



## Super Committee Deadline Next Week with Little Agreement in Sight Among the Parties

### *Appropriations Issues*

It is anticipated that the House/Senate conference on H.R. 2112, the “minibus” FY 2012 appropriations bills for Agriculture/FDA, Commerce/Justice/Transportation and Housing/Urban Development, will be finalized in time for passage this week. The bill appears to be the most likely vehicle for another CR to extend federal agency funding from November 18 into December. The Senate also voted 81-14 to limit debate on H.R. 2354, the FY 2012 Energy/Water appropriations bill, which could serve as the vehicle for a second appropriations minibus if the Financial Services (H.R. 1573) and State/Foreign Operations (H.R. 1601) measures are added. Debate on the Financial Services bill could become contentious given that it contains IRS funding for the implementation of the PPACA. The Homeland Security and the Legislative Branch appropriations are possible additions to the second minibus in conference.

were rejected by each party last week. The \$2.3 trillion Democrat plan would raise about \$1 trillion in taxes (\$350 billion specified and \$650 to be obtained from another special tax committee before 2013) and reduce the size of federal health programs: by cutting about \$350 billion from Medicare, including \$250 billion from providers and \$100 billion by requiring beneficiaries to contribute more to the program and by cutting about \$50 billion from Medicaid and the PPACA, including about \$8 billion from preventive health programs. The plan would seek to achieve about \$5 billion in savings from durable medical equipment spending; \$4 billion from DSH hospitals; \$13 billion through a Medicaid “provider tax”; and \$20 billion by increasing federal rebates from drug companies. In addition, the plan would seek to fix the Medicare physician payment SGR problem and pay for the fix by means of savings from the overseas

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### *Super Committee Agreement in Doubt*

As of this Monday the Joint Select Committee on Deficit Reduction has only 10 days to agree on a 10-year deficit reduction plan of at least \$1.2 trillion, draft legislative language and obtain a CBO cost analysis to confirm the minimum target (to avoid across the board cuts of \$600 billion from defense and non-defense spending accounts). Proposed offers by Democrats and Republicans on the panel

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contingency operations (OCO) budget. The \$1.5 trillion Republican plan would raise about \$300 billion in revenue and cut spending by about \$1.2 trillion, including raising the Medicare eligibility age from 65 to 67. In

addition, **Senator Pat Toomey** said the Super Committee should consider a 10-year \$1.2 trillion deficit reduction plan which would decrease spending by \$700 billion and increase revenues by about \$500 billion (by decreasing tax rates and eliminating certain deductions). Adding to the

pressure for an agreement among committee members, the President said he would veto any effort to mitigate the effect of the \$1.2 trillion in mandated cuts to defense and non-defense accounts through sequestration.

## Supreme Court to Announce Decision to Consider PPACA Suits

**T**he U.S. Supreme Court is expected to announce its decision this week on whether to consider the several lawsuits challenging the individual mandate, Medicaid and other provisions of the PPACA. The Department of Justice has pleaded for consideration of the Eleventh Circuit's decision

declaring the individual mandate unconstitutional, but without striking down the Medicaid and other provisions of the statute that 26 "red" state plaintiffs have urged the court to consider. If the court decides to take up one or more PPACA cases, oral arguments would likely be scheduled for early spring with a final decision

rendered by the end of June next year. In related news, the U.S. Court of Appeals for the District of Columbia Circuit also ruled last week in favor of a DC District Court holding that Congress had the authority under the Commerce Clause to enact the individual mandate.

### PPACA Partnership for Patients Provision Under Fire

**A**t a Senate HELP Committee hearing last week, **Senator Mark Kirk** asked the CMS witness whether the agency would request a formal cost estimate from the CMS Office of the Actuary on the validity of the agency position that the PPACA Partnership for Patients provision would save \$35 billion over three years. The witness said the agency would be "willing to consult" with the CMS actuary, but not send a letter requesting a formal estimate.

### Senate Passes Repeal of PPACA Provision

**T**he House is expected to take up H.R. 674, legislation the Senate amended which would repeal the PPACA provision which requires federal, state, and local governments to withhold 3% from payments for goods and services to vendors. The \$11 billion cost of the repeal is paid for by also modifying the PPACA provision that defines income for determining eligibility for subsidies made available to participants under health insurance exchanges, Medicaid and the SCHIP program. An amendment by **Senator John Tester** was adopted which provides tax incentives for hiring short-term and long-term unemployed veterans (with the cost offset by extending existing mortgage fees on loans available to veterans).

## Medicare to Cover Prevention of Heart Disease, STIs

**C**MS announced that evidence is adequate to conclude that intensive behavioral therapy for cardiovascular disease is reasonable and necessary for the

prevention or early detection of illness or disability. CMS also said that Medicare will cover high-intensity behavioral counseling and screening for chlamydia, gonorrhea, syphilis and hepatitis

B when appropriate lab tests are ordered by a primary care physician.

## IOM Calls for HIT Reporting

**T**he Institute of Medicine released a report, Patient Safety and Health IT: Building Safer Systems for Better Care, which recommends that HHS establish a reporting system for technology vendors and users

to report health-IT related deaths, injuries and unsafe conditions. The report said that reporting should be mandatory for vendors and voluntary, confidential and non-punitive for health care providers. The IOM also recommended that

HHS publish an action plan that includes a schedule for working with the private sector to assess the impact of health IT on patient safety and minimizing the risk of its implementation and use.

## HRSA Restores MD Public Use Database

**T**he Health Resources and Services Administration announced the restoration of public access to the “public use file” of an online database that tracks physician malpractice and disciplinary cases. The agency said that anyone who uses the database must promise to not combine the information with publicly available records, such as court files, to identify physicians. **Senator Charles Grassley** had criticized HHS for previously removing certain information from the database.

## CMS Asks for Comments on CED Policy

**C**MS announced that it is seeking public comment on improving its “coverage with evidence” (CED) policy which allows for coverage of items and services while gathering data to support the “reasonable and necessary” determination required under Medicare. CMS said it will weigh public input on CED with internal lessons learned to develop a guidance document that better aligns CED with the rapidly evolving changes in the healthcare system.

**H.R. 3364 (MEDICAID)**, to amend Title XIX of the Social Security Act to cover physician services delivered by podiatric physicians to ensure access by Medicaid beneficiaries to appropriate quality foot and ankle care; TERRY; to the Committee on Energy and Commerce, Nov. 4.

**H.R. 3369 (VETERANS' HEALTH)**, to direct the secretary of veterans affairs to carry out a pilot program on the provision of traumatic brain injury care in rural areas; CAPITO; to the Committee on Veterans' Affairs, Nov. 4.

**H.R. 3381 (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; CASSIDY; to the Committee on Energy and Commerce, Nov. 4.

**H.R. 3386 (MEDICAL RESEARCH)**, to encourage the use of medical checklists through research, and for other purposes; HOLT; to the Committee on Energy and Commerce, Nov. 4.

**H.R. 3392 (REGULATORY REVIEW)**, to amend Title 5, United States Code, to provide for periodic review of major rules, and for other purposes; QUAYLE; to the Committee on the Judiciary, Nov. 4.

**S. 1814 (PUBLIC HEALTH)**, to amend Title XXVIII of the Public Health Service Act to reauthorize certain provisions relating to public health preparedness; GILLIBRAND; to the Committee on Health, Education, Labor, and Pensions, Nov. 7.