



## House Trims all Spending Trees and Goes Home; Senate Secures 60th Health Reform Vote

### *FY 2010 Spending Bills Finalized*

Last Wednesday the President signed the \$446.8 billion omnibus appropriations bill, H.R. 3288, which includes the FY 2010 spending levels for HHS/NIH/CDC/CMS, etc. Much of the \$603.7 billion of HHS funding is for mandatory spending under Medicare and Medicaid, but includes \$31 billion for NIH (a \$692 million increase over last year). The White House signaled that the FY 2011 budget recommendations will include measures to help reduce the deficit. After stalling by Republicans, on a snow-bound Saturday the Senate garnered 88 Senators to agree to the House-passed Defense Appropriations “minibus” which includes a delay in the scheduled January 1, 2010 21% in Medicare physician reimbursements. The bill freezes reimbursements at current levels for Medicare physicians and some other providers through February 28, 2010. **Senate Finance Chairman Max Baucus** said that he is “committed to finding a permanent solution to the flawed payment formula.... And in the meantime, this bill makes sure that our physicians in Medicare and TRICARE will not face steep, unfair cuts in payments. This bill would help ensure that they can continue to care for our seniors and military families....” The bill also includes an extension of the 65% COBRA premium subsidy included in the American Recovery and Reinvestment Act from 9 to 15 months. The bill also extends

the HHS poverty guidelines at 2009 levels through February 28, 2010, thus preventing higher eligibility requirements for Medicaid and other programs during this period.

The Senate also passed a short-term CR until December 23rd, to give Congress time to send the minibus to the President. With the Senate approving the House-passed Defense bill and an expected increase in the statutory debt limit, the House announced it will remain in recess until January 12, 2010. The Senate will return Monday to take up three cloture motions on health reform (see below).

### *Inside*

Senate Set to Pass Health Reform	2
Negotiated Agreement on Coverage for Abortion	2
Last Week’s Action on Senate Amendments	2
Other Conference Issues	3
HHS Health IT Awards	3
HHS Enrollment Awards	3
Recently Introduced Health Legislation	4

## Health Reform Update

### Senate Set to Pass Health Reform

After much consternation from **Senator Reid** last week over holdouts in his ranks over health reform, on Saturday Nebraska **Senator Ben Nelson** became the 60th senator to say he had obtained changes in **Senator Reid's** manager amendment allowing him to vote for cloture on the legislation. Earlier, **Senator Joseph Lieberman's** opposition to a public option and expanding Medicare to those 55-64 caused **Senator Reid** to drop those provisions from the Senate measure. **Senator Ben**

**Nelson** said changes to the bill related to abortion coverage were sufficient for him to remove his opposition. However, he said he would condition his vote on the conference report on the retention of the key Senate provisions which, among other things, does not include a public option. **Senator Reid's** manager's amendment is expected to be voted on early Monday morning. A second cloture vote is expected Tuesday on the original 2,074-page health care bill, followed by a 30-hour, post-cloture debate. After that,

the Senate will likely vote on Wednesday to end debate on the underlying legislative vehicle, the Service Members Home Ownership Tax Act. Following that, the earliest a final vote is likely to take place on the health reform package would be on Christmas Eve. **Senate Minority Leader Mitch McConnell** said that Republicans would not expedite the health reform votes, thus possibly delaying the passage of the legislation until after Christmas.

### Last Week's Action on Senate Amendments

Last week the Senate rejected, 51-48, the amendment by **Senator Byron Dorgan** that would allow for the foreign importation of prescription drugs. Also failing was a related Lautenberg amendment that would have permitted importation, provided the FDA certifies the imported drugs are safe, a hurdle that essentially would kill any possibility of imported drugs making it to the U.S. market (since the FDA sent a letter stating that reimportation is unsafe and that the FDA does not have the resources to do adequate inspections and enforcement). Also failing was a Crapo amendment that would have sent the legislation back to the Finance Committee to have it remove any tax increases that would affect individuals earning less than \$200,000 or couples earning less than \$250,000 (to make it consistent with the President's campaign promise). However, the Senate did approve a Baucus "sense of the Senate" maneuver stating that middle-class tax increases should be rejected.

### Negotiated Agreement on Coverage for Abortion

Apparently the negotiations over abortion coverage headed by **Pennsylvania Senator Bob Casey** were successful in bringing **Senator Ben Nelson** on board as the 60th vote for cloture on health reform. In this regard, a letter to **Senator Nelson** from two dozen faith leaders in Nebraska stated "As Nebraskan religious leaders, we support this compromise... We support its strong conscience protections, like those contained in the current House bill; removal of the 'assured availability' provision that requires one plan that covers abortion and one plan that does not; provisions requiring that insurance companies in the healthcare exchange segregate funds and allow individuals to opt out of abortion coverage in any plan that may cover it to ensure that no federal funds pay for abortions or subsidize plans that include abortion coverage; and finally, we strongly support funding for programs that support pregnant women, adoption, children's health, and pre-natal care." The House bill includes the Stupak amendment which differs from the Casey provision, thus setting up abortion coverage as a major issue of contention during conference.

## Health Reform Update

### Other Conference Issues

Presuming passage of the Senate reform package, whether the House insists on a conference remains to be seen. If so, organized labor is poised to press for the elimination of the Senate's so-called "Cadillac" health tax and inclusion of the House-passed public option. **SEIU President Andy Stern** said "We don't like the bill. It has to be improved." It is expected that the CBO cost estimate will show an overall \$130 billion savings over 10 years. In this regard, last week the President said rising Medicare and Medicaid costs will cause the federal government to "go bankrupt" if Congress does not rein in costs. The President also reminded Congress that a final bill will not satisfy everyone, but that differences should not be allowed to derail the legislation. Numerous issues are likely to arise after the Senate passes the legislation, given the lack of adequate analysis by all concerned. Republican **Senators Judd Gregg, Chuck Grassley and Mike Enzi** have asked CBO

and the Joint Committee on Taxation to provide an analysis of the manager's amendment to the bill "as soon as possible" after it is released. **Majority Leader Mitch McConnell** said the bill "is an absolute outrage" and the Democrat's calling the bill "historic" is only that it "ignores the will of the American people." To obtain Vermont **Senator Sander's** vote, the manager's amendment is reported to contain \$10 billion for community health centers and additional federal funding of Medicaid over that of other states; that is, other than for Nebraska and Louisiana which also will get favorable treatment in the attempt to secure the votes of **Nebraska Senator Ben Nelson and Louisiana Senator Mary Landrieu**. The bill retains the so-called "CLASS Act" federal long-term care insurance program which **Senator Gregg** has called a "ponzi scheme." Small employer groups continue to oppose the employer mandate under the legislation and even large employer groups are

urging what they call improvements; that is, deleting taxes on insurers and stakeholders, increasing the thresholds for the tax on Cadillac insurance plans, strengthening cost and quality measures and including medical malpractice reforms. Funding cuts to hospitals, nursing homes, and other providers and manufacturers are certain to create pressures for changes from conferees. The framework of the state-based health insurance exchanges will also come under fire with some charging that the time-frame is inadequate for states to make the massive changes required and that insurers will cherry-pick younger/healthier individuals for lower-cost coverage outside the exchanges, thus raising the costs of coverage under the exchanges. The individual mandate and the level of tax penalties for failure to obtain coverage will also come under increased scrutiny; opponents even charge that an individual mandate is unconstitutional.

### HHS Health IT Awards

The HHS Office of the National Coordinator for Health Information Technology announced last week that it would award \$60 million in contracts to research ways to overcome barriers to the adoption and meaningful use of health IT. The funds will be used to develop Strategic Health IT Advanced Research Projects (SHARP) to focus on: ways to ensure health IT data are secure and to build public trust in the security policies of health IT systems; ways to ensure health IT systems are patient-focused and user-friendly for physicians; means to research new and better architectures for the electronic exchange of health data; and means to research ways to protect patient privacy while also using data from electronic health records for quality improvement initiatives and to conduct population health and clinical research. The projects will address mandates in the Health Information Technology for Economic and Clinical Health (HITECH) Act.

### HHS Enrollment Awards

HHS announced that the agency has awarded \$72.6 million in "performance bonuses" to nine states that took steps to enroll more children in Medicaid and SCHIP programs. Receiving awards were Alabama (\$39.1 million), Alaska (\$789,000), Illinois (\$9.1 million), Louisiana (\$1.5 million), Michigan (\$3.7 million), New Jersey (\$4.2 million), New Mexico (\$5.1 million), Oregon (\$1.6 million), and Washington (\$7.5 million). To qualify for the bonuses, states had to adopt at least five of eight policies, such as providing 12 months of continuous eligibility or using a joint application for both Medicaid and SCHIP, to encourage enrollment and retention of eligible children.

**H.R. 4313 (MEDICARE)**, to amend Part B of Title XVIII of the Social Security Act to eliminate the sunset for reimbursement for services furnished by certain Indian hospitals and clinics; YOUNG of Alaska; jointly, to the committees on Energy and Commerce and Ways and Means, Dec. 15.

**H. RES. 971 (WOMEN'S HEALTH)**, expressing the sense of the House of Representatives regarding guidelines for breast cancer screening for women ages 40 to 49; WASSERMAN SCHULTZ; to the Committee on Energy and Commerce. considered and agreed to, Dec. 15.

**H.R. 4371 (MEDICARE)**, to amend Title XVIII of the Social Security Act to continue using 2009 Medicare practice expense relative value units for certain cardiology services; GONZALEZ;

jointly, to the committees on Energy and Commerce and Ways and Means, Dec. 16.

**H.R. 4373 (MEDICARE)**, to amend Title XVIII of the Social Security Act to stabilize and modernize the provision of partial hospitalization services under Medicare, and for other purposes; HASTINGS of Florida; jointly, to the committees on Ways and Means and Energy and Commerce, Dec. 16.

**H.R. 4383 (MEN'S HEALTH)**, to amend the Public Health Service Act and Title XIX of the Social Security Act to provide for a screening and treatment program for prostate cancer in the same manner as is provided for breast and cervical cancer; MARSHALL; to the Committee on Energy and Commerce, Dec. 16.

**H.R. 4386 (MILITARY HEALTH)**, to amend Title 10, United States Code, to require emergency contraception to be available at all military health care treatment facilities; MICHAUD; to the Committee on Armed Services, Dec. 16.

**H.R. 4390 (MEDICARE/MEDICAID/CHIP)**, to amend Title XI of the Social Security Act to provide for enhanced program and provider protections under the Medicare, Medicaid, and Children's Health Insurance programs; MURPHY of New York; jointly, to the committees on Energy and Commerce and Ways and Means, Dec. 16.