



## Deadline for Super Committee Deficit Reduction Plan Looms; Minibus Conference

### *Appropriations Minibus Conference*

The House and Senate appointed conferees on H.R. 2112, the “minibus” FY 2012 appropriations bills for Agriculture/FDA, Commerce/Justice/Transportation and Housing/Urban Development with designated members likely to continue their discussions despite the House recess this week. **House Appropriations Chairman Harold Rogers** said a conference report needs to be ready by November 14 so floor action can occur that week. The bill is also likely to include another CR extending additional agency funding from November 18 into December. The Senate is expected to begin work this week on another minibus which includes the FY 2012 Energy/Water, Financial Services and State/Foreign Operations measures with Homeland Security and the Legislative Branch appropriations possible additions in conference. A resolution of the usually contentious HHS/Labor/Education appropriations bill remains to be ironed out, most likely in a last-minute late December effort to get Congress out of Washington.

### *Super Committee Deadline Looms*

The Joint Select Committee on Deficit Reduction held what is likely their final hearings last week and face a November 23rd deadline to come up with a minimum \$1.2 trillion 10-year deficit plan. The committee heard from **Erskine Bowles and former**

**Senator Alan Simpson**, the co-chairs of **President Obama’s** National Commission on Fiscal Responsibility and Reform, who expressed concern that the Super Committee would fail the country unless they come up with a significant deficit reduction plan similar to the one they have proposed. Also, the Bipartisan Policy Center, headed by former **CBO Director Alice Rivlin and former Senator Pete Domenici**, suggested that the Super Committee be given more time to consider a grand deal through a two-step process. One scenario would be for the Super Committee to agree on partially or fully meeting the minimum of \$1.2 trillion in deficit reduction, but also give the other congressional committees of jurisdiction further instructions to come up with tax and entitlement changes that could also be given an up or down vote in both chambers. The later suggested that the Super Committee invoke a “trigger” under

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the Budget Control Act to force a vote on up to \$1.7 trillion in tax changes and \$5 trillion in Social Security reform and health program related savings, part of which could be used for a permanent fix to the Medicare physician payment system. While statements by committee members indicated little public progress, apparently **House Speaker John Boehner and Senate Majority Leader Harry Reid** have entered back channel efforts to come up with a resolution that they hope can

pass both chambers. A bipartisan 100 House member group urged their leaders and the committee to come up with a significant long-term package of savings. On the other hand, **House Ways and Means Committee member Sander Levin** released a report throwing stones at a Republican proposal to curb Medicare, Social Security and other entitlements by means of adopting a slower-growth “chained CPI”. The report said that adopting such a measure would result in nearly \$60 billion in new tax increases and hundreds of billions more in benefit cuts for

Social Security and Medicare. In addition, a group of thirty-three Senate Republicans said the Super committee plan should include no net increase in tax revenues, but include comprehensive tax reform that lowers rates. Also, **Reps. Joe Courtney and Tom Cole** said they had 160 bipartisan signatures on a letter urging the committee to avoid cutting the tax exclusion for employer-paid health insurance. Nonetheless, **Senate Minority Leader Mitch McConnell** said the November 23rd deadline “cannot be missed”.

## PPACA Supreme Court Requests

**T**he Department of Justice has urged the U.S. Supreme Court to delay its decision on whether to review issues raised by the state of Virginia in its suit challenging the individual mandate. On the other hand, The **Virginia AG, Kenneth Cuccinelli** asked the court to review the Fourth Circuit decision holding that the state of Virginia does not have

standing to challenge the provision on behalf of its citizens. The DOJ argued that the Supreme Court should first take up the issues in the Florida case under which the Eleventh Circuit held for the state plaintiffs and against the constitutionality of the individual mandate.

### CLASS Out

**S**enator **John Thune** introduction legislation, S. 720, to repeal the PPACA long-term care CLASS Act following the HHS policy announced that it will abandon the current implementation of the program. CBO revealed that the HHS policy has induced CBO to change their PPACA budget baseline to exclude the \$83 billion in net deficit reduction that would have resulted from CLASS Act implementation. As a result, CBO said the Thune bill would have “no budgetary effect”.

### House Republicans Say IRS Erred in Subsidy Regs

**T**wenty-four House Republicans sent the IRS Commissioner a letter saying they object to the IRS regulations allowing for PPACA individual subsidies to persons enrolled in exchanges operated by the federal government. They cited the law which states that the tax credits would go to individuals who are enrolled only in “an exchange established by the state.”

## Final Medicare MD Payment Rules

CMS released the final CY 2012 Physician Fee Schedule rule which states that Medicare rates will be cut by 27.4% next year unless Congress intervenes to change the result. **HHS Secretary Kathleen Sebelius** said that “the pattern of threatened SGR cuts and last-minute Congressional rescues is in itself not a sustainable solution and must be remedied.” The rule also: finalized PPACA quality and cost

measures to be used in establishing a new value-based modifier that would adjust physician payments based on the level of quality and efficient care; implemented the third of a four-year transition to new practice expense RVUs; updated the Physician Quality Reporting System, the e-Prescribing Incentive Program, and the Electronic Health Records Incentive Program; and finalized an expansion of physician coding

which will focus on determining whether codes billed in each specialty that result in the highest Medicare expenditures under the fee schedule are overvalued. Comments on the following are due by year-end--the interim final work, practice expense, and malpractice RVUs; certain other 2012 Healthcare Common Procedure Coding System codes; and the physician self-referral designated health services codes.

## Health Care Disparities

HHS released final PPACA standards to measure health care disparities based on race, ethnicity, sex, primary language and disability status. The final data standards apply to the collection of data in HHS-sponsored population surveys where person-level data are collected either via self-report or from a respondent who serves as a knowledgeable household representative.

## FDA Issues

In a “Can’t Wait [for Congress]” initiative, the President announced that he will sign an Executive Order which will direct the FDA to broaden reporting of potential shortages of certain prescription drugs and to expedite regulatory reviews that can help prevent or respond to such shortages. The FDA Commissioner also said that the agency is requesting drug manufacturers to report promptly regarding the potential discontinuation of drugs, including drugs for which reporting is not required.

## Final Medicare OP Hospital, ESRD and Home Health Rules

CMS released final CY 2012 outpatient hospital payment rules which will increase OPPOS payments by 1.9% to about \$41.1 billion next year. The rule also expands the measures to be reported under the Hospital Outpatient Quality Reporting Program; creates a new quality reporting program for ambulatory surgical centers; strengthens the hospital value-based purchasing (VBP) program that will affect payments to hospitals for inpatient stays beginning Oct. 1, 2012; and establishes an electronic reporting pilot that will allow additional hospitals, including critical access hospitals, to report clinical quality measures for purposes of participating in the Medicare Electronic Health Record Incentive Program. CMS also released final CY 2012 Medicare payments to end-stage renal disease (ESRD) treatment providers that will raise overall payments by about \$240 million to \$8.3 billion in 2012. In addition, a final CY 2012 CMS payment rule for home health agencies will decrease payments by about 2.3%, or \$430 million next year.

**H.R. 3299 HEALTH INSURANCE COVERAGE**, to amend Title XXVII of the Public Health Service Act to apply to retiree-only health plans the extension of dependent health coverage for individuals through age 26 provided for by the PPACA; HINCHEY; jointly, to the committees on Energy and Commerce, Ways and Means, and Education and the Workforce, Nov. 1.

**H.R. 3314 (PUBLIC HEALTH)**, to direct the secretary of health and human services to develop a national strategic action plan to assist health professionals in preparing for and responding to the public health effects of climate change, and for other purposes; CAPPS; to the Committee on Energy and Commerce, Nov. 2.

**H.R. 3315 (MEDICARE/ MEDICAID)**, to establish a pilot program providing for monthly fee-based payments for direct primary care medical homes for Medicare-Medicaid dual eligibles and other Medicare beneficiaries; CASSIDY; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 2.

**H.R. 3326 (MEDICAID)**, to enable states to opt out of the Medicaid expansion-related provisions of the PPACA; QUAYLE; to the Committee on Energy and Commerce, Nov. 2.

**H.R. 3328 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide a six-month grace period for certain Medicare advanced diagnostic imaging services suppliers to receive accreditation; RENACCI; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 2.

**S. 1799 (VETERANS' HEALTH)**, to amend Title 38, U.S. Code, to provide for certain requirements relating to the immunization of veterans, and for other purposes; TESTER; to the Committee on Veterans' Affairs, Nov. 3.

**S. 1800 (MENTAL HEALTH)**, to prohibit the use of federal funds for any universal or mandatory mental health screening program; PAUL; to the Committee on Health, Education, Labor, and Pensions, Nov. 3.

**S. 1809 (HEPATITIS)**, to amend the Public Health Service Act to

revise and extend the program for viral hepatitis surveillance, education, and testing in order to prevent deaths from liver cancer, and for other purposes; KERRY; to the Committee on Health, Education, Labor, and Pensions, Nov. 3.

**H.R. 3342 (MEDICAID)**, to amend Title XIX of the Social Security Act to encourage states to increase generic drug utilization under Medicaid; BASS of New Hampshire; to the Committee on Energy and Commerce, Nov. 3.

**H. RES. 457 (CPR/ DEFIBRILLATOR TRAINING)**, encouraging individuals to seek training in the use of cardiopulmonary resuscitation (CPR) and automated external defibrillators (AEDs), and for other purposes; ROE of Tennessee; to the Committee on Energy and Commerce, Nov. 3.