



Next CR Scuffle This Tuesday; Constitutionality of PPACA Likely Headed to Supreme Court

CR Tension Continues This Week

Last week the Senate passed a continuing resolution (CR) to fund federal agencies through October 4th at the \$1.043 trillion level previously set under the Budget Control Act debt limit increase law. The President enacted this short term measure, H.R. 2017, after three House members showed up on Thursday during recess to agree to the legislation. This leaves the House with the choice to pass another CR, H.R. 2608, which the Senate passed last week in order to provide appropriations through November 18th. In passing this bill, the Senate bent to the House's wish to fund FEMA at a lower level, but without the contentious offsets previously insisted on by the House. The bill could still meet with some Republican resistance in the House, given that total appropriations exceed by about \$24 billion the spending caps set under the Ryan-led House Budget Resolution.

Other Appropriations Matters

The House Appropriations Subcommittee on Labor/HHS/Education has released a proposed FY 2012 \$153.4 billion spending bill which, among other things, would rescind \$8.6 billion in appropriations related to the PPACA. It would prohibit HHS from continuing to implement the law until 90 days after the date when all legal challenges to the PPACA have concluded. Among the bill's cuts from

current spending:

- ◆ Zeroing out funding for the PPACA's Center for Consumer Information and Insurance Oversight;
- ◆ Rescinding \$15 million due for the Independent Payment Advisory Board;
- ◆ Reducing CDC funding by \$52 million;
- ◆ Cutting \$1 billion from the PPACA's Prevention and Public Health Fund;
- ◆ Preventing funding going to Planned Parenthood unless the organization attests that it will not perform abortions or provide funding to other abortion providers;

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- ◆ Cutting all funding for Title X, which pays for medical services such as contraception and cancer screenings for low-income women;
- ◆ Barring the use of any funding available through the PPACA or FY 2012 appropriations for health plans that cover abortions; and
- ◆ Banning funding for needle-exchange programs.

However, the bill would provide \$268 million for GME at children's hospitals and increase NIH funding by \$1 billion to \$31.7 billion.

Joint Select Committee on Deficit Reduction

Members continue to

weigh-in with suggestions for the deficit reduction committee. **Senators Tom Carper and Tom Coburn** said the super committee should consider including S. 1251, their legislation which would provide the federal government with increased authority to reduce fraud, particularly under the Medicare and Medicaid programs. **Senator Tom Coburn** also joined with **Senator Joseph Lieberman** urging the committee to consider their proposal to cut Medicare spending by \$500 billion over five years by, among other things, increasing the Medicare eligibility age and raising higher-income beneficiary premiums under Medicare Part B. **Rep. Allyson Schwartz** also sent a Dear Colleague letter to House members urging them to join her in

efforts to have the super committee repeal the Medicare sustainable growth rate (SGR) and provide a permanent fix for the Medicare physician payment system.

Autism Research Extended

By unanimous consent, the Senate passed the House-passed legislation, H.R. 2005, which authorizes \$231 million per year from FY 2012-2014 for autism research and other activities at CDC and NIH. The President is expected to sign the bill into law. **Senators Coburn and Jim DeMint** released their hold on the legislation after the bill's sponsor, **Senator Robert Menendez**, agreed to have the GAO investigate the spending under the program.

PPACA Headed to Supreme Court?

In a sort of turnaround, the U.S. Department of Justice filed a petition with the U.S. Supreme Court requesting a review of the U.S. Court of Appeals for the Eleventh Circuit's decision in *Florida v. HHS* which declared the PPACA's individual mandate unconstitutional. The DOJ argued to the Supreme Court that the Eleventh Circuit improperly failed to defer to Congress's policy judgment that the individual mandate affects interstate commerce and that Congress has the authority to enact the mandate under the Necessary and Proper clause as well. The speculation is that the Administration did not want the court to delay a decision past the next election when another person could occupy the White House. However, the DOJ said the 11th Circuit case is the

right one to review because it raises all the relevant questions. Twenty-six states and the National Federation of Independent Business (NFIB) have also filed separate petitions asking the court to hear the "severability" issue raised in the case, that is, that the entire Act should be declared invalid if the individual mandate is ruled unconstitutional. On the other hand, the DOJ asked the Supreme Court to address whether the tax anti-injunction act (AIA) bars the states' challenge to the individual mandate. The states have also asked the court to review whether the Medicaid expansion should be held invalid. The conditions seem to argue for a Supreme Court review given the different decision in the Sixth Circuit's case upholding the individual mandate.

Republican "Repeal and Replace" of the PPACA

House Budget Committee Chairman Paul Ryan released a proposal to replace the PPACA which expands on his earlier Budget Committee blueprint to convert Medicaid into a state block grant and Medicare from a fee-for-service

system to a government assisted program to buy private health insurance (similar to Medicare Part D). He now proposes to also provide lower-income individuals with a capped defined contribution towards the purchase of private health insurance coverage.

Pay for Coordinated Care

HHS announced a Medicare/Medicaid “Comprehensive Primary Care Initiative” under which insurers, states and primary care doctors can participate in a 4-year coordinated care model that would pay medical practices a monthly reimbursement of \$20 per beneficiary in fee-for-service Medicare for care management

to achieve “better health, better health care, and lower per-capita costs.” The money can be used for activities of their choice, including helping those with chronic diseases to follow personalized care plans, giving patients 24-hour access to care and health information, engaging patients and their families in their care and using electronic

health records to coordinate care with other specialists. States selected would receive a monthly stipend on behalf of their Medicaid beneficiaries, although they would not be part of the savings program. Letters of intent to participate in the program are due by November 15th.

Grants to Improve Maternal and Child Health

HHS announced it has awarded \$224 million in PPACA grants to states and other government agencies to improve low-income maternal and child health through home visits from nurses and social workers.

Grants to Develop ARS Medications

HHS announced it has awarded \$56.3 million to five organizations for the development of new medications to treat acute radiation syndrome injuries.

Grants to Lower Obesity

The CDC announced a four-year, \$25 million Childhood Obesity Demonstration Project to three university institutions for research that could help prevent obesity among low-income children.

Grants to Improve Community Health Centers

HHS announced it has awarded \$32 (HRSA) and \$15 million (SAMRSA) in PPACA grants to more than 900 community health centers to help them promote patient-centered medical services and improving care for patients with mental and substance use disorders.

Grants to SHIPS

CMS announced the release of \$1.5 million in performance awards to State Health Insurance Assistance Programs that assist Medicare beneficiaries and their caregivers for their outstanding counseling services and outreach efforts.

S. 1627 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes; NELSON of Florida; to the Committee on Finance, Sept. 23.

H.R. 3059 (CHILDREN'S HEALTH), to amend the Federal Food, Drug, and Cosmetic Act to improve the priority review

voucher incentive program relating to tropical and rare pediatric diseases; MCCAUL; to the Committee on Energy and Commerce, Sept. 23.

H.R. 3070 (APPROPRIATIONS), making appropriations for the departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending Sept. 30, 2012, and

for other purposes; REHBERG; to the Committee on Appropriations, Sept. 29.

H.R. 3072 (STATE PLANS), to amend the PPACA to provide state flexibility for the offering of health benefits through alternative health arrangements; HALL; to the Committee on Energy and Commerce, Sept. 29.