



Congress Begins to Grind Out FY 2011 Appropriations After Financial Overhaul Passage

Congress On the Road to the August Recess

This week the Senate is expected to hold a cloture vote to extend unemployment benefits, a breakout from the extenders legislation that failed due to Republican demands for Medicaid extension payfors. The 2011 six month extension for federal Medicaid funding to help state budgets remains stymied at the moment. Last week **West Virginia Democratic Gov. Joe Manchin III** appointed **Carte Goodwin**, his former general counsel, to temporarily fill the Senate seat of the late **Robert C. Byrd**, with his Senate swearing-in expected on Tuesday. The supplemental war-related defense spending bill is also stymied in the Senate with Republican and some Democrat opposition to the additional \$16 billion in domestic spending added by the House. Retiring **House Appropriations Chairman David Obey** also indicated he may follow last week's Senate Appropriations Committee action in holding the first full committee markup on FY 2011 appropriations, given subcommittee actions on the Agriculture, Transportation-HUD, Legislative Branch, Military Construction-VA and Labor-HHS-Educations appropriations bills. At the markup, the House committee is also expected to take up the so-called 302(b) allocations to set the funding levels for all 12 annual appropriations bills. Last week's Senate Appropriations Committee markup set 302(b) allocations for \$1.114 trillion in total discretionary spending and reported along party

lines the Military Construction-VA, Homeland Security and Agriculture appropriations bills. Appropriations, short-term and long-term budget issues will soon face President Obama's choice of **Jacob J. Lew** to be the next White House OMB Director when he is confirmed by the Senate. Intended to frustrate the Democrats' legislative agenda, last week **House Minority Leader John Boehner** endorsed a one-year moratorium on almost all new federal regulations, an idea he said would create jobs by ending uncertainty among businesses fearful of new federal mandates.

Labor-HHS-Education Appropriations

Last week the House Labor-
Education-HHS Appropriations

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Subcommittee reported its FY 2011 \$176.4 billion spending bill, providing NIH with about \$32 billion or about \$1 billion more than for FY 2010. **Chairman David Obey** said “this year’s bill puts the emphasis on translating basic research results into practical and available cures and treatments. Among other things, it permits NIH to use up to \$50 million to launch a newly authorized program aimed at that objective, which is called the Cures Acceleration Network.” The bill provides: CDC with \$6.78 billion, HRSA with \$7.6 billion, SAMHSA with \$3.58 billion and AHRQ with \$411 million. The “program management” category at CMS was given an increase of \$131 million for a total of \$3.6 billion and the CMS “Health Care Fraud and Abuse Control” was given a \$250 million increase for a total of \$561 million. The Ryan White HIV/AIDS program was given a \$84 million increase and the CDC HIV prevention program a \$29 million increase. Republicans used the markup as an

attempt to reopen the debate over the PPACA, but were unsuccessful in their attempt to amend the majority’s mark.

Agriculture/FDA FY 2011 Appropriations

Last week the Senate Appropriations Committee voted to approve the FY 2011 Agriculture/FDA appropriations bill, granting the FDA \$2.504 billion (equal to the Administration’s request and \$159 million more than in FY 2010), but less than the \$2.571 billion approved by the House AG Subcommittee. The bill provides the FDA with \$489 million for the regulation of human drugs (vs. \$465 in FY 2010), \$215 million for the regulation of biologics (vs. \$206 million in FY 2010), and \$326 million for the regulation of devices and radiological health (vs. \$315 million in FY 2010). Included is a \$2 million increase for the FDA’s orphan product development grant program for a total of \$16 million in FY 2010.

Military Construction-Veterans Affairs FY 2011 Appropriations

Last week the Senate Appropriations Committee voted along party lines to approve \$141.1 billion in FY 2011 spending for military construction and the Department of Veterans Affairs (a total of \$120.8 billion in FY 2011, including \$56.9 billion in discretionary spending or about \$27.3 million over the Administration’s request). It also includes \$46 million for construction of a VA medical facility in West Virginia (**Senator Robert C. Byrd’s** last earmark requested before his death) and \$50.6 billion in advance funding for FY 2012 for veterans medical accounts. The House Milcon-VA Appropriations Subcommittee also approved \$191.7 billion in FY 2011 appropriations, including \$63.8 billion in mandatory funding for veterans’ benefits and \$50.6 billion in advanced FY 2012 funding for several important VA health care programs.

PPACA Technical Corrections Measure Passes House

Last week the House passed by voice vote H.R. 5712 (the Veterans’, Seniors’, and Children’s Health Technical Corrections Act of 2010), legislation to make various corrections to the PPACA: including the following provisions--\$95 million to CMS for retroactively reprocessing claims affected by the new law; clarification of enrollment rules for Medicare; allowing a new payment system for skilled nursing facilities; allowing some children’s hospitals to continue receiving orphan drug discounts for

rare treatments; extending through FY 2011 a law permitting hospitals to reclassify at a higher-wage index for Medicare reimbursements; and protecting medical residency positions shared by affiliated hospitals. The CBO estimated the bill’s cost, offset by an annual reduction in funding for the Medicare Improvement Fund, would reduce the deficit by \$12 billion over 10-years.

PPACA Regulations on Prevention Services Mandate

Last week the departments of HHS, Labor and Treasury issued interim final regulations pursuant to PPACA's requirement for new health insurance plans to cover specified preventive services (such as mammograms, colonoscopies, cancer screenings, blood pressure and cholesterol tests,

counseling to lose weight or quit smoking, healthy check-ups and immunizations for children) without imposing cost sharing on participants and beneficiaries. The requirements take effect for insurance plans that begin on or after September 23, 2010, six months after enactment of the PPACA. The preamble provides

an estimate that premium costs will increase by about 1.5% on average for enrollees covered under new plans. Republicans used the occasion to criticize the use of the U.S. Preventive Task Force to set the preventive care health plan coverage policy, citing the panel's controversial mammogram recommendations last year.

House Medical Bankruptcy Hearing Raises Republican Objections to the PPACA

At last week's hearing on H.R. 901 held by the House Judiciary Subcommittee on Commercial and Administrative Law, Republicans questioned why the hearing was being held given a 2009 hearing on the same subject concluding

the measure was unneeded. Republican **Rep. Franks** said "Obamacare was pitched to the American people as the magical legislation that would increase coverage and simultaneously decrease costs....Is today's hearing the other party's admission that

Obamacare won't work, or are my colleagues worried that the millions who will lose their medical insurance of their choice under Obamacare will be bankrupted by the effect of that legislation?"

Medicare Home Health Agency/Hospice/SNF Payments

CMS issued a proposed rule under which a number of changes would reduce payments to home health agencies by \$900 million in CY 2011 (a 4.75% decrease). The rule includes the combined effects of a market-basket update (a \$270 million increase), a wage index update (a \$20 million increase), reductions to the home health prospective payment system (HHPPS) rates to account for increases in aggregate case-mix that are unrelated to underlying changes in patient health status (a \$700 million decrease) and other provisions mandated by the PPACA. The rule includes a hospice proposal for implementing the same face-to-face requirement for recertifying the eligibility of a Medicare beneficiary for hospice services as mandated by the PPACA. In another action, CMS announced that hospices serving beneficiaries will be provided an estimated 1.8% increase in their payments for FY 2011. The

estimated hospice payment increase is the net result of a 2.6% increase in the hospital market-basket, offset by an estimated 0.8% decrease in payments to hospices due to updated wage index data and the second year of CMS's seven-year phase-out of its wage index budget neutrality adjustment factor. Also CMS released FY 2011 Medicare payment rates for skilled nursing facilities and inpatient rehabilitation facilities under which nursing home payment rates will increase 1.7% percent for a total increase of \$542 million in Medicare payments to nursing homes in FY 2011. In related news, 242 House members wrote CMS urging the agency to re-examine its proposal to reduce Medicare payments to inpatient hospitals due to changes in documentation and coding practices that were included in the FY 2011 hospital inpatient prospective payment system (IPPS) proposed rule.

Final Rules for Meaningful Use Standards/Certification of EHRs

Last week HHS announced final rules for achieving “meaningful use” of electronic health records so that eligible physicians and hospitals may qualify for as much as \$27 billion in federal funding. A

related ruling, issued by Office of the National Coordinator for Health Information Technology, identifies the standards and certification criteria for EHR technology, so that eligible professionals and hospitals may be assured that the IR

systems they adopt are capable of performing the required functions. The meaningful use final rule is effective 60 days after publication while the rule on standards and certification will be effective 30 days after publication.

HIV/AIDS “National Strategy”

Last week the Administration announced the first-ever coordinated national strategy to combat the HIV/AIDS epidemic by reducing HIV infections and HIV-related health disparities, increasing care quality

and expanding access to services. The Administration proposed that by 2015: the annual number of new HIV infections be reduced by 25%; the HIV transmission rate be reduced by 30%; the proportion of patients accessing care within

three months of diagnosis increase from the current 65% to 85%; and the number of infected individuals aware of their HIV status increase from the current rate of 79% to 90%.

Health Related Hearings This Week

Senate HELP Committee, to hold a hearing July 21 to examine treating rare and neglected pediatric diseases, focusing on promoting the development of new treatments and cures.

Senate Homeland Security and Governmental Affairs, the Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration, to hold hearings July 22 to examine disaster medical preparedness, focusing on improving coordination and collaboration in the delivery of medical assistance during disasters.

Senate Judiciary, to hold a business meeting July 20 to consider S. 3397, to amend the Controlled Substances Act to provide for take-back disposal of controlled substances in certain instances.

House Energy and Commerce Subcommittee on Health, to hold a hearing July 20 on pending public health legislation; and the Subcommittee on Oversight and Investigations, to hold a hearing July 20, “Direct-To-Consumer Genetic Testing and the Consequences to the Public Health.”

House Veterans’ Affairs, Subcommittee on Health, to hold a hearing July 20 healing the physical injuries of war.

House Ways and Means, Subcommittee on Health, to hold a hearing July 20 on efforts to promote the adoption and meaningful use of health information technology.

S. 3574 (MEDICARE), to amend Title II of the Social Security Act to prohibit the inclusion of Social Security account numbers on Medicare cards; BROWN of Ohio; to the Committee on Finance, July 13.

S. 3575 (PRESCRIPTION DRUGS), to amend and reauthorize the controlled substance monitoring program under Section 3990 of the Public Health Service Act and to authorize the secretary of veterans affairs to share information about the use of controlled substances by veterans with state prescription monitoring programs to prevent misuse and diversion of prescription medicines; DURBIN; to the Committee on Health, Education, Labor, and Pensions, July 13.

H.R. 5712 (MEDICARE/MEDICAID/CHIP), to provide for certain clarifications and extensions under Medicare, Medicaid, and the Children's Health Insurance Program; LEVIN; jointly, to the committees on Energy and Commerce, the Budget and Ways and Means, July 13.

H.R. 5714 (MEDICARE), to amend Title II of the Social Security Act to prohibit the inclusion of Social Security account numbers on Medicare cards; DOGGETT; to the Committee on Ways and Means, July 13.

H. RES. 1511 (UNITED STATES-MEXICO BORDER HEALTH COMMISSION), honoring the United States-Mexico Border Health Commission on the 10th anniversary of the

full commission establishment and for a decade of significant contributions; GRIJALVA; jointly, to the committees on Foreign Affairs and Energy and Commerce, July 13.

H.R. 5731 (VETERANS' HEALTH), to amend Title 38, United States Code, to provide for annual reviews of mental health professionals treating veterans, and for other purposes; KIRKPATRICK of Arizona; to the Committee on Veterans' Affairs, July 14.

H.R. 5732 (MEDICARE), to amend Title XVIII of the Social Security Act to permit coverage of certain covered Part D drugs for uses that are determined to be for medically accepted indications based upon clinical evidence in peer reviewed medical literature; KILROY; jointly, to the committees on Energy and Commerce and Ways and Means, July 14.

H.R. 5733 (HEALTH INFORMATION), to permit health care providers to disclose certain protected health information to law enforcement officials; BRALEY of Iowa; to the Committee on Energy and Commerce, July 14.

H.R. 5740 (DRUGS), to provide for the mandatory recall of adulterated or misbranded drugs; TOWNS; to the Committee on Energy and Commerce, July 14.

S. 3596 (HOSPITALS), to establish the Culture of Safety Hospital Accountability Study and Demonstration Program; HAGAN; to the Committee on Finance, July 15.

S. 3606 (APPROPRIATIONS), making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending Sept. 30, 2011, and for other purposes; KOHL; from the Committee on Appropriations, July 15.

H.R. 5742 (MEDICAL RESEARCH), to encourage the use of medical checklists through research, and for other purposes; HOLT; to the Committee on Energy and Commerce, July 15.

H.R. 5761 (HEALTH INSURANCE COVERAGE), to amend the Patient Protection and Affordable Care Act to expedite the application of the provision prohibiting rescissions of health insurance coverage; MELANCON; to the Committee on Energy and Commerce, July 15.

H.R. 5768 (VETERANS' HEALTH), to amend Title 38, United States Code, to authorize the waiver of the collection of copayments for telehealth and telemedicine visits of veterans, and for other purposes; WELCH; to the Committee on Veterans' Affairs, July 15.

H. RES. 1523 (NATIONAL CHIROPRACTIC HEALTH MONTH), to observe the contributions of the chiropractic profession and recognize National Chiropractic Health Month; BOSWELL; to the Committee on Energy and Commerce, July 15.