



## Senate Version of “Doc Fix” Signed into Law; Senate Tanks Broader Extenders Legislation

### “Doc Fix: It’s the Law”

By a vote of 417-1, (**Congressman George Miller** D-CA was the sole nay vote) the House passed H.R. 3962, the so-called “doc fix” which passed a week earlier by the Senate. The President signed the bill into law (P.L. 111-157), thereby canceling retroactively to June 1 the 21% cut in Medicare physician reimbursements and providing a 2.2% payment increase through the end of November. Earlier the House played “chicken,” threatening to ignore H.R. 3962 and urging the Senate to pass the broader package of extenders, including the doc fix, unemployment compensation and 2011 Medicaid FMAP enhancements for states. The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, H.R. 3962, was funded by clarifying the so-called three-day Medicare payment window for hospitals and by allowing CMS to collaborate with the IRS to help identify potentially fraudulent providers sooner by determining whether providers applying to enroll or re-enroll in Medicare have failed to file federal tax returns or have delinquent tax debts. Republicans were quick to criticize Democrats for mismanaging Medicare issues and **Rep. Wally Herger** said some physicians in his Northern California district are not taking new Medicare patients because of the uncertainty about future physician payment levels. The House acted after the Senate failed to obtain the 60 votes for cloture on the extenders legislation, H.R. 4213. Senate Majority Leader said he is pulling the extenders bill from

further consideration without stating when, or if, the legislation will be brought up later. The latest revision of H.R. 4213 would have reduced the amount of Medicaid funding for states from \$24 billion to \$16 billion with a full offset, but all Senate Republicans still remained opposed, charging that the legislation would still add \$33 billion to the national debt. In related news, **Senators Judd Gregg and Orrin Hatch** have asked the Medicare trustees to provide Congress with the “real cost” of a long-term fix to Medicare physician reimbursement rates and an estimate of when the Part A Hospital Insurance Trust Fund will be exhausted.

**Appropriations/Budget Issues**  
**House Budget Committee**  
**Chairman John Spratt** said that a

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\$1.121 trillion budget package that is expected to set FY 2011 discretionary spending about \$7 billion below what **President Obama** has proposed will likely be included in the rule for the emergency war supplemental spending bill to be considered in the House this week. This procedure skirts the regular budget process under which both bodies would negotiate a common 5 and 10 year budget resolution and instead includes a “deeming resolution” for just one budget year. The House proposal is about \$3 billion less than the five-year budget resolution adopted by the Senate Budget Committee in April. The Senate is expected to follow suit, although if the two spending levels differ, budget negotiations will

have to continue to be resolved. The House intends to pass the budget package before adjourning for the July 4th recess. The one year budget marks time for the President’s Deficit Commission to issue its report after the fall elections. **House Majority Leader Steny Hoyer** renamed the deeming resolution a “budget enforcement resolution” which would also alter PAYGO rules; require committees to identify wasteful spending; demonstrate the House’s intention to vote on any recommendations made by the Deficit Commission; and endorse the goal of reducing the deficit from about 10% of GDP to 3% in FY 2015.

## PPACA Patient Protection Rules Unveiled

Last week the President announced the Administration’s interim final rules implementing the PPACA’s “patient’s bill of rights.” Under the HHS/DOL/Treasury regulations, most of which take effect for plans years beginning on and after 9/23/10, insurers will no longer be able to deny coverage or limit benefits to children due to pre-existing medical conditions. The new rules also prohibit companies from rescinding coverage in all plans when people get sick if they made an unintentional mistake on their application. These bans apply to all health insurance policies except existing individual policies.

The rules also end lifetime limits on benefits for all plans and phase out annual limits on benefits over the next three years (plans issued or renewed as of 9/23/10 are allowed to set annual limits no lower than \$750,000; the limit is raised to \$1.25 million as of 9/23/11 and to \$2 million as of 9/23/12). In addition, the rules require plan access to pediatricians and obstetrician-gynecologists without a referral. The President said that insurers should not use the rules “as an opportunity to enact unjustifiable rate increases that don’t boost care and inflate their bottom line....” He also criticized Republicans calling for

the repeal of the PPACA. Last week House Republicans unveiled a document, “ObamaCare, Three Months of Broken Promises,” critical of promises that the passage of PPACA would create jobs and allow U.S. residents to keep their current health coverage if they like it. It states that “Public calls for repeal of the new law are rising -- and Republicans are on offense, calling attention to steadily-mounting evidence that **President Obama’s** massive health care law is raising health care costs and crushing small business job creation at a time when the American economy can least afford it.”

## More PPACA Court Challenges

A petition for a writ of mandamus by a group of Maryland physicians seeking U.S. Supreme Court intervention in a federal lawsuit alleging the passage of the PPACA legislation violated separation of powers principles and the origination clause under the U.S. Constitution was denied by the Supreme Court last week. The

physicians claimed that President Obama used and abused his executive power to obtain control over the legislative process through member coercion. Also, an analysis published by the Urban Institute concludes that the PPACA is constitutional under current legal precedent. However, the author also said that it was possible that a majority

of U.S. Supreme Court justices “could use a PPACA challenge to establish a constitutional paradigm in place of past precedent,” but that the possibility is a long shot. The author also said that “the opponents’ passionate legal arguments will encourage noncompliance with the individual mandate and blunt PPACA’s practical enforcement.”

### CBO Estimates High-Risk Pool Costs

In a letter to **Senator Enzi**, CBO estimated that eliminating subsidy caps on the PPACA high-risk health insurance pool could result in federal spending of between \$10-15 billion through 2013. However, the PPACA only authorized appropriations of \$5 billion for the short-term high-risk pool subsidies.

### Non-profit Health Insurer Board

HS has announced the formation of the Consumer Operated and Oriented Plan Advisory Board which will make recommendations on grants and loans to set up nonprofit, member-run health insurers to serve the individual and small group markets. The GAO also announced the appointment of the Board’s 15 members.

### Provider Termination Notices

CMS announced that the agency will inform state Medicaid agencies of providers who have been terminated from Medicare or the SCHIP program as provided for under the PPACA. Also, beginning next January the PPACA requires states to terminate any Medicaid provider who has been terminated from Medicare or another state Medicaid program.

### Website for EHR Incentive Program Resources

CMS announced an official website for the Medicare & Medicaid Electronic Health Record Incentive Programs to provide up-to-date, detailed information about the programs. CMS said the Medicare and Medicaid EHR incentive programs will provide payments to eligible professionals and eligible hospitals as they adopt, implement, upgrade or demonstrate “meaningful use” of certified EHR technology.

### ARRA Rules to Prevent Shifting of Medicaid Costs to Political Subdivisions

CMS has issued additional guidance for states to ensure they are in compliance with rules that prohibit a state from shifting Medicaid costs to political subdivisions as a condition of receiving increased federal Medicaid funding under the 2009 AARA economic stimulus law.

## MedPAC Sends Annual Report to Congress

**A**mong the items included in the MedPAC annual report to Congress:

- ◆ payment incentives are one of the most powerful ways Medicare can induce quality improvement, but sometimes the incentives and public reporting alone may not be sufficient to induce the magnitude of quality improvement needed (MedPAC has previously recommended payment changes intended to align financial incentives with the provision of high-quality, efficient care, such as pay for performance, payment penalties for excessive hospital readmissions and a pilot to test medical homes);

- ◆ Medicare is in a position to facilitate an exchange of expertise,

so that the innovations and culture of the nation's high-performing providers can be exported to underperforming providers;

- ◆ Medicare can give providers technical assistance to help them change practice patterns and improve quality and efficiency and use the QIO program and other organizations to assist low performers;

- ◆ MedPAC may update the conditions of participation (COPs) that many types of providers are required to meet to participate in the Medicare program; and

- ◆ MedPAC recommends that Medicare's financing of graduate medical education to align it with the commission's broader goal of

delivery system reform.

In related news, at a House E&C Health Subcommittee hearing held last week, **Chairman Frank Pallone** said that he has been contacted by hospitals which are very concerned about the significant amount that could be lost in Medicare education funding under MedPAC's GME recommendations that GMS payments be contingent on improving quality. **MedPAC Chairman Hackbarth** defended the recommendations, stating that "We're not saying 'take the money away'...[but that the commissioners want to] 'establish accountability for use of the money'" [for the sake of taxpayers, the health care system, and beneficiaries].

## NIH Approves Some New Stem Cell Lines

**L**ast week the NIH rejected a request to approve an additional 42 stem cell lines for study in federally funded research programs because an expert panel concluded that the consent forms permitting use of the embryos included too broad of language and disallowed the signatories

from suing the clinic for any reason. However, **NIH Director Francis Collins** approved eight other new lines, thus increasing to 75 the number of lines now are eligible for federal funding.

**H.R. 5570 (REFORM PROPOSALS)**, to provide that no funds are authorized to be appropriated to the Internal Revenue Service to expand its workforce in order to implement, enforce, or otherwise carry out either the Patient Protection and Affordable Care Act or the Health Care and Education Reconciliation Act of 2010; UPTON; to the Committee on Ways and Means, June 22.

**H.R. 5578 (PHARMACEUTICALS)**, to prohibit the open-air cultivation of genetically engineered

pharmaceutical and industrial crops, to prohibit the use of common human food or animal feed as the host plant for a genetically engineered pharmaceutical or industrial chemical, to establish a tracking system to regulate the growing, handling, transportation, and disposal of pharmaceutical and industrial crops and their byproducts to prevent human, animal, and general environmental exposure to genetically engineered pharmaceutical and industrial crops and their byproducts, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of

genetically engineered foods, and for other purposes; KUCINICH; jointly, to the committees on Agriculture and Energy and Commerce, June 23.

**H.R. 5588 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for additional opportunities to enroll under Part B of Medicare, and for other purposes; SCHRADER; jointly, to the committees on Energy and Commerce and Ways and Means, June 23.