



SOTU Pointed Questions on PPACA Generate Obama Critique and Republican Backlash

President Assails Ryan/ House FY 2013 Budget Resolution

After the House recessed until April 16, Republicans defended the House Budget Committee FY 2013 budget resolution which, among other things, would repeal the PPACA and provide for a voluntary Medicare voucher system to begin in 2023. However, **President Obama** said the resolution would “end Medicare as we know it” and shift health care costs to beneficiaries when health care spending outpaces the proposed subsidies. **House Budget Chairman Paul Ryan** responded by saying the President refused “to take responsibility and offer a credible plan” to address the nation’s \$15+ trillion debt. **Chairman Ryan** also said “If the president were serious, he would put forward a plan to deal with our debt crisis and save

Social Security, Medicare and Medicaid for future generations of seniors without raising taxes on small businesses that are struggling in this economy....”

The President linked his remarks to his likely Republican presidential contender’s support for the Ryan plan. The sparring over the House budget and the Senate’s insistence on the \$1.047 trillion spending cap under the BCA is a bellwether that all twelve FY 2013 appropriations bills are unlikely to be completed before the next fiscal year begins October 1st.

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President Obama Scores SOTU on PPACA

After the Supreme Court heard six hours of arguments over three days on the constitutionality of various provisions of the PPACA, **President Obama** said he is “confident that this law will be upheld because it should be upheld” and warned the justices that striking it down would be an “unprecedented, extraordinary step.” He also said “I’d just remind commentators that for years what we’ve heard is, the biggest problem on the bench was judicial activism or a lack of judicial restraint, that an unelected group of people would somehow overturn a duly constituted and passed law.”

Senator Mike Johanns said the President crossed the line with his remarks and that “What President Obama is doing here isn’t right. It is threatening, it is intimidating.”

Senate Minority Leader Mitch McConnell asked the President to back off his remarks. Later,

after the White House was peppered with questions about the President’s remarks and a federal judge asked the DOJ to clarify the President’s remarks, the President walked back his comments when he said “The point I was making is that the Supreme Court is the final say on our Constitution, and all of us have to respect it.” The federal judge on the 5th U.S. Circuit Court of Appeals in Texas, **Judge Jerry Smith**, issued the demand during oral arguments in a lawsuit challenging the physician-owned hospital provision under the PPACA. In response to the judge’s demand, **Attorney General Eric Holder** sent a letter reaffirming the Justice Department’s position that federal courts have the authority to review and overturn acts of Congress if they are found to be unconstitutional. The AG said “The power of the courts to review the constitutionality of legislation is beyond dispute....” In the event

that some or all of the PPACA is ultimately overturned by the Supreme Court, Republicans are beginning to formulate their legislative response. It was reported that **Reps. Michael Burgess** and Tom Price are developing full-scale alternatives to the law as enacted. **House Energy and Commerce Committee Chairman Fred Upton** also said the easiest provision to retain would be the one that allows children to remain on their parents’ health insurance coverage up to age 26. Republicans have previously proposed alternatives that would provide for greater subsidies for state high-risk pools; allow insurers to offer coverage across state lines; expand HSA tax benefits; and allow small business pooling under association health plans; etc. Presidential candidate **Rick Santorum** also proposed an alternative plan if he is elected.

CMS Outlines MA Growth

In the CMS announcement of its “Calendar Year 2013 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter,” the agency said that the final estimate of the increase in the national per capita Medicare Advantage growth percentage for combined aged and disabled beneficiaries is 2.80%

while the estimated per capita costs for fee-for-service is 3.29%. CMS also said the Part D deductible under the standard benefit will increase from \$320 to \$325. CMS said it will also take action for the first time to terminate plans that are rated below three stars for three consecutive years.

Republicans Ask CMS to Increase Fraud Efforts

In a letter to CMS sent by **House Ways and Means Health Subcommittee Chairman Wally Herger, Ways and Means Oversight Subcommittee Chairman Charles Boustany, Senate Finance Committee ranking**

member Orrin Hatch and Finance Committee member Tom Coburn, the members asked the agency to beef up fraud and abuse efforts, particularly those who false bill and set up fake storefronts. They asked for a description of CMS efforts to identify and detect

nominee owners; what safeguards Medicare contractors use in verifying identities of practitioners and owners; and a description of the process CMS uses to determine which categories of providers and suppliers are at high risk of committing fraud.

MedPAC Recommendations on Medicare FFS Benefit Design

The Medicare Payment Advisory Commission announced they will recommend several means by which Congress could reform the traditional Medicare fee-for-service system to reduce beneficiary exposure to the risk of high out-of-pocket spending and to create incentives for beneficiaries to make better decisions about their use of medical services. The

recommendations, to be included in the June MedPAC report to Congress, would allow HHS to combine the deductible for Part A and Part B and replace the current coinsurance with a copayment that would vary by type of service and provider. The commissioners discussed a possible out-of-pocket cap of about \$5,000 that would be made budget neutral through an additional charge on Medigap

supplemental coverage. The commission also discussed a Medicare/Medicaid dual-eligible demonstration and suggested that so-called “passive” enrollment in managed care plans could be frightening to individuals and may pose problems with their care. The target date for managed care plan selection under the demo is set for July 30.

LTC Facility Relief

CMS announced that the agency will not proceed with a proposed requirement that nursing homes and other long-term care facilities hire independent pharmacists to review resident medications in an effort to reduce the overprescribing of antipsychotics and other drugs. The agency said it will further study the issue after receiving comments that physician prescribing patterns could be driving the issue, not pharmacists.

Home Visitation Grants

HHS announced that ten states will receive Maternal, Infant and Early Childhood Home Visiting Program grants of \$72 million to establish and expand home visitation programs for pregnant women, parents, caregivers and children.

FDA Issues

The Senate HELP Committee released a public draft, the Drug Approval and Patient Access legislation, which is designed to accelerate FDA approval of breakthrough drugs and to aid in the development of consensus policy proposals to accompany the omnibus medical product user fee reauthorization legislation the committee wants to have enacted before the current laws expire on September 30th. The committee said it will release additional drafts in other policy areas in upcoming weeks.