



House Votes to Repeal the PPACA; President to Give State of the Union Address

President's SOU Address on Tuesday

The President is expected to unveil his budget and jobs/competitiveness blueprint on Tuesday night during his State of the Union Address. In a nod to the theme of "civil discourse" following the Arizona shooting, it is expected that several Republican and Democrat senators, including **Dick Durbin** and **Mark Kirk** of Illinois and **Pat Toomey** and **Robert Casey** of Pennsylvania, will sit together during the speech.

House Budget Committee Chairman Paul Ryan, who will author the new budget caps, has been tapped to deliver the Republican response. He will be hard pressed to come up with another \$100 billion in federal budget cuts for the remainder of FY 2011 as called for by the freshman Republicans. The Republican Study Committee has recommended cuts of \$80 billion and eliminating another \$45 billion in stimulus funding which has gone unspent. Even before the President's speech, subject to a rule, the House is scheduled to take up H. Res. 38, the Reducing Non-Security Spending to Fiscal Year 2008 Levels or Less. The first meeting of the House Appropriations Committee will occur next week to begin the showdown on spending cuts which **Chairman Rodgers** says will be the largest in U.S. history.

The House is likely to further push **President**

Obama's directive last week requiring agency review of costly, outdated regulations by soon taking up H.R. 10, "Regulations from the Executive in Need of Scrutiny (REINS) Act", legislation introduced by **Rep. Geoff Davis** and **House Judiciary Chairman Lamar Smith** that would require a vote in Congress before any regulation with an economic impact of more than \$100 million could go into effect.

A group of House Republicans have also taken another swipe at the PPACA by proposing a plan that would prohibit any spending in 2011 to implement the law or for the DOJ to defend the law in court. In the State of the Union Address, the President may also recommend an overhaul of the tax code which could take aim at various tax expenditures, possibly including the exemption from income for employer-paid health coverage.

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House Says “Take That” PPACA

Last week all House Republicans and three Democrats, **Reps. Dan Boren, Mike McIntyre and Mike Ross**, voted 245-189 to pass H.R. 2, legislation which would repeal the PPACA in all its parts. Subsequently the House also voted 253 to 175 to pass H. Res. 9, a resolution instructing committees of jurisdiction to report legislation replacing various provisions of the PPACA. Adopted was a Matheson amendment which instructs the committees of jurisdiction to include a permanent fix to the Medicare physician payment formula or sustainable growth rate (SGR). In general, the resolution provided broad guidelines for the legislation, such as:

- ◆ lowering health care premiums through increased competition and choice;
- ◆ providing people with pre-existing conditions better access to affordable health coverage;
- ◆ increasing the number of insured individuals;
- ◆ providing states with greater flexibility to administer Medicaid programs;
- ◆ providing seniors with assistance on prescription drug costs;
- ◆ overhauling medical malpractice laws;
- ◆ banning federal funding for abortions; and
- ◆ protecting the physician-patient relationship.

Democrats were not impressed with the resolution, with **Minority Whip Steny Hoyer** stating that “Today’s resolution is just another example of how Republicans have failed to make the tough choices necessary to reform our health care system....” Although **Senate Majority Leader Harry Reid** said he would not bring up the House-

passed repeal measure, several Senate Democrats indicated that the PPACA could be modified in minor ways. For example, **Senators Maria Cantwell, Ben Nelson and Amy Klobuchar** sent a letter to House Speaker Boehner requesting that the House pass a measure to repeal the PPACA’s IRS Form 1099 reporting requirement. The Obama Administration’s SBA also came out in favor of 1099 repeal.

Four key health-related committee chairmen—**Dave Camp (Ways and Means), Fred Upton (Energy and Commerce), John Kline (Education and Workforce) and Lamar Smith (Judiciary)**—provided more detail on potential House actions, stating that their “step-by-step, common-sense approach” would include legislation, hearings and oversight on at least the following: the introduction of medical malpractice reform legislation this week which will include a cap on non-economic damages; legislation to allow consumers to purchase health insurance across state lines (H.R. 371); legislation to codify the Hyde Amendment by permanently prohibiting taxpayer funding of abortion across all federal programs (H.R. 3); legislation codifying the Obama executive order stating that the PPACA prohibits federal funding of abortions; a Budget Committee hearing this week on the economic impact of the PPACA; how the \$500 billion in Medicare provider cuts under the PPACA will affect the program; how the tax increases and regulatory mandates will impact individuals, families and small businesses; what approaches can help to permanently fix the Medicare physician payment system; an inquiry to the Director of the Center for Consumer Information and Insurance Oversight (CCIIO) seeking information about the CCIIO’s authority, move to CMS and recent decisions to grant widespread waivers of PPACA requirements; and oversight hearings on the CMS Center for Medicare and Medicaid Innovation.

HHS Strikes Back at PPACA Repeal Efforts

Before last week’s vote to repeal the PPACA, HHS Secretary Kathleen Sebelius released a report finding that as many as 129 million Americans under the age of 65

have a pre-existing health condition that could put them at risk for losing health insurance or being denied coverage if the law is repealed. She said “almost half of our population age 64 and younger

could be discriminated against based on their pre-existing health condition....” and called repeal a “mistake.”

Bipartisan Efforts to Aid PPACA Implementation

Led by former **Senate Majority Leaders Tom Daschle and Bill Frist** and former **Ohio Governor Ted Strickland**, the Bipartisan Policy Center has announced a project to help states implement the PPACA by developing and disseminating “best practices” to states and others. **Senator Frist** said that regardless of the shortcomings

of the law, it will serve as the “fundamental platform” for states as they proceed to cover the uninsured. The Center will initially focus on the state insurance exchanges, insurance rate review and delivery system reforms, including health IT, the health care workforce, efficiency and medical malpractice reform. In related news, the Office of Exchanges in

the CMS Center for Consumer Information and Insurance Oversight announced that it soon plans to provide a dozen or so states additional “establishment” grants for research, IT, and financial, regulatory and legislative changes that may be needed to start up their insurance exchanges.

Additional States Join Suit in Targeting Individual Mandate

New **Florida Governor Rick Scott** said last week that the addition of six states--IA, OH, KS, WY, WI, and ME--to Florida’s suit challenging the PPACA means that a majority of states, 26, have committed to bringing their challenge all the way to the Supreme Court. A ruling by the U.S. District Court for the Northern District of Florida is expected shortly. In the Virginia suit in which the judge held

that the individual mandate was unconstitutional, both the Virginia Commonwealth and the DOJ have filed notices of appeal. In this connection **VA AG Ken Cuccinelli** said the state was appealing those aspects of the final order related to severance, the scope of severance and the remedy. The federal government’s attorneys said they sought review not only of the district court’s final order striking the individual mandate, but also of

an earlier decision that denied **HHS Secretary Kathleen Sebelius’s** motion to dismiss. Congressional Democrats have also filed an amicus brief in the U.S. Court of Appeals in the Sixth Circuit in support of the lower court decision in favor of the PPACA’s individual mandate.

CER Committee Announced

The GAO announced the appointment of 15 members to the methodology committee of the Patient-Centered Outcomes Research Institute (PCORI) which is charged under the PPACA to conduct comparative clinical effectiveness research. In addition to the 15 members, the directors of the AHRQ and NIH, or their designees, will serve on the committee.

Increase in Payments to Inpatient Psychiatric Hospitals

CMS proposed updates to prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities for discharges occurring during the rate year beginning July 1, 2011 through September 30, 2012. Under the rule, Medicare payments would increase about 2.5%, or about \$110 million.

H.R. 299 (REFORM), to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, repeal the 7.5 percent threshold on the deduction for medical expenses, provide for increased funding for high-risk pools, allow acquiring health insurance across state lines, and allow for the creation of association health plans; BROUN of Georgia; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, Appropriations, the Judiciary, Natural Resources, House Administration, and Rules, Jan. 18.

H.R. 314 (HEALTH CARE TRIBUNALS), to provide grants to states for health care tribunals, and for other purposes; THORNBERRY; to the Committee on the Judiciary, Jan. 18.

H.R. 315 (FRAUD AND ABUSE), to reduce the amount of paperwork and improve payment policies for health care services, to prevent fraud and abuse through health care provider education, and for other purposes; THORNBERRY; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 18.

H.R. 3 (ABORTION), to prohibit taxpayer funded abortions and to provide for conscience protections, and for other purposes; SMITH of New Jersey; jointly, to the committees on the Judiciary, Energy and Commerce and Ways and Means, Jan. 20.

H.R. 358 (ABORTION), to amend the Patient Protection and Affordable Care Act to modify special rules relating to coverage of abortion services under such Act; PITTS;

to the Committee on Energy and Commerce, Jan. 20.

H.R. 360 (REFORM), to amend the Patient Protection and Affordable Care Act to provide for participation in the exchange of the president, vice-president, members of Congress, political appointees, and congressional staff; BURGESS; jointly, to the committees on Oversight and Government Reform, House Administration, and Energy and Commerce, Jan. 20.

H.R. 361 (ABORTION), to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities; FLEMING; to the Committee on Energy and Commerce, Jan. 20.

H.R. 364 (REFORM), to repeal the Patient Protection and Affordable Care Act and to take meaningful steps to lower health care costs and increase access to health insurance coverage without raising taxes, cutting Medicare benefits for seniors, adding to the national deficit, intervening in the doctor-patient relationship, or instituting a government takeover of health care; LATHAM; jointly, to the committees on Energy and Commerce, Education and the Workforce, Ways and Means, the Judiciary, House Administration, Natural Resources, Rules, and Appropriations, Jan. 20.

H.R. 369 (TAXATION), to amend the Internal Revenue Code of 1986 to improve access to health care by allowing a deduction for the health insurance costs of individuals, expanding health savings accounts, and for other purposes; AUSTRIA; to the Committee on Ways and Means, Jan. 20.

H.R. 371 (REFORM), to repeal Title I of the Patient Protection and Affordable Care Act and to amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce; BLACKBURN; jointly, to the committees on Energy and Commerce, Ways and Means, and Education and the Workforce, Jan. 20.

H.R. 373 (REGULATORY REFORM), to amend the Unfunded Mandates Reform Act of 1995 to ensure that actions taken by regulatory agencies are subject to that Act, and for other purposes; FOXX; jointly, to the committees on Oversight and Government Reform, Rules, the Budget, and the Judiciary, Jan. 20.

H.R. 376 (EMERGENCY SERVICE WORKERS), to amend the Internal Revenue Code of 1986 to provide recruitment and retention incentives for volunteer emergency service workers; KING of New York; jointly, to the committees on Ways and Means and Education and the Workforce, Jan. 20.

H.R. 383 (WOMEN'S HEALTH), to provide for coverage of hormone replacement therapy for treatment of menopausal symptoms, and for coverage of an alternative therapy for hormone replacement therapy for such symptoms, under Medicare and Medicaid, group health plans and individual health insurance coverage, and other federal health insurance programs; LEE of California; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, Oversight and Government Reform, and Veterans' Affairs, Jan. 20.