



House Readies FY 2012 CR; Super-Committee to Receive President's Recommendations

Appropriations Issues

This Wednesday or Thursday the House is scheduled to take up H.J. Res. 79, a continuing resolution (CR) that includes agency funding at the rate set in the debt limit law which caps FY 2012 spending at \$1.043 trillion. Funding would continue until the first of the following occurs: (1) enactment of an appropriation for any project or activity provided for in the joint resolution; (2) enactment of the applicable appropriations Act for FY2012 without any provision for such project or activity; or (3) November 18, 2011. Several individual appropriations bills could yet be enacted this year: the Agriculture/FDA bill has passed both the House and Senate and has the Military Construction/VA bill. The Defense bill will likely be taken up, but it does not appear the Labor/HHS/Education bill will be marked up in the House. Passage of the CR by both the House and the Senate would clear the decks to enable both houses to recess the last week of this month.

Senate HELP Committee Hearing on Health and Poverty

At a Senate HELP Committee hearing last week, "Is Poverty a Death Sentence?", **Senator Bernie Sanders** said that "poverty in America today leads not only to anxiety, unhappiness, discomfort, and a lack of material goods. It leads to death." **Senator Rand Paul**, however, argued that instead

"capitalism in our country vanquished starvation along with smallpox and polio....Anyone who wishes to equate poverty with death must go to the third world to do so. Anyone wishing to equate poverty with death must seek out socialism and tyranny. Where you find command economies you will find death and starvation." IOM statistics were cited that showed 45,000 Americans die every year because of lack of health insurance. The hearing is a prelude to the coming debt reduction committee debate over whether and how much Medicaid and Medicare spending should be reduced to help balance the federal budget. Joint Select Committee on Deficit

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Reduction Gets Advice on Spending Cuts

The deficit reduction “super committee” heard testimony from **CBO Director Douglas Elmendorf** who said that any tax increases and spending cuts should be phased-in over the long term, given the current state of the economy and high unemployment rate. He said that spending on Social Security and federal health programs is projected to increase to 12.2% of GDP in 2021 under current law, up from 10.4% in 2011. **Senator Rob Portman** maintained that entitlement spending is driving long-term deficits to impossible levels while **Senator John Kerry** countered that it’s more than a spending problem with many tax “expenditures” being spending in disguise. The CBO Director said the committee’s recommendations could follow several paths, including raising federal revenues significantly above their average share of GDP, making major changes to entitlement programs or substantially reducing the role of the rest of the federal government relative to the size of the economy. The President’s “Americans Jobs Bill” will be brought into the committee’s purview by Democrats while Republicans are likely to resist many of the direct spending programs and the bill’s payfors

which include increasing taxes on higher income individuals and families. **Senate Minority Leader Mitch McConnell** said “The President can call this [jobs] bill whatever he wants. But in reality, all he’s really doing is just proposing a hodgepodge of retreat ideas aimed at convincing people that a temporary fix is really permanent and that it will create permanent jobs. And then daring Republicans to vote against it....” **House Speaker John Boehner** reiterated Republican opposition to tax rate increases and advocated for major tax reform with lower rates and the elimination of various deductions. The President will also forward to the joint select committee his recommendations for long-term deficit reduction which are likely to include minor adjustments to the Medicare and Medicaid programs. The recommendations may also address the need to ameliorate the scheduled 29.5% reduction in Medicare physician payments beginning next January. Other suggestions for deficit reduction may also be forthcoming from the so-called “Gang of Six.” Reducing health care fraud and abuse was a topic promoted by several committee members and the CBO Director pledged his support to find solutions, but cautioned that it is unlikely any savings will be substantial. The committee’s deadline for finding solutions is

November 23, but CBO said they would need 2-3 weeks to score the proposed legislation, thus forcing the committee to come to some resolution during the remainder of September and the weeks in October. If the committee lacks a majority consensus, then automatic cuts of \$1.2 trillion over ten years would take place under both defense and non-defense spending programs. CBO said that the 2% cap on Medicare cuts under the sequestration would amount to about \$123 billion of the total. House and Senate committees of jurisdiction are also anxious to weigh-in with their own recommendations, the first being the Senate Defense Committee which urged DOD to provide the defense committee with the Administration’s recommendations for \$400 billion in defense cuts. Outside groups have begun their lobbying for certain changes with the latest being the Healthcare Leadership Council which suggested \$410 billion in Medicare savings over 10 years by establishing an insurance exchange under which beneficiaries could use vouchers to purchase coverage, raising the Medicare eligibility age from 65 to 67, overhauling deductibles and copayments and making changes to the medical liability system.

Republicans Take Aim to Overturn PPACA Provisions

Republicans took issue with the PPACA's minimum medical loss ratio rules (MLR) and its so-called grandfather provisions at a House Energy and Commerce Health Subcommittee hearing. Democrats voiced strong opposition to H.R. 2077 which would repeal the MLR and H.R. 1206 that would exempt brokers' fees from the administrative costs category under the MLR. Republicans said the MLR will lead to layoffs and slashed paychecks for insurance agents and brokers and that some states said the rules would

destabilize their insurance markets, particularly in the individual market. However, the CMS spokesman said that the rule is slowing insurer rate increases. On the other issue, **Chairman Joe Pitts** said, because current grandfathered plans still have to meet a number of the PPACA's mandates, employers are forced to pay more to keep their current grandfathered plans, shop for more expensive plans or drop coverage for their employees all together. He said the provision breaks **President Obama's** pledge that U.S. residents who like their

insurance can keep it and said the committee will soon move draft legislation to correct the disparity. The Senate Appropriations Committee also acted on a party-line vote to reject an amendment **Senator Lindsey Graham** offered to the Treasury appropriations bill which would prohibit funds allocated for the IRS from being used to implement the PPACA. A forthcoming House Republican report is expected to be critical of the CLASS Act as unsustainable and will seek a repeal of the long-term care program as enacted under the PPACA.

MedPAC Chairman Addresses Physician Payment Cuts

The Medicare Payment Advisory Commission Chairman Glenn Hackbarth said that using the Medicare savings under the PPACA to cover the costs of expanded coverage under the Act, without addressing the failed SGR formula for determining physician payments, could destabilize the program. He said MedPAC will vote on a \$200 billion ten-year plan to replace the payment system at the next meeting in

October. As initially described, the plan would be paid for by cutting payments to specialists while maintaining payment rates for primary care doctors and by cutting other services by 5.9% for three years and freezing such service payments thereafter. The plan would also recommend that Congress direct HHS: to regularly collect data to more accurately determine work and expense values; use such data to identify overpriced fee schedule services

and reduce their relative value units; to specify that the relative value unit (RVU) reductions should achieve an annual numeric goal for five years of at least 1% of fee schedule spending; and to increase the shared savings opportunity for physicians and health professionals who join or lead accountable care organizations with a two-sided risk model and compute spending benchmarks for two-sided risk ACOs using the 2011 fee schedule rates.

IRS on PPACA Affordability Safe-Harbor

In Notice 2011-73, the IRS is seeking comments on the PPACA's shared responsibility safe-harbor provisions. Instead of using household income, employers would be allowed to use employee compensation paid by the firm involved.

Another Court Rules Individual Mandate Unconstitutional

In a suit brought by plaintiffs without health insurance, the U.S. District Court for the Middle District of Pennsylvania said Congress cannot "invoke its Commerce Clause power to compel individuals to buy insurance as a condition of lawful citizenship or residency." The court granted a motion for summary judgment by a self-employed couple who said the insurance premiums would exceed their home mortgage.

HHS Announces “Million Hearts” Campaign

In announcing a new “Million Hearts” campaign, **HHS Secretary Kathleen Sebelius** said there are about two million heart attacks and strokes annually with about 800,000 possibly being preventable with basic health care. The initiative will be led by **CDC Director Thomas Frieden** and **CMS Administrator Donald**

Berwick and involve several organizations, including the American Heart Association, the American Medical Association, YMCA and Walgreen. The participating organizations plan to: raise awareness of heart disease, which accounts for one in three deaths in the U.S.; improve access to quality health care;

encourage healthy behaviors, including diet and exercise; and urge U.S. clinicians to better manage the ABC’s of treatment, by encouraging the use of aspirin for at-risk patients and promoting blood pressure control, cholesterol management and smoking cessation programs.

Patient Access to Lab Results

HHS released proposed regulations that would modify the restrictions under the Clinical Laboratory Improvement Amendments (CLIA) of 1988 and the PPACA and allow patients or their representatives to have direct access to laboratory test results. Comments are due in 60 days.

MA Rates for 2012

Refuting critics that the PPACA reductions in payments to Medicare Advantage plans will lead to disruption, CMS announced that MA enrollment for 2012 is expected to increase by 10% and that monthly premiums are expected to decline by an average of 4%.

Grants to Community Health Centers for IT

HHS announced it has awarded nearly \$8.5 million in PPACA grants to 85 community health center programs for use in adopting information technologies.

Notice on Use of Identifiable Patient Data in ACO Program

CMS issued notice that it is establishing a new system of records that will contain personally identifiable information (PII) about individuals who participate in or whose information is used to determine eligibility of an Accountable Care Organization to receive enhanced payments under the Medicare Shared Savings Program. The new system will come online October 19th.

FDA Issues: Senate HELP Committee Hearing on Imported Drugs

At a Senate HELP Committee hearing, **Chairman Tom Harkin** committed to acting next year to improve the FDA’s inspection of foreign drug manufacturers and secure the drug supply chain, most likely as part of the reauthorization of the funding for the FDA’s drug review process. However, he emphasized that any approach to improving the security of the supply chain could not cost too much money.

H.R. 2112, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and related agencies programs for the fiscal year ending Sept. 30, 2012, with an amendment in the nature of a substitute. (S. Rept. No. 112-73).

S. 1553 (VETERANS' HEALTH), to amend the Public Health Service Act to facilitate emergency medical services personnel training and certification curriculums for military veterans; KLOBUCHAR; to the Committee on Health, Education, Labor, and Pensions, Sept. 14.

S. 1560 (LONG-TERM CARE), enhance access to controlled substances for residents of institutional long-term care facilities, and for other purposes; KOHL; to the Committee on the Judiciary, Sept. 14.

H.R. 2925 (MEDICARE), to establish a smart card pilot program under Medicare; GERLACH; jointly, to the committees on Ways and Means and Energy and Commerce, Sept. 14.

H. CON. RES. 78 (DISEASE AWARENESS), supporting the goals and ideals of Sickle Cell Disease Awareness Month; DAVIS of Illinois; to the Committee on Education and the Workforce, Sept. 14.

S. 1573 (APPROPRIATIONS), making appropriations for financial services and general government for the fiscal year ending Sept. 30, 2012, and for other purposes; from the Committee on Appropriations; DURBIN; placed on the calendar, Sept. 15.

H.R. 2939 (DRUGS), to provide for the disposal of drugs pursuant to national pharmaceutical stewardship programs, and for other purposes; SLAUGHTER; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 15.

H.R. 2951 (STEM CELL RESEARCH), to intensify stem cell research showing evidence of substantial clinical benefit to patients, and for other purposes; FORBES; to the Committee on Energy and Commerce, Sept. 15.

H.R. 2954 (MINORITY HEALTH), to improve the health of minority individuals, and for other purposes; LEE; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Budget, Veterans' Affairs, Armed Services, Agriculture, the Judiciary, and Natural Resources, Sept. 15.

H.R. 2960 (DIABETES), to amend the Public Health Service Act to foster more effective implementation and coordination of clinical care for people with pre-diabetes and diabetes; OLSON; to the Committee on Energy and Commerce, Sept. 15.

H.R. 2961 (DEFICIT REDUCTION), to amend the PPACA to have Early Innovator grant funds returned by states apply toward deficit reduction; POMPEO; to the Committee on Energy and Commerce, Sept. 15.