



## Class Act Scheduled for House Repeal; Doc Fix Talks Continue

### *House Actions on CLASS Act Repeal and Doc Fix*

The House is scheduled this Wednesday to take up the vote on H.R. 1173, legislation that would repeal the PPACA Community Living Assistance Services and Supports program. Because HHS has suspended the program's implementation, the \$2 billion in CBO projected savings under Medicaid will not be realized and the supposed budget neutrality of the PPACA has already been breached. Nonetheless, the Democrat leadership in the House, who said a replacement should be substituted for the current law, is expected to oppose the legislation.

**Rep. Charles Boustany**, who introduced the legislation, said he is developing legislation to replace the CLASS Act. While the Senate is unlikely to act on this repeal bill, both the Senate and the House are focusing on how to extend the doc fix, payroll tax cut and unemployment benefits beyond the end of February when the current law expires.

The conference committee on H.R. 3630, the Middle Class Tax Cut Act of 2011, met last week for opening statements only.

The next meeting is scheduled for this Wednesday. **Conference**

**Chairman Rep. Dave Camp** said that the committee should consider an extension of the Medicare physician payment fix for one, two or more years.

**Rep. Chris Van Hollen** said the fix should be for not less than to the end of the year. The trick is for the committee to find the funding for the extension

with some members suggesting that savings from the drawdown of the Iraq and Afghanistan wars be used to come up with a permanent solution. This course may not be the one taken given the President's statement in his SOTU address that war savings be used instead to pay down the debt and fund road and construction projects.

### *President's SOTUA Falls Short on FY 2013 Health Issues*

The President gave little hint in his State of the Union address as to how his FY 2013 budget will address rising federal health costs other than to say that he is "prepared to make more reforms that rein in the long-term costs of Medicare and Medicaid, and strengthen Social Security, so long as those programs remain a guarantee of security for seniors. But in return, we need to change our tax code so that people like me, and an awful lot of members of Congress,

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pay our fair share of taxes.” He appeared to support federal medical funding by calling for continued investment in medical research that “could lead to new treatments that kill cancer cells but leave healthy ones untouched” and questioning whether tax cuts for high-income earners should be extended “Or do we want to keep investments in everything else -- like education and medical research; a strong military and care for our veterans?”

The PPACA was only alluded to indirectly in the President’s demand for increased economic “fairness” and his statement that he will not go back to the days when health insurance companies had unchecked power to cancel policies, deny coverage and charge different premiums for men and women. **House Speaker John Boehner**, however, said that the PPACA is “driving up premiums

and jeopardizing coverage for millions of Americans. **President Obama** promised he would make our economy stronger, but policies like ObamaCare have made it worse....”

Whatever the President’s budget, to be released February 13th, does to address Medicare and other health spending, **House Republican Budget Committee Chairman Paul Ryan** said his conference will not back away from proposing long-term Medicare reforms in his committee’s FY 2013 budget which will be fashioned in early March after the CBO provides the committee with their ten-year baseline. House Republicans are also going on the offensive by pushing budget legislation that would: turn annual budget resolutions into legislation that could be signed into law (H.R. 3575); keep CBO from incorporating inflation increases

into its projected spending baselines (H.R. 3578); change budget accounting to include some liabilities that are currently off budget (H.R. 3581); and require CBO to take into account the effect that bills might have on economic growth through so-called “dynamic scoring” (H.R. 3582). Such measures have little chance in the Senate which has limited the discussion of budget reform to steps to achieve two-year budgeting and changes to the Senate’s rules in considering budget-related legislation. The budget is likely to include provision for the reauthorization of the FDA’s review of drug and medical devices, given **House Energy and Commerce Health Subcommittee Chairman Joe Pitt’s** comments that he hopes to mark up the reauthorization bills in April to enable quick House consideration and enactment by the end of June.

## House Republicans Address PPACA Issues

**Rep. Joe Pitt’s** also said his health subcommittee will work on legislation to “replace” the provisions of the PPACA as a follow-up to the House-passed measure to fully repeal the law. The measure was said to include H.R. 5, medical malpractice reform that would

cap damages, tax incentives for individuals to purchase health insurance, state high risk pool incentives, among other provisions. He also indicated that the committee will move H.R. 452, legislation to repeal the PPACA Independent Payment Advisory Board. Ramping

election year opposition to the PPACA, House Energy and Commerce Committee Chairman Fred Upton renewed his request to the White House for internal White House memos and other materials leading up to the passage of the health reform law.

## Essential Health Benefits Guidance

The CMS Center for Consumer Information and Insurance Oversight released a web document providing illustrative information on the health plan benchmarks that constitute minimum “essential benefits” under the PPACA. The document, *Essential Health Benefits: Illustrative List of the Largest Three Small Group Products by State*, shows the information gathered from each state as well as the largest three federal FEHBP plans (Blue-Cross/Blue-Shield standard and basic options and the GEHA plan). The CCIIO also indicated that health insurance agents and brokers will be able to receive the same

commissions inside the federal health insurance exchanges which are to be established in states which do not set up their own exchanges. The CCIIO also released a report showing the sixteen PPACA-related initiatives involving more than 50,000 health care providers designed to improve patient safety, promote coordination of health care across settings, invest in primary care transformation, create new bundled payments and meet the medical needs of dual-eligibles. In related news, the Patient-Centered Outcomes Research Institute (PCORI) issued a draft PPACA comparative effectiveness agenda which shows that the agency’s focus will center

around five areas, including the comparison of various treatment, diagnosis, and prevention options; the improvement of health care systems by focusing on ways to improve access to care, patient self-care, and the use of non-physician providers; the communication and dissemination of research by focusing on using tools like electronic health records to expand patient and physician knowledge; how to overcome health disparities across different patient populations; and the acceleration of patient-centered and methodological research by using registries and clinical data networks to support the research.

## PPACA Constitutionality Suits

The Department of Justice filed a brief arguing that, despite the lack of a so-called severability provision under the PPACA, the Supreme Court should not strike down the entire law even if the court holds one part, such as the individual mandate, unconstitutional. However, the brief said, if the mandate is held invalid, both the guaranteed issue and community rating provisions of the law could not work and should also be invalidated. In another matter, the court rejected

an amicus by the Freedom Watch Foundation arguing that Supreme Court Justice Elena Kagan recuse herself from considering PPACA-related suits because her impartiality might reasonably be questioned due to her service in the Obama Department of Justice. **Supreme Court Chief Justice Roberts** previously said in a report that he had confidence in the court’s justices to make the appropriate decision of when or if to recuse themselves from deciding PPACA and other cases.

## New Medicaid Rules on Medicaid Drug Transparency

CMS issued a proposed rule on payments for Medicaid outpatient drugs which would require the use of the average manufacturer price (AMP) in an attempt to prevent state

overpayment and to improve price transparency. The agency said that the rule could save taxpayers and states an estimated \$17.7 billion over five years. In related Medicaid news, HHS released

new federal poverty guidelines for determining Medicaid and other program eligibility. The 2012 poverty line for individuals is \$11,170 in annual income and \$23,050 for a family of four.

## Guidance on Dual-Eligible Demonstration

CMS released guidance to organizations wishing to participate in so-called “shared savings” demonstration projects designed to improve the quality of care for Medicare/Medicaid dual eligible individuals. The memo gives guidance on

requirements such as payment principles, standards in programmatic areas, key dates and network adequacy which must be met in order for organizational participation beginning in 2013.

## Meaningful Use Incentive Payment Guidelines

CMS released new appeals rules regarding payments to providers in relation to Medicare and Medicaid meaningful use incentive payments. Hospitals and other providers can appeal

payment disputes and appeal program ineligibility determinations or denial of status as a meaningful user.

## Recently Introduced Health Legislation

**H.R. 3802 (ABORTION)**, to require an abortion provider, before performing an abortion, to wait for a period of at least 24 hours; DUNCAN of South Carolina; to the Committee on Energy and Commerce, Jan. 23.

**H.R. 3803 (REPRODUCTIVE HEALTH)**, to amend Title 18, United States Code, to protect pain-capable unborn children in the District of Columbia, and for other purposes; FRANKS of Arizona; jointly, to the committees on the Judiciary and Oversight and Government Reform, Jan. 23.

**H.R. 3805 (ABORTION)**, to ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion; JORDAN; to the Committee on Energy and Commerce, Jan. 23.

**H.R. 3827 (COMPARATIVE RESEARCH)**, to repeal the Patient-Centered Outcomes Research program and comparative effectiveness research funding; GUTHRIE; jointly, to the committees on Ways and Means,

Appropriations, the Budget, and Energy and Commerce, Jan. 25.

**H.R. 3831 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for the recognition of attending physician assistants as attending physicians to serve hospice patients; TERRY; jointly, to the committees on Ways and Means and Energy and Commerce, Jan. 25.