 which would achieve \$30-33 billion in discretionary spending cuts was quickly shot down by **House Speaker John Boehner** who said that "nothing has been agreed to until everything has been agreed to" (including specific line-item cuts). An agreement would have to be reached early this week to avoid a government shutdown on Friday, midnight, given House and Senate rules requiring advance notice of legislation and floor time for debate. If an agreement can be reached this week, a short-term CR extending into next week is likely to be enacted. If an agreement is not reached in a timely fashion, **House Speaker Boehner** will be put in the position of having to round up enough Republican and Democrat votes for a CR extending beyond the Spring recess which begins April 15 and ends on May 2nd. Continuing to complicate the negotiations is the looming vote to increase the statutory federal debt limit, particularly with House Republican deficit hawks threatening to vote against increasing the limit if the new CR does not include riders, such as PPACA defunding, and substantial cuts, such as the \$61 billion under H.R. 1 as passed by the House. In a bit of gamesmanship, last week

the House passed H.R. 1255, the Government Shutdown Prevention Act, which "deems" that H.R. 1 as previously passed by the House would become "law" unless the Senate passes FY 2011 legislation before April 6. Minority Leader Nancy Pelosi dismissed the gimmick as a waste of time that undermines negotiations. Some Democrats have prodded the White House to become more engaged in finding a resolution to the impasse even as **President**  
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**Obama** slammed a potential government shutdown as creating new hurdles to economic recovery.

### **Republicans to Give Opening Salvo on FY 2012 Budget/Entitlement Cuts**

On Tuesday, **House Budget Committee Chairman Paul Ryan** is expected to release the House Republican spending and tax budget plan for FY 2012. Even before the release, Democrats are criticizing the anticipated Republican plan to turn Medicaid into a state block grant program. The plan, which is expected to provide about \$11,000 per Medicaid enrollee, is expected to save many billions over ten years. The plan for Medicare is to gradually convert the program into a “premium support” plan which was offered by **Rep. Ryan and Alice Rivlin** to the presidential deficit reduction commission (DRC). CBO estimated ten year cost savings of the Medicare portion of the Ryan/Rivlin plan to be about \$110 billion over the projected Medicare cost savings under the PPACA. Given the push by **Senate Majority Leader Harry Reid** to paint Republicans into a corner on potential cuts to Social Security, the Republican plan may avoid including major changes to the benefits under this program. In total, the Ryan FY 2012 budget proposal is expected to include over \$4 Trillion in 10-year deficit reduction, exceeding somewhat the deficit reduction target recommended by the Deficit Reduction Commission. If the House Budget Committee proceeds, as intended, to mark up the Ryan plan and pass it in the House before the Spring recess, which commences April 15, the committee will be engaged in a contentious debate over FY 2012, as well as FY 2011 federal spending cuts. Senate Republicans have decided their opening shot on budget reform is to introduce legislation ultimately leading to a constitutional amendment

requiring the President to annually submit a balanced budget with federal spending capped at 18% of GDP. Congress would need a two-thirds majority in each house to approve tax increases and any unbalanced budget. A three-fifths vote in each chamber would be required to raise the federal debt ceiling. The Ryan budget plan is also expected to include a cap on the amount of discretionary spending that Congress could appropriate. **Rep. Ryan** also said that he intends to offer a provision that would place a global limit on all federal spending, expressed as a percent of GDP (decidedly below the 23-24% that the Obama budget would produce). Preceding the Budget Committee debate, last week the House Energy and Commerce Committee Health Subcommittee heard from **CMS health actuary Richard Foster** who testified that Medicare spending growth “may not be viable indefinitely” because spending reductions under the PPACA may induce medical providers to leave Medicare. He said that if Congress acts to alleviate provider cuts, then the cost savings will not be realized. Citing the future costs of the PPACA, last week **Senators Orrin Hatch and John Cornyn** released a report from the CMS Office of the Actuary which analyzes the effect that employer decisions would have on the ultimate cost of the PPACA. Previous 10-year estimates assumed that about 20% of small employers and 5% of large employers would stop offering health coverage, thus resulting in \$565 billion in health insurance exchange subsidies and \$725 billion in Medicaid costs. The new report states that if no employers drop coverage, exchange subsidies would be \$501 billion and Medicaid costs would be \$667 billion, while if 50% of employers drop coverage, the exchange cost would rise to \$798 billion and Medicaid costs would be \$738 billion. Although unknown at this time, the Ryan budget may also assume the elimination of these exchange and Medicaid costs by means of the repeal of the PPACA.

## **Early Retiree Reinsurance Program Applications to End**

**L**ast week House Republicans renewed their criticism of the PPACA’s ERRP program, asking the Administration how it can justify

the large payments made to the UAW Retiree Medical Trust and other company unionized health plans. Given the sums already paid out to 1,300 state and local

government plans and private companies, CMS announced that that new applications for ERRP subsidies will not be accepted after May 5th.

## Senate to Vote to Repeal PPACA Form 1099 Requirement

**Senate Majority Leader Harry Reid** announced that he will bring up this Tuesday the House-passed bill, H.R. 4, to repeal the Form 1099 information reporting rules, as included under the PPACA. The House bill includes an offset that amends the

PPACA premium subsidy provision to recapture inaccurate payments. An amendment to be offered by **Senator Robert Menendez** would disallow the offset if HHS finds that it would reduce the number of insured individuals or raise insurance premiums. The vote

on the bill and amendment are uncertain given that both measures need 60 votes for passage. However, if H.R. 4 passes without amendment, the bill would go directly to **President Obama** for his signature.

## House Energy and Commerce Subcommittee Votes to Defund PPACA

Last week the Health Subcommittee of the E&C Committee approved several bills to void HHS authority to implement various provisions of the PPACA. The bills would: repeal mandatory funding for grants to states for establishing insurance exchanges (H.R.

1213); repeal mandatory funding for school-based health center construction (H.R. 1214); would convert direct funding for personal responsibility education programs, which address topics such as teen pregnancy and sexually transmitted infections, to an authorization of appropriations (H.R. 1215); convert

funding for graduate medical education at teaching health centers from direct funding to an authorization of appropriations, meaning the program would go through the annual appropriations process (H.R. 1216); and repeal the Prevention and Public Health Fund (H.R. 1217).

## House Ways and Means Approves Bill Prohibiting Taxpayer Funded Abortions

Last week the House Ways and Means Committee, on a party-line vote, passed H.R. 1232, legislation that would prohibit taxpayer funds from being used for abortions and prohibit money in tax-advantaged medical savings accounts from being used to reimburse women for abortions. The bill also amends the PPACA to modify Section 36B of the Internal Revenue Code to exclude health plans that cover abortions from being eligible for premium assistance tax credits.

## CLASS Act Implementation at Risk

Testifying before the Senate Appropriations Labor/HHS Subcommittee last week, **HHS Secretary Kathleen Sebelius** said that HHS would not implement the CLASS long-term care insurance program unless the agency is able to implement the law in a manner that assures the long-term sustainability of the program. She defended the \$120 million in the FY 2012 budget for the program's implementation, stating that the money "is designed to make sure we have a solvent program" by reaching out to encourage enrollment.

## Accountable Care Organization Proposed Regulations

Last week CMS released proposed rules allowing providers to establish ACOs under the PPACA. Under the rule, groups of providers can qualify as ACOs when they are able to provide primary care for at least 5,000 patients and meet 65 quality standards. The proposal includes a one-sided risk model (sharing savings only for the first two years and sharing savings and losses in the third year) and a two-sided risk model (sharing savings and losses for all three

years), allowing ACOs to choose for or the other model. ACOs in the one-sided risk program that have smaller populations (and have more variation in expenditures) would have a larger sharing rate and ACOs with larger populations (and have less variation in expenditures) have a smaller rate. Under the two-sided approach, CMS proposed a flat 2% minimum sharing rate. Comments are due in 60 days. The HHS OIG has released a notice on waivers of certain federal fraud and abuse

laws for ACOs. The Federal Trade Commission and the Department of Justice also released a statement on the enforcement of antitrust laws as applicable to ACOs which makes them more viable (the “Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program”). In addition, the IRS has issued guidance (IRS Notice 2011-20) on the tax treatment of ACOs.

## Update on PPACA Constitutional Challenges

Last week the Eleventh Circuit Court of Appeals in Atlanta rejected the Florida multistate request for an en banc hearing on the district court finding that the PPACA is unconstitutional and said that instead a randomly selected three-judge panel will hear oral arguments on June 8. Also, the Virginia AG filed a brief in his appeal to the Fourth Circuit arguing that the federal government “tipped the scales too far” in the direction of a national police power in enacting the PPACA individual mandate and that the commerce clause does not confer constitutional

authority for the mandate. Continuing its defense of the PPACA, the federal government argued in an Oklahoma District Court that Oklahoma does not have standing to challenge the constitutionality of the individual mandate just because the state passed a law exempting its citizens from a federal mandate to purchase health insurance. If the decision is adverse to the plaintiffs, Oklahoma is expected to appeal the decision to yet another circuit, the U.S. Court of Appeals for the Tenth Circuit.

## House E&C Committee Seeks MD Organizational Input on SGR Solution

Last week the House Energy and Commerce Committee asked 51 medical societies to provide their input on finding a long-term solution to fix the sustainable growth rate problem under the Medicare physician payment formula.

## Change to Medicare DME Direct Solicitation Rules

Last week CMS issued a proposed rule clarifying the conditions under which suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) can directly contact Medicare beneficiaries. Under the rule, the definition of “direct solicitation” would be narrowed.

## Medicare Payment Rule for Renal Disease Providers

Last week CMS issued an interim final rule revising the end-stage renal disease (ESRD) transition budget-neutrality adjustment for services rendered on or after the beginning of this year. CMS said the revision will be applied prospectively and will result in an increase in payments of 3.1% by applying a 0% adjustment for renal dialysis services furnished April 1, 2011 through Dec. 31, 2011.

## SHIP Awards

Last week CMS announced that the agency will distribute \$46.5 million to 54 State Health Insurance Assistance Programs (SHIPs) to provide information and counseling to Medicare beneficiaries about their health benefits and choices.

**S. 659 (MEDICARE)**, to amend Title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under Medicare; COLLINS; to the Committee on Finance, March 29.

**S. 660 (COMPARATIVE EFFECTIVENESS RESEARCH)**, to protect all patients by prohibiting the use of data obtained from comparative effectiveness research to deny or delay coverage of items or services under federal health care programs and to ensure that comparative effectiveness research accounts for advancements in personalized medicine and differences in patient treatment response; KYL; to the Committee on Health, Education, Labor, and Pensions, March 29.

**S. 668 (INDEPENDENT PAYMENT ADVISORY BOARD)**, to remove unelected, unaccountable bureaucrats from seniors' personal health decisions by repealing the Independent Payment Advisory Board; CORNYN; to the Committee on Finance, March 29.

**H.R. 1213 (REFORM)**, to repeal mandatory funding provided to states in the PPACA to establish American health benefit exchanges; UPTON; to the Committee on Energy and Commerce, March 29.

**H.R. 1214 (HEALTH CENTERS)**, to repeal mandatory funding for school-based health center construction; BURGESS; jointly, to the committees on Energy and Commerce and Education and the Workforce,

March 29.

**H.R. 1216 (GRADUATE MEDICAL EDUCATION)**, to amend the Public Health Service Act to convert funding for graduate medical education in qualified teaching health centers from direct appropriations to an authorization of appropriations; GUTHRIE; to the Committee on Energy and Commerce, March 29.

**H.R. 1217 (PUBLIC HEALTH)**, to repeal the Prevention and Public Health Fund; PITTS; to the Committee on Energy and Commerce, March 29.

**H.R. 1219 (MEDICAID)**, to amend Title XIX of the Social Security Act to require Medicaid coverage of optometrists; HALL; to the Committee on Energy and Commerce, March 29.

**H.R. 1232 (TAXATION)**, to amend the Internal Revenue Code of 1986 to eliminate certain tax benefits relating to abortion; CAMP; to the Committee on Ways and Means, March 29.

**S. 688 (MEDICARE)**, to amend Title XVIII of the Social Security Act to apply the additional Medicare HITECH payment provisions to hospitals in Puerto Rico; MENENDEZ; to the Committee on Finance, March 30.

**H.R. 1249 (PATENT REFORM)**, to amend Title 35, United States Code, to provide for patent reform; SMITH of Texas; jointly, to the committees on the Judiciary and the Budget, March 30.

**H.R. 1252 (MEDICARE)**, to amend Title XI of the Social Security Act to provide for the annual mailing of statements of Medicare beneficiary Part A contributions and benefits in coordination with the annual mailing of Social Security account statements; COOPER; jointly, to the committees on Ways and Means and Energy and Commerce, March 30.

**H.R. 1254 (DRUGS)**, to amend the Controlled Substances Act to place synthetic drugs in Schedule I; DENT; jointly, to the committees on Energy and Commerce and the Judiciary, March 30.

**H.R. 1256 (MEDICARE)**, to amend Title XVIII of the Social Security Act to require the use of analytic contractors in identifying and analyzing misvalued physician services under the Medicare physician fee schedule and an annual review of potentially misvalued codes under that fee schedule; MCDERMOTT; jointly, to the committees on Energy and Commerce and Ways and Means, March 30.

**H.R. 1273 (MEDICARE)**, to amend Title XVIII of the Social Security Act to apply the additional Medicare HITECH payment provisions to hospitals in Puerto Rico; PIERLUISI; to the Committee on Ways and Means, March 30.

**H. Res. 187 (PUBLIC HEALTH)**, supporting the goals and ideals of National Public Health Week; ROYBAL-ALLARD; to the Committee on Energy and

Commerce, March 30.

**H.R. 1285 (MILITARY HEALTH)**, to amend Title 10, United States Code, to prohibit certain increases in fees for military health care before fiscal year 2014; BACHMANN; to the Committee on Armed Services, March 31.

**H.R. 1286 (REFORM)**, to provide for fiscal accountability for new direct funding under the PPACA by converting its direct funding into authorizations of appropriations and by rescinding unobligated direct funding; BACHMANN; jointly, to the committees on

Energy and Commerce, Ways and Means, and Education and the Workforce, March 31.

**H.R. 1290 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for coverage under Part B of Medicare for medically necessary dental procedures; COHEN; jointly, to the committees on Energy and Commerce and Ways and Means, March 31.

**H.R. 1298 (VETERANS' HEALTH)**, to direct the secretary of veterans affairs to conduct cost-benefit analyses for the

provision of medical care by the Department of Veterans Affairs in certain geographic areas served by multiple Department of Veterans Affairs medical facilities; LOBIONDO; to the Committee on Veterans' Affairs, March 31.

**H.R. 1301 (MEDICAID)**, bill to amend Title XIX of the Social Security Act to increase the federal medical assistance percentage for the District of Columbia under Medicaid to 75 percent; NORTON; to the Committee on Energy and Commerce, March 31.