



1899 L Street, NW, Suite 1200  
Washington, DC 20036

T 202.822.8282  
F 202.296.8834

HOBBSSTRAUS.COM

September 26, 2019

## GENERAL MEMORANDUM 19-012

### House and Senate Approve FY 2020 Continuing Resolution through November 21; President expected to Sign the Bill

The House and Senate have approved HR 4378, a Continuing Resolution (CR) to fund the federal government through November 21, 2019, at largely FY 2019 terms and spending levels. The White House has indicated that the President will sign the bill. The CR is designed to give Congress leeway to continue negotiating the FY 2020 spending bills even after the beginning of the new fiscal year (October 1, 2019). None of the twelve FY 2020 appropriations bills have been enacted. As of this writing the House had approved all but two of its appropriations bills, including passage of the Interior, Environment and Related Agencies bill. The Senate has yet to finish any of its appropriations measures, although the Senate Appropriations Committee has marked up its version of the Interior, Environment and Related Agencies bill. We will provide a comparison of the House and Senate Interior bills as they go to conference.

It has unfortunately become the norm that federal agencies are funded for periods of time for under CRs, limiting their ability to plan and wasting time on constant reallocation of funds. Tribes and tribal organizations are directly affected in the same manner. The Consolidated Appropriations Act for FY 2019 was signed four and a half months into the fiscal year. The House Natural Resources Subcommittee on Indigenous Peoples of the United States held a hearing on September 25, 2019, regarding pending bills (HR 1128 and HR 1135) which would authorize advance appropriations for some areas of the Indian Health Service (IHS) and/or the Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) budgets. (The Senate companion bills are S 229 and S 2541, respectively). There was considerable testimony about the problems caused by federal agencies having to operate under the restrictions of CRs.

In addition to the CR, the following "anomalies" are included in HR 4378:

- Extension of funding for the Special Diabetes Program for Indians, Community Health Centers Fund, National Health Service Corps, and the Teaching Health Center Graduate Medical Education Program through November 21, 2019, all of which were facing expiring authorizations on October 1, 2019;
- Extension of funding for the Temporary Assistance for Needy Families Program (TANF) and the Health Profession Opportunity Grant demonstration program through November 21, 2019, which also faced expiration of their authorizations on October 1, 2019;
- Extension through November 21, 2019, of the Alaska moratorium provision that, with some exceptions, prohibits IHS from contracting directly under the Indian Self-

Determination and Education Assistance Act (ISDEAA) with any tribe that is a member of a regional tribal health organization;

- The bill also addresses in the Indian Health Service budget the staffing and operation needs for facilities that were opened, renovated or expanded in FYs 2019 and 2020, providing \$18,397,500 in the Services account and \$631,000 in the Facilities account. In the Administration's request for anomalies for the CR they listed the Cherokee Nation Regional Health Center and the Northern California Youth Regional Treatment Center as the facilities to receive these funds; and
- The Census Bureau will be able to increase its rate of spending in preparation for the 2020 Census.

As is common in CRs, the funds will not be distributed for programs that may have high initial rates of operation or for funds which are fully distributed at the beginning of the fiscal year. This is because of the possibility that Congress might eliminate or reduce funding for those particular programs in a final appropriations bill. The CR directs agencies to use the most limited funding action permitted in the Act in order to provide for continuation of projects and activities. Agencies will be allowed to apportion funds in a manner that would avoid furloughing employees.

Attached is an 8-page section- by-section summary of the CR as prepared by the House Appropriations Committee.

We will continue to follow developments on FY 2020 appropriations.

Please let us know if we may provide additional information about FY 2020 appropriations.

###

Inquiries may be directed to:

Karen Funk ([kfunk@hobbsstrauss.com](mailto:kfunk@hobbsstrauss.com))

Moriah O'Brien ([mobrien@hobbsstrauss.com](mailto:mobrien@hobbsstrauss.com))



## **H.R. 4378, Continuing Appropriations Act, 2020, and Health Extenders Act of 2019** *Section-by-Section Summary*

### **DIVISION A – CONTINUING APPROPRIATIONS**

#### **Section 101. Extension of FY 2019 Funding, with Exceptions.**

Section 101 appropriates funding at the levels provided in fiscal year 2019 appropriations bills, with exceptions to:

- ensure the Department of Agriculture can operate rural water and waste loan programs;
- prevent a rescission within the Department of Justice;
- prevent a one-time appropriation to the Bureau of Reclamation from recurring;
- extend certain immigration authorizations; and
- prevent certain funding for Ebola activities in the Department of State and USAID from being repurposed for other activities.

#### **Section 102. Prevention of New Multi-Year Activities at DOD, with Limited Exceptions.**

Section 102 prevents the Department of Defense from beginning new multi-year activities during the period of the CR with limited exceptions.

#### **Section 103. Same Terms and Conditions for Continuing Appropriations as FY 19 bills.**

Section 103 states that appropriations are under the same terms and conditions, including relevant authorities and prohibitions, as the fiscal year 2019 appropriations bills.

#### **Section 104. Prevention of New Starts and Activities Outside DOD.**

Section 104 prevents new starts and activities outside the Department of Defense.

#### **Section 105. Technical Budget Matter.**

Section 105 contains technical budget matter identifying appropriations in the Continuing Resolution as the most appropriate funding with which to conduct fiscal year 2020 activities and programs.

#### **Section 106. End Date of CR.**

Section 106 provides that the CR ends at the earlier of the enactment of a full-year appropriations bill or November 21, 2019.

#### **Section 107. Requirement to Charge CR Spending to Enacted Full-Year Appropriations Bill.**

Section 107 requires that spending under the CR should be charged to the full-year appropriations bill when such bill is enacted.

### **Section 108. Daily Spending Rate for Agency Operations.**

Section 108 provides agencies with a daily rate for operations unless Congress allows them to spend funds more quickly.

### **Section 109. Expenditures for Grant Programs and Similar Payments.**

Section 109 prevents agencies from spending money too quickly for grant programs and similar payments, language needed because Congress has not made final funding determinations.

### **Section 110. Reiterating That Funding Should be Spent in the Most Limited Manner Possible.**

Section 110 reiterates that funding should be spent in the most limited manner possible, language needed because Congress has not made final funding determinations.

### **Section 111. Operations of Mandatory Programs and Appropriated Entitlements.**

Section 111 states that mandatory programs and appropriated entitlements should operate as normal. In the case of a government shutdown, provides some of those programs with an additional 30 days beyond November 21, 2019 to operate.

### **Section 112. Restrictions on Furloughs or Termination of Employees.**

Section 112 restricts furloughs or termination of employees due to lack of funds during the duration of a CR.

### **Section 113. Waiver Language for Intelligence Programs.**

Section 113 provides waiver language for certain intelligence programs as well as agencies that operate under the State Department Basic Authorities Act and Foreign Relations Authorization Act.

### **Section 114. Specially Designated Funds Including OCO, Disaster, Emergency.**

Section 114 dictates that specially designated funds (OCO, disaster, emergency, etc.) in fiscal year 2019 appropriations bills should be considered the same type of funding.

### **Section 115. Directions for OMB and Agencies on Executing a CR.**

Section 115 directs OMB and agencies to execute a CR by accounting for the levels provided to them by this CR inclusive of any rescissions that were in last year's bills.

### **Section 116. Reimbursements for Processors of Commodities for Disaster-Associated Losses.**

Section 116 concerns sugar beet processor co-ops and allows the Department of Agriculture to use funds provided by the recently enacted disaster supplemental to reimburse certain processors of commodities for losses associated with the relevant disasters.

### **Section 117. Specialty Crop Research Initiative Grants.**

Section 117 allows the Secretary of Agriculture to waive certain matching fund requirements for recipients of Specialty Crop Research Initiative grants.

### **Section 118. Permitting Expeditious Expenditure of Summer EBT Program Funds.**

Section 118 allows the Summer EBT program in the Department of Agriculture to spend more quickly to get ready for next year.

### **Section 119. Commodity Credit Corporation.**

Section 119 allows the Commodity Credit Corporation to be replenished for net realized losses sustained in fiscal year 2019, as of September 17, 2019, and requires certain reports to Congress on the Corporation's activities and the trade damage to agricultural producers.

### **Section 120. Increasing Agricultural Marketing Service Funding.**

Section 120 increases the funding available to the Agricultural Marketing Service during the period of the continuing resolution to allow that agency to ramp up efforts to meet programmatic changes included in section 10113 of the Agriculture Improvement Act of 2018.

### **Section 121. Permitting USITC to Ramp Up Efforts Toward Meeting American Manufacturing Competitiveness Act of 2016 Mandates.**

Section 121 allows the International Trade Commission to ramp up efforts toward meeting congressional mandates under the American Manufacturing Competitiveness Act of 2016.

### **Section 122. Permitting Census Bureau to Ramp Up 2020 Census Preparations.**

Section 122 allows the Census Bureau to ramp up preparations for the 2020 Decennial Census.

### **Section 123. DOD Background Investigation Services to the Federal Government.**

Section 123 enables the Department of Defense to provide background investigation services to the federal government by exempting activities billed in advance from counting toward the statutory cap on Defense Working Capital Funds for these types of transactions.

### **Section 124. Extension of Funding for Ukraine Security Assistance Initiative.**

Section 124 extends for another year funding for the Ukraine Security Assistance Initiative that would otherwise expire after September 30.

### **Section 125. Ensuring Retention of DOE Funding for Future Use.**

Section 125 ensures the Department of Energy retains funding for use in future fiscal years.

### **Section 126. Extension of Dates in Calfed Bay-Delta Authorization Act**

Section 126 extends dates in the Calfed Bay-Delta Authorization Act.

### **Section 127. Providing an Initial Appropriation for Committee on Foreign Investment in the United States Fund.**

Section 127 provides an initial appropriation for the Committee on Foreign Investment in the United States Fund established under the Foreign Investment Risk Review and Modernization Act of 2018.

## **Section 128. District of Columbia Expenditures of Local Funds.**

Section 128 allows the District of Columbia to spend local funds under a CR in line with its approved budget for the current fiscal year, not the prior fiscal year.

## **Section 129. Providing Additional Funding for OPM to Account for Previously Collected Fees.**

Section 129 provides additional funding for the Office of Personnel Management to account for certain fees it no longer collects because the activities have been moved outside of its jurisdiction.

## **Section 130. Providing an Appropriation to Ensure Operation of SBA's 7(a) Loan Program.**

Section 130 provides an appropriation to ensure the Small Business Administration can operate its 7(a) loan program.

## **Section 131. Providing an Appropriation to Ensure Operation of SBA's Disaster Loan Program and to Consider Such Funding as Disaster Relief.**

Section 131 provides an appropriation to ensure the Small Business Administration can operate its disaster loan program and to consider such funding as disaster relief.

## **Section 132. Permitting Expeditious Expenditure of Funds for Secret Service Security Needs for 2020 President Campaign.**

Section 132 allows the Secret Service to spend more quickly to prepare for security needs related to the 2020 presidential campaign.

## **Section 133. Permitting Expeditious Expenditures from FEMA Disaster Relief Fund to Effectively Respond to Disasters.**

Section 133 allows the Federal Emergency Management Agency Disaster Relief Fund to spend as quickly as it needs to in order to effectively respond to disasters.

## **Section 134. Extension of National Flood Insurance Program.**

Section 134 extends the National Flood Insurance Program through November 21, 2019.

## **Section 135. Restructuring of the DHS Working Capital Fund.**

Section 135 restructures the Department of Homeland Security Working Capital Fund.

## **Section 136. Expenditures of Indian Health Service Funds.**

Section 136 allows the Indian Health Service to spend more and more quickly to account for changes in the number of facilities for which it is responsible.

## **Section 137. Permitting Continuation of HHS Organizational Structure Changes Regarding Administration of Strategic National Stockpile.**

Section 137 allows the Department of Health and Human Services to maintain changes in organizational structure regarding the administration of the Strategic National Stockpile.

### **Section 138. Funding to Respond to the Ebola Outbreak in Africa.**

Section 138 makes available and allows the transfer of funding to respond to the Ebola outbreak in Africa.

### **Section 139. Extension of Authorization for National Advisory Committee on Institutional Quality and Integrity.**

Section 139 extends the authorization for the National Advisory Committee on Institutional Quality and Integrity through November 21, 2019.

### **Section 140. Expenditure of VA Funds Related to Enactment of Blue Water Navy Vietnam Veterans Act of 2019.**

Section 140 allows the Department of Veterans Affairs to spend more quickly to full fund programs affected by the enactment of the Blue Water Navy Vietnam Veterans Act of 2019 (Public Law 116–23).

### **Section 141. Extension of Authorization for Export-Import Bank.**

Section 141 extends the authorization for the Export-Import Bank through November 21, 2019.

### **Section 142. Extension of Authorization for U.S. Commission on International Religious Freedom.**

Section 142 extends the authorization for the U.S. Commission on International Religious Freedom through November 21, 2019.

### **Section 143. Technical Change Related to DOT Grants.**

Section 143 is a technical change to address a timing issue for Department of Transportation grants.

### **Section 144. Preventing Drastic DOT Cuts to Funding Based on Status of Mass Transit Account of the Highway Trust Fund.**

Section 144 prevents the Department of Transportation from drastically cutting transit funding based on the status of the Mass Transit Account of the Highway Trust Fund.

### **Section 145. Permitting Expedient Expenditure of HUD Funds to Maintain Project Rental Assistance and Renew Expiring Contract for Housing for the Elderly.**

Section 145 allows the Department of Housing and Urban Development to spend more to maintain project rental assistance and renew expiring contracts for Housing for the Elderly.

## **DIVISION B – HEALTH AND HUMAN SERVICES EXTENDERS AND OTHER MATTERS**

### ***TITLE I- PUBLIC HEALTH EXTENDERS***

#### **Section 1101. Extension for Community Health Centers, the National Health Service Corps, and Teaching Health Centers that Operate GME Programs.**

Section 1101 extends the Community Health Centers Fund through November 21, 2019. Additionally, Section 1101 extends funding through November 21, 2019 at current levels for the National Health Service

Corps and the Teaching Health Center Graduate Medical Education program, two health care workforce programs that provide resources to support the training of health providers in underserved areas.

### **Section 1102. Diabetes Programs.**

Section 1102 extends funding through November 21, 2019 for the Special Diabetes Program, which supports research on the prevention and cure for Type 1 diabetes, and the Special Diabetes Program for Indians, which provides funds for diabetes treatment and prevention to the Indian Health Service, Tribal, and Urban Indian Health programs.

## ***TITLE II- OTHER HEALTH EXTENDERS***

### **Section 1201. Extension of Sexual Risk Avoidance Program.**

Section 1201 extends funding through November 21, 2019 for the Sexual Risk Avoidance Education grant program, which provides grants to implement programs that educate adolescents on relationships, resisting sexual coercion, and abstaining from sexual activity.

### **Section 1202. Extension of Personal Responsibility Education Program.**

Section 1202 extends funding through November 21, 2019 for the State Personal Responsibility Education Program, which provides grants to fund evidence-based education programs that inform adolescents about the prevention of teen pregnancy and sexually-transmitted infections, among other topics.

## ***TITLE III- MEDICAID EXTENDERS***

### **Section 1301. Extension of Community Mental Health Services Demonstration Program.**

Section 1301 extends the authorization of the Certified Community Behavioral Health Clinic demonstration program to run through November 21, 2019. The demonstration allows eight states to deliver comprehensive mental and substance use disorder treatment to Medicaid beneficiaries at an enhanced provider rate.

### **Section 1302. Temporary Increase in Federal Medical Assistance Percentage for Territories Under Medicaid Program.**

Section 1302 extends the current 100 percent Federal Medical Assistance Percentage (FMAP) for the territories through November 21, 2019.

### **Section 1303. Delay of Reductions in Medicaid DSH Allotments.**

Section 1303 delays the reduction in the allotments for Medicaid disproportionate share hospitals (DSH) through November 21, 2019. Without this delay, Medicaid DSH allotments will decrease by \$4 billion, effective October 1, 2019.

## ***TITLE IV- MEDICARE EXTENDERS***

### **Section 1401. Extension of Funding for Quality Measure Endorsement, Input, and Selection.**

Section 1401 extends funding through November 21, 2019 for a contract with a consensus-based entity, such as the National Quality Forum (NQF), to support activities related to quality measurement and performance improvement in the Medicare and Medicaid programs.

## **Section 1402. Extension of Funding Outreach and Assistance for Low-Income Programs.**

Section 1402 extends funding through November 21, 2019 for State Health Insurance Assistance Programs, Area Agencies on Aging, Aging and Disability Resource Centers, and the contract with the National Center for Benefits and Outreach and Enrollment. These programs support outreach, enrollment, and education activities for low-income Medicare beneficiaries.

## **Section 1403. Extension of Appropriations and Transfers to the Patient-Centered Outcomes Research Trust Fund; Extension of Certain Health Insurance Fees.**

Section 1403 extends the ability for the Patient-Centered Outcomes Research Institute (PCORI) to receive funding from the Patient-Centered Outcomes Research Trust Fund through November 21, 2019. PCORI is a publicly funded non-profit organization which invests in comparative clinical effectiveness research, which compares at least two alternative health care options.

## ***TITLE V- HUMAN SERVICES EXTENDERS***

### **Section 1501. Extension of Demonstration Projects to Address Health Professions Workforce Needs.**

Section 1501 extends funding for the Health Profession Opportunity Grant (HPOG) demonstration through November 21, 2019. In fiscal year 2020, local HPOG grantees will enter the fifth year of demonstration grants which require them to use a career pathways approach to help disadvantaged workers enter health professions in need of workers. In addition to the grants, HPOG funding supports rigorous evaluation and technical assistance to grantees.

### **Section 1502. Extension of the Temporary Assistance for Needy Families Program and Related Programs.**

Section 1502 extends funding for the Temporary Assistance for Needy Families program (TANF), the Child Care Entitlement to States (CCES) and related programs, including the TANF Contingency Fund through November 21, 2019 without any policy changes. The extension will allow the Department of Health and Human Services to make first-quarter payments to states.

## ***TITLE VI- MISCELLANEOUS POLICIES***

### **Section 1601. Alaska Native Regional Health Entities.**

Section 1601 clarifies that Alaska Native regional health entities may receive disbursements from the Indian Health Service for purposes of providing health care services to Alaska Native Villages or Alaska Native Village corporations within their service areas.

### **Section 1602. Increasing Numerical Limitations of the World Trade Center Health Program.**

Section 1602 increases the number of eligible enrollees in the World Trade Center Health Program, which provides medical care for first responders and survivors affected by World Trade Center related conditions and diseases. The current numerical limits for eligible first responders and survivors are 25,000 each. Section 602 would increase the respective limits to 75,000 each.

### **Section 1603. Excluding Authorized Generic Drugs from Calculation of Average Manufacturer Price for Purposes of the Medicaid Drug Rebate Program; Excluding Manufacturers from Definition of Wholesaler.**

Section 1603 implements the MACPAC recommendation to exclude a manufacturer's authorized generic drug price from the average manufacturer price (AMP) of its brand product. It also removes

manufacturers from the definition of “wholesaler” in the Medicaid Drug Rebate Program. These two changes will ensure that prices used to calculate brand drug AMP and its associated Medicaid rebates more accurately reflect the price of those drugs.

**Section 1604. Medicaid Improvement Fund.**

Section 1604 increases the Medicaid Improvement Fund to \$2.387 billion, to be available beginning fiscal year 2025 to fund state improvements to their mechanized claims systems.

***TITLE VII- BUDGETARY EFFECTS***

**Section 1701. Budgetary Effects.**

Section 1701 is a technical provision to exempt the budgetary totals from being entered on the Senate or statutory Pay-As-You-Go scorecards.