



House Agrees to 2-Month Extender Bill Including Delay of Medicare Payment Cuts

Two-Month Doc Fix Enacted as Part of Extenders Legislation

With the threatened shutdown of the federal government avoided with the House and Senate sending H.R. 2055, the “Megabus” FY 2012 appropriations bill, to the President for his signature, the House created another showdown over the payroll tax-cut extenders legislation. By a 229-193 vote, the House passed a resolution disapproving the Senate version of H.R. 3630 and requested a conference with the Senate to reconcile the House and Senate payroll tax cut provisions. **House Speaker John Boehner** wrote the President urging him to tell the Senate to reconcile the House and Senate bills after **Senate Majority Leader Harry Reid** said he would not appoint conferees or call Senators back to negotiate a full year extender package (including a two-year “doc fix”). Having the upper hand and public sentiment, the President rejected the Speaker’s overtures and urged the House to pass the two-month Senate bill. With little leverage to force the Senate into backing the House stance, **Speaker Boehner** announced Thursday night that the House had reached agreement with the Senate on a new bill which adopts the Senate’s two-month extension together with a technical fix to the payroll tax cut which saves businesses from impossible changes to their payroll systems. On Friday both the House and Senate passed H.R. 3765, the Temporary Payroll Tax Cut Continuation Act of 2011, by unanimous consent and the President signed the \$33

billion extender into law. As part of the agreement, the Senate agreed to appoint conferees on the House-passed bill, H.R. 3630, as amended in the Senate. **Speaker Boehner** appointed the following conferees:

- ◆ Kevin Brady of Texas,
- ◆ Dave Camp of Michigan,
- ◆ Renee Ellmers of North Carolina,
- ◆ Nan Hayworth of New York,
- ◆ Tom Price of Georgia,
- ◆ Tom Reed of New York,
- ◆ Fred Upton of Michigan and
- ◆ Greg Walden of Oregon.

In addition to extending unemployment benefits and the 2% payroll tax cut until February 29, the new law keeps Medicare physician payments at current levels for the first two months of the year and provides additional “extenders” for several other health-related programs as shown in the Appendix.

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The extension of current Medicare payment levels for physicians in January and February avoids the scheduled 27.4% cut at the beginning of the year, but only delays a heated House and Senate debate over another extension for one or two years. The \$202

billion House-passed version of H.R.3630, 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. The resolution of the payroll tax cut package did not settle all disputes in the Senate, however.

Senate Minority Leader Mitch McConnell objected to ending the first session of this Congress to thwart the President's "recess appointment" of various agency officials. Thus, the Senate will not formally recess until the fourth Monday in January.

Supreme Court Sets Spring Schedule for Arguments on PPACA

The U.S. Supreme Court announced that it will hear five and one-half hours of arguments on the PPACA on March 26-28 as follows: one hour on March 26 to hear arguments on whether the anti-injunction act (AIA) effectively blocks a commerce clause challenge to

the PPACA individual mandate (HHS v. Florida, U.S., No. 11-398, review granted 11/14/11) before the 2014 effective date; two hours on March 27 to hear arguments only on the constitutionality of the individual mandate; and two and one-half hours on March 28 to hear arguments over the severability

of the individual mandate from the rest of the PPACA (National Federation of Independent Business v. Sebelius, U.S., No. 11-393, review granted 11/14/11) and the constitutionality of the PPACA Medicaid expansion (Florida v. HHS, U.S., No. 11-400, review granted 11/14/11).

Pioneer ACOs Selected

CMS announced that it has selected 32 health care systems to participate in a "Pioneer" accountable care organization (ACO) initiative designed to better coordinate care across providers and lower costs. Pursuant to the PPACA, the Pioneer

initiative will test the effectiveness of several innovative payment models and how they can help experienced organizations to provide better care for beneficiaries, work in coordination with private payers and reduce Medicare cost growth.

Independence At Home DEMO

CMS announced that the PPACA "Independence at Home (IAH)" demonstration will test a service delivery model that uses physician and nurse practitioner directed primary care teams to provide services to chronically ill Medicare beneficiaries in their homes. The demonstration will reward providers that show a reduction in

Medicare expenditures through an incentive payment if they succeed in providing high-quality care while reducing costs. Applications from providers wishing to participate in the demo are due by February 6th. Of note, providers cannot participate in both the aforementioned Pioneer ACO program and the three year demonstration project.

Senators Ask IOM to Review GME Program

A bipartisan group of senators--**Sens. Bingaman, Tom Udall, Mark Udall, Bennet, Kyl, Grassley and Crapo**--have written the Institute of Medicine asking for the agency to do a thorough review of the system of graduate medical education. They said "We believe our GME system is under increasing stress and the projections for our

health care workforce are of significant concern.... There is growing concern that the United States is failing to adequately match medical training with our medical needs on a national level." Changes to the GME are under discussion in Congress, at MedPAC, at the Accreditation Council for Graduate Medical Education and at various foundations.

H.R. 3728 (TAXATION), to amend the Internal Revenue Code of 1986 to make members of health care sharing ministries eligible to establish health savings accounts; SCHOCK; to the Committee on Ways and Means, Dec. 19.

H.R. 3735 (MEDICARE), to provide for enhanced penalties to combat Medicare and Medicaid fraud, a Medicare data-mining system and biometric technology pilot program, and for other purposes; ROS-LEHTINEN; jointly, to the committees on Energy and Commerce and Ways and Means, Dec. 19.

H. RES. 501 (MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT), expressing

the sense of the House of Representatives regarding any final measure to extend the payroll tax holiday, extend federally funded unemployment insurance benefits, or prevent decreases in reimbursement for physicians who provide care to Medicare beneficiaries; PRICE of Georgia; jointly, to the committees on Ways and Means, Energy and Commerce, House Administration, and Transportation and Infrastructure, Dec. 19.

H.R. 3737 (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act with respect to fast track approval of certain orphan drugs; STEARNS; to the Committee on Energy and Commerce, Dec. 20.

H.R. 3760 (TOURETTE SYNDROME), to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the programs and activities of the National Institutes of Health with respect to Tourette syndrome; SIRES; to the Committee on Energy and Commerce, Dec. 20.

H.R. 3762 (OCCUPATIONAL THERAPISTS), to amend the Public Health Service Act to include occupational therapists as behavioral and mental health professionals for purposes of the National Health Service Corps; TONKO; to the Committee on Energy and Commerce, Dec. 20.

Appendix

Temporary Payroll Tax Cut Continuation Act of 2011

TITLE I—TEMPORARY PAYROLL TAX RELIEF

Sec.101.Extension of payroll tax holiday.

TITLE II—TEMPORARY EXTENSION OF UNEMPLOYMENT COMPENSATION PROVISIONS

Sec.201.Temporary extension of unemployment compensation provisions.

Sec.202.Extended unemployment benefits under the Railroad Unemployment Insurance Act.

TITLE III—TEMPORARY EXTENSION OF HEALTH PROVISIONS

Sec.301.Medicare physician payment update.

Sec.302.2-month extension of MMA section 508 reclassifications.

Sec.303.Extension of Medicare work geographic adjustment floor. Sec.304.Extension of exceptions process for Medicare therapy caps. Sec.305.Extension of payment for technical component of certain physician pathology services.

Sec.306.Extension of ambulance add-ons.

Sec.307.Extension of physician fee schedule mental health add-on payment. Sec.308.Extension of outpatient hold harmless provision.

Sec.309.Extending minimum payment for bone mass measurement. Sec.310.Extension of the qualifying individual (QI) program.

Sec.311.Extension of Transitional Medical Assistance (TMA).

Sec.312.Extension of the temporary assistance for needy families program.

TITLE IV—MORTGAGE FEES AND PREMIUMS

Sec.401.Guarantee Fees.Sec.402.FHA guarantee fees.

TITLE V—OTHER PROVISIONS

Subtitle A—Keystone XL Pipeline

Sec.501.Permit for Keystone XL pipeline.

Subtitle B—Budgetary Provisions

Sec.511.Senate point of order against an emergency designation.

Sec.512.PAYGO scorecard estimates.