At this point, we are in the middle of a “government shutdown.”

The strategy for developing a compromise of the continuing resolution (CR) has been to send competing proposals back and forth between the House and the Senate. The House began the negotiations on September 20 by sending HJ Res 59 (by a vote of 230-189) with the following provisions: (1) changes to the Full Faith and Credit Act (FFCA), stating that creditors would be paid first, with military and federal civilian paychecks, disabled veterans’ checks, Medicare payments to doctors, school lunch programs and other government debts ranking lower; (2) provision to defund the Affordable Care Act (ACA); (3) an annualized funding limit of $986.3 billion; and (4) continuation of the CR through December 15, 2013.

The Senate accepted the annualized funding amount but rejected the changes to the FFCA and ACA. In addition, the Senate changed the date of the CR from December 15, 2013 to November 15, 2013. On September 27, by a vote of 54-44, the Senate sent the amended HJ Res 59 to the House.

The House responded on September 29, with an amendment detailing three key changes: (1) change the date of the CR back to December 15, 2013; (2) a one year delay in the Affordable Care Act (ACA); and (3) repeal of the medical device tax.

On Monday afternoon, September 30, by a party-line vote of 56-44, the Senate tabled the amendment, effectively forcing the House to once again respond.

During the early evening of September 30, the House sent another amendment by a vote of 228-201, which would (1) delay the individual mandate of the ACA by one year and (2) eliminate the Federal contribution for members and their staff who receive their health insurance through the Exchange.

Around 9 pm on September 30, the Senate, by a party-line vote of 56-44, tabled the latest House amendment, effectively forcing the House to once again respond.

At this time, it is unclear how and when the House will respond to the latest volley.

Note: The CR does not directly address the need to raise the current debt limit. Obama Administration officials have noted that the debt ceiling would likely need to be raised by mid-October.
**When did the government shutdown begin? How long would it last?**
Fiscal year 2014 began at midnight on October 1, 2013. It is unclear at this time how long it would last. The longest government shutdown lasted 21 days from December 16, 1995 until January 6, 1996.

**What are some key dates?**
- October 1, 2013 – Beginning of fiscal year 2014
- October 17, 2013 – Projected date for the need to increase the debt limit
- November 15, 2013 – When the Senate CR would end
- December 15, 2013 – When the House CR would end
- January 1, 2014 – Sequestration order would likely need to occur, given the increased appropriations outlined in the CR (at fiscal year 2013 levels, not fiscal year 2014 levels)

**What is a government shutdown?**
When federal agencies and programs lack congressionally appropriated funding, they experience a funding gap. Under the Antideficiency Act, they must cease operations, except in certain emergency situations or when the law authorizes continued activity. Failure of the President and Congress to reach agreement on interim or full-year funding measures has occasionally caused government shutdowns.

**What is a funding gap? Why does it matter?**
If interim or full-year appropriations are not enacted into law, the time interval in which agency appropriations are not enacted is referred to as a “funding gap.” When a funding gap occurs, the federal government begins a “shutdown” of the affected activities, including the furlough of certain personnel and curtailment of agency activities and services. Programs that are funded by laws other than annual appropriations acts (e.g., Social Security funding and Medicare spending) also may be affected by a funding gap, if program execution relies on activities that receive annually appropriated funding.

**When have government shutdowns occurred?**
Six fairly lengthy government shutdowns occurred from FY 1977 to FY 1980, ranging from 8 to 17 full days. From FY 1981 to FY 1995, nine government shutdowns occurred with durations of up to three days. In FY 1996, there were two government shutdowns – (1) five full days between November 13 and 19, 1995; and (2) the longest government shutdown, which lasted 21 days from December 16, 1995 until January 6, 1996. There have been no similar government shutdowns since FY 1996.

**What has happened in previous government shutdowns?**
Government shutdowns have necessitated furloughs of several hundred thousand federal employees, required cessation or reduction of many government activities, and affected numerous sectors of the economy.

**What effect did the FY 1996 shutdowns have on the health care sector?**
Although the implications of a future shutdown would not necessarily reflect past experience, past events may be illustrative. For example, during the FY 1996 shutdowns, the National Institutes of Health (NIH) clinical center could no longer accept new patients into clinical research trials; the Centers for Disease Control and Prevention (CDC) ceased disease surveillance; and hotline calls to NIH concerning diseases were not answered. In addition, over 20% of Washington, DC area contracts (or $3.7 billion of a total $18 billion) were affected adversely by the government shutdown.
When was the last threat of a government shutdown? What happened then?
On Friday, April 8, 2011, an hour before a government shutdown was slated to begin (at midnight on Saturday, April 9, 2011), a last-minute deal -- literally last-minute -- was reached to keep the government open with a short-term spending bill, known as a continuing resolution (CR), until September 2011.

What is the distinction between a government shutdown and a debt limit impasse?
In a government shutdown situation, Congress and the President do not enact interim or full-year appropriations for an agency. In this case, the agency does not have budget authority to obligate funds towards things like salaries or rent. As a consequence, the agency must shut down certain activities until budget authority is provided.

In a debt limit impasse, by contrast, the government no longer has the ability to borrow to finance its obligations. As a result, the federal government would need to rely solely on incoming revenues to finance obligations. If this occurred during a period when the federal government was running a deficit, an agency may continue to obligate funds, but the Treasury Department may not be able to liquidate all obligations, which may result in delays in federal payments and disruptions in government operations.

Which individuals cannot be subject to a furlough?
Among the Executive Branch, the President, Presidential employees, and “excepted” Federal employees would not be subject to a furlough. Among the Legislative branch, members of Congress and “essential” employees are not furloughed. Among the Judicial branch, judges, core court staff, and pretrial services officers would not be furloughed. (Note: If a government shutdown had occurred in FY 2013, the judiciary would have continued to operate using funds derived from court filing and other fees and no-year appropriations, which are available for obligations without fiscal year limitation and until fully expended. The judiciary estimated that these funds, if used cautiously, could have sustained judiciary activities for approximately 10 working days after an appropriations lapse.)

What are “retained,” “excepted” or “essential work” employees? How are they treated?
According to the White House Office of Management and Budget (OMB), “retained” employees are exempted from furlough during a shutdown. The Office of Personnel Management (OPM) defines federal agency “excepted” employees as those who are required to work during a shutdown, despite being funded through annual appropriations, because they are either performing duties “authorized by law” or for the “safety of human life and protection of property.” Thus, “retained” or “excepted” employees must still report to work, despite the government shutdown, but would not receive pay during the shutdown but would likely be paid after the shutdown has ended. In contrast, while “essential work” employees within the judiciary would be required to report to work in a non-pay status, Supreme Court Justices, federal courts of appeals and district courts judges, U.S. Claims Court judges, U.S. magistrate judges, and U.S. bankruptcy judges would continue to be paid during a lapse in appropriations.

What are “released” employees? How are they treated?
Employees who are subject to a “shutdown furlough” are considered “released” and placed in a temporary, non-duty, non-pay status. Federal employees who have been furloughed under a shutdown historically have received their salaries retroactively, but there is no guarantee of receiving such pay.
What is the effect of a government shutdown on mandatory programs, such as Medicare?

Programs that are funded by laws other than annual appropriations acts (e.g., Social Security and Medicare) may or may not be affected by a government shutdown. Although the funds needed to make payments to beneficiaries may be available automatically pursuant to permanent appropriations, the payment may be processed by employees who are paid with funds provided in annual appropriations acts. In such circumstances, at least some of these employees would be subject to a furlough and, as such, the processing of payments may be delayed.

What about the effect on Medicare? As a Medicare physician, will I still get paid?

The latest information related to contingency planning states that “[i]n the short term, the Medicare Program will continue largely without disruption during a lapse in appropriations.” Therefore, Medicare claims from physicians probably will be processed and paid, based on reassurances given to organized medicine, information from the latest contingency planning, and what happened during the last shutdown. During the FY 1996 shutdowns, Medicare continued to pay physicians and hospitals, despite the fact that Medicare Administrative Contractors (MACs) receive discretionary funding to process claims. During the FY 1996 shutdowns, MACs processed and paid claims on a credit basis for the Centers for Medicare and Medicaid Services (CMS), with the expectation of catching up later. However, it is unclear how long MACs would extend credit to the federal government. During a Congressional hearing on the November 1995 shutdown, an official from the Department of Health and Human Services (HHS) warned that MACs “would have to cease Medicare payments if their cash ran out due to a longer hiatus.” That same hearing revealed that the OMB and HHS had begun formulating contingency plans for a July 1995 shutdown, roughly 5 months in advance. That contingency planning is still in place.

Previously, delays in Medicare payments were mitigated due to contingency planning. Is that contingency planning in place now?

The latest information related to contingency planning states that “[i]n the short term, the Medicare Program will continue largely without disruption during a lapse in appropriations.”

How many employees from the HHS could be furloughed? When would the furlough begin?

According to the latest contingency information available, 40,512 staff (or 52%) would be furloughed and 37,686 staff (or 42%) would be retained as of day two of a government shutdown. The percentages vary among HHS agencies and offices, with grant-making and employee-intensive agencies (e.g., Substance Abuse and Mental Health Services Administration or SAMHSA and the Agency for Healthcare Research and Quality or AHRQ) having the vast majority of their staff on furlough, and agencies with a direct service component (e.g., Indian Health Services or IHS) having most of their staff retained.
**What about the Food and Drug Administration (FDA)? How would those employees be affected?**

FDA would continue limited activities related to its user fee funded programs including the activities in the Center for Tobacco Products. FDA would also continue select vital activities including maintaining critical consumer protection to handle emergencies, high-risk recalls, civil and criminal investigations, import entry review, and other critical public health issues.

Approximately half of FDA’s staff would be excepted (not furloughed) for the protection of human life. The 698 FDA excepted staff include 578 staff to inspect regulated products and manufacturers, conduct sample analysis on products and review imports offered for entry into the U.S. This number includes active investigators who will be needed to perform inspections, recall operations, emergency response, review import entries and make admissibility decisions. The remaining 120 staff would be conducting and overseeing adverse event reporting and lot release protocol reviews as well as providing support with surveillance, product incidents, compliance, recalls, and emergencies.

FDA will be unable to support the majority of its food safety, nutrition, and cosmetics activities. FDA will also have to cease safety activities such as routine establishment inspections, some compliance and enforcement activities, monitoring of imports, notification programs (e.g., food contact substances, infant formula), and the majority of the laboratory research necessary to inform public health decision-making.

The requirement to pay user fees should be unaffected by a government shutdown.

**What about the Assistant Secretary for Preparedness and Response (ASPR)?**

According to the latest contingency information available, ASPR would continue to maintain minimal readiness and limited staffing for all-hazards preparedness and response operations including the Secretary’s Operations Center, the National Disaster Medical System, and specialized medical countermeasure response under the safety of human life exception.

ASPR would be unable to fund activities related to medical countermeasures against chemical, biological, radiological, nuclear, and emerging threats, the Hospital Preparedness Program, and fully staff the National Disaster Medical System. Additionally, the potential assistance to Colorado in recovering from recent unprecedented flooding and the preparation to respond to H7N9 influenza or MERS incident could be delayed.

**What about the National Institutes of Health (NIH)?**

According to the latest contingency information available, the NIH would continue patient care for current NIH Clinical Center patients, minimal support for ongoing protocols, animal care services to protect the health of NIH animals, and minimal staff to safeguard NIH facilities and infrastructure. NIH would not admit new patients (unless deemed medically necessary by the NIH Director), or initiate new protocols, and would discontinue some veterinary services. NIH will not take any actions on grant applications or awards.

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What about the Centers for Medicare and Medicaid Services (CMS)?

According to the latest contingency information available, the CMS will continue large portions of ACA activities, including coordination between Medicaid and the Marketplace, as well as insurance rate reviews, and assessment of a portion of insurance premiums that are used on medical services. In the short term, the Medicare Program will continue largely without disruption during a lapse in appropriations. Additionally, other non-discretionary activities including Health Care Fraud and Abuse Control, Center for Medicare & Medicaid Innovation, and Pre-existing Condition Insurance Plan activities would continue. States will have funding for Medicaid on October 1, due to the advanced appropriation enacted in the FY 2013 appropriations legislation, as well as for the Children’s Health Insurance Program (CHIP).

CMS would be unable to continue discretionary funding for health care fraud and abuse strike force teams resulting in the cessation of their operations. Fewer recertification and initial surveys for Medicare and Medicaid providers would be completed, putting beneficiaries at risk of quality of care deficiencies.

What about the Centers for Disease Control and Prevention (CDC)?

According to the latest contingency information available, the CDC will continue minimal support to protect the health and well-being of US citizens here and abroad through a significantly reduced capacity to respond to outbreak investigations, processing of laboratory samples, and maintaining the agency’s 24/7 emergency operations center. CDC would also continue activities supported through mandatory funding including the World Trade Center health program, U.S. President's Emergency Plan for AIDS Relief (PEPFAR), CDC's Global AIDS program, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Vaccines for Children (VFC) program, and certain childhood obesity activities and asbestos exposure in Libby, Montana.

CDC would be unable to support the annual seasonal influenza program, outbreak detection and linking across state boundaries using genetic and molecular analysis, continuous updating of disease treatment and prevention recommendations (e.g., HIV, TB, STDs, hepatitis), and technical assistance, analysis, and support to state and local partners for infectious disease surveillance.