

Tax Bill Signed; Funding, 340B Punted to January

Health Care Impact Review

December 22, 2017

The GOP scored a significant victory with President Trump signing the *Tax Cuts and Jobs Act* into law today. The law is not only a significant realignment of the US Tax Code; it also repeals the ACA's individual mandate. The House and Senate also passed legislation late Thursday to forestall the looming end-of-year government shutdown. The new funding deadline is January 19, 2018. The bill funded the CHIP program through March. But, government funding isn't the only issue that Congress put off until early next year. They must also address the proposed \$81 billion disaster relief package, CHIP reauthorization, Medicare extenders, ACA stabilization, the 340B program, disproportionate share hospital payments, raise the debt ceiling, and many other non-health care related deadlines. Below are highlights of the Republican tax bill as well as several bills and policies to address the issues that Congress must tackle when they return next year.

Republican Tax Overhaul

The House and Senate passed H.R. 1, the *Tax Cuts and Jobs Act*, and sent the \$1.5 trillion bill to the President (click [here](#) for bill text and various summaries) who signed it into law today. A 4% mandatory Medicare cut as required by PAYGO rules, which would offset \$25 billion in lost revenue from the tax package, were resolved by a waiver of the rules in the Continuing Resolution that passed yesterday.

Key Health Care Provisions in the Bill –

- Repeals the individual mandate starting in 2019. Click [here](#) for a very good analysis of what this may mean.
- Expands the medical expense deduction for 2017 and 2018 for medical expenses exceeding 7.5 percent of adjusted gross income. The threshold returns to 10 percent beginning in 2019.
- Continues and expands the deduction for charitable contributions
- Allows businesses to immediately write off the full cost of new equipment
- Preserves the Research & Development Tax Credit
- Retains the tax-preferred status of private-activity bonds
- Ends tax-preferred status for all new advance refunding bonds at the end of the year
- Implements a new 21% excise tax on nonprofits equal to the sum of (a) compensation in excess of \$1 million per year paid to the top-five highest paid employees of the organization, plus (b) excess parachute payments for the same employees. Certain types of compensation are excluded from the \$1 million limit – including the portion of compensation for licensed medical professionals for the direct performance of medical services. Further IRS guidance and/or regulation will be required for clarification on how this provision will ultimately be enforced.

According to Moody's Investors Service, the GOP tax bill has negative credit implications for nonprofit hospitals and health systems. Click [here](#). According to Moody's:

1. The repeal of the individual insurance mandate will cause the uninsured population to rise and raise uncompensated care costs, which will negatively affect healthcare organizations' operating margins and cash flow.

2. The tax plan's limits on tax-exempt refundings is negative for all issuers of tax-exempt debt, including nonprofit hospitals and health systems, as these financings have been used to reduce long-term borrowing costs and take advantage of lower interest rates.
3. The tax bill will slash the corporate tax rate to 21 percent from 35 percent. This change has negative implications for nonprofit hospitals and health systems, as it "makes tax-exempt bonds a less attractive investment for banks and other financial institutions, which will weaken demand, especially for direct bank loans and private placements."

Continuing Resolution

On December 21, Congress passed legislation to fund the government through January 19th without resolving many of the thorniest issues that they face. In addition to funding the government, the CR also reauthorized funding until March 31, 2018 for the Children's Health Insurance Program (CHIP), Community Health Centers, National Health Service Corps, graduate medical education, Veterans Choice, and the Special Diabetes Program.

- Click [here](#) for the bill language, and [here](#) for a section-by-section of the bill.
- House bill also includes funding for Veterans Choice Program, click [here](#).
- Senate sponsors of the ACA stabilization bill, Sens. Lamar Alexander and Susan Collins, announced earlier this week that they won't force Republican leaders to include the CSR funding and reinsurance provisions in the stopgap spending bill due to opposition from some Republican House Members. More on this debate from *The Hill*, click [here](#). These provisions are expected to be raised again in January as part of the next spending package.
- The tax bill could have triggered a \$150 billion cut in federal spending under PAYGO, including a \$25 billion cut to Medicare, but a waiver to the rules was included in the CR. For more on the PAYGO rule from the Congressional Budget Office, click [here](#).

340B Program

The 340B rule finalized by HHS earlier this year is slated to go into effect on Jan. 1st. The first hearing on the lawsuit brought by hospitals and associations was held December 21, 2017 and the judge indicated that he will decide on whether to issue a preliminary injunction to prevent the rule from going into effect before the end of the year. Congress is also reviewing 340B legislation that is likely to be considered in the mid-January spending package IF the court rules against the 340B position of hospitals.

- Pharma is making a huge push for new statutory "transparency" requirements that have not been vetted by anyone other than the pharmaceutical industry – in exchange for a one or two year delay in CMS' 340B payment cut.
 - Representatives Bucshon (R-IN) and Scott Peters (D-CA) introduced [legislation](#) that would halt new disproportionate share hospitals and new child sites from enrolling in the 340B program. Current participants in the program would also be required to report patients' insurance coverage and income, how much charity care they offer at child sites, and total reimbursement for 340B-discounted drugs.
- Leadership will soon meet with Rep. McKinley (R-WV), the lead sponsor of [legislation](#) to delay implementation of the 340B rule, and other Representatives to discuss this issue. McKinley and other supporters are advocating for the 2-year delay along with requirements that the Committees of jurisdiction over 340B will work on legislation to "modernize" the program. More than 150 Representatives have co-sponsored.

Medicare Extenders

While Congress provided funding for several Medicare extenders through March 2018 in the CR, a comprehensive, longer-term fix has remained elusive.

- The questions being debated are not about whether to extend the programs, but how to pay for them. Committee staff has stated that their goal is to use pay-fors from the groups who are benefiting from the extension of these programs.
- Congress has been working on a bipartisan agreement to extend certain Medicare programs for beneficiaries and providers that recently expired or will expire soon ([click here](#) to see the Ways and Means deal cut in November).
 - Included in the otherwise encouraging agreement is a provision that will cut reimbursement rates for CAH swing beds, something that would disproportionately hurt rural hospitals and communities.
 - Representatives Jenkins (R-WV) and O'Halleran (D-AZ) led a recent letter to the House Ways and Means Committee opposing changes to swing bed reimbursements. [Click here](#) for the letter signed by Reps. Jenkins, O'Halleran and 17 other Representatives.