



House Returns to Vote on Debt Limit Increase; Senate Returns Later for SOTU Address

Congress Returns

The House returns this Tuesday to take up the resolution of disapproval of the President's exercise of authority under the CBA to increase the federal debt limit by \$1.2 trillion. Although House Republicans are expected to vote to disapprove the increase, the move is expected to be approved by the Democrat majority in the Senate, thus allowing for an increase in the debt limit to \$16.4 trillion. Although this limit is not expected to be breached until 2013, an earlier breach could throw a monkey-wrench into the legislative proceedings intended to ease Congress into the election season this November.

The Senate will return on January 23rd to a joint session of Congress the next day to hear the President deliver his State of the Union Address. With congressional Republicans, as well as all Republican presidential candidates, intent on repealing the health reform law, the President can be expected to give a vigorous defense

of the PPACA during his address.

The President will have a new Chief of Staff to defend the law and to negotiate a deal with Congress to extend the payroll tax cut and Medicare physician payment fix before the temporary extension ends on January 29th. **Jack Lew**, who headed OMB, will take over the COS duties as the conferees on H.R.3630, the Middle Class Tax Cut Act of 2011, begin their discussions this week.

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Additional Brief Filed with Supreme Court on PPACA

Florida and 25 other states filed another brief in their suit challenging the constitutionality of various aspects of the PPACA. The latest brief urged the Supreme Court to declare the Act unconstitutional with respect to the Act's Medicaid expansions. Saying that the PPACA Medicaid provisions are

coercive, the brief stated that the Act "threatens States with the loss of every single penny of federal funding" under Medicaid. They asked the court to define the outer limit of federal spending powers which would amount to coercive and unconstitutional action regarding the shared federal/state funded Medicaid program. In

related news, a report issued by the RWJ Foundation and the Urban Institute said that, if the Supreme Court rules the PPACA individual mandate unconstitutional, the number of uninsured individuals would rise from 26 million to 42 million.

HHS "Guidance" on PPACA Essential Benefits Challenged

The guidance bulletin issued by HHS on PPACA mandated "essential health benefits" has become a political football. A letter sent to **HHS Secretary Kathleen Sebelius** by the chairs of the three House committees of jurisdiction and **Senators Orrin Hatch and Mike Enzi** charge that the bulletin does not comply with regulatory requirements that a proposed rule be issued along with a cost benefit

analysis of the "unfunded mandate" impact of the provision. The authors asked HHS to provide a legal basis for issuing only a "bulletin" and for an analysis of the economic impact of the requirement. Various patient advocacy groups have also expressed their displeasure with the way essential health benefits are defined by giving states leeway to make the final decisions on coverage.

MedPAC on ASC and OHDP Payments

The Medicare Payment Advisory Commission has recommended that Congress raise the Medicare reimbursement rate for ambulatory surgical centers by 0.5% in 2013. The commission also recommended that ASCs report cost data to CMS to help develop a market-basket for ASCs. The commission also recommended that outpatient hospital

department payments for evaluation and management services be reduced over three years starting in 2013 to bring them more in line with payments to free-standing physician offices. They also recommended that a study be conducted by 2015 to determine the impact the policy would have on low income beneficiaries.

Health Costs Remain Constant in 2010

CMS reported that, due to the weak economy, health care spending was slowed in 2010 with costs increasing only 3.9% to \$2.6 trillion or about 17.9% of U.S. GDP. The agency also said the PPACA contributed just 0.1% to the overall increase in health care spending. In

another report issued by the Agency for Healthcare Research and Quality, the agency found that only about 1% of U.S. residents incurred more than 20% of all health care spending in 2009 while the bottom 50% incurred only 2.9% of all spending.

Final Rules for Retiree Drug Subsidy Program

CMS issued a final rule regarding RDS payments to sponsors of retiree prescription drug plans which states that the Part D policy with respect to the use of pass-through negotiated

prices will not apply to the RDS program and that RDS sponsors will not have to report such prices in the same manner as Part D sponsors.

House Hearings on FDA User Fees

The House Energy and Commerce Subcommittee on Health has given notice of upcoming hearings on measures authorizing the FDA to collect user fees. On February 7th the subcommittee will hold hearings on reauthorizing

the Prescription Drug User Fee Act and on new proposals for generic and biosimilar drug user fees. On February 15th the subcommittee will hold hearings on the reauthorization of the medical device portion of the Act.