



Congress Stumbles Over Independence Day Recess Line with Health Issues to be Resolved

War Supplemental Passes House Along with One-Year Budget Target

Before recessing until July 12th, last week the House passed H.R. 4899, the \$75 billion Supplemental Appropriations Act of 2010, which provides war funding as well as a one-year FY 2011 “deeming” budget having a discretionary spending limit of \$1.12 trillion (\$7 billion less than the President’s request and \$3 billion less than the Senate limit). In addition, the budget aligns the House PAYGO rules with the statutory pay-as-you-go procedures under current law and provides that any savings created by the enactment of legislation recommended by the National Commission on Fiscal Responsibility and Reform be set aside in a reserve fund to ensure that such savings are used only for deficit reduction. Presumably in accord with the one-year budget parameters, last week the House Agriculture-Food and Drug Administration Appropriations Subcommittee passed its appropriations measure which includes FY 2011 funding for the FDA of \$2.571 billion (about \$214 million above last year). The war supplemental bill includes the following health related provisions: an amendment to strengthen the Federal Trade Commission’s ability to restrict “pay for delay” payments by brand-name drug manufacturers to their generic competitors to delay the manufacture and marketing of less costly generic drugs (CBO estimates that the federal government will save more than \$2.4 billion over 10 years in lower drug costs for Medicare, Medicaid, military

and veteran health programs); and a provision affecting certain injectable, infusible and inhalation drugs to clarify the calculation of the Average Manufacturer Price (AMP) determining the amount of manufacturer rebates to the federal government for such outpatient drugs purchased under Medicaid program (CBO estimates a savings of \$2.1 billion over 10 years). The White House threatened a veto of the bill if the Senate does not exclude an offset provision adversely affecting the funding of the education “Race to the Top” program. The House did not include an extension of supplemental federal funding for Medicaid as urged by the NGA and which is being held up in the Senate under the extenders measure, H.R. 4213.

Senate Majority Leader Harry Reid attempted to take up the

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extenders bill with an amendment to extend unemployment benefits and homebuyer tax credits but not the Medicaid and other provisions included in the original bill. However, his cloture motion failed on a 58-38 vote (only two Republicans voted aye; **Senators Snowe and Collins**; and **Senator Reid** lost a Democrat vote due to the death of Senator Robert Byrd). The Senate is likely to take up a stand-alone bill extending unemployment benefits that the House passed before recessing (H.R. 5618). The Senate is also likely to take up stand-alone legislation extending federal FMAP funding when it returns July 12th. The Senate could also consider a stand-alone bill introduced by **Senators Sherrod Brown and Bob Casey** that would extend federal subsidies for laid-off workers to purchase health coverage through COBRA.

Medicare Physician Payments

CMS said that the agency will begin processing Medicare payments to physicians pursuant to the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010. CMS said it has “directed Medicare claims administration contractors to discontinue processing claims at the

negative update rates and to temporarily hold all claims for services rendered June 1, 2010, and later, until the new 2.2 percent update rates are tested and loaded into the Medicare contractors’ claims processing systems. CMS expects to begin processing claims at the new rates no later than July 1, 2010. Claims for services rendered prior to June 1, 2010, will continue to be processed and paid as usual.” The President has stated that the temporary MD payment fixes are untenable and that the SGR need to be fixed permanently. Congress will have to again address this issue before year-end and may yet consider a permanent fix, to the extent that Republican demands for budget offsets do not again derail such legislation.

House Hearing on Diabetes Epidemic

Last week the House Energy and Commerce Subcommittee on Health heard testimony on the rising level of diabetes in the U.S. and CDC said that “diabetes has changed from a public health concern to a widespread epidemic....” A study released by the Trust for America’s Health and the Robert Wood Johnson Foundation found that in 28 states obesity rates increased last year.

Republican Repeal Efforts Ramp Up

Last week House Republican leaders said they will support procedural efforts to force votes in the House to repeal the new health reform law. Measures for the complete repeal of the PPACA are unlikely to

advance, such as a bill introduced by **Rep. Michele Bachmann**, as are measures to repeal the individual mandate (e.g. **Rep. Ron Paul’s** H.R. 4995). However, attempts to keep portions of the law from being implemented may be

successful in forcing members to vote this year on various PPACA spending restrictions through the appropriations process (e.g. along the lines of a bill introduced by **Rep. Fred Upton**).

Deficit Commission

Last week **CBO Director Douglas Elmendorf** told the National Commission on Fiscal Responsibility and Reform that the long-term budget imbalance will require sharp changes in revenues, spending or both and that the PPACA will probably make a “dent” in the problem but not diminish the problem substantially. CBO has projected federal outlays for direct spending health care programs, including the PPACA, to rise from

about 5% of GDP to about 10% in 2035. He said the PPACA “takes steps toward fiscal sustainability, but small steps relative to the length of the journey that would be needed to ultimately achieve sustainability....” **Co-chairman Erskine Bowles** said he favors limiting revenues to little more than 21% of GDP and bringing spending in line with this target as well.

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PPACA Implementation Issues

Last week the HHS Office of Consumer Information and Insurance Oversight (OCIIO) announced the formation of a website allowing uninsured persons to enroll in a “Pre-Existing Condition Insurance Plan (PCIP)” on the temporary high-risk pool site. The site will include 500 pages covering information about plan availability, eligibility and benefits, as well as more than 5,500 private insurance options from 1,000 insurance companies. Prices will be provided sometime in October. The site will become the portal for the state-based health insurance exchanges when they go into operation in 2014. The OCIIO has also begun accepting applications for the Early Retiree Reinsurance Program under PPACA which will last until 2014. All employers who are accepted into the program are eligible to receive reimbursement for costs incurred as of June 1, regardless of the date on which the employer was accepted into the program. CMS

announced it will post a grant solicitation in late July for states to participate in the \$450 million per year “Money Follows the Person Rebalancing Demonstration Program” extended through FY 2016 under the PPACA. DOL’s EBSA Assistant Secretary Phyllis Borzi announced that the last set of interim final rules in a first wave of regulations under the PPACA, including ERISA claims and appeals procedures, is on schedule for release by July 23, two months before the effective date of the regulations. This week, DOL/HHS/Treasury is expected to jointly release a separate set of interim final rules on insurance coverage for preventive services under PPACA. Senator Ron Wyden and **Rep. Ed Markey** have written CMS to urge that the PPACA “Independence at Home” demonstration project be implemented within six months and before the 2012 deadline, because of the availability of \$5 million annually beginning in FY 2010.

CBO Alternative Projections Draw Fire

Initially CBO has projected that under the PPACA the federal deficit will be reduced by \$143 billion over the next 10 years and by about 0.5% of GDP in the following 10 years which would amount to more than \$1 trillion in deficit savings. However, alternative budget scenarios included in CBO’s

“Long-Term Budget Outlook” released last week assume that after 2020 some planned Medicare cuts and provisions to control the rise in health care subsidies for individuals will not be in place. The scenario also assumes several changes to current tax law not related to the health care measure. The result is that the overall

debt is projected to be higher under the alternative scenario. **Senate Finance Chairman Max Baucus** was quick to criticize the alternative scenarios, stating “I just urge you not to . . . get into the realm of what Congress is or is not going to do in the future, certainly in areas that have not been tested yet. . . .”

Virginia Challenge to PPACA

Last week the commonwealth of Virginia gave the first oral arguments in the state's challenge to the PPACA. **Federal District Judge Henry Hudson** said he expects to issue a ruling within 30 days on the first issue at hand, whether Virginia has the standing to continue with its suit. The arguments also covered whether the federal government has the authority under the commerce clause of the Constitution to require individuals to purchase

health insurance. The state's AG, **Kenneth Cuccinelli** said he is "cautiously optimistic" that the case has a "better than even chance" of succeeding. He said that if the judge rules in Virginia's favor as to whether it has standing to file suit, a summary judgment hearing is scheduled for October 18 on the law's constitutionality. In perhaps an early view of the courts view on health reform, the U.S. Supreme Court June has denied a petition for review filed by a trade group that challenged

provisions of the San Francisco city and county ordinance that require certain employers to make contributions toward health care coverage for their employees (Golden Gate Restaurant Ass'n v. City & County of San Francisco, U.S., No. 08-1515, review denied 6/28/10). The U.S. Court of Appeals for the Ninth Circuit held that ERISA did not preempt the ordinance, over the objection of the Golden Gate Restaurant Association.

CMS to Hold off Rejecting Part B Claims

Last week CMS said it will not begin to automatically reject Medicare Part B claims submitted by providers who are not in the agency Provider Enrollment, Chain, and Ownership System (PECOS) database. CMS said "until the automatic rejections are operational, providers should not see any change in the processing of submitted claims, they will continue to be reviewed and paid as they have historically been reviewed and paid...."

DME Competitive Bidding Program Under Fire

A bipartisan group of 252 House members have co-sponsored legislation (H.R. 3790) to stop the new Medicare bidding program for selected Durable Medical Equipment, Prosthetics, Orthotics and Supplies. Last week CMS announced that in the first round of bidding the new program will cut the cost of medical devices in nine areas of the country by about a third. CMS says it has improved the bidding program since 2008, when it was delayed, and expects Congress will allow the program to go forward.

CMS Nominee Berwick Under Fire

In a letter to **President Obama**, 56 House Republicans urged withdrawal of **Donald Berwick's** nomination for CMS Administrator, claiming he has a "history of support for government rationing of medical services. While we support efforts to ensure quality care for all, we must guarantee that unelected government bureaucrats or boards do not make one-size-fits-all judgments prohibiting treatment options on the basis of cost...." The Senate Finance Committee has yet to schedule hearings on his nomination.

S. 3527 (MEDICARE), to amend Title XVIII of the Social Security Act to ensure access to chest radiography (x-ray) services that use computer-aided detection for the purpose of early detection of lung cancer; BROWN of Ohio; to the Committee on Finance, June 24.

H.R. 5593 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for timely access to post-mastectomy items under Medicare; SUTTON; jointly, to the committees on Energy and Commerce and Ways and Means, June 24.

H.R. 5595 (IMMIGRATION), to amend Section 214(b) of the Immigration and Nationality Act to create, for an alien seeking to enter the United States as a nonimmigrant to care for a relative with a serious health condition, an exemption from the presumption that the alien is an immigrant; ELLISON; to the Committee on the Judiciary, June 24.

H.R. 5597 (MEDICARE), to establish a Medicare patient IVIG access demonstration project; MATSUI; jointly, to the committees on Ways and Means and Energy and Commerce, June 24.

H. RES. 1477 (DISEASE AWARENESS) expressing support for the designation of May as Ehlers-Danlos Syndrome Awareness Month to increase the knowledge of this little-known, potentially fatal, genetic disease; KILDEE; to the Committee on Energy and Commerce, June 24.

H. RES. 1478 (HIV TESTING) supporting the goals and ideals of National HIV Testing Day, and for other purposes; LEE of California; to the Committee on Energy and Commerce, June 24.

H.R. 5615 (TAX POLICY), to amend the Internal Revenue Code of 1986 to repeal the medical device tax, and for other purposes; BILBRAY; jointly, to the committees on Ways and Means and Appropriations, June 28.

S. 3543 (MEDICARE), to amend Title XVIII of the Social Security Act to expand access to medication therapy management services under the Medicare Prescription Drug Program; HAGAN; to the Committee on Finance, June 29.

S. 3548 (COBRA), to provide for the extension of premium assistance for COBRA benefits; CASEY; to the Committee on Finance, June 29.

H.R. 5638 (MEDICAID), to establish federally qualified behavioral health centers and to require Medicaid coverage for services provided by such centers; MATSUI; to the Committee on Energy and Commerce, June 29.

H. RES. 1485 (DISEASE AWARENESS) expressing support for designation of September 2010 as “National Prostate Cancer Awareness Month;” NEUGEBAUER; to the Committee on Energy and Commerce, June 29.

H. RES. 1488 (DISEASE AWARENESS) supporting the goals and ideals of National Ovarian Cancer Awareness

Month;” ISRAEL; to the Committee on Oversight and Government Reform, June 29.

S. 3551 (MEDICAID), to provide a fully offset extension of emergency unemployment insurance assistance, enhanced Medicaid FMAP reimbursements, and summer employment for youth, and for other purposes; BROWN of Massachusetts; to the Committee on Finance, June 30.

S. 3554 (ABORTION), to direct the Federal Trade Commission to promulgate rules prohibiting deceptive advertising of abortion services, and for other purposes; MENENDEZ; to the Committee on Commerce, Science, and Transportation, June 30.

H.R. 5652 (ABORTION), to direct the Federal Trade Commission to prescribe rules prohibiting deceptive advertising of abortion services; MALONEY; to the Committee on Energy and Commerce, June 30.