



## House Labor/HHS/Education Spending Bill Targets PPACA; House Passes DOD Bill

### *House Labor/HHS Appropriations Subcommittee Approves FY 2013 Spending Bill*

On an 8-6 vote the House Labor/HHS/Education Appropriations Subcommittee approved the draft FY 2013 spending bill containing \$150 billion in discretionary funding (\$6.3 billion less than in FY 2012 and \$8.8 billion less than the Administration's request). Under the bill, HHS would receive \$68.3 billion (\$1.3 billion less than last year and \$1.8 billion less than the Administration's request). The bill would scale back PPACA funding by \$123 billion over five years by eliminating: \$1.6 billion for the Medicare and Medicaid Innovation program; \$1 billion for the Prevention and Public Health Fund; \$3 billion for the Consumer Operated and Oriented Plan program; \$300 million for community health centers; and \$150 million for the Patient-Centered Outcomes Research Trust Fund; and all funding for the Independent Payment Advisory Board and the Center for Consumer Information and Insurance Oversight. An attempt by Democrats to strike this provision was defeated along party lines. The bill would also eliminate Title X funding for medical services such as for contraception and cancer screenings for low-income women and preclude funding for Planned Parenthood unless the organization affirms it will not perform or provide referrals for abortions. HHS agencies would receive the following: \$3.5 billion for CMS (about \$409 million less than for FY 2012); \$30.6 billion for NIH (about the same as for FY 2012); \$16.4 billion

for the Administration for Children and Families; \$5.75 billion for CDC; and \$3.1 billion for the Substance Abuse and Mental Health Services Administration. The bill would also allow insurers and sponsors of group health insurance plans to refuse coverage for any health services "on the basis of religious beliefs or moral convictions." Also included is about \$20 million in grant funding for abstinence-only sex education programs. While the bill may be taken up in full committee this week, it remains to be seen when the bill will be taken up in the House. The \$8.8 billion difference with the Senate bill will guarantee that the Labor/HHS appropriations bills will not see a House/Senate conference.

### *Appropriations/Sequestration*

The House passed H.R. 5856, the FY 2013 Defense Appropriations bill which appropriates \$519 billion for regular programs or \$8 billion above the level set under the Budget Control Act. The bill would transfer

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funding from defense operational accounts to cover the cost of brain injury, vision and eye, spinal cord and Gulf War Illness research. The bill also provides funding for suicide prevention programs and prohibited certain enrollment fees for TriCare. This bill, Labor/HHS and other unfinished FY 2013 appropriations bills will likely be put on hold until after the election

subject to the passage of a short-term continuing resolution. With sequestration looming, the House also passed the Sequestration Transparency Act of 2012 (H.R. 5872), legislation designed to force the Administration within 30 days of enactment to provide specifics as to the budget hit that each federal program will take if the Budget Control Act sequestration is allowed to go forward unchanged next year. The CBO has warned

about a new recession unless Congress comes up with a plan that prevents both steep tax hikes and the across-the-board spending cuts. Also, the Chairman of the Federal Reserve told the Senate Banking Committee that Congress needs to act sooner rather than later. **Senators Kelly Ayotte and Carl Levin** suggested that the sequestration could be delayed as part of an upcoming continuing resolution.

## Final Reporting Rule for Essential Benefits

**H**HHS issued a final rule under which the three largest small group health insurance plans in each state will be required to report benefit, treatment, drug coverage and enrollment information on covered benefits. The information will enable HHS to determine the minimum “essential health benefits” to be offered under PPACA health insurance exchanges. A rule issued by the IRS states that PPACA low-income subsidies are to be made available

to eligible individuals choosing essential benefit health plans in state-run exchanges as well as in the default federally run exchange. However, a paper to be published by authors Jonathan Adler and Michael Cannon maintains that a reading of the PPACA does not allow for the subsidies to be legally provided under the federal exchange operated in states which do not establish their own exchanges.

## Republicans Continue Criticism of PPACA

**H**ouse Energy and Commerce Committee Chairman **Fred Upton and Senator Orrin Hatch** stated in a letter to HHS Secretary Kathleen Sebelius that the PPACA Supreme Court decision raises new questions about the pending cost and construct of the law’s Medicaid expansion. They said that governors “are concerned about the federal government’s ability to maintain its commitment to such a high federal match [100% for 3 years and grading down to 90% by 2020] for the long term.” To aid states in their decision whether to adopt the Medicaid expansion, the legislators asked HHS to release all the legislative and policy specifications for the “blended rate” proposed under the Obama budget recommendations which would combine Medicaid and SCHIP payments.

## State Innovation Grants

**C**MS announced a \$275 million State Innovation Model PPACA grant program for states to design and test new multi-payer models to improve healthcare and lower the costs under Medicare, Medicaid and SCHIP. Applications are due by September 17th.

## Hearing on Medicare Physician Payment Reform

At a House E&C Health Subcommittee hearing, Using Innovation to Reform Medicare Physician Payments, **Chairman Burgess** announced he will introduce legislation to delay the 2013 cut in physician payments for one year. He said this would give Congress time to develop options to the current SGR system. Committee Democrats questioned from which programs the offsets would be derived and criticized Republicans for past actions

which did not include offsets. They said they oppose using cuts from provisions under the PPACA, but suggested using the so-called Overseas Contingency Operations fund as a source for offsets. In a related report, the Institute of Medicine said that its previous recommendation, for new geographic adjustments under Medicare designed to more accurately reflect the cost of doing business in different regions, would result in an increase or decrease of payments to most providers of

no more than 5% and affect 88% of hospital discharges and 96% of physician payments. At a House Small Business Committee hearing, witnesses from the medical profession testified that decreasing Medicare, Medicaid and private health plan reimbursements and rising costs are causing many physicians in private practice to move to hospital-owned practices, thus shrinking access and leading to local unemployment.

### More Republican Demands

Republicans on the House Ways and Means Committee have asked **HHS Secretary Kathleen Sebelius** to provide by August 3 all records related to the creation, development and implementation of the Medicare Advantage quality bonus demonstration program that the GAO has criticized. Also, Reps. Joseph Pitts and Bill Cassidy have asked HRSA Administrator Mary Wakefield to issue an updated definition of “patient” that ensures program eligibility for those truly in need.

### DSH and Medicare Part B Allotments

CMS gave notice of final FY 2010 and 2011 federal share DSH allotments and preliminary information about FY 2012 allotments. CMS said the preliminary FY 2012 DSH allotments are about \$64 million more than the final FY 2011 DSH allotments. CMS also provided information about final FY 2010, FY 2011, and preliminary FY 2012 DSH allotments for institutions for mental diseases (IMD). In addition, CMS gave notice of the final federal allotments to states under SCHIP for FY 2012. In a separate notice, CMS provided the final allotments to pay the Medicare Part B premiums for qualifying individuals for FY 2011 and the preliminary qualifying individual allotments for FY 2012.

**H. CON. RES. 131 (HIV/AIDS)**, expressing support for continued international cooperation to combat HIV/AIDS; LEE of California; to the Committee on Foreign Affairs, July 13.

**S. 3391 (LABORATORIES)**, to amend Section 353 of the Public Health Service Act with respect to suspension, revocation, and limitation of laboratory certification; KLOBUCHAR; to the Committee on Health, Education, Labor, and Pensions, July 17.

**H.R. 6134 (MEDICAL MARIJUANA)**, to amend Title 18, United States Code, to provide an affirmative defense for the medical use of marijuana in accordance with the laws of the various states, and for other purposes; FARR; to the Committee on the Judiciary, July 17.

**S. 3396 (CONGENITAL DIAPHRAGMATIC HERNIA)**, to amend the Public Health Service Act to provide for a national campaign to increase public awareness and knowledge of congenital diaphragmatic hernia, and for other purposes; SESSIONS; to the Committee on Health, Education, Labor, and Pensions, July 18.

**H.R. 6137 (REFORM)**, to repeal provisions of the Patient Protection and Affordable Care Act relating to health savings accounts, and for other purposes; FLEMING; jointly, to the committees on Ways and Means and Energy and Commerce, July 18.

**H.R. 6138 (HIV/AIDS)**, to bring an end to the spread of HIV/AIDS in the United States and around the world; LEE of California; jointly, to the committees on Energy and Commerce, Foreign Affairs, Education and the Workforce, the Judiciary, Armed Services, Financial Services, and Ways and Means, July 18.

**H.R. 6142 (MEDICARE)**, to amend Title XVIII of the Social Security Act to extend Medicare physician payment rates for one year; BURGESS; jointly, to the committees on Energy and Commerce and Ways and Means, July 18.

**H.R. 6143 (OBESITY)**, to provide for supplemental appropriations for obesity programs of the Centers for Disease Control and Prevention, and for other purposes; BACA; jointly, to the committees on Appropriations and the Budget, July 18.

**H.R. 6146 (HOSPITALS)**, to permit pass-through payment for reasonable costs of certified registered nurse anesthetist services in critical access hospitals notwithstanding the reclassification of such hospitals as urban hospitals, including hospitals located in “Lugar counties,” and for on-call and standby costs for such services; HINOJOSA; to the Committee on Ways and Means, July 18.

**H. RES. 733 (MEDICARE/MEDICAID)**, expressing the sense of the House of Representatives that any deal replacing the Budget

Control Act of 2011 should contain serious revenue increases and no Medicare, Medicaid, and Social Security benefit cuts; ELLISON; jointly, to the committees on the Budget, Ways and Means, Energy and Commerce, Armed Services, Transportation and Infrastructure, and Education and the Workforce, July 18.

**H. RES. 734 (HEALTH CARE WORKERS)**, recognizing the importance of frontline health workers toward accelerating progress on global health and saving the lives of women and children, and for other purposes; LOWEY; to the Committee on Foreign Affairs, July 18.

**S. 3407 (PALLIATIVE CARE)**, to amend the Public Health Service Act to increase the number of permanent faculty in palliative care at accredited allopathic and osteopathic medical schools, nursing schools, and other programs, to promote education in palliative care and hospice, and to support the development of faculty careers in academic palliative medicine; WYDEN; to the Committee on Health, Education, Labor, and Pensions, July 19.