



House Passes 6-Month CR; Congress Delays Sequestration Decisions until Lame-Duck

Obama Administration Releases Data on BCA Sequestration Cuts

The Office of Management and Budget released a report mandated by Congress that was supposed to provide great detail on the spending cuts to defense and domestic programs scheduled for next January under the Budget Control Act. Republicans were quick to criticize the lack of detail in the report on the BCA's effect on specific programs, projects and activities. Overall, defense and non-defense spending would each be cut by \$54.7 billion in FY 2013 with appropriated defense spending being cut by 9.4% and non-defense discretionary accounts being cut by 8.2%.

The report did specify that Medicare providers would take a hit of about \$11.1 billion in FY 2013 and that Medicaid, SCHIP, VA health programs and the PPACA PCIP program would be exempt from the spending reductions. Medicare Part A mandatory spending would be reduced by about \$5.6 billion, Part B by about \$4.9 billion and Part D by about \$559 billion. Provider groups responded that the latter Medicare cuts would result in a loss of about 700,000 jobs by 2021.

In addition, the report stated that:

- ◆ discretionary spending would be reduced by \$2.5 billion for NIH, \$605 million for HRSA, \$409 million for the CDC, \$391 for the FDA, \$275 million

for SAMHSA, and \$356 million for Indian Health Services;

- ◆ mandatory funding for health care fraud and abuse would be cut \$53 million while such discretionary spending would be cut by about \$25 million;

- ◆ PPACA grants for state health insurance exchanges would be cut by \$66 million and the prevention fund by about \$76 million; and

- ◆ the Office of the National Coordinator for Health Information would get a \$1 million haircut.

The White House said that “the destructive across-the-board cuts required by the sequestration are not a substitute for a responsible deficit reduction plan.” House Republicans attempted to partially insulate themselves from the impact of sequestration by passing H.R. 6365, legislation that would require the President to provide Congress, by October 15th, with a plan to replace the defense cuts by other spending reductions and without increasing

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revenues. Under the bill, once a plan to replace the automatic cuts with other spending cuts is enacted, the bill would reduce the cap on discretionary spending for FY 2013 by \$19 billion and remove the separate caps for defense and non-defense discretionary spending.

Democrats called the action a “charade” and the White House issued notice that the President would veto the bill (which is a non-starter in the Senate). Any action to delay or ameliorate the sequestration cuts will have to come in the lame-duck session inasmuch as **House Majority Leader Eric Cantor** said that the House will recess this Friday until after the November 6th election.

The Senate bipartisan “Gang of Eight” is reportedly in discussions to develop a comprehensive deficit reduction plan that would reduce deficit spending by \$4 trillion over ten-years through revenue increases and entitlement changes. They are also considering a delay in sequestration or a partial sequestration followed by a broader deficit reduction agreement. **Senator Dick Durbin** has suggested a six-month delay in the spending cuts.

Agencies Funded Until March 27, 2013

In a move to avoid at least one of the “fiscal cliff” issues this year, the House voted 329-91 to

pass H.J. Res. 117, a continuing resolution which continues federal agency funding at the \$1.047 trillion BCA level through next March 27th. The Senate is expected to pass the resolution this week before leaving Washington to allow members to campaign. Decisions on sequestration, the debt ceiling and tax-cut extensions will be kicked to the lame-duck session. The CR was depleted of the typical “member directed” funding provisions attached to prior CRs, but did specify that FDA funding would continue at FY 2012 levels. The CR funding levels will likely serve as the spending base from which the cuts under sequestration would be made. The FY 2013 appropriation debate may not be over this year, given that **House Appropriations Chairman Harold Rogers** said his intent is to use the lame-duck session to the “fullest extent” to “do as much as we can to allow ample time to complete” the FY 2013 appropriations cycle.

Health Legislation Considered

Last week the House passed H.R. 2800, legislation to amend the Violent Crime Control and Law Enforcement Act of 1994 to reauthorize the Missing Alzheimer’s Disease Patient Alert Program. Also, the House Energy and Commerce Health Subcommittee passed the following:

◆ H.R. 1206, legislation that would

remove broker commissions from the medical loss ratio (MLR) that health insurers are required to meet under the PPACA;

◆ H.R. 1063, the Strengthening Medicare and Repaying Taxpayers Act of 2011, that would provide beneficiaries the amount due Medicare when a secondary payer claim is paid, require HHS regulations on appeal rights and bar HHS from seeking payment of claims below the cost of recoupment;

◆ H.R. 6118, the Taking Essential Steps for Testing Act of 2012, that would give CMS authority to determine if a one-year CLIA ban on labs that refer work to other labs should be applied and the flexibility to impose intermediate sanctions instead of a two-year ban against lab ownership or operation;

◆ H.R. 733, legislation that would require the National Cancer Institute to update its scientific framework to expand research on recalcitrant cancers; and

◆ H.R. 6163, legislation that would create a National Pediatric Research Network.

Hearing on IRS Role under PPACA

The House Ways and Means Oversight and Health Subcommittees held hearings last week that targeted several provisions of the PPACA. Republicans were critical that the IRS role in collecting taxes will likely be impaired by the agency's role in enforcing the PPACA individual mandate, but the IRS disputed this assertion and said its PPACA enforcement constituted "core functions." Republicans also

maintained that HHS has refrained from issuing final regulations regarding the establishment of state health insurance exchanges to frustrate the state role under the PPACA. However, Democrat members defended the law and said that states have until mid-November to make their decisions on whether and how to establish exchanges. Insurers called for more clarity, such as in connection with risk-mitigation programs, if

they are to be ready to offer their plans by the open enrollment period beginning next October. HHS also released a report stating that premium payers have saved an estimated \$1 billion as a result of the PPACA minimum loss ratio requirement for rebates. The Census Bureau also released a report showing that the percentage of uninsured in 2011 decreased to 15.7% from 16.3% in 2010.

NIH Reorganizes NHGRI

NIH announced a reorganization of the National Human Genome Research Institute's Extramural Research Program into four new divisions to reflect the expanding role of genomics research. The divisions include: the Division of Genome Sciences which will oversee basic genomics research and technology development; the Division of Genomic Medicine which will promote the institute's efforts to advance the application of genomics to

medical science and clinical care; the Division of Genomics and Society which will be responsible for an expanded program related to societal issues relevant to genomics research; and the Division of Extramural Operations which will handle grant management and scientific reviews, as well as other operational aspects of the institute's Extramural Research Program.

FDA Issues

The FDA Center for Devices and Radiological Health issued a report with recommendations to improve the surveillance of post-market medical devices by: establishing a UDI system that can be incorporated into electronic health record systems; promoting the creation of national and international registries for certain devices; updating adverse-event reporting and analysis procedures; and developing new methods for evidence generation, synthesis and appraisal.

Meaningful Use Incentive Payments

CMS announced that up to this time about \$6.9 billion in meaningful use incentive payments for meaningful use of electronic health records have been made to 143,000 physicians and hospitals pursuant to the 2009 economic stimulus law.

NQF Report

In a report to Congress, HHS said that the National Quality Forum evaluated 353 health care quality measures and endorsed 170 new ones during the past year. HHS said that the NQF also has made progress in reducing the reporting burdens on providers.