



## House Proposes Slash in FY 2011 Budget/Health Spending; Second Court Attacks PPACA

### *House to Ante Up on President's Budget Freeze*

OMB announced that the President's budget for FY 2012 will be released on Monday February 14, Valentine's Day. No Valentine's Day for most federal agencies, the budget is expected to place a five-year freeze on non-security discretionary spending and a two-year freeze on federal salaries. In advance of the budget, OMB has asked all agencies to comply with the President's order to provide within 120 days a plan to review all major regulations for possible change or repeal. In an opening move by the House, setting up a confrontation with Senate Democrats, **House Budget Committee Paul Ryan** issued his directive that FY 2011 discretionary spending be capped at \$1.055 trillion, thus saving \$32 billion by the end of this September (a 7% reduction from the President's initial request for the year and 12% in non-security spending with the latter spending capped at \$420 billion). To achieve the yearly reduction, non-security discretionary programs would have to shrink by 15.4% from current CR levels. An appropriations measure is expected to be pushed to the floor by next week and must be passed by March 4th when the CR for the current fiscal year expires. Although DoD will be given an increase of \$9.6 billion, **House Appropriations Committee Chairman Harold Rogers** directed his subcommittees to

trim about 14% from the President's FY 2011 request for Agriculture or 24.2% for the remainder of the year (including the FDA) and 4% for Labor-HHS-Education or 12.7% for the remainder of the year (to \$20.06 billion down from \$23.3 billion last year). The proposed cuts will serve up a contentious debate in the House, not only from objecting Democrats, but from the Republican Study Committee and a few other House members who are calling for much deeper spending cuts than under the Ryan directive. The remaining FY 2011 House spending proposal will preclude member earmarks and **Senate Appropriations Committee Chairman Daniel Inouye** acceded to the President's threat to veto bills containing such earmarks by declaring

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the next two years as earmark-free. Although **House Speaker John Boehner** has declared that Republicans will not block an increase in the debt limit, other House leaders have said that a debt limit increase is conditioned on the proposed spending cuts for this year and next.

### **Senate Committee Ratios Set**

Last week the Senate approved organizing resolutions that divides each committee's funding 53-47%, for the Democrat majority and Republican minority, respectively.

## **Courts and Senate Judiciary Committee on PPACA Constitutionality**

Last week the Senate Judiciary Committee heard differing testimony on the constitutionality of the PPACA's individual mandate. Committee Democrats continued to maintain the law will be found constitutional by the U.S. Supreme Court. Committee Republicans expressed doubt that the individual mandate is constitutional and said the entire law could collapse if the individual mandate is struck down. In relation to this last point, **Judge Roger Vinson**, in a U.S. District Court for the Northern District of Florida decision, gave his opinion that the entire PPACA be struck down (for lack of a severability clause and other reasons) stemming from his ruling that the individual mandate is unconstitutional. The court granted a motion for summary judgment filed by 26 "red" states, two individual plaintiffs and an association of small business owners and denied the Department of Justice cross-motion for summary judgment.

Instituting new talking points in defending the law, the White House issued a statement that "We don't believe this kind of judicial activism will be upheld and we are confident that the Affordable Care Act will ultimately be declared constitutional by the courts."

In the one other case holding against the PPACA, the **Virginia AG Kenneth Cuccinelli** said that the state will seek expedited U.S. Supreme Court review, stating that Rule 11 of the Supreme Court practice rules permits an immediate review "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination" by the Supreme Court. The Department of Justice opposed the move, stating that arguments about the law should be fully developed in the lower courts before they are presented to the Supreme Court. In this regard, last week **Federal District Court Judge Keith Starrett** dismissed a lawsuit by **Mississippi Lt. Gov. Phil Bryant** that the individual mandate is unconstitutional, but left the door open for an amended filing.

While most states continue to move forward on implementing their health insurance exchanges, in light of **Judge Vinson's** decision, **Florida Governor Rick Scott** said in rejecting a bid for \$1 million in PPACA money "We are not going to spend a lot of time and money with regard to trying to get ready to implement that until we know exactly what is going to happen....I hope and I believe that either it

will be declared unconstitutional or it will be repealed." Senate Republicans have also taken another tack to allow states to avoid the PPACA mandates. **Senators Lindsey Graham and John Barrasso** introduced S. 244, legislation to allow states to pass a law opting out of the individual mandate, employer mandate, Medicaid expansion and minimum benefit requirements and other restrictions on insurers.

Anticipating a scenario under which the Supreme Court may strike down the individual mandate, Democrats are beginning to develop alternatives. **Rep. Peter DeFazio** said he is working on a proposal under which individuals who do not want health insurance would be required to file an "affidavit of personal responsibility" and waive their right to enroll in a health insurance exchange or Medicaid and, as a result, be barred from using the bankruptcy law to reduce health-related debt. Also, **Senators Ben Nelson and Claire McCaskill** are said to be exploring an alternative open-enrollment procedure similar to that instituted under Medicare Part D.

## Senate Republicans Fail to Pass PPACA Repeal Amendment

Last week **Senate Minority Leader Mitch McConnell** offered the PPACA repeal measure as an amendment to a bill reauthorizing the FAA. By 47-51,

the amendment failed on a vote to waive a budget point of order against the provision. However, Democrats exercised their talking points to “improve” the PPACA

when **Senator Debbie Stabenow** offered an amendment to repeal the PPACA’s IRS Form 1099 reporting requirement and it passed on a vote of 81-17.

### PPACA Oversight

Last week **House Energy and Commerce Committee Chairman Fred Upton** asked **HHS Secretary Kathleen Sebelius** to provide his committee with information about the health insurance reform implementation fund and stimulus funding for

comparative effectiveness research. The committee also asked HHS to provide all documents, including e-mail correspondence between HHS officials and outside groups about efforts to advertise or provide education about the PPACA and what funds were used.

## Senate Republicans Fail to Pass PPACA Repeal Amendment

Last week **HHS Secretary Kathleen Sebelius** wrote state governors outlining various ways in which states can save money under their Medicaid programs without running afoul of federal requirements. Cost cutting options included four categories: modifying benefits, managing care for high-cost beneficiaries, purchasing prescription drugs more efficiently and reducing fraud, waste, and abuse. She said that HHS is continuing to review what authority it has to waive the PPACA “maintenance of effort” provision beyond the one statutory exception and will help states identify Medicaid cost drivers. The House Energy and Commerce Committee is expected to hold hearings to listen to the complaints governors have in meeting fast rising Medicaid costs and new PPACA eligibility requirements.

### HHS Grants for Medicaid/SCHIP

Last week HHS announced the awarding of \$40 million in grants to states, community-based organizations, school systems and others to support their school-based outreach and enrollment activities for Medicaid and the SCHIP programs.

## Medicare Imaging Demonstration

Last week CMS announced the selection of five health systems to recruit participants for the Medicare Imaging Demonstration (MID), a project that promotes appropriate utilization of advanced imaging services. CMS is seeking participation of some 2,500 to 3,000 physicians from at least 500 practices. The two-year demonstration, authorized by Section 135(b) of MIPPA, will assess the impact that decision support systems used by physician practices have on the appropriateness and utilization of advanced medical imaging services ordered for beneficiaries under fee-for-service Medicare.

## Critical Access Hospitals to Get Comparative Data on Discharges/Claims

CMS announced that, beginning April 25th, critical access hospitals will have help in improving claims accuracy through newly implemented free access to the annual Program for Evaluating Payment Patterns Electronic Report (PEPPER), a tool providing hospital-specific Medicare data on discharges that are vulnerable to improper payments.

**S. 227 (MEDICARE)**, to amend Title XVIII of the Social Security Act to ensure more timely access to home health services for Medicare beneficiaries under Medicare; COLLINS; to the Committee on Finance, Jan. 31.

**S. 244 (REFORM)**, to enable states to opt out of certain provisions of the Patient Protection and Affordable Care Act; BARRASSO; to the Committee on Finance, Feb. 1.

**S. 248 (HEALTH CARE COVERAGE)**, to allow an earlier start for state health care coverage innovation waivers under the Patient Protection and Affordable

Care Act; WYDEN; to the Committee on Health, Education, Labor, and Pensions, Feb. 1.

**S. 262 (TAXATION)**, to repeal the excise tax on medical device manufacturers; BROWN of Massachusetts; to the Committee on Finance, Feb. 3.

**S. 274 (MEDICARE)**, to amend Title XVIII of the Social Security Act to expand access to medication therapy management services under the Medicare prescription drug program; HAGAN; to the Committee on Finance, Feb. 3.

**S. 277 (VETERANS' HEALTH)**, to amend Title 38, United States

Code, to furnish hospital care, medical services, and nursing home care to veterans who were stationed at Camp Lejeune, North Carolina, while the water was contaminated at Camp Lejeune, and for other purposes; BURR; to the Committee on Veterans' Affairs, Feb. 3.

**S. 281 (REFORM)**, to delay the implementation of the health reform law in the United States until there is a final resolution in pending lawsuits; HUTCHISON; to the Committee on Finance, Feb. 3.