



## Latest CR Punts Decision on Remainder of FY 2012 Federal Funding Until November 18th

### *Short Term Continuing Resolution Enacted*

The President signed H.R. 2017 into law, P.L. 112-33, after the House agreed with the Senate bill extending FY 2012 federal agency funding only until November 18th when another CR or omnibus appropriations bill will need to be passed to avoid a government shutdown. The bill passed on a 352-66 vote even though 53 House Republicans opposed the bill's funding level of \$1.043 trillion which is \$24 billion more than the House-passed budget resolution.

### *Related Appropriations Issues House Appropriations*

**Committee Chairman Harold Rogers** said he is hoping that negotiations with the Senate Appropriations Committee will begin soon to resolve how the \$1.043 trillion FY 2012 spending total will be split between each of the twelve appropriations bills in order to finalize one or more omnibus bills before the November 18th deadline. The negotiations over the Labor-HHS-Education bill are often the most contentious which is likely to lead to the legislation's inclusion in an omnibus bill. Because both the House and Senate have passed the Military Construction-Veterans Affairs bill, this bill still has a chance of being enacted solo. **Senate Majority Leader Harry Reid** announced that he intends this month to bring up individually the Agriculture-FDA, Transportation-HUD and Commerce-Justice-Science bills for floor action. However,

because the Senate version of the Agriculture-FDA bill would provide \$19.8 billion in FY 2012 discretionary funding, more than the \$17.3 billion included in the House bill, this bill is also likely to be squeezed into an omnibus measure.

### *Joint Select Committee on Deficit Reduction*

Members continue to weigh-in with suggestions for the super committee with Democrats continuing their push to eliminate the Medicare Part D provisions prohibiting the federal government to negotiate over drug prices. Medical groups are asking the committee to include:

- ◆ medical liability reforms,
- ◆ repeal of the PPACA's IPAB,
- ◆ continuation of Medicare graduate medical education funding, and
- ◆ reform of the Medicare physician payment system's SGR.

*continued page two*

## *Inside*

CLASS Act under Fire	2
OIG to Investigate PPACA Provisions	2
PPACA "Essential Benefits" and Costs	2
PPACA Physician Payments Sunshine Act	2
Another Petition on PPACA Sent to Supreme Court	3
MedPAC Approves SGR Replacement	3
Proposed Changes in 2013 to Medicare MA and Part D	3
Recently Introduced Health Legislation	4

*from page one*

The Blue Cross and Blue Shield Association also weighed-in with a list of possible deficit reduction provisions in the health area, including:

◆ \$3 billion by accelerating the adoption of safety measures in the value-based purchasing program;

◆ \$21 billion by expanding a bundled payment program to cover all inpatient Medicare discharges by 2020;

◆ \$125 billion by coordinating care for dual-eligibles;

◆ \$7 billion through lifestyle change programs;

◆ \$3 billion through a childhood

prevention program;

◆ \$1 billion by requiring pre-authorization of advanced imaging services in Medicare for certain physicians; and

◆ \$54 billion by putting caps on non-economic and punitive damages and a shorter statute of limitations in the medical malpractice system.

## CLASS Act under Fire

Republicans in the Senate and the House continue their push in opposition to the PPACA long-term care CLASS Act. Republicans on the Senate Budget Committee asked

the Committee chairman to have the HHS Secretary and the Class Act actuary, who recently resigned, testify before the committee on the actuarial soundness and viability of the program. The House

Energy and Commerce Committee also wrote to HHS asking for an analysis of the viability of the program and the status of the program office within HHS.

## OIG to Investigate PPACA Provisions in 2012

The HHS Office of Inspector General issued a 2012 work plan which states that various PPACA programs will be reviewed, including pre-existing condition insurance plans; the early retiree reinsurance program; the health insurance web portal; affordable insurance exchanges; the national background check program; and the CLASS Act.

## PPACA Physician Payments Sunshine Act

Senators Charles Grassley and Herb Kohl recently wrote to CMS seeking answers as to why the agency has missed a deadline for issuing regulations for the PPACA Physician Payments Sunshine Act which requires public disclosure of the financial relationships between physicians and the pharmaceutical, medical device and biologics industries. Collection of payment data begins next year with public disclosure beginning September 30, 2013.

## PPACA “Essential Benefits” and Costs

The Institute of Medicine reported Friday to HHS that the PPACA “essential health benefits” that every health plan will have to provide beginning in 2014 should be “affordable” and tied to a typical small-employer plan and reflect small employer costs because state insurance exchanges will be offering such coverage mainly to small businesses and individuals. While HHS does not have to abide by the IOM recommendations in issuing regulations by next May, the IOM also said the initial essential benefits package should be based on the general categories specified under the PPACA. In addition, the IOM recommended that HHS first determine what the national average premium of typical small employer plans would be in 2014 and then set the essential benefits package under the so-called “silver plan” not exceed this cost. If states choose to deviate from the HHS regulations, the IOM said the essential benefits package set by each state should be the actuarial equivalent of the federal benefits package. Both insurers and the Essential Health Benefits Coalition were generally supportive of the IOM recommendations. Even before the costs of any new essential benefits have been mandated, a recent survey by Aon Hewitt found that per employee health premiums are likely to exceed \$10,000 in 2012.

## Another Petition on PPACA Sent to Supreme Court

**T**he Virginia Attorney General **Kenneth Cuccinelli** has filed a petition asking the U.S. Supreme Court to review the ruling by the U.S. Court of Appeals for the Fourth Circuit which held that Virginia lacked standing to challenge the constitutionality of

the PPACA's individual mandate, because the provision does not apply to the state itself and the state does not have the right to defend the constitutional rights of its citizens. The AG said the court should take up the circuit's ruling given that it involves the major pertinent issues brought against the

law, namely the constitutionality of the individual mandate and the severability of the this provision from the remainder of the law. The Supreme Court is soon expected to rule whether it will take up PPACA issues during the court's 2012 term.

## MedPAC Approves SGR Replacement

**T**he Medicare Payment Advisory Commission voted 15-2 to recommend that the Medicare SGR formula be replaced with a 10-year fee schedule that would freeze primary care payment rates and cut rates for other providers by 5.9% followed by a three year freeze of those payments. MedPAC estimated that about 34% of the funding for the changes would come from the

drug industry; 21% from skilled nursing facilities and home health agencies; 15% from higher cost-sharing by beneficiaries; and 11% from hospitals. In addition, MedPAC said that Congress should direct HHS to regularly collect data, including service volume and work time, to establish more accurate work and practice expense values and direct the Secretary to identify overpriced fee-schedule

services and reduce their Relative Value Units accordingly. The commission also recommended that HHS increase the shared savings opportunity for physicians and health professionals who join or lead two-sided risk accountable care organizations. In general, physician groups reacted negatively to the recommendations.

## Proposed Changes in 2013 to Medicare MA and Part D

**C**MS has proposed that Medicare Advantage Plans and Part D drug plans be scrutinized for their performance and that applications for 2013 be denied if the plans perform poorly

under the "star" rating system. The agency also proposed that Part D plans be allowed to cover benzodiazepines and barbiturates.

**S. 1655 (MEDICARE)**, to amend Title XI of the Social Security Act to provide for the annual mailing of statements of Medicare beneficiary Part A contributions and benefits in coordination with the annual mailing of Social Security account statements; CORKER; to the Committee on Finance, Oct. 6.

**H.R. 3095 (REFORM)**, to freeze the implementation of the PPACA, to establish a commission to evaluate its impact on the delivery of health care to current Medicare recipients, job creation,

current health insurance coverage, participation in state exchanges, and the federal deficit, and for other purposes; SAM JOHNSON of Texas; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, Natural Resources, the Judiciary, House Administration, Appropriations, and Rules, Oct. 6.

**H.R. 3102 (MAMMOGRAPHY SCREENING)**, to require that every mammography summary delivered to a patient after a mammography examination,

as required by Section 354 of the Public Health Service Act (commonly referred to as the “Mammography Quality Standards Act of 1992”), contain information regarding the patient’s breast density and language communicating that individuals with more dense breasts may benefit from supplemental screening tests, and for other purposes; DELAURO; to the Committee on Energy and Commerce, Oct. 6.