

# Holland & Knight

Memorandum

Date: January 17, 2018

From: Holland & Knight

Re: Continuing Resolution Proposal to Extend Funding for the Federal Government

## Overview

On Jan. 16, Chairman of the House Appropriations Committee Chairman Rodney Frelinghuysen (R-N.J.) introduced a [continuing resolution](#) (CR), which would fund the federal government until Feb. 16. Congress has until Jan. 19 to agree to a proposal to extend funding for the government. Provided Congress sends an agreement to the President for his signature by the Jan. 19 deadline, Congress would then have less than 10 legislative days between both chambers to either draft an omnibus appropriations bill to fund the government through the end of Fiscal Year (FY) 2018 or draft and pass another CR to temporarily fund the government at slightly less than current levels to conform to spending caps under current law.

The current CR legislation introduced in the House also includes six years of funding for the Children's Health Insurance Program (CHIP), funding for which was extended in the previous CR to March 31, and further delays several tax provisions authorized under the Affordable Care Act. The inclusion of six years of CHIP funding was greatly aided by a recent Congressional Budget Office (CBO) assessment indicating that due to the repeal of the ACA's individual mandate in the tax legislation that passed late last year the cost of a five-year extension of CHIP would be reduced from \$8 billion to \$800 million. However, the CBO calculated that a six-year extension would be budget neutral, thus shifting CHIP funding from a five- to a six-year renewal.

In addition, while advocates were targeting the CR as a possible vehicle for reauthorization of several crucial Medicare "extenders" (see below), such extensions are not part of the CR package at this time, due in part to disagreements of how to offset the cost of such extensions. Thus, Congress will have to look ahead to Feb. 16 as the next opportunity to reauthorize these extenders. The House Ways and Means Committee published a bipartisan [proposal](#) to extend these provisions on Nov. 15, 2017. If extension of these provisions are delayed beyond the Feb. 16 deadline, passage of any measure that provides an extension retroactive to Jan. 1 would require many claims under federal health insurance programs to be resubmitted, generating significant burden for federal health agencies.

The legislation already faces an uphill battle in the House of Representatives, where members of the House Freedom Caucus have already announced their informal opposition to the measure citing the need for an increase in defense spending, thus requiring Democratic votes to garner the necessary 218 votes for passage. However, as of Jan. 17 House Democrats will not vote for the measure putting its passage in doubt. In the Senate, nine Democrats must join their Republican colleagues in order to pass a short-term spending measure. Democrats in both chambers have signaled their opposition to a measure that does not include some extension or action on the Deferred Action for Childhood Arrivals (DACA) program.

## Summary of CR Provisions

### *Children's Health Insurance Program (CHIP)*

The CR provides a six-year extension of funding for the CHIP, to include \$21.5 billion for FY 2018 and increasing to \$25.9 billion by FY 2023. CHIP received \$19.3 billion and \$20.4 billion respectively for FYs 2016 and 2017. Given that the previous CR extended CHIP funding through March 31, any unobligated funds from such an extension would be rescinded, with the funding proportionally reduced in FY 2018 depending on how much funding has already been allotted since Dec. 21 (the date that the last CR was signed into law). The bill would also provide an 11.5 percentage

point increase in the federal CHIP matching rate for FY 2020 (the current increase of 23 percentage points was authorized under the ACA and expires in 2019). The maintenance-of-effort requirement would also be extended through FY 2023, though only for children whose family income is less than 300 percent of the federal poverty level.

The CR also extends through 2023:

- The Child Enrollment Contingency Fund
- The Medicaid and CHIP “express lane,” which streamlines CHIP and Medicaid enrollment based on enrollment in other federal programs
- The Childhood Obesity Demonstration Project (\$30 million for FYs 2018-2023)
- The Pediatric Quality Measures Program (\$90 million for FYs 2018-2023)
- Outreach and enrollment grants for parent mentors to guide new enrollees through the enrollment process (\$120 million for FYs 2018-2023)

#### *Medicaid Improvement Fund*

The CR would include \$980 million in funding for the Medicaid Improvement Fund.

#### *ACA Taxes*

The CR would delay three taxes authorized under the ACA, including:

- A two-year delay of the 2.3 percent medical device sales tax (2018 and 2019)
- An additional two-year delay of the “Cadillac” tax on high-cost insurance plans (until 2022)
- A one-year suspension of the tax on health care insurers (2019)

#### **Other Health Issues of Note Not Addressed in CR**

##### *Community Health Center (CHC) Funding*

\$550 million in funding for CHCs through March 31 (Q2 of FY 2018) was included as part of the previous CR, which was signed into law on Dec. 22. Both Republicans and Democrats are generally supportive of the CHC program.

The Dec. 22 CR also provided through March 31 \$65 million for the National Health Service Corps, \$15 million for Teaching Health Center Graduate Medical Education, and \$37.5 million for the Special Diabetes Program for Type 1 Diabetes. \$37.5 million for the Special Diabetes Program for Indians was provided for Q2 of FY 2018 only.

##### *Disproportionate Share Hospital (DSH) Reductions*

The CR does not include a delay to cuts to the Medicaid DSH program. Such cuts would total nearly \$2 billion in FY 2018 without additional congressional action. Hospitals that primarily service safety net populations have advocated for at least a two-year delay to DSH cuts to be included as part of any short-term CR. A two-year delay to the DSH cuts was included as part of the *CHAMPIONING HEALTHY KIDS Act* (H.R. 3922), which passed the House on Nov. 3, but was not addressed in the Senate.

##### *340B Drug Pricing Program*

In late 2017, the Centers for Medicare and Medicaid Services (CMS) finalized a rule that would reduce Medicare outpatient prospective payment system (OPPS) reimbursement for separately payable drugs purchased by 340B hospitals (i.e. public and non-profit hospitals eligible for discounts on outpatient prescription drugs) by 28.5 percent. Potential congressional action on the issue chilled as multiple hospital associations jointly filed suit against the Department of Health and Human Services (HHS) to halt implementation of the rule. However, in December the U.S. District Court for the District of Columbia granted the government’s motion to dismiss the lawsuit, with the reduced payment rates to take effect Jan. 1. The hospital industry has looked to include a delay to these reductions of one to two years in CR negotiations in return for various statutory requirements. However, such a delay was not included in this CR and may be discussed in future funding discussions.

## **Additional Background**

Funding for the federal government was originally expired on Sept. 30, 2017 unless Congress passed a CR or passed an FY 2018 omnibus appropriations bill. Congress subsequently passed CRs to fund the federal government through Dec. 8, 2017, Dec. 22, 2017, and Jan. 19, 2017. The current CR extends funding for several anomalies included in previous CRs, including funding for the National Flood Insurance Program, intelligence activities via emergency missile defense funding, the Child Nutrition Programs, among others. Any omnibus funding legislation would require an additional congressional step to increase discretionary spending caps under the law for FYs 2018 and 2019.

### **Medicare “Extenders”:**

- Medicare Dependent Hospital Program and Low-Volume Adjustment Program
- Home rural health add-on
- Medicare geographic payment cost index for physicians
- Ground ambulance add-ons
- Reauthorization of special needs plans
- Extension of State Health Insurance Assistance Programs
- Funding extension for consensus-based entity work on quality measures
- Extension of exceptions process to caps on incurred expenses for outpatient therapy services under Medicare Part B

### **Additional Resources from the House Appropriations Committee**

[CR Text](#)

[CR Section-by-Section](#)