



Government Shutdown Averted; House Must Approve 2-Month Doc Fix

Congress Approves Final FY 2012 Megabus Appropriations Bill

On Friday the House voted 296-121 to approve H.R. 2055, the so-called “megabus” appropriations bill which completes FY 2012 federal funding for the remaining nine appropriations bills, including: Defense, Energy and Water, Financial Services, Homeland Security, Interior/Environment, Labor/Health and Human Services/Education, the Legislative Branch, Military Construction/Veterans Affairs and State/Foreign Operations.

On Saturday the Senate followed suit on a vote of 67-32. Passage of the bill avoided the showdown over a government shutdown Friday night; however, another short-term CR was passed to allow the complex bill to be enrolled and sent to the President for his signature. In general, the \$915 billion in discretionary spending provided under the legislation conforms to the \$1.043 trillion spending limit under the Budget Control Act (BCA) which amounts to a \$6 billion cut from this year’s spending for all the affected agencies.

HHS was allotted \$69.7 billion (a \$700 million reduction) with the amount spread among the following agencies:

- ◆ CMS gets \$3.9 billion for program management (a \$241 million increase);
- ◆ CDC gets \$6.1 billion (a \$38 million increase, including \$80 million for the Preventive

Health and Health Services Block Grant proposed for elimination by the President);

- ◆ NIH gets \$30.7 billion (a \$299 million increase);
- ◆ HRSA gets \$6.5 billion (a \$41 million reduction); and
- ◆ SAMHSA gets \$3.5 billion (a \$27 million reduction).

Also, the Defense portion of the bill includes \$32.5 billion for Defense health programs, or \$1.1 billion above FY 2011 spending levels. The Military Construction/Veterans Affairs section of the legislation (used as the vehicle for the megabus) includes a total of \$58 billion in discretionary funding and \$64.2 billion in mandatory funding for the Department of Veterans Affairs. The bill’s passage

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was delayed earlier in the week when **Senate Majority Leader Harry Reid** refused to have the bill enrolled unless Republicans also agreed to compromise on the other major legislative end-game, the passage of an extension for unemployment benefits and the 2% payroll tax cut, as well as a legislative fix for the upcoming 27.4% cut in Medicare physician payments. The congressional urge to adjourn for the holidays, however, trumped all and a temporary extenders fix was agreed to as described below.

Stalemate over Payroll Tax, SGR and Extenders

After threats and counter-threats among House and Senate Republicans and Democrats over the form, cost and budget offsets for extending unemployment benefits and the payroll tax cut, the Senate left town until January 23, 2012, after setting aside the House-passed version of the bill and voted 89-10 to send H.R. 3630 back to the House for its approval early this week. The Senate amendment only provides for a two-month reprieve of the January 1st Medicare physician payment cut of 27.4% and for extending unemployment benefits and the payroll tax cut for two months as well. The \$33 billion cost of the two-month extension would be covered by increasing the fees Fannie Mae and Freddie Mac charge lenders to guarantee mortgages. Democrats argued for a millionaire tax to substantially cover the \$200 billion cost of a full-year extension while Republicans resisted any tax increase, thus creating a stalemate

which was overcome only by thrusting the controversy into next February. Republicans won their argument to include a provision requiring the President to make a decision within 60 days regarding a go-ahead for the Keystone pipeline construction, but this issue will also likely be revisited next year. **President Obama** praised the Senate for keeping the payroll tax cut alive for another two months but said it would be “inexcusable” if Congress failed to extend it again, for the full year. However, **Speaker Boehner** announced on Sunday, after having a conference call with rank and file House members, that the House would not pass the Senate package. **Majority Leader Cantor** underscored the Speaker’s remarks by saying the House would not pass the bill, “because — to put it simply — we owe the middle class, employers and doctors better than a two-month extension.” On Monday, the House could vote on the Senate bill or a new counter proposal of the extenders package that will include a one year extension of the physician payment formula, the payroll tax, and other extenders. If such a bill passes, the Senate would then have to come back to Washington to approve the new House version this week to put an end to the 1st session of the 112th Congress. The original bill that the House passed on a 234-193 vote, the Middle Class Tax Cut Act of 2011, would increase Medicare payments for physicians by 1% in 2012 and 2013 at a cost of about \$39 billion, but result in a scheduled 37% cut in 2014. Key offsets, described in last week’s newsletter, would involve other federal health programs.

Other Legislation

Before voting on the megabus bill, the Senate marked time by voting down two different versions of a balanced budget amendment to the U.S. Constitution. The House also approved H.R. 3672, legislation to provide \$8.1 billion in disaster relief that was modified to pay for the legislation by adding an additional 1.83% across-the-board cut to all FY 2012 base discretionary spending other than for the Department of Defense, Military Construction and Veterans Affairs accounts. However, the Senate rejected the cost offsets. The Senate also approved the conference report on H.R. 1540, the FY 2012 Defense Authorization Act. If Congress adjourns this week, as expected, both chambers will have to again confront the \$1.2 trillion in sequestered spending for discretionary defense and non-defense spending beginning January 2, 2013. **House Armed Services Committee Chairman Buck McKeon** unveiled legislation to delay sequestration for one year by cutting the federal workforce, through attrition, by 10% over ten years. Also, **Senators John McCain and Jon Kyl** said they are working on a plan to avoid the mandated defense cuts. However, **Reps. Chris Van Hollen and Peter Welch** said they oppose an end-run around the sequestration for the Pentagon and urged Congress to achieve a balanced plan that would include both defense and non-defense cuts, something that the Joint Congressional Deficit Reduction Committee was unable to achieve.

Framework for PPACA “Essential Health Benefits”

The CMS Center for Consumer Information and Insurance Oversight issued a bulletin providing guidance on how the agency will proceed in setting requirements under the PPACA for the minimum “essential health benefits” for “non-grandfathered” individual and small group health insurance plans offered both inside and outside state health insurance exchanges. CMS did not indicate a timetable for when final regulations will be promulgated. In general, the guidance indicates that each state would be able to establish essential benefit “benchmarks” from among: one of the three largest small group plans in the state; one of the three largest state

employee health plans; one of the three largest federal employee health plan options; or the largest health maintenance organization in the state’s commercial market. States would have the flexibility to change their benchmark EHB to keep up with innovations in care and coverage. Also, plans would be allowed to modify coverage within a benefit category as long as they do not reduce the value of the coverage. When selected benchmarks do contain all of the required categories of benefits, CMS is said to be considering allowing states to fill in missing categories from among other eligible benchmark plans. Republicans were quick to

criticize the guidance. **Senator Orrin Hatch** stated “There is no question essential health benefits will increase the cost of insurance for almost every American. The framework proposed by the Administration takes away the right of individuals to choose the health care plan that best fits their needs. Unfortunately, the partisan health care law is bending the health care cost curve in the wrong direction with more mandates, regulation, and price controls.” Republicans are also expected to take up other PPACA concerns next year, including renewed efforts to repeal the long-term care CLASS Act and restraining the regulations defining minimum loss ratios.

Physician Payments Sunshine Act

Proposed rules under this portion of the PPACA were issued by CMS last week. The rules would require applicable manufacturers of drugs, devices, biologicals and

medical supplies covered by Medicare, Medicaid and SCHIP to report annually to HHS as to payments or transfers of value provided to physicians or teaching hospitals. Also, manufacturers and

group purchasing organizations would be required to disclose to CMS physician ownership or investment interests. The reported information would be made available on a public website.

FDA Issues PPACA Report

The FDA released a draft report, Quantitative Summary of the Benefits and Risks of Prescription Drugs: A Literature Review, designed to address a PPACA requirement to determine whether the addition of quantitative summaries of the benefits and risks of prescription drugs in standardized format to promotional labeling or print advertising would improve health care decisionmaking by clinicians and patients and

consumers. Among other things, the report said that the numeric presentation of risk-benefit information was associated with a positive impact on several outcomes relative to nonnumeric presentation of such information. However, the report stated that no format, structure or graphical approach to presenting risk-benefit information emerged as being superior.

MedPAC Payment Recommendations

The Medicare Payment Advisory Commission is considering recommendations under which Medicare payments made to hospital outpatient departments in FY 2013 would be reduced to align with the rates paid for patient visits to freestanding physician offices in order to equalize Medicare payment rates for evaluation and management (E&M) services in the two settings and help stem hospital acquisition of physician practices. MedPAC also recommended that the payment update for all inpatient and outpatient services be only 1% in 2013 in contrast to the 2.9% under current law. As to SNF payments in 2013, the recommendation was for Congress to eliminate the marketbasket update and direct CMS to revise the prospective payment system. Options for ambulatory surgical center payments include: having Congress implement a 0.5% increase

in payment rates for ASC services in 2013 along with required cost reporting; or requiring a value-based purchasing (VBP) program for ASCs no later than 2016. The commission is expected to again recommend changes for home health agencies as they did for 2011, including the adoption of beneficiary copayments. The commission also discussed potential recommendations which would encourage the use of generics under Part D. The commission did not provide specific payment recommendations for Medicare Part B physician payments, but indicated that any fix for the SGR problem should be paid for through reimbursement cuts for specialists and a freeze for primary care doctors. In related news, CMS announced that 30% of dialysis facilities evaluated in a pay-for-performance program will have their Medicare reimbursements reduced from 0.5% to 2.0%.

Ryan Medicare Reform Redo

In a surprising bipartisan development, House Budget Committee Chair Paul Ryan and Senator Ron Wyden released a “white paper” proposal that would give Medicare beneficiaries “premium support” subsidies to purchase a private health plan through a new insurance

exchange. Subsidies would vary based on the cost of the health plan with lower-income beneficiaries receiving a full subsidy and higher-income beneficiaries receiving less. The plan would not apply to those now age 55 or older, but beginning in 2022 both new and current enrollees would be able

to choose between traditional Medicare and the private health plans. The authors said they would introduce legislation only after the presidential election next year. The White House press spokesman said the proposal “would undermine, rather than strengthen, Medicare.”

HHS Partnership for Patients Grants

HHS announced that 26 “hospital engagement networks” will receive a total of \$218 million as part of the HHS Partnership for Patients initiative which intends to reduce hospital readmissions and preventable medical errors. The networks will be required to conduct intensive training programs to: teach and support hospitals in improving patient safety; provide technical assistance to hospitals; and implement a system to track hospital progress toward meeting quality improvement goals.

Medicare Secondary Payer Guidance

CMS issued guidance relating to the Medicare Secondary Payer (MSP) system under which beneficiaries with claims of less than \$25,000 will be able to obtain conditional payments before settlement of lawsuits involving physical trauma injuries where treatment has been completed.

Medicare Fraud Prevention

CMS announced that all Medicare Part D and Medicare Advantage prescription drug plans will now have the ability to withhold pharmacy payments for suspicious claims, until an investigation has determined that such a claim is not fraudulent, as part of an effort to reduce fraud and abuse.

S. 1982 (DIRECT CAREGIVERS), to amend the Older Americans Act of 1965 to develop and test an expanded and advanced role for direct care workers who provide long-term services and supports to older individuals in efforts to coordinate care and improve the efficiency of service delivery; CASEY; to the Committee on Health, Education, Labor, and Pensions, Dec. 13.

S. 1985 (FEDERAL BUDGET), to allow a bipartisan group of members of Congress to propose and have an up-or-down vote on a balanced deficit reduction bill pursuant to this act, such as proposed by the National Commission on Fiscal Responsibility and Reform report, reducing the deficit by a goal of \$4 trillion over 10 years; LIEBERMAN; to the Committee on Homeland Security and Governmental Affairs, Dec. 14.

H.R. 3633 (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the reduction in Medicare disproportionate share hospital (DSH) payments made by Section 3133 of the PPACA; BUERKLE; to the Committee on Ways and Means, Dec. 12.

H.R. 3654 (911 CALL CENTERS), to adopt technology allowing 911 call centers to receive and respond to emergency text messages, and for other purposes; HOCHUL; jointly, to the committees on Energy and Commerce and Transportation and Infrastructure, Dec. 13.

H. RES. 4894 (CANCER SURVIVORS), expressing support for designation of the first Tuesday in June as National Cancer Survivor Beauty and Support Day; to the Committee on Oversight and Government Reform, Dec. 13.

S. 1995 (MEDICAL DEVICES), to enhance Food and Drug Administration oversight of medical device recalls, to provide for the conditional clearance of certain medical devices, and for other purposes; GRASSLEY; to the Committee on Health, Education, Labor, and Pensions, Dec. 14.

H.R. 3667 (MEDICARE), to provide for a Medicare primary care graduate medical education pilot project in order to improve access to the primary care workforce; MCMORRIS RODGERS; jointly, to the committees on Ways and Means and Energy and Commerce, Dec. 14.

H.R. 3668 (DRUGS), to prevent trafficking in counterfeit drugs; MEEHAN; to the Committee on the Judiciary, Dec. 14.

H.R. 3669 (FEDERAL BUDGET), to improve the accuracy and transparency of the Federal budget process; RENACCI; jointly, to the committees on the Budget, Rules, Oversight and Government Reform, and Ways and Means, Dec. 14.

H.R. 3671 (APPROPRIATIONS), making consolidated appropriations for the fiscal year ending Sept.

30, 2012, and for other purposes; ROGERS of Kentucky; jointly, to the committees on Appropriations and the Budget, Dec. 14.

H. CON. RES. 94 (APPROPRIATIONS), directing the clerk of the House of Representatives to make corrections in the enrollment of H.R. 3672; ROGERS of Kentucky; jointly, to the committees on Appropriations and House Administration, Dec. 14.