



## Congress Passes CR, Recesses and Leaves Major Budget and Tax Issues for Lame Duck

### *Senate Sends CR to President to Fund Government until March 27, 2013*

Early Saturday morning the Senate voted 62-30 to send H.J. Res. 117 to the President for his signature. The continuing resolution continues federal agency funding at the \$1.047 trillion BCA level through next March 27th. Other major budget issues, such as what actions to take on the upcoming sequestration, the debt ceiling, tax-cut extensions and further FY 2013 appropriations will be left until Congress returns after the November elections. Spending under the CR is \$19 billion more than specified under the House-passed budget resolution. Also, the House passed H.R. 6433 which makes technical corrections to the FDA drugs and device user fee provisions. The FDA said the agency would go ahead with the new user fee assessments on generic drug makers regardless of whether Congress enacts the technical corrections needed under the CR.

### *Action Taken on Several Health Bills Before the Recess*

Several health bills were passed by the House as the chamber rushed to adjourn last week. Among the bills passed are: H.R. 6118, the Taking Essential Steps for Testing Act of 2012, that would give CMS authority to determine if a one-year CLIA ban on labs that refer work to other labs should be applied and the flexibility to impose intermediate sanctions instead of a two-year ban against lab

ownership or operation; H.R. 733, legislation that would require the National Cancer Institute to update its scientific framework to expand research on recalcitrant cancers; H.R. 6163, legislation that would create a National Pediatric Research Network; and H.R. 4124, legislation to encourage veterans to become emergency medical technicians. The House Energy and Commerce Committee also advanced the following legislation: H.R. 1206, legislation that would remove broker commissions from the medical loss ratio (MLR) that health insurers are required to meet under the PPACA and H.R. 1063, the Strengthening Medicare and Repaying Taxpayers Act of 2011, that would provide beneficiaries the amount due Medicare when a secondary payer claim is paid, require HHS regulations on appeal rights and bar HHS from seeking payment of claims below the cost of recoupment. The Senate HELP Committee also passed its own versions of the cancer research bill (S. 3556) and the laboratory testing bill (S. 3391). The committee also passed S. 1440, legislation to reauthorize the preterm labor and infant delivery programs.

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## PPACA Tax Penalty Estimate, Part D Savings and CER Funding

The CBO released a report on the PPACA which estimates that nearly 6 million persons will fail to abide by the law's individual mandate and be assessed tax penalties. The report said about \$7 billion in penalties

will be collected in 2016 and about \$8 billion in each subsequent year to 2022. HHS also reported that Medicare beneficiaries have saved about \$4.5 billion on prescription drugs since January 2011 as a result of the law's closing of the

Part D "donut hole." In addition, the Patient-Centered Outcomes Research Institute (PCORI) announced that letters of intent are due by October 15th for the second cycle of PPACA funded comparative effectiveness research.

## Hearing on Medicare Advantage Funding Challenges

The House Ways and Means Health Subcommittee held a hearing on the Medicare Advantage program and the funding challenges the program faces under the PPACA and budget sequestration. MA insurer representatives warned of the negative impact of any funding cuts that may result from the upcoming BCA sequestration (overall Medicare cuts are limited to 2% under the BCA mandate). Another witness from the Ethics and Public Policy Center testified that the full effect of the PPACA on MA plans has yet to be felt has yet because "through 2013, less than 10% of the scheduled Medicare reductions will have gone into

effect, and costs have risen modestly in recent years because of the slow economy." **Chairman Wally Herger** said that "a significant number of beneficiaries prefer to receive their Medicare benefits from a private health plan" and that the subcommittee has examined the "impact that changes to Medicare health plans will have on beneficiaries in these plans and the value these plans bring to beneficiaries, Medicare and ultimately to taxpayers." In related news, CMS reported that average Medicare Advantage premiums will increase by 4.7% in 2013 to \$32.59 from \$31.12 in 2012.

**S. 3539 (ELECTRONIC HEALTH RECORDS)**, to encourage the adoption and use of certified electronic health record technology by safety net providers and clinics; KERRY; to the Committee on Finance, Sept. 13.

**H.R. 6392 (MEDICARE DRUG BENEFIT)**, to amend Part D of Title XVIII of the Social Security Act to permit the secretary of health and human services to negotiate covered Part D drug prices, and for other purposes; BALDWIN; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 13.

**H.R. 6393 (VETERANS' HEALTH)**, to amend Title 38, United States Code, to direct the secretary of veterans affairs to consider the best interest of the veteran when determining whether the veteran should receive certain contracted health care, to amend the Wounded Warrior Act to improve access to certain medical care for former members of the armed forces with severe injuries or illnesses, and for other purposes; BARBER; jointly, to the committees on Armed Services and Veterans' Affairs, Sept. 13.

**H.R. 6400 (PRIMARY HEALTH SERVICES)**, to amend the Public Health Service Act to authorize grants to states for the purpose of assisting them in operating an RDOCS program to provide for the increased availability of primary health care services in health professional shortage areas; MCDERMOTT; to the Committee

on Energy and Commerce, Sept. 13.

**H.R. 6402 (CHILDHOOD IMMUNIZATION)**, to amend the Public Health Service Act to authorize grants to 10 states for demonstration projects for the expansion of state registries on childhood immunization or health to include data on body mass index (BMI), collected and submitted to the state by health care providers; MORAN; to the Committee on Energy and Commerce, Sept. 13.

**H.R. 6413 (MEDICARE)**, to amend Title XVIII of the Social Security Act to cover transitional care services to improve the quality and cost effectiveness of care under the Medicare program; BLUMENAUER; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 14.

**H. RES. 787 (PROSTATE CANCER AWARENESS)**, expressing support for designation of September 2012 as "National Prostate Cancer Awareness Month"; NEUGEBAUER; to the Committee on Energy and Commerce, Sept. 18.

**H.R. 6417 (BREAST CANCER RESEARCH)**, to provide for research and education with respect to triple-negative breast cancer, and for other purposes; JACKSON LEE of Texas, to the Committee on Energy and Commerce, Sept. 14.

**S. 3560 (CANCER RESEARCH)**, to provide for scientific frameworks with

respect to recalcitrant cancers; WHITEHOUSE; to the Committee on Health, Education, Labor and Pensions, Sept. 19.

**S. 3565 (WOMEN'S HEALTH)**, to eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition; CASEY; to the Committee on Health, Education, Labor and Pensions, Sept. 19.

**S. 3566 (CANCER RESEARCH)**, to provide for scientific frameworks with respect to recalcitrant cancers; HARKIN; from the Committee on Health, Education, Labor and Pensions; placed on the calendar, Sept. 19.

**H.R. 6433 (FDA USER FEES)**, to make corrections with respect to Food and Drug Administration user fees; UPTON; to the Committee on Energy and Commerce, considered and passed Sept. 19.

**H.R. 6435 (MEDICARE)**, to amend Title XVIII of the Social Security Act to clarify the application of Medicare special enrollment periods and secondary payer rules to employer coverage of family members of employees; STARK; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 19.

**S. 3586 (MEDICAID)**, to provide reimbursement under Medicaid to individuals and entities that

provide voluntary nonemergency medical transportation to Medicaid beneficiaries for expenses related to no-load travel; FRANKEN; to the Committee on Finance, Sept. 20.

**S. 3604 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for the implementation of prescriber education programs and to establish requirements relating to the administration of antipsychotics to residents of skilled nursing facilities and nursing facilities under Medicare and Medicaid, and for other purposes; KOHL; to the Committee on Finance, Sept. 20.

**H.R. 6446 (MEDICARE)**, to create incentive for innovative

diagnostics by improving the process for determining Medicare payment rates for new tests; ROSKAM; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 20.

**H.R. 6466 (MEDICARE)**, to amend Title XVIII of the Social Security Act to exempt certain hospice programs from the limitation applicable to payments for hospice care under Medicare, and for other purposes; KISSELL; to the Committee on Ways and Means, Sept. 20.

**H.R. 6476 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for coverage of certified adult day

services under Medicare; LINDA T. SANCHEZ of California; jointly, to the committees on Ways and Means and Energy and Commerce, Sept. 20.

**H. RES. 796 (BREAST CANCER AWARENESS)**, supporting efforts to raise awareness of, improve education on, and encourage research on inflammatory breast cancer; MCCARTHY of New York; to the Committee on Energy and Commerce, Sept. 20.

**H. RES. 800 (STOMACH CANCER AWARENESS)**, support for designation of November 2012 as Stomach Cancer Awareness Month; WEST; to the Committee on Energy and