



Deficit-Reduction Super Committee Faces Turkey Deadline; FY 2012 Omnibus Looms

Remaining FY 2012 Appropriations to Hitch Ride on Omnibus

The Senate approved and sent to the President for enactment the first FY 2012 appropriations minibus legislation, H.R. 2112, which provides appropriations for the Agriculture/FDA, Commerce/Justice/Transportation and Housing/Urban Development agencies. The bill also extends federal agency funding under the current CR from November 18 to December 16, thus setting up a pre-Christmas struggle to finish appropriations for the remaining agencies. Before leaving for the Thanksgiving week, **Senate Majority Leader Harry Reid** also abandoned efforts to move a second minibus bill, H.R. 2354, which was structured around the FY 2012 Energy/Water appropriations bill. With only a few weeks left in the legislative year, the “minibus” approach will have to yield to an omnibus appropriations measure to be taken up first in the House.

The **House Appropriations Chairman, Harold Rogers**, said he is determined to package the remaining nine appropriations bills, including Labor-HHS-Education, into one omnibus measure and avoid having to pass a continuing resolution. In attempting to pass an omnibus bill, the House majority faces a challenge from their own Republican base, given that 101 Republicans voted against the minibus bill because of objections to higher levels of funding than they would like.

Will the Super Committee Fail?

Democrats on the Joint Select Committee on Deficit Reduction rejected a last-ditch “Plan B” Republican offer late last week, thus extending their discussions into this week and setting up a late Monday target to get any agreed upon proposal to CBO in time to meet the November 23rd deadline. In general, the \$643 billion Republican proposal would raise \$229 billion in revenues and reduce spending by \$316 billion without touching Medicare, Medicaid or Social Security. The plan would not meet the minimum \$1.2 trillion in deficit reduction over ten years which is required under the Budget Control Act (BCA) to avoid automatic \$600 billion ten-year cuts in defense and non-defense spending, and a 2% cut in Medicare provider payments, beginning in 2013. House Democrats and a bipartisan group of senators continue to urge the Super Committee to come up with a “big deal” of \$3-4

continued page two

Inside

Supreme Court to Consider Constitutionality of PPACA	2
Another PPACA Provision Repealed	2
CLASS Act Repeal on the Move in House	2
Grants under Health Care Innovation Challenge	3
Antibiotic Tracking System	3
CMS Asks for Comments on CED Policy	3
Recently Introduced Health Legislation	4

from page one

trillion in deficit reduction. However, with Republicans resisting more than \$300 billion in revenue increases, such a big deal looks unlikely. If the Super Committee fails to come up with “real cuts,” the automatic cuts in 2013 could still be mitigated in a number of ways. Congress could: amend the BCA to avoid or reduce the automatic cuts (**Senator McCain** has threatened to move legislation to avoid the \$600 billion

in defense cuts); use accounting gimmicks to come up with the \$1.2 trillion in deficit reduction (e.g. using up to \$1 trillion in Iraq war savings; assuming the Bush tax cuts are extended to neutralize the CBO baseline; or using “dynamic” scoring from pro-growth tax reform); or direct committees of jurisdiction to come up with legislation to meet various revenue targets. Failure of the committee could also have other election year consequences if the

economy continues to struggle, because under this scenario the \$2.1 trillion increase in the federal debt limit under the BCA could prove insufficient to avoid another vote on the debt limit next year. On another note, **House Majority Leader Eric Cantor** said the House would act independently on legislation to avoid the 30% cut in Medicare physician payments scheduled to begin January 1st in the event that the Super Committee deadlocks.

Supreme Court to Consider Constitutionality of PPACA

The U.S. Supreme Court announced that it will hear oral arguments on the U.S. Court of Appeals for the Eleventh Circuit’s decision that ruled the PPACA individual mandate is unconstitutional and that the Medicaid provisions did not violate the constitution. Opening briefs are due by December 29 and opposing briefs by January 30, 2012. The five and one-half hours of argument are likely to be heard during the last two weeks in March next year. The constitutionality

of the individual mandate will be considered in two hours of debate; the issue of whether the Anti-Injunction Act bars consideration of this former matter until penalties are collected in 2014 will take another hour; the issue of whether the entire statute should be held null and void, because the PPACA lacks a “severance” clause will take 1.5 hours; and the issue of whether the Act’s Medicaid provisions are coercive and unconstitutional will take up another hour of the court’s time. Because the AIA and the

severability provisions were not addressed by the plaintiffs in the Eleventh Circuit case--the NFIB, Florida and 25 other states, and two individuals--the court will appoint special lawyers to address these questions. The court is expected to release its decision by the end of next June. If the court determines that the AIA bars court jurisdiction until a penalty is assessed, the PPACA would proceed as intended until 2014 when the issue is ripe for court consideration.

Another PPACA Provision Repealed

On a unanimous vote, the House passed the Senate-modified bill, H.R. 674, legislation which repeals 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 is offset by 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. The bill, which the President is expected to sign into law, also provides tax incentives for hiring short-term and long-term unemployed veterans.

CLASS Act Repeal on the Move in House

The House Energy and Commerce Subcommittee on Health voice voted H.R. 1173 to send the bill to full committee in an effort to have the House vote this year to repeal of the PPACA long-term care CLASS Act.

Grants under Health Care Innovation Challenge

HHS announced that the Center for Medicare and Medicaid Innovation (CMMI) will award up to \$1 billion in PPACA grants to applicants who can rapidly implement the most compelling new ideas to deliver

better health, improved care, and lower costs to beneficiaries enrolled in Medicare, Medicaid and SCHIP, particularly those with the highest health care needs. Awards of \$1 million to \$30 million will be granted over three years. **Senator**

Orrin Hatch and other Senate Finance Committee members have expressed concern about the costs of the program and have requested more information and analysis from HHS and the GAO.

MACPAC Sets Sight on Managed Care

The Medicaid and CHIP Payment and Access Commission (MACPAC) announced that a priority for the commission will be to focus on new directions for providing access to Medicaid for the disabled and evolving models for providing Medicaid services through managed care. The commission will also look at access to primary care physicians under Medicaid as the program expands to cover more individuals under the PPACA.

Antibiotic Tracking System

The CDC announced that it will launch a new antibiotic monitoring system as part of its “National Healthcare Safety Network.” Hospitals that already submit information to the NHSN can use the new system by electronically sending pharmacy data from their drug administration records.

S. 1840 (DOWN SYNDROME), to amend the Public Health Service Act to expand and intensify programs of the National Institutes of Health with respect to translational research and related activities concerning Down Syndrome, and for other purposes; BROWN of Ohio; to the Committee on Health, Education, Labor, and Pensions, Nov. 10.

S. 1841 (DOWN SYNDROME), to amend the Public Health Service Act to expand and intensify programs of the National Institutes of Health and the Centers for Disease Control and Prevention with respect to translational research and related activities concerning Down syndrome, and for other purposes; BROWN of Ohio; to the Committee on Health, Education, Labor, and Pensions, Nov. 10.

S. 1849 (VETERANS' HEALTH), to require a five-year strategic plan for the Office of Rural Health of the Veterans Health Administration of the Department of Veterans Affairs for improving access to, and quality of, health care services for veterans in rural areas; FRANKEN; to the Committee on Veterans' Affairs, Nov. 10.

S. 1854 (PUBLIC HEALTH), to enhance medical surge capacity; BURR; to the Committee on Finance, Nov. 10.

S. 1855 (PANDEMIC PREPAREDNESS), to amend the Public Health Service Act to reauthorize various programs under the Pandemic and All-Hazards Preparedness Act; BURR; to the Committee on Health, Education, Labor, and Pensions, Nov. 10.

H.R. 3399 (MEDICARE/

MEDICAID), to amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs; ROSKAM; jointly, to the committees on Energy and Commerce, Ways and Means, and the Judiciary, Nov. 10.

H.R. 3414 (FEDERAL BUDGET), to provide for greater transparency and honesty in the federal budget process; HUIZENGA of Michigan; jointly, to the committees on the Budget, Rules and Oversight and Government Reform, Nov. 14.

H.R. 3418 (CHILDREN'S HEALTH), to amend the Public Health Service Act to improve the health of children and reduce the occurrence of sudden unexpected infant death and to enhance public health activities related to stillbirth; PALLONE; to the Committee on Energy and Commerce, Nov. 14.

S. 1862 (CHILDREN'S HEALTH), to amend the Public Health Service Act to improve the health of children and reduce the occurrence of sudden, unexpected infant death and to enhance public health activities related to stillbirth; LAUTENBERG; to the Committee on Health, Education, Labor, and Pensions, Nov. 15.

S. 1865 (ACCESS), to improve patient access to medical innovation; FRANKEN; to the Committee on Health, Education, Labor, and Pensions, Nov. 15.

S. 1878 (DENTAL CARE), to assist low-income individuals in obtaining recommended dental care; MENENDEZ; to the Committee on Finance, Nov. 16.

S. 1880 (REFORM), to repeal the

health care law's job-killing health insurance tax; BARRASSO; to the Committee on Finance, Nov. 16.

S. 1882 (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to ensure that valid generic drugs may enter the market; BINGAMAN; to the Committee on Health, Education, Labor, and Pensions, Nov. 16.

H.R. 3442 (MEDICARE), to amend Title XVIII of the Social Security Act with respect to payment for partial hospitalization services under Medicare; EDDIE BERNICE JOHNSON of Texas; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 16.

H. RES. 469 (REFORM), expressing the sense of the House of Representatives that the PPACA is unconstitutional; ROE of Tennessee; jointly, to the committees on the Judiciary, Energy and Commerce, Ways and Means, Education and the Workforce, Natural Resources, House Administration, Rules, and Appropriations, Nov. 16.

S. 1900 (MEDICARE), to amend Title XVIII of the Social Security Act to preserve access to urban Medicare-dependent hospitals; MENENDEZ; to the Committee on Finance, Nov. 17.

H.R. 3458 (MEDICARE), to amend Title XVIII of the Social Security Act to ensure the eligibility of professionals practicing in rural health clinics for electronic health records and quality improvement incentives under Medicare; SCHOCK; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 17.