



## POTUS and Congress Focus on Obamacare and Reducing the Federal Deficit

### *President Defends PPACA in SOTU but Will Consider "Improvements"*

In last Tuesday's State of the Union address, **President Obama** said "Now, I've heard rumors that a few of you have some concerns about the new health care law....What I'm not willing to do is go back to the days when insurance companies could deny someone coverage because of a pre-existing condition....So instead of refighting the battles of the last two years, let's fix what needs fixing and move forward." However, he did indicate a willingness to consider medical malpractice reform legislation and a repeal of IRS Form 1099 reporting requirements. In the Republican response to the President's speech, **House Budget Committee Chairman Paul Ryan** said "What we already know about the President's health care law is this: Costs are going up, premiums are rising, and millions of people will lose the coverage they currently have....Job creation is being stifled by all of its taxes, penalties, mandates and fees. Businesses and unions from around the country are asking the Obama administration for waivers from the mandates. The President mentioned the need for regulatory reform to ease the burden on American businesses. We agree, and we think his health care law would be a great place to start...."

Last week, House Republicans voted for a full repeal of this law, as we pledged to do, and we will work to

replace it with fiscally responsible, patient-centered reforms that actually reduce costs and expand coverage." In his remarks, the President also indicated his forthcoming budget recommendations will include a five-year freeze at current levels of non-security-related domestic spending while advocating for additional spending on biomedical research and several other domestic initiatives. Later in the week he the President indicated that "Health reform is part of deficit reform...."

In contrast to the President's remarks, **Rep. Ryan** said "We hold to a couple of simple convictions: Endless borrowing is not a strategy. Spending cuts have to come first. Our nation is approaching a tipping point. We are at a moment where, if government's growth is left

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unchecked and unchallenged, America's best century will be considered our past century." In this regard, following the earlier Republican inspired action to reduce House member and committee funding, the House voted 256 to 165 to pass H. Res. 38 which requires the Chair of the House Committee on the Budget to include in the Congressional Record the contemplated allocation for the Committee on Appropriations for the remainder of FY 2011 that assumes non-security spending at FY 2008 levels or less. The resolution does not define "non-security" spending. The Appropriations Committee is expected to detail the spending cuts for the remainder of the year in the next several weeks with a House vote to follow. The House also passed H.R. 359, legislation to rescind the federal financing of presidential campaigns. The budget debate will heat up even more with the release of a CBO projection that the 2011 deficit will reach nearly \$1.5 trillion. The Secretary of the Treasury also announced new measures to delay the date when the federal government reaches the current debt limit (now likely to be breached as early as March 31, thus forcing a debt increase vote before then).

### ***House Hearing on Regulations and REINS Act***

Last week the House Subcommittee on Courts, Commercial, and Administrative Law held oversight hearing on H.R. 10, the 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. It would give committees 15 days to review the regulation, issued under current or future laws, or be discharged. Democrats said that the legislation was purely a partisan measure that raises constitutional issues and would prevent the president from executing laws expeditiously. If enacted, the law would likely cause most PPACA regulations to come to a vote in the House and Senate before becoming effective.

### ***New Senate Rules Changes Eliminate Legislative "Holds"***

Last week in an agreement between **Senate Majority Leader Harry Reid and Minority Leader Mitch McConnell** the Senate voted to modify the so-called "secret hold" procedure used to block consideration of legislation; senators would have two days to disclose their hold or the respective leader would be charged with the hold. The Senate agreed to another standing order to prevent senators from forcing the reading of legislation or an amendment if the text has been available for 72 hours. The two leaders also agreed that, in general, Republicans will not be blocked from offering amendments by means of "filling the amendment tree." In addition, they agreed to cut by a third the number of executive branch nominees requiring confirmation in a vote by the full Senate. However, this rule will not avoid a Senate vote on CMS Administrator Donald Berwick whose nomination has again been forwarded to the Senate by the White House.

### ***New Key Senate Committee Assignments***

**Senator Daniel Akaka** gave up his Senate Veterans Affairs Committee gavel in favor of becoming chairman of the Committee on Indian Affairs. **Senator Patty Murray** assumed the Veterans Affairs chair. **Senator Debbie Stabenow** assumed the chair of the Agriculture Committee with **Senator Pat Roberts** assuming the ranking post. On the Senate Finance Committee, **Senator Ben Cardin** replaces **Blanche Lincoln**. Also, **Senator Orrin Hatch** takes the ranking slot on full committee from term-limited **Senator Charles Grassley** (who assumes the ranking slot on Judiciary) while **Senators Tom Coburn and John Thune** take the two new Republican seats on the committee. The Senate Appropriations Committee will have seven new Republicans--**Senators Lindsey Graham, Mark Kirk, Jerry Moran, Dan Coats, Roy Blunt, John Hoeven and Ron Johnson**. **Senator Jeff Sessions** assumes the ranking membership on the Senate Budget Committee.

## House/Senate Committees Take on PPACA

At last week's House Budget Committee hearing on the economic and fiscal impact of the PPACA, **CMS Chief Actuary Richard Foster** responded to questions from Republicans stating that, unlike the contention of the White House, some employees would lose their current health coverage as a result of the PPACA. He also provided **Rep. Pete Stark** with a letter estimating the "negative" impact that would result from a repeal of the PPACA and supported the CBO estimate that the law would reduce the budget deficit by \$230 billion over 10 years. In addition he said he was concerned that the Medicare provider payment cuts in the PPACA cannot be sustained over the long term and that it is doubtful the law would slow rising health care costs. In response to questioning on **Budget Chairman Ryan's** voucher program for future Medicare beneficiaries age 54 or younger, Mr. Foster said that savings of \$280 billion from 2011-2020 would largely result from curtailed provider payments and that the voucher amount would

likely diminish in value as health care costs outstrip general inflation. In a House Ways and Means hearing, **Austan Goolsbee**, chair of the Council of Economic Advisers, said the PPACA will bring down health costs and make coverage more accessible and affordable for small businesses through provisions such as tax credits for 4 million small businesses and the creation of health insurance exchanges. However **Chairman Dave Camp** said "Employers of all sizes are expressing concern that the new mandates and regulations will deter them from hiring new employees, threaten their ability to retain existing workers, and harm their ability to increase wages for existing employees...." In a Senate HELP Committee hearing on the PPACA, **HHS Secretary Kathleen Sebelius** defended the provisions of the law and said that, in relation to the President's SOTU remarks that he would be open to medical malpractice reform, the President is still opposed to caps on noneconomic damages and prefers a state-based reform framework.

She also opposed the repeal of the medical device excise tax under the PPACA. In response to a question from **Senator McCain**, the Secretary said that the 700 companies and health plans that have received temporary waivers of annual benefit limits for limited-benefit, or "mini-med," plans have assured HHS that they can gradually phase into the PPACA minimum limits. **Chairman Tom Harkin** defended the more popular provisions of the law while **Senator Mike Enzi** pointed out that health insurers in 20 states have stopped offering children-only coverage as a result of the law. This week the Senate Judiciary Committee will hold hearings on constitutionality of the PPACA. In related news, HHS released a report last week stating that consumers will spend 14-20% less on health insurance coverage under the PPACA exchanges as compared with the situation if the law was repealed. The report also admitted that premiums will increase by 1-2% because of the law's new benefit protections.

## PPACA Repeal Legislation

In addition to the above hearings, the House E&C Committee initiated an investigation into HHS's risk pool insurance program. A number of key anti-PPACA bills were also introduced. For example: S. 192, a Senate (DeMint) bill identical to the House-passed legislation would repeal the health reform law; H.R. 452, introduced by Rep. Phil Roe would repeal the Independent Payment Advisory Board under the PPACA; and H.R. 436 (Paulsen) and S. 17 (Hatch) would repeal the PPACA's 2.3% excise tax on

medical device sales. On another note, Democrats demonstrated their willingness to "improve" the PPACA when Senators Max Baucus and Harry Reid introduced S. 72, legislation designed to repeal the PPACA's IRS Form 1099 reporting provisions. **Senator Mike Johanns** also introduced a similar bipartisan bill, S. 18, which in addition would offset the revenue loss by rescinding \$39 in unspent federal funds. Although **Senate Majority Leader Harry Reid** says he will not bring up any PPACA repeal legislation, **Senate Minority**

**Leader Mitch McConnell** has said he will force a vote which would most likely come as an amendment to other legislation. If such a move occurs, **Senator Charles Schumer** has indicated that Democrats will force a vote to show favor for the more popular provisions of the law, such as filling the Part D donut hole, allowing those up to age 26 to continue coverage under their parents policies and Medicare coverage for no-cost medical exams.

## OCIIO Requests Comments on COOPP Program

Last week the HHS Office of Consumer Information and Insurance Oversight requested comments on developing regulations for loans and grants to establish a Consumer Operated and Oriented Plan Program under

the health reform law. HHS also requested comments on the types of groups that would meet the criteria of the program; what issues a nonprofit insurer may face in developing provider networks in areas with medical shortages;

how much funding is necessary; and whether it would be desirable for the nonprofits to participate in Medicaid, SCHIP or other markets.

## PPACA Lawsuits Proceed

Last week the 4th U.S. Circuit Court of Appeal in Virginia agreed to VA AG Ken Cuccinelli's request for an expedited review of the district court decision ruling that the PPACA's individual mandate is unconstitutional. Also, the Oklahoma Attorney General filed

suit in the U.S. District Court for the Eastern District of Oklahoma that the PPACA individual mandate should be declared unconstitutional, maintaining that Congress exceeded the powers granted to it by the commerce clause and the necessary and proper clause of the U.S. Constitution. In another action,

a U.S. District Court judge in Pennsylvania rejected a request by the Justice Department to dismiss a challenge to the health care law filed by two individuals. About 20 actions have been filed against the PPACA in federal court.

## HHS Establishes Translational Research Center

Last week HHS Secretary Kathleen Sebelius alerted Congress that the agency is on track to initiate the National Center for Advancing Translational Sciences in October. HHS is expected to consolidate more than \$700 million in current drug research projects under the center and will request that Congress increase financing for the center to more than \$1 billion.

## Arizona Applies for Medicaid Waiver Citing Budget Crisis

Last week Arizona Governor Jan Brewer formally requested a section 115 Medicaid waiver from HHS to allow the state to cut Medicaid eligibility to 280,000 residents. She said that Arizona is in a fiscal crisis "unlike any we have seen.... We are in a struggle for our state's survival." The waiver request was necessitated by the PPACA provision requiring states to maintain their current Medicaid eligibility standards.

## PPACA Fraud Rules

Last week HHS announced that new rules will take effect March 25th to reduce fraud by imposing more stringent enrollment and screening measures for providers deemed to be high risk; requiring states to exclude a provider from the Medicaid program if the provider has already been excluded from Medicare or another state's Medicaid program; and implementing predictive data analytics software to detect the presence of health care fraud. HHS also announced that in FY 2010 Medicare fraud recoveries amounted to about \$2.8 billion.

**H.R. 5 (ACCESS)**, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; GINGREY of Georgia; jointly, to the committees on the Judiciary and Energy and Commerce, Jan. 24.

**H.R. 396 (VETERANS' HEALTH)**, to direct the secretary of defense and the secretary of veterans affairs to carry out a pilot program under which the secretaries make payments for certain treatments of traumatic brain injury and post-traumatic stress disorder; SESSIONS; jointly, to the committees on Armed Services and Veterans' Affairs, Jan. 24.

**H.R. 397 (REFORM)**, to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 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; HERGER; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, House Administration, Natural Resources, Appropriations, and Rules, Jan. 24.

**H.R. 409 (MILITARY HEALTH)**, to require the secretary of defense to develop and implement a plan to provide

chiropractic health care services and benefits for certain new beneficiaries as part of TRICARE; ROGERS of Alabama; to the Committee on Armed Services, Jan. 24.

**H. Res. 51 (AIDS/HIV)** supporting the goals and ideals of National Black HIV/AIDS Awareness Day; LEE of California; to the Committee on Energy and Commerce, Jan. 24.  
S. 15 (REFORM), to repeal the Patient Protection and Affordable Care Act; VITTER; to the Committee on Finance, Jan. 25.

**S. 17 (TAXATION)**, to repeal the job-killing tax on medical devices to ensure continued access to life-saving medical devices for patients and maintain the standing of United States as the world leader in medical device innovation; HATCH; to the Committee on Finance, Jan. 25.

**S. 27 (DRUGS)**, to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market; KOHL; to the Committee on the Judiciary, Jan. 25.

**S. 31 (MEDICARE)**, to amend Part D of Title XVIII of the Social Security Act to authorize the secretary of health and human services to negotiate for lower prices for Medicare prescription drugs; FRANKEN; to the Committee on Finance, Jan. 25.

**S. 36 (MEDICAID)**, to amend Title XIX of the Social Security Act to provide 100 percent reimbursement for medical

assistance provided to a Native Hawaiian through a federally-qualified health center or a Native Hawaiian health care system; INOUE; to the Committee on Finance, Jan. 25.

**S. 37 (MEDICARE)**, to amend Title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician; INOUE; to the Committee on Finance, Jan. 25.

**S. 38 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide improved reimbursement for clinical social worker services under Medicare; INOUE; to the Committee on Finance, Jan. 25.

**S. 39 (GRADUATE EDUCATION)**, to amend Title VII of the Public Health Service Act to make certain graduate programs in professional psychology eligible to participate in various health professions loan programs; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 40 (MENTAL HEALTH)**, to amend the Public Health Service Act to promote mental and behavioral health services for underserved populations; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 43 (MENTAL HEALTH)**, to amend Title VII of the Public Health Service Act to establish

a psychology post-doctoral fellowship program, and for other purposes; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 44 (MEDICARE)**, to amend Part D of Title XVIII of the Social Security Act to require the secretary of health and human services to negotiate covered Part D drug prices on behalf of Medicare beneficiaries; KLOBUCHAR; to the Committee on Finance, Jan. 25.

**S. 47 (MENTAL HEALTH)**, to amend Chapter 81 of Title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; INOUE; to the Committee on Homeland Security and Governmental Affairs, Jan. 25.

**S. 48 (PHARMACISTS)**, to amend the Public Health Service Act to provide for the participation of pharmacists in National Health Services Corps programs, and for other purposes; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 51 (RURAL HEALTH)**, to amend the Public Health Service Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental care, and for other purposes; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 53 (GRADUATE EDUCATION)**, to express the sense of the Senate concerning the

establishment of Doctor of Nursing Practice and Doctor of Pharmacy dual degree programs; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 54 (FEDERALLY QUALIFIED COMMUNITY HEALTH CENTERS)**, to implement demonstration projects at federally qualified community health centers to promote universal access to family centered, evidence-based behavior health interventions that prevent child maltreatment and promote family well-being by addressing parenting practices and skills for families from diverse socioeconomic, cultural, racial, ethnic, and other backgrounds, and for other purposes; INOUE; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 55 (MEDICAID)**, to amend Title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under state Medicaid programs; INOUE; to the Committee on Finance, Jan. 25.

**S. 56 (MEDICAID)**, to amend Title XIX of the Social Security Act to improve access to advanced practice nurses and physician assistants under Medicaid; INOUE; to the Committee on Finance, Jan. 25.

**S. 58 (MEDICARE)**, to amend Title XVIII of the Social Security Act to provide for patient protection by establishing safe nurse staffing levels at certain Medicare providers, and for other purposes; INOUE; to the

Committee on Finance, Jan. 25.

**S. 59 (HOSPITALS)**, to treat certain hospital support organizations as qualified organizations for purposes of determining acquisition indebtedness; INOUE; to the Committee on Finance, Jan. 25.

**S. 66 (NATIVE HAWAIIAN HEALTH CARE IMPROVEMENT ACT)**, to amend the Native Hawaiian Health Care Improvement Act to revise and extend that Act; INOUE; to the Committee on Indian Affairs, Jan. 25.

**S. 71 (NATIVE HAWAIIANS/PACIFIC ISLANDERS)**, to amend the Public Health Service Act to provide for health data regarding Native Hawaiians and other Pacific Islanders; INOUE; to the Committee on Indian Affairs, Jan. 25.

**S. 73 (HEALTH CARE COVERAGE)**, to provide for an earlier start for state health care coverage innovation waivers under the Patient Protection and Affordable Care Act, and for other purposes; SANDERS; to the Committee on Finance, Jan. 25.

**S. 76 (CANCER CLUSTERS)**, to direct the administrator of the Environmental Protection Agency to investigate and address cancer and disease clusters, including in infants and children; BOXER; to the Committee on Environment and Public Works, Jan. 25.

**S. 96 (ABORTION)**, to amend Title X of the Public Health Service Act to prohibit family planning

grants from being awarded to any entity that performs abortions; VITTER; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 121 (ABORTION)**, to impose admitting privilege requirements with respect to physicians who perform abortions; VITTER; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 137 (PREMIUM RATES)**, to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; REID of Nevada; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 159 (LONG-TERM CARE)**, to improve consumer protections for purchasers of long-term care insurance, and for other purposes; KOHL; to the Committee on Finance, Jan. 25.

**S. 165 (ABORTION)**, to amend the Public Health Services Act to prohibit certain abortion-related discrimination in governmental activities; VITTER; to the Committee on Health, Education, Labor, and Pensions, Jan. 25.

**S. 174 (REFORM)**, to improve the health of Americans and reduce health care costs by reorienting the nation's health care system toward prevention, wellness, and health promotion; HARKIN; to the Committee on Finance, Jan. 25.

**H.R. 416 (PREMIUM RATES)**, to amend the Public

Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; SCHAKOWSKY; to the Committee on Energy and Commerce, Jan. 25.

**H.R. 429 (REFORM)**, to repeal the Patient Protection and Affordable Care Act and the health care-related provisions in the Health Care and Education Reconciliation Act of 2010 and to amend Title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer federal employee health benefits plans to individuals who are not federal employees, and for other purposes; ISSA; jointly, to the committee on Energy and Commerce, Ways and Means, Oversight and Government Reform, Education and the Workforce, Natural Resources, the Judiciary, Rules, House Administration, and Appropriations, Jan. 25.

**H.R. 434 (REFORM IMPLEMENTATION)**, to prevent the secretary of the Treasury from hiring new employees to enforce the individual health insurance mandate; McMORRIS RODGERS; to the Committee on Ways and Means, Jan. 25.

**H.R. 436 (TAXATION)**, to amend the Internal Revenue Code of 1986 to repeal the excise tax on medical devices; PAULSEN; to the Committee on Ways and Means, Jan. 25.

**H.R. 439 (HEALTH CARE COVERAGE)**, to provide for

an earlier start for state health care coverage innovation waivers under the Patient Protection and Affordable Care Act, and for other purposes; WELCH; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 25.

**S. 192 (REFORM)**, to repeal the job-killing health care law and health care-related provisions in the Health Care and Education Reconciliation Act of 2010; DeMINT; read the first time, Jan. 26.

**S. 196 (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; GRASSLEY; to the Committee on Homeland Security and Governmental Affairs, Jan. 26.

**S. 197 (ACCESS)**, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; ENSIGN; to the Committee on Health, Education, Labor, and Pensions, Jan. 26.

**H.R. 450 (REFORM)**, to repeal limitations imposed by the Patient Protection and Affordable Care Act on health-related tax benefits under the Internal Revenue Code of 1986 and to treat high deductible health plans as qualified health plans under such act; REICHERT; jointly, to the committees on Ways and Means and Energy and Commerce, Jan. 26.

**H.R. 451 (HEALTH CARE INFORMATION)**, to ensure that patients receive accurate health care information by prohibiting misleading and deceptive advertising or representation in the provision of health care services, and to require the identification of the license of health care professionals; SULLIVAN; to the Committee on Energy and Commerce, Jan. 26.

**H.R. 452 (REFORM)**, to repeal the provisions of the Patient Protection and Affordable Care Act providing for the Independent

Payment Advisory Board; ROE of Tennessee; jointly, to the committees on Ways and Means and Rules, and Energy and Commerce, Jan. 26.

**H.R. 488 (TAXATION)**, to amend the Internal Revenue Code of 1986 to repeal the excise tax on medical devices; GERLACH; to the Committee on Ways and Means, Jan. 26.

**S. 218 (ACCESS)**, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability

system places on the health care delivery system; ENSIGN; to the Committee on the Judiciary, Jan. 27.

**S. 221 (TAXATION)**, to amend the Internal Revenue Code of 1986 to extend the health insurance costs tax credit, and for other purposes; BROWN of Ohio; to the Committee on Finance, Jan. 27.