



House Passes Two PPACA Repeal Measures; Senate Returns to Appropriations “Minibus”

Appropriations Schedule

The current continuing resolution (CR) funding federal programs expires on November 18th setting up the need for at least one more CR to allow Congress to finish the FY 2012 appropriations process and the final votes on any plan produced by the Joint Special Committee on Deficit Reduction (Super Committee). The CR may be attached by the House to the minibus the Senate is readying to pass this week which includes the Agriculture/FDA, Commerce/Justice/ Science and Transportation/ HUD spending bills, or a second minibus that is expected to include the Energy/ Water appropriations for FY 2012. The Labor/HHS/Education bill will likely be the most contentious to settle, particularly given the PPACA defunding rider the House would like to attach to this measure.

Super Committee Super Secret

If progress is being made by the panel on coming up with a minimum \$1.2 trillion 10-year deficit plan by November 23, it is not apparent by any public statements made by committee members. The Super Committee held a hearing last week during which CBO Director Doug Elmendorf testified that it would help CBO to have proposals to score this week. The Director emphasized that discretionary cuts could be voided by future Congresses and that mandatory program spending dominates the source of future budget deficits. Indicative of the stalled debate,

Senate Democrats, led by **Senator Max Baucus**, offered a \$3 trillion 10-year deficit reduction proposal that would raise \$1.3 trillion in revenues, cut Medicare spending by \$400 billion and Medicaid costs by \$100 billion. Republicans counter-offered with a \$2.2 trillion plan that would avoid a tax overhaul and would instead make deeper cuts to both discretionary and mandatory spending programs. **House Speaker John Boehner** criticized the level of tax increases in the Democrat plan while **House Minority Leader Nancy Pelosi** called for a “balance” in spending cuts and tax increases. If the Super Committee fails its task, **Senator John McCain** pledged to derail the fallback which would trim defense spending by \$600 billion over ten years. **House Speaker John Boehner** could also deny passage of the fallback plan to evenly cut defense and non-defense spending by changing House rules and voiding the mandate under the

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Budget Control Act. Other members and outside groups continue to urge the committee

to adopt their recommendations, the latest being one by **Reps. Phil Roe and Allyson Schwartz** to repeal the Medicare physician payment SGR system in favor of

a long-term solution to the current dysfunctional system of payments.

PPACA Repeal Provisions Pass House

The House passed another round of PPACA repeal measures last week, including H.R. 674, which would repeal the imposition of 3% withholding on certain payments made to vendors by federal, state and local governments, and H.R. 2576 which would modify the calculation of modified adjusted gross income to include 100% of Social Security payments for purposes of determining eligibility

for premium assistance tax credits under state health insurance exchanges and subsidies under Medicaid. Although the bills passed on mainly party lines, the Administration expressed support for both bills. In related action, Rep. Charles Boustany introduced H.R. 1173, legislation which would repeal the PPACA long-term care CLASS Act after the White House said the provision was halted only temporarily. A House hearing on

the long-term care program elicited much criticism from Republicans on statements by HHS that they said exaggerated the cost savings produced by the program while suppressing internal HHS estimates that showed the program would be unsustainable over the long term. They maintained the program was a budget gimmick from the start in order to reduce CBO's cost of the PPACA by \$70 billion.

Hearing on PPACA Subsidies

The staff of the House Committee on Oversight and Government Reform issued a report, **Uncovering the True Impact of the Obamacare Tax Credits: Increases the Deficit, Expands Welfare through the Tax Code, and Implements a New Marriage Tax Penalty**, which states that the PPACA creates a "substantial new marriage penalty into the tax code" and will result in removing as many as 8.1 million federal taxpayers from the tax rolls by 2020. **Former CBO Director Douglas Holtz-Eakin** testified before the committee that the PPACA is

likely to increase the federal deficit, despite original CBO and Joint Committee on Taxation estimates that the PPACA will reduce the federal deficit by \$143 billion over 10 years. **Cornell Professor Richard Burkhauser** testified that the PPACA health insurance subsidies will result in perverse incentives for employers to discontinue offering health coverage, particularly to part-time workers. Others said the law would also discourage marriage because of the formulation of the subsidies.

PPACA Community Health DEMO

HHS said it will provide about \$42 million over three years to 500 community health centers pursuant to the PPACA mandated "Federally Qualified Health Center (FQHC) Advanced Primary Care Practice" demonstration project. The demo will provide Medicare payments based on the quality of care delivered and reward centers for such things as helping patients manage

chronic conditions like diabetes and high blood pressure. In another CHC White House "jobs" initiative, the Health Resources and Services Administration will ask community health centers to hire at least one veteran over the next three years and give training grant priority to universities that prepare veterans for careers as physician assistants.

Upcoming Decision by U.S. Supreme Court on PPACA Constitutionality

The Court is expected to convene November 10th in a private conference to discuss whether to review the several lawsuits contesting the PPACA. The Department of Justice has urged the court to review the Eleventh Circuit decision which held the individual mandate invalid. DOJ also would like the court to review another decision which held that the AIA (Anti-injunction Act) precludes

court action until 2014 when the penalty under the tax code is effective. DOJ also asked the court not to review the constitutionality of the mandated Medicaid provisions which 26 states said should be reviewed. If the Supreme Court decides to review one or more cases, oral arguments would likely begin next spring with a decision to be issued by the end of June. Whatever decision is made will likely become fodder

for the 2012 elections. Amicus briefs continue to be filed with the court challenging the PPACA with the latest one filed by 100 House Republicans and the American Center for Law and Justice. The U.S. Chamber of Commerce also filed a brief arguing that the court should void the entire Act if the individual mandate is held unconstitutional given the lack of a severability provision under the law.

Final ACO Rules

CMS released a final rule, setting forth standards potential accountable care organizations (ACOs) must meet, which scales back some of the proposed rules, such as one that would require a majority of primary care doctors in an ACO to be defined as meaningful users of electronic health records and another that would require all ACO marketing materials to be approved by CMS prior to distribution.

CMS Announces Part B Premiums for 2012

CMS announced that the “standard” Medicare Part B premium will be \$99.90 in 2012, lower than previously projected. However, most will see increases in their premiums because of the freeze on the level of premiums over the last two years because of the lack of CPI increases under Social Security. The Medicare Part B deductible was set at \$140, a decrease of \$22 from 2011. Medicare Part A monthly premiums will be \$451 for 2012, an increase of \$1 from 2011. The Part A deductible paid by beneficiaries when admitted as a hospital inpatient will be \$1,156 in 2011, an increase of \$24 from 2011.

S. 1750 (HOME HEALTH), to amend the Older Americans Act of 1965 to establish the Home Care Consumer Bill of Rights, to establish state home care ombudsman programs, and for other purposes; FRANKEN; to the Committee on Health, Education, Labor, and Pensions, Oct. 20.

S. 1752 (PHARMACEUTICALS), to nullify certain regulations regarding the removal of essential-use designation for epinephrine used in oral pressurized metered-dose inhalers; ROBERTS; to the Committee on Health, Education, Labor, and Pensions, Oct. 20.

H.R. 3239 (MEDICARE/MEDICAID), to provide certain legal safe harbors to Medicare and Medicaid providers who participate in the EHR Meaningful Use Program or otherwise

demonstrate use of certified health information technology; MARINO; to the Committee on Energy and Commerce, Oct. 21.

H.R. 3243 (FEDERAL HEALTH PROGRAMS), to amend titles XIX and XXI of the Social Security Act, titles I and II of the PPACA and other acts for the purpose of eliminating certain health entitlement programs and reducing the deficit; REHBERG; jointly, to the committees on Energy and Commerce and Ways and Means, Oct. 24.

H.R. 3258 (MEDICARE), to extend for a two-year certain geographic practice cost index (GPCI) adjustments under Medicare, and for other purposes; BRALEY of Iowa; jointly, to the committees on Energy and Commerce and Ways and Means, Oct. 25.

H.R. 3266 (PUBLIC HEALTH), to amend Title XXIX of the Public Health Service Act to reauthorize the program under such title relating to lifespan respite care; LANGEVIN; to the Committee on Energy and Commerce, Oct. 26.

H.R. 3269 (MEDICARE), to amend Title XVIII of the Social Security Act to ensure the continued access of Medicare beneficiaries to diagnostic imaging services; OLSON; jointly, to the committees on Energy and Commerce and Ways and Means, Oct. 27.